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## **ENVIRONMENTAL PROTECTION**

### **COMPLIANCE AND ENFORCEMENT**

#### **Noise Control**

#### **Readoption with Amendments: N.J.A.C. 7:29**

Proposed: December 20, 2010 at 42 N.J.R. 3024(a), December 19, 2011 at 43 N.J.R. 3300(a)

Adopted: July 2, 2012 by , Bob Martin, Commissioner, Department of  
Environmental Protection

Filed: \_\_\_\_\_ as R.2012 d. \_\_\_\_\_, **with substantial changes for which  
notice and opportunity for public comment were provided.**

Authority: N.J.S.A. 13:1G-1 et seq.

DEP Docket Number: 12-10-11

Effective Date:

Expiration Date:

The New Jersey Department of Environmental Protection (Department) is readopting the Noise Control rules, N.J.A.C. 7:29, with amendments to the method by which sound levels are calculated, and to the types of facilities that are considered receptors.

This readoption with amendments document can be viewed or downloaded from the Department's website at <http://www.nj.gov/dep/rules/adoptions.html>.

**Summary of Public Comments and Agency Responses:**

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The Department received comments on the proposal of amendments (42 N.J.R. 3024(a)) from the following persons:

1. Jean Public
2. Marc Levy
3. Paul Barnett (Pure Energy Resources)

A summary of the comments and the Department's responses follows. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

### **General comments**

1. COMMENT: The New Jersey Noise Control Council needs ordinary citizens as members. Members should be chosen randomly, rather than by political appointment. (1)

RESPONSE: The Department does not have the power to change the makeup of the Council. Membership in the New Jersey Noise Control Council (Council) is governed by statute, N.J.S.A. 13:1G-17. By law, the Council consists of 13 members, nine of whom are members of the public. Those nine must include a medical doctor, an industrialist, an ecologist, a civil engineer and a member of a local governing body. There are no restrictions on the remaining four members. Anyone can apply to fill a vacancy to the Council by submitting a resume and letter of interest to the Council. Information on where to send the information is posted on the Council's website at <http://www.nj.gov/dep/enforcement/ncp.html>.

2. COMMENT: The Council has done relatively nothing to help quell noise in New Jersey,

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in particular with landscaping equipment and airport noise. (1)

RESPONSE: The Council's activities are beyond the scope of the readopted rules. It is an advisory body, created by statute. Council meetings are open to the public, and the public is welcome to attend these meetings to raise their noise concerns.

Landscapers on commercial, industrial, public service and community service property are regulated under the readopted rules at N.J.A.C. 7:29. Landscapers operating on these properties become part of the commercial, industrial, public service and community service operation and must therefore comply with the State's day and nighttime sound level standards. Citizens with noise complaints may contact the appropriate enforcement agency, which is the county health department or a municipality with a Department-approved Model Noise Ordinance. The enforcement agency will be able to determine whether the activity is in violation of the noise limits.

The Department's Model Noise Ordinance, which was developed by the Council, the Department and the Rutgers Noise Technical Assistance Center, includes an optional section that addresses noise from landscaping equipment used on residential property. The local municipality must adopt the Model for that provision to be enforced.

Aircraft noise is under the jurisdiction of the Federal Aviation Administration. Because Federal law preempts State law in this case, the State has no authority over noise from aircraft. One member of the Council is a member of the New Jersey Coalition Against Aircraft Noise, so the Council is aware of the issue.

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3. COMMENT: The regulations are ineffective and should not be readopted. (1)

RESPONSE: N.J.A.C. 7:29 has been highly effective in protecting the citizens of the State from noise-related disturbances, and continues to be an integral part of noise control by county and local noise inspectors. Many states do not have regulations to enforce noise. New Jersey has taken a proactive stance in amending the regulations to meet the ever changing landscape of noise-related sources. This includes extensive amendments and new rules, such as to address railroad noise. The Department consults with the Council and the Rutgers Noise Technical Assistance Center as part of its rulemaking process. The Department also takes the public's comments into consideration when making changes, as it did by removing industrial facilities as a receptor of noise as part of the Notice of Proposed Substantial Changes on Adoption (43 N.J.R. 3300(a)).

**N.J.A.C. 7:29-1.2 Industrial, commercial, public service, or community service facilities**

**(The Department responded to this comment in the Notice of Proposed Substantial Changes on Adoption, 43 N.J.R. 3300(a)).**

4. COMMENT: Industrial facilities should not be included as a receptor category for noise at N.J.A.C. 7:29-1.2. It was added in error in a previous rule amendment. Industrial facilities are not among the receptors in Model Noise Ordinances approved for municipalities by the Department. (3)

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RESPONSE: The Department, the New Jersey Noise Control Council and the Rutgers Noise Technical Assistance Center have had lengthy discussions regarding this issue at numerous Council meetings. Although there is no language in the 2000 proposal Summary discussing the insertion of industrial facilities as a receptor at N.J.A.C. 7:29-1.2(b) when the rule was amended, there is no evidence in the proposal that the insertion was inadvertent. (See 32 N.J.R. 1115(a).)

The commenter is correct that the Model Noise Ordinance did not list industrial facilities as a receptor. This was an error, since the Model is intended to be more restrictive than the State noise control rules. The State noise control rules provide a minimum standard. In accordance with N.J.A.C. 7:29-1.8, County and municipal ordinances to regulate noise, the governing body of a municipality or county or board of health may adopt a noise control ordinance, provided that the ordinance is more stringent than the Noise Control Act or the rules at N.J.A.C. 7:29, and provided the Department gives written approval of the ordinance.

Industrial facilities have since been added as receptors in the Model, so that the Model aligns with the rules at N.J.A.C. 7:29. However, industrial facilities will be removed as receptors in the Model as a result of the modifications to the rules on adoption.

Regardless of the history of the language in the rule, the comment regarding the removal of industrial facilities as a receptor has merit. As discussed in the Economic Impact to the Notice of Proposed Substantial Changes on Adoption (43 N.J.R. at 3301), under the prior rule at N.J.A.C. 7:29-1.2(b) sound emanating from an industrial, commercial, public service or community service facility is measured at the property line of other industrial, commercial, public service or community service facilities. For an industrial, commercial or community service facility that is located such that the noise it generates exceeds the standards in the rules

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only at a nearby industrial facility, the rule may necessitate the noise-generating facility to institute noise abatement measures in order to operate or expand operations. Often the nearby industrial facility also generates noise.

As set forth above, the Department first added industrial facilities as a receptor in its rulemaking in 2003. (32 N.J.R. 1116(a) and 2230(b).) Since then, it has been the Department's experience that noise complaints from an industrial facility about another facility are infrequent, in part because many industrial facilities are located in industrial parks, which are run by associations that can act as mediators to address noise-related issues among members. In contrast, the cost of compliance for a facility whose noise affects only industrial facilities is substantial, and can be prohibitive. Under the circumstances, the Department believes it is no longer necessary for the rule to identify industrial facilities as a receptor. Accordingly, the Department is modifying the rule on adoption to remove industrial facilities as a receptor, as the rule provided for nearly 30 years prior to the 2003 amendment.

The Department is modifying N.J.A.C. 7:29-1.2(b) on adoption so that industrial facilities and facilities that generate noise similar to that from industrial facilities, such as those that are engaged in waste collection, waste incineration, waste recycling, water and sewage treatment and electricity generation, are not designated as receptors for noise. The definition of "industrial facility" combines facilities that are categorized elsewhere in the previous rule, and also adds facilities. For example, waste collection and recycling centers and water and sewage facilities are defined as public service facilities in the previous rule. The modifications classify them as industrial facilities because the activities conducted at them create levels of noise similar to industrial facilities. The adopted definition of the term "electricity generation" includes

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generation, transmission or distribution of electricity for sale in the State. Waste incineration and electricity generation are not expressly identified in the prior rules, but waste incineration and electricity generation result in noise comparable to activities identified as industrial, rather than the activities at facilities that are protected under the rules, such as community service facilities. The modifications on adoption group all of the public and private industrial and industrial-like facilities together under one defined term.

Maintenance centers, included in the previous definition of public service facility, referred to government facilities used, for example, by a department of public works to store, operate and maintain equipment such as garbage trucks, snow removal equipment and street sweepers. Such facilities are not industrial or commercial, as defined under the rules; however, they are reasonably classified as “community service facilities” because the noise generated at maintenance centers is not comparable to that from of industrial facilities. Accordingly, the Department is modifying the definition of community service facility on adoption to add maintenance centers.

Likewise, the “offices and buildings of agencies or instrumentalities of government” category in the prior definition of public service facility is being moved into the definition of community service facility. The definition of community service facility includes, in addition to maintenance centers, categories of facilities in which individuals must communicate vocally in person or over the phone without noise interruption. These facilities, because of the activities conducted at them, should be afforded protection as a receptor against noise, as the daytime noise standard was specifically established to allow uninterrupted conversation.

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The Department is modifying N.J.A.C. 7:29-1.2 and 1.5 on adoption to remove references to the deleted term public service facility.

Although industrial facilities are no longer receptors under the State's rules, the Federal Occupational Health and Safety Administration (OSHA) continues to have authority over noise-related issues within industrial facilities, for example, through its Occupational Noise Exposure Standards at Title 29 of the Code of Federal Regulations, thereby ensuring that employee health in this respect is protected. In addition, associations that generally manage industrial parks can act as mediators should there be disputes between industrial facilities regarding excessive noise.

#### **N.J.A.C. 7:29-1.5(a)5 Exceptions**

5. COMMENT: The exception for "motor vehicle racetrack facilities engaged in the racing of motor vehicles" should be removed. There is scientific evidence that excessive noise can cause physiological problems such as high blood pressure, loss of hearing and sleep deprivation.  
(2)

RESPONSE: The exception at N.J.A.C. 7:29-1.5(a)5 applies to facilities engaged in the racing of motor vehicles. All other activities held at these venues, such as concerts, fairs and rodeos, are subject to the Department's day and nighttime sound level standards. Some racetrack activities are also governed under Superior Court orders, which can be enforced through the courts.

The Department has met extensively with local officials, racetrack owners, citizens and citizen groups, and also held a public hearing, to offer solutions and compromises to address this issue. At the public hearing those in favor of the exemption far outnumbered those against it.



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Complaints to the Department regarding racetrack noise are relatively infrequent, compared to all other noise complaints.

The Department has determined that the most appropriate method of addressing noise from venues such as motor vehicle racetrack facilities is to rely upon local regulatory agencies to monitor and control racetrack noise through a municipal noise ordinance and/or an annual license to operate. Limiting the days, times and types of vehicles that can operate can help to control noise at motor vehicle racetracks. It is true that excessive noise can cause many physiological problems. Noise abatement is difficult in a densely populated, highly industrialized state, such as New Jersey. The Department will continue to work with the New Jersey Noise Control Council and the Rutgers Noise Technical Assistance Center to seek ways to reduce noise from all sources.

The Department received one comment on the Proposed 2011 Substantial Changes on Adoption to the Rules Proposed for Readoption with Amendments from the following person:

4. Christopher Bajdek (ESS Group)

A summary of the comment and the Department's response follows. The number in parentheses after the comment identifies the respective commenter listed above.

**N.J.A.C. 7:29-1.2 Industrial, commercial, public service, or community service facilities**

6. COMMENT: The commenter is a consultant with a background in noise assessment and

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abatement. The Department is commended for its proposal to remove industrial facilities as a receptor of noise. (4)

RESPONSE: The Department acknowledges the commenter's support for the rules.

### **Federal Standards Statement**

Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65), require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The rules readopted with amendments do not impose any standards or requirements that exceed the standards or requirements imposed by any applicable Federal law. There are Federal sound level standards for certain sources of noise, such as train coupling and idling, which can be enforced by local municipalities by referencing the Federal standards, which are incorporated into the rules readopted with amendments at N.J.A.C. 7:29-1.3.

With this exception, the rules have not been formulated in accordance with the authority of or in order to implement, comply with or participate in any program established under Federal law. Accordingly, a Federal standards analysis is not required.

**Full text** of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 7:1D.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from the proposal indicated in brackets with asterisks \*[thus]\*).

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7:29-1.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

...

“Community service facility” means any non-residential facility used to provide services to the public, including, but not limited to:

1. – 3. (No change from proposal.)

4. Public, private and parochial schools; \*[and]\*

5. Hospitals\*[,]\*\*;\*

**\*6. Offices and buildings of agencies or instrumentalities of government; and**

**7. Maintenance centers (such as department of public works facilities). \***

...

**\*“Electricity generation” means generation, transmission, or distribution of electricity for sale in the State.\***

...

“Industrial facility” means any \*[activity and its related premises, property, facilities, or equipment involving the fabrication, manufacture, or production of durable or nondurable goods.]\* **\*facility, whether public or private, and its related premises, property, or equipment involving:**

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1. **The fabrication, manufacture, or production of durable or nondurable goods; or**
2. **Industrial-like activities including, but not limited to:**
  - i. **Waste collection;**
  - ii. **Waste incineration;**
  - iii. **Waste recycling;**
  - iv. **Water and sewage treatment; and**
  - v. **Electricity generation. \***

...

\*[“Public service facility” means any facility and its related premises, property, or equipment used to provide governmental services to the public including, but not limited to:

1. Maintenance centers;
2. Offices and buildings of agencies or instrumentalities of government;
3. Waste collection centers;
4. Waste recycling centers; and
5. Water and sewage facilities.]\*

...

7:29-1.2 Industrial, commercial, \*[public service,]\* or community service facilities

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(a) No person shall cause, suffer, allow, or permit sound from any industrial, commercial, \*[public service]\* or community service facility that, when measured at any residential property line of any affected person, is in excess of any of the following:

1. – 2. (No change from proposal.)

(b) No person shall cause, suffer, allow, or permit sound from any industrial, commercial, \*[public service]\* or community service facility that, when measured at the property line of any other \*[industrial,]\* commercial\*[, public service]\* or community service facility of any affected person, is in excess of any of the following:

1. – 3. (No change from proposal.)

#### 7:29-1.5 Exceptions

(a) The operational performance standards established at N.J.A.C. 7:29-1.2 shall not apply to any of the following noise sources:

1. – 13. (No change.)

14. Emergency electricity generators at an industrial\*[or]\*\*,\* commercial \*[facility]\*, or \*[a public service or]\* community service facility in use during an electrical outage.