

ENVIRONMENTAL PROTECTION

COMPLIANCE AND ENFORCEMENT

COMPLIANCE OPERATIONS AND COORDINATION

Notice of Action on Petition for Rulemaking

Noise Control; Request for Amendments Related to Noise from Lawn Care Equipment

N.J.A.C. 7:29-1.2

Petitioner: Amy Black.

Take notice that the Department of Environmental Protection (Department) has denied the petition for rulemaking filed by Amy Black (petitioner) described below. The petition was received on April 5, 2017. Notice of receipt of the petition was published in the May 15, 2017, New Jersey Register (49 N.J.R. 1251(b)).

The Petition

The petitioner requests that the Department amend the Noise Control rules, N.J.A.C. 7:29, to limit noise coming from a residential property. Petitioner seeks to protect people on neighboring properties and on public rights of way from lawn equipment noise. Petitioner states, “it has become difficult to walk the streets other than in wintertime ... due to the incessant sound of leaf blowers and other commercial yard equipment ... [T]here is barely a minute that some commercial lawn operation isn’t using [the equipment] somewhere in the neighborhood.” Petitioner requests that the Department amend N.J.A.C. 7:29-1.2, Industrial, commercial, or community service facilities, to restrict noise from any residential property, and to measure the noise at the property line of the noise-generating property rather than at the property line of the affected person as currently measured under the existing rules.

Existing N.J.A.C. 7:29-1.2 provides limits on noise from industrial, commercial, or community service facilities at specific times, measured at the property line of any affected person. Petitioner requests the regulations be extended to apply the sound level limits to noise originating from residential properties. Petitioner further asks that the Department amend the rules to allow the sound level limits be measured at the source property line, rather than the affected person's property line, to protect people in nearby public rights of way.

Petitioner's requested language follows, with additions shown in bold, **thus**, and deletions in brackets, [thus].

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

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

1. From 7:00 A.M. to 10:00 P.M.:

i. Continuous airborne sound which has a sound level in excess of 65 dBA; or

ii. Continuous airborne sound which has an octave band sound pressure level in decibels which exceeds the values listed below in one or more octave bands: Octave

Band Center Octave Band Sound Frequency (Hz) Pressure Level (dB) 31.5 96 5 Octave

Band Center Octave Band Sound Frequency (Hz) Pressure Level (dB) 63 82 125 74

250 67 500 63 1000 60 2000 57 4000 55 8000 53 or,

iii. Impulsive sound in air which has a maximum sound level in excess of 80 dBA.

2. From 10:00 P.M. to 7:00 A.M.

- i. Continuous airborne sound which has a sound level in excess of 50 dBA; or
- ii. Continuous airborne sound which has an octave band sound pressure level in decibels which exceeds the value listed below in one or more octave bands: Octave Band Center Octave Band Sound Frequency (Hz) Pressure Level (dB) 31.5 86 63 71 125 61 250 53 500 48 1000 45 2000 42 4000 40 8000 38 or,
- iii. Impulsive sound in air which has a maximum sound level in excess of 80 dBA and such impulse sound shall not be repeated more than four times in any hour. Impulsive sound which repeats more than four times in any hour shall not exceed 50 dBA.

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

- 1. Continuous airborne sound which has a sound level in excess of 65 dBA; or
- 2. Continuous airborne sound which has an octave band sound pressure level in decibels which exceeds the values listed below in one or more octave bands: Octave Band Center Octave Band Sound Frequency (Hz) Pressure Level (dB) 31.5 96 6 Octave Band Center Octave Band Sound Frequency (Hz) Pressure Level (dB) 63 82 125 74 250 67 500 63 1000 60 2000 57 4000 55 8000 53 or,
- 3. Impulsive sound in air which has a maximum sound level in excess of 80 dBA.

The Department’s Response to the Petition

The Department is denying the petition because it believes at this time that the restrictions on residence-to-residence noise that the petitioner seeks are more appropriately made at the municipal level, rather than the State level. The municipalities are better able to respond effectively to complaints involving such noise. Further, petitioner's proposed amendments are contrary to the existing regulatory purpose, which is to protect an "affected person," defined in the rules, from excessive noise.

The Department promulgates noise control rules on a Statewide level. The rules are enforced on behalf of the Department by a local, county, or regional health agency with grant funding that the Department provides. The Department, pursuant to the Noise Control Act, has developed the Model Noise Control Ordinance (Model Ordinance) as guidance for municipalities to follow when adopting their own noise control ordinances. Before a municipality may adopt a noise ordinance based on the Model Ordinance, it must obtain Department approval. See N.J.A.C. 7:29-1.8. The municipal noise ordinance must, at minimum, be identical to the Model Ordinance. It can be more stringent than the Model Ordinance. Municipalities with a Department-approved noise ordinance can respond to residential noise complaints and take measurements to determine if the noise violates the day or nighttime sound level standards. If the municipal enforcement office finds that there has been a violation, the municipality may take appropriate enforcement measures.

The Model Ordinance allows a municipality to impose a curfew on the use of landscaping equipment, such as leaf blowers. The Model Ordinance also requires that landscaping equipment be operated with a muffler and/or sound reduction device. A municipality's ordinance may contain curfew hours or other provisions that are more restrictive than the Model Ordinance language, as long as the ordinance is consistent with the Statewide scheme of noise control and is

approved by the Department. See N.J.A.C. 7:29-1.8. For example, some New Jersey municipalities have banned leaf blowers entirely during seasons when leaves do not drop.

A municipality that does not have a Department-approved noise control ordinance is not without recourse against excessive noise. The municipality may evaluate the sound under the municipality's public nuisance ordinance. Most such ordinances rely on a "plainly audible" standard, and consider a sound that is plainly audible to a person of normal hearing at a specific distance from the source of the sound to be a public nuisance. If a noise violates the nuisance standard, the municipality can pursue enforcement as needed.

Additionally, the petitioner's suggested rule language expands the noise control rules beyond what the Department believes to be appropriate. Existing N.J.A.C. 7:29-1.2(a) protects residential properties from noise from industrial, commercial, or community service facilities by placing daytime and overnight limits, measured from any residential property line. Existing N.J.A.C. 7:27-1.2(b) applies specifically tailored noise restrictions to industrial, commercial, or community service facilities that operate in proximity to other such facilities, such as in an industrial park. The existing rules differ in their treatment of business-to-business noise and business-to-residence noise, because it has been the Department's experience that noise complaints from an industrial facility about another facility are infrequent. The basis for the difference is discussed in the Department's 2012 adoption of amendments to the Noise Control rules, 44 N.J.R. 1881(a).

Petitioner's suggested amendments could result in increased noise from industrial, commercial, and community service facilities during overnight hours. Where the suggested amendments would place a limit of 65 dBA on sound from industrial, commercial, or community service facilities during the period from 10:00 P.M. to 7:00 A.M, the existing rule limits the

sound during those times to 50 dBA. The Department does not believe that increasing the allowable noise from industrial, commercial, and community service facilities is appropriate.

Petitioner's suggested amendments would measure the sound emitted at a residence or an industrial, commercial, or community service facility from the source's own property line, regardless of the volume of the sound away from the source. This, petitioner states, is to protect people in the "public right of way." If the rule were amended as suggested, any person standing outside the property line of any source of sound in excess of the limits could report a violation, regardless of that person's ability to reasonably avoid or leave the source of the noise.

The existing Noise Control rules, by contrast, protect only an "affected person" from excessive noise. An "affected person," as defined at N.J.A.C. 7:29-1.1, is "any person who has registered a noise complaint with an authorized enforcement agency that he or she is a receptor of noise on a protected property category, and said affected person has an interest in the protected property category as an owner, tenant, or employee." An owner, tenant, or employee of a protected property cannot reasonably leave the location to avoid the noise; therefore, it is reasonable that the rules protect that person. A person on a public right of way is not an "affected person"; the right of way is not a protected property category, and the person has no interest in the property. Therefore, the person on a public right of way is not subject to the protections of the Noise Control rules.

Measuring noise at the property line of the source of the noise, as the petitioner suggests, would allow anyone to register a noise complaint, whether he or she is truly affected by the noise, or could reasonably move to a location where the noise is not an issue. The number of potential complaints resulting from such a change would overburden limited enforcement

resources. For this reason, the point of compliance for a noise measurement under N.J.A.C. 7:29-1.2 is at the property line of the affected person.

Based on the local municipalities' existing ability to address noise, particularly as to landscaping equipment; the burdens the proposed amendments expanding the rules' protections beyond an "affected person" would have on enforcement resources; and the possibility of increased noise from industrial, commercial, and community service facilities, the petition is denied.

Therefore, in accordance with N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-4.2, after careful consideration of the petition, the Department has determined to deny the petition for rulemaking.

A copy of this notice has been mailed to the petitioner as required by N.J.A.C. 1:30-4.2.