



Ontario updates noise guideline to harmonize approvals and land use planning decisions

December 9, 2013

After more than three years, the Ministry of Environment (MOE) has finally released its Environmental Noise Guideline, Stationary and Transportation Sources – Approval and Planning (NPC-300). The Guideline, posted to the Environmental Registry on October 21, 2013, ensures that MOE uses a single and harmonized set of noise standards to evaluate ECA applications. The Guideline similarly affects municipalities in land use planning decisions. MOE will also use NPC 300 to evaluate noise complaints under s.14 of the Environmental Protection Act.

The update removes inconsistencies between standards that were used in MOE's approvals process and those that applied to local land use decisions. NPC-300 will facilitate urban intensification while ensuring new residential developments do not push existing industrial and commercial sources of noise out of compliance. Sound level limits will be applied differently in the newly created Class 4 areas. While limits for Class 1, 2 and 3 areas assume open windows in receptor buildings, the limits for a Class 4 area assume mitigation measures at the receptors. These include closed windows and enclosed noise buffer balconies, together with the operation of a ventilation system or central air conditioning, thereby allowing higher ambient noise levels.

In applying for or renewing an MOE approval, the owner of a stationary source will remain responsible for compliance with applicable sound level limits. However, where a site in proximity to a stationary source is in the process of being developed or redeveloped for noise sensitive land uses, the proponent/developer of the noise sensitive land use is responsible for ensuring compliance with the applicable sound level limits.

Meeting the sound level limits may require that noise control measures be undertaken by the property developer, the stationary source, or a combination of both. The Ministry says that mitigation must be the responsibility of the developer of the sensitive use and should be done in "a reciprocal, legally-binding and supportive manner." Since there is no legal framework, many stakeholders have questioned how municipalities could compel developers and source owners to work together, especially if the parties were not inclined to cooperate.

For a detailed discussion of the new NPC, see "Ontario expands noise control options" in the April 2011 issue of our newsletter.

There are several revisions to the Guideline since we saw it last

MOE made a number of changes to NPC-300 in response to the comments it received when the Draft Guideline was last posted to the Environmental Registry in November 2010 (and during follow-up consultation sessions with various stakeholders). These amendments include

- ◆ clarifying certain technical definitions, including “auxiliary transportation facility,” “background sound level,” “enclosed noise buffer balcony,” “exclusion limit,” “noise control measure,” “noise sensitive land use,” “point of reception,” and “predictable worst case”
- ◆ adding new definitions for a number of terms, including “acoustic barrier,” “agreement for noise mitigation,” “layover site,” and noise sensitive commercial and institutional purpose buildings
- ◆ clarifying and adding additional guidance for the new Class 4 area concept. Such areas may be classified solely at the discretion of the land use planning authority to facilitate new development while protecting existing stationary sources
- ◆ removing the proposed Class 5 area that was designed to address situations where background noise levels are dominated by existing rail and air traffic. Instead, the definition of “background sound level” was revised to include the contribution of noise from rail traffic
- ◆ adding information about how the NPC-300 will be implemented now that the final decision notice has been posted. Applications for Ministry approvals submitted prior October 21, 2013 may be assessed under the new Guideline at the request of the applicant.

**New Noise standard
rolls four documents
into one**

NPC-300 updates and consolidates three former guidelines and an MOE criteria document

- ◆ *Sound Level Limits for Stationary Sources in Class 1 and 2 Areas (Urban) (NPC 205)*
- ◆ *Sound Level Limits for Stationary Sources in Class 3 Areas (Rural) (NPC-232)*
- ◆ *Noise Assessment Criteria in Land Use Planning (LU-131)*
- ◆ *Noise Assessment Criteria in Land Use Planning: Requirements, Procedures and Implementation.*

NPC-300 does not apply to wind turbine facilities, which are covered by the *Noise Guideline for Wind Farms* (PIBS 4709e), or to landfill operations (PIBS 7792e).

If you have questions about the new Guideline and how it may affect an existing or future approval, please call John Georgakopoulos at 416-862-4826 or at jgeorgakopoulos@willmsshier.com. We can also help guide you through the noise-related standards and other environmental considerations that arise during the land use planning process.