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ENVIRONMENTAL PROTECTION

COMPLIANCE AND ENFORCEMENT

Noise Control

Notice of Proposed Substantial Changes on Adoption to Rules Proposed for Readoption with Amendments

Proposed Changes: N.J.A.C. 7:29-1.1, 1.2 and 1.5

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

Authorized By: Bob Martin, Commissioner, New Jersey Department of
Environmental Protection

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

DEP Docket Number: 12-10-11

Submit written comments by (60 days after publication) to:

Alice A. Previte, Esq.

Attn: DEP Docket No. 12-10-11

Department of Environmental Protection - Office of Legal Affairs

Mail Code 401-04L

P.O. Box 402

Trenton, New Jersey 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on CD or DVD as well as on paper. Submittal of CD or DVD is not a requirement. Submittals on CD or DVD must not be access-restricted (locked or read-only) in order to facilitate use by the Department of the electronically

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submitted comments. The Department prefers Microsoft Word 6.0 or above. Macintosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation with the commenter's name and affiliation following the comment.

This notice of proposed change can be viewed or downloaded from the Department's web page at www.nj.gov/dep/rules.

Take notice that the Department in accordance with the Administrative Procedure Act, N.J.S.A. 52:14C-4.10, is proposing substantial changes to the Noise Control rules at N.J.A.C. 7:29, based on a comment received on the proposal to readopt the Noise Control Rules, N.J.A.C. 7:29, with amendments in its proposal published in the New Jersey Register on December 20, 2010 (42 N.J.R. 3024(a)). The public comment period closed on February 18, 2011. The proposed substantial change amends N.J.A.C. 7:29-1.2, Industrial, commercial, or community service facilities, to eliminate industrial facilities as a receptor for noise. As part of this change, the Department is proposing to add a new definition of electricity generation, change the definitions of community service facility and industrial facility, and delete the definition of public service facility at N.J.A.C. 7:29-1.1. The Department is also proposing to change N.J.A.C. 7:29-1.5, Exceptions, to remove references to public service facility.

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Summary of Public Comments and Agency Responses:

The Department received a comment on N.J.A.C. 7:29-1.2, Industrial, commercial, public service, or community service facilities, from Paul Barnett of Pure Energy Resources.

1. 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.

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

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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 if the changes proposed in the within notice are adopted.

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 below, under existing 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 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), 32 N.J.R. 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

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circumstances, the Department believes it is no longer necessary for the rule to identify industrial facilities as a receptor. Accordingly, the Department is proposing to change the rule to remove industrial facilities as a receptor, as the rule provided for nearly 30 years prior to the 2003 amendment.

The Department is proposing to change N.J.A.C. 7:29-1.2(b) 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 proposed new definition of “industrial facility” combines facilities that are categorized elsewhere in the existing 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 existing rule. The proposed changes to the rule will classify them as industrial facilities because the activities conducted at them create levels of noise similar to industrial facilities. Waste incineration and electricity generation are not expressly identified in the existing 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 proposed changes group all of the public and private industrial and industrial-like facilities together under one defined term.

Maintenance centers, included in the definition of public service facility proposed for deletion, refers 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

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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 industrial facilities. Accordingly, the Department proposes to add maintenance centers into the definition of community service facility.

Likewise, the “offices and buildings of agencies or instrumentalities of government” category in the existing definition of public service facility is proposed to be moved into the definition of community service facility. The proposed definition of community service facility will include, 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.

The Department proposes to change N.J.A.C. 7:29-1.2 and N.J.A.C. 7:29-1.5 to remove references to the deleted term public service facility.

Although industrial facilities would no longer be receptors under the State’s rules, the Federal Occupational Health and Safety Administration (OSHA) would continue 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.

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**Effect of Proposed Changes on Impact Statements Included in the Proposal to
Readopt with Amendments**

The proposed substantial changes on adoption will affect only the following Impacts set forth in the proposal:

Economic Impact

The Department anticipates that the proposed substantial changes on adoption will have a positive economic impact on facilities whose noise receptors are only industrial facilities. Under the existing rule, sound emanating from an industrial, commercial, public service or community service facility is measured at the property line of other surrounding industrial, commercial, public service or community service facilities. For an industrial, commercial, public service or community service facility that is located such that the noise it generates exceeds the standards in the rules only at a nearby industrial facility, the existing rule may necessitate the noise-generating facility to institute noise abatement measures in order to operate or expand operations. These abatement measures could range from a simple noise barrier costing a few hundred dollars to a multi-phased abatement plan costing hundreds of thousands of dollars. The range of costs depends on factors such as the number of individual sources of noise at the industrial facility, the corresponding sound levels, the distance between the noise sources and receiving properties, and reflective and absorptive surfaces nearby.

The Department anticipates that the proposed substantial changes on adoption will provide an economic benefit to industrial and industrial-like facilities, both public and private, whose receptors are solely other industrial or industrial-like facilities by reducing design and operational costs. Similarly, commercial and community service facilities

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that generate noise and whose receptors are only industrial facilities will also benefit, insofar as they are saved the expense of implementing noise abatement measures.

Because the substantial changes on adoption will not reduce the protection for residential, commercial or community service receptors, the Department anticipates that economic impact will be neutral as to them.

Regulatory Flexibility Analysis

As required by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has evaluated the reporting, recordkeeping and other compliance requirements that the proposed substantial changes on adoption will impose on small businesses. The Regulatory Flexibility Act defines small business as any business which is a resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full-time employees.

The proposed changes will reduce compliance requirements for those industrial, commercial and community service facilities that are located such that the noise they generate exceeds the standards in the rules only at a nearby industrial facility. The economic benefit in terms of reduced costs that may accrue to an affected small business is as set forth in the Economic Impact, above.

Full text of the proposed substantial changes to the rules proposed for readoption with amendments follows (additions indicated in boldface with asterisks ***thus***; deletions 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.