



January 13, 2011

Ms. Alice Verbaas  
Senior Program Support Coordinator  
Ministry of the Environment  
Operations Division  
Environmental Assessment and Approvals Branch  
2 St. Clair Avenue West, Floor 12A  
Toronto, ON M4V 1L5

Dear Ms. Verbaas

**Re: Proposed Updated Environmental Noise Guideline (NPC-300): Environmental Bill of Rights (EBR) Registry Number 011-0597**

This submission comprises the response of the Ontario Professional Planners Institute (OPPI) on the proposed update to the Environmental Noise Guideline.

Established in 1986, OPPI is the recognized voice of the Province's planning profession and provides vision and leadership on key planning issues. Government, private industry, agencies, and academic institutions employ more than 3,000 practicing planners. In addition, we have approximately 500 student members. Members work in a wide variety of fields including urban and rural community development, urban design, environment, transportation, health and social services, housing, and economic development.

OPPI is committed to creating and fostering healthy communities in Ontario. Launched in 2006, our "Healthy Communities, Sustainable Communities" initiative emphasizes the importance of urban design, active transportation and green infrastructure, links between public health and land use planning, and strategies for collaborating on tangible actions for healthier communities. Planners have a pivotal role to play in bringing together multiple partners and disciplines and in engaging their communities.

The mandate and environmental approvals administered by the Ministry of the Environment (MOE), together with their supporting guidelines, are of great interest to OPPI members since these establish a framework for considering land use compatibility when uses that generate emissions and sensitive uses are proposed in proximity to each other. Intensification of urban land use, brownfield development and the use of a wider range of transportation options are mandated by the Provincial Policy Statement and supported by OPPI's "Healthy Communities, Sustainable Communities" initiative. At the same time, issues of land use compatibility and the potential health implications of both air quality and noise can be heightened when these principles are applied in practice.

OPPI's response to the proposed changes to the Environmental Noise Guideline is provided from the perspective of planning practitioners who would utilize information from the Guideline and technical input from noise impact assessors in generating policy and making recommendations on development applications. Our response begins with general comments on the context of the initiative and a need for mutual understanding between planners and technical disciplines. These are followed by a section-by-section commentary on the content of the Noise Assessment Criteria document.

## **Context**

The draft NPC-300 document forms part of a series of reviews and proposed changes to the regulatory framework and guidance relating to environmental approvals and related planning matters, emanating from MOE. These include:

- Modernization of Environmental Approvals
- Review of the "D"-Series Guidelines
- Alternative Air Quality Standards
- Review re: Fine Airborne Particulates
- Review re: Cumulative Effects

Of these, OPPI has already submitted comments on EBR postings relating to Approvals Modernization and the "D"-Series Guidelines. A copy is posted on the OPPI website: [http://www.ontarioplanners.on.ca/pdf/D1\\_to\\_D6\\_Guidelines\\_September\\_2010.pdf](http://www.ontarioplanners.on.ca/pdf/D1_to_D6_Guidelines_September_2010.pdf)

Some of this context was outlined at the NPC-300 consultation event held on December 14, 2010 (attended by a representative from OPPI), but it is not referenced or discussed in the EBR posting or in the draft NPC-300 publication. Indeed, the draft NPC-300 publication refers to Certificates of Approvals (C of As) and the D-Series Guidelines as if there are no imminent changes to the current regime.

The modernized approvals framework, for example, could have implications for the application of NPC-300 when some activities are placed on a registry and will no longer require individual environmental approvals.

It would have been helpful if the EBR notice, at least, had provided further information on this context so that responses to NPC-300 would be better informed.

## **Mutual Understanding of the Proposed Changes**

The draft NPC-300 publication consolidates and proposes changes to three existing guidelines. Also it covers a broad scope, from highly technical discussion of noise impacts to more general planning-related matters.

Since the NPC-300 publication would be used by a wide range of professionals and lay persons it is important that its content and any changes proposed to the three existing guidelines be widely understood – both to enable informed comment during the current public review period and when the document is ultimately implemented by noise impact and planning practitioners, to ensure good land use planning.

Unfortunately, neither the EBR posting nor the draft NPC-300 publication provide an itemized list of proposed changes to the three previous guidelines. There is no rationale for those provisions that are to be retained or the proposed changes. It is common practice for EBR postings to specify and outline the implications of proposed changes, but that did not occur in this instance.

As a particular example, it was indicated at the consultation session that the proposed new Class 4 and 5 Areas were instituted to promote urban intensification. For planners this is an important consideration, but no supporting rationale is found in the EBR posting or in the draft publication. Understanding of the materials would have been enhanced and comments on the draft publication would have been better informed if this basic information had been provided.

### **Commentary on the Draft NPC-300 Document**

Overall it would be helpful if defined terms were italicized throughout the document.

#### **Part A - Background**

*A1, Purpose: paragraph 1 (page1)*

The reference to sustainable development in the first paragraph should be supported by a definition of this term. It is not clear how the draft NPC-300 document supports this principle.

Since the Guideline provides for noise mitigation both at the source and at the receptor (e.g. good site planning, and sealed windows and air conditioning in Class 4 and Class 5 Areas) we suggest that the stated objective of the Guideline in the first paragraph be expanded to include mitigation at the receptor.

Planners need to know how the requirements in the Guideline can best be addressed under each of the areas of legislation identified in A1 (1), i.e. the *Planning Act* (including Official plan policy and implementation mechanisms such as zoning and development agreements), the *Environmental Assessment Act* (including individual EAs, the Municipal Class EA and the Provincial Highways Class EA), and the *Aggregate Resources Act* (including the relationship between these Guidelines and requirements in the "Aggregate Resources of Ontario" standards, which have different noise study requirements for different types and scales of pits and quarries). Each of these processes has its own sequence of notice, consultation, analysis and decision making in which noise considerations would be addressed at different levels of detail.

Section A1 refers to a need to implement the principles of the Guideline at an early stage of the land use planning process, but there is very little in the document to describe how this would be done at the early or later stages any of these processes, or for different types of project. While feasibility and detailed noise studies are discussed in Part C, the Guideline needs a broader description of the way they would fit into these planning processes. Flowcharts or other visual representations would be very helpful.

Also in this section, the *Niagara Escarpment Planning and Development Act* should be added to the legislation under which decisions would be made by planning approval authorities.

OPPI is pleased to see that the draft Guideline recognizes that the requirements of municipalities and other ministries may prevail over the Guideline.

*A4, Definitions (beginning on page 4)*

"Auxiliary Transportation Facilities" – the definition is an expansion of the "ancillary transportation facilities" definitions in the previous guidelines but is still not clear. In what way are the facilities "auxiliary"? Rail and truck engine noise, rail shunting noise and noise from truck refrigeration equipment appear to be as or more significant than the noise sources listed, many of which are not necessarily associated with transportation facilities. We understand that large scale commercial facilities are to be considered in the impending draft "D"-Series Guidelines but these are not specifically considered here.

"Class 4 Area" – there appears to have been little consideration of how a Class 4 Area would be "designated" by a land use planning approval authority. Section B7.4 provides a number of means to "designate" an area to Class 4 ranging from Official Plan policy through to a written statement of from the Planning Commissioner (note that in planning documents the word "designation" is generally limited to designations in Official Plans).

If the purpose of the Guidelines is to relax the noise mitigation requirements through the development approval process in order to make certain sites more viable for development to enhance economic benefits, urban renewal or social benefits then the rationale for relaxing the standards should be explicitly considered through the decision making process. The Guidelines should provide guidance as to when it would be appropriate to designate Class 4 areas. Further, the method by which Class 4 areas are "designated" should be consistent and transparent. Local Official Plans should outline the criteria and required information to support such designations and ultimately identify the areas where there are Class 4 and (and also Class 5) Areas. There should be a supporting rationale for using the relaxed standard, to be considered through an official plan review, a specific application for a Class 4 designation, or as part of a complete application submission, for example. Policy considerations for reviewing proposals for Class 4 areas may go beyond noise impacts and include other matters such as air quality, maximizing the use of separation, built form and other means of mitigation, efficient use of community infrastructure, and whether some types of development (such as residential forms likely to have a greater number of families or outdoor patios) should be restricted.

The Guideline should also encourage the use of Official Plan policy by municipalities to help implement other provisions in the Guideline including the "Point of Reception on a Vacant Lot" (Section B8) and "Development of Adjacent Lands" (B10).

"Class 5 Area" – The process for designating an area as Class 5 is not clear. Do these areas remain entirely under MOE jurisdiction, and is there to be no involvement by planning approval authorities?

"Construction" – the authors may wish to refer to the recent Rockfort Quarry Ontario Municipal Board Decision (OMB ref. PL00643) for a recent interpretation of the distinction between construction vs. operations in relation to aggregate extraction.

"dBA" – the Guideline should include an explanation of the characteristics of noise power and energy as opposed to pressure, and the rationale for using pressure as the basis for measurement.

“Noise control measure” – Noise sources at pits and quarries move within the site and may require noise control measures (such as temporary berms or truck trailers adapted as noise barriers) that are portable. Therefore not all noise control measures need to be permanent in nature, although measures need to be in place for the duration of noise impacts at particular locations.

There should be some recognition in the Guideline (or perhaps in future “D” –Series Guidelines) that noise control measures such as acoustic barriers may in themselves have unwanted impacts such as on wildlife movement, visual amenity and public safety, and that these aspects should be also be considered in decision-making.

“Noise sensitive land uses” - Under the last paragraph, the definition provides exemptions for uses such as a caretaker’s residence. In the definition it should also say that this would be “and subordinate to” the primary use. In relation to pits and quarries, an aggregate operator may own on-site residences that are not otherwise directly associated with the operation. We suggest that the definition include such residences as noise sensitive land uses.

The draft guidelines perpetuate a continuing lack of guidance regarding noise impacts on wildlife and wildlife habitat, even though the definition for an adverse includes “injury or damage to...plant or animal life”. Since no guidelines or standards exist, this issue is generally given very low priority in project and land use planning, even where there is potential for impacts on areas and habitat that are otherwise protected under provincial or other policy.

“Outdoor Living Area (OLA)” – in the last bullet point the definition includes “common outdoor amenity areas associated with multi-storey apartment buildings or condominiums”. The bullet should be revised to say “multi- unit building” to capture row or townhouses that have common outdoor amenity areas. This comment also applies to the common amenity areas for “Point of Reception”.

“Predictable worst case” – With regard to future expansion we suggest that the extent of the zoning, permitted uses and setbacks in the zoning by-law also be considered in making this judgement.

“Stationary Source” – the exemption for aggregate crushing and screening equipment below grade in Regulation 524/98 is restricted to mobile equipment, and this should be specified. For wind farms and wind turbine generators it should be noted that these are covered under a separate guideline, as referenced on page 2 of the Draft. Also, noise setbacks for transformer stations related to renewable energy projects are prescribed in Regulation 359/09.

Auditory warning devices are part of the perceived noise impact of some activities and should be considered – with options for mitigation – in noise studies.

#### *A5, Legislative Background (p. 15)*

The discussion under “Environmental Protection Act” should make a clear statement as to whether meeting the sound level limits means that there will be no “adverse effect” in relation to noise, or whether other considerations might come into play.

The Guideline should note that C of A (air) considerations also include air quality (and Environmental Compliance Approvals may include other media as well when modernization is implemented). There should be some consideration of the potential for Class 4 and 5 areas, in particular, to be subject to air quality as well as noise concerns, and the effects of both these considerations on appropriate land use.

This Section should include discussion of the Niagara Escarpment Planning and Development Act. The discussion of the PPS should include a reference to Section 2.5.2.2 which requires aggregate extraction to be undertaken in a manner which minimizes social and environmental impacts. Also the Guideline should include a clear description of the respective roles of the Aggregate Resources Act (ARA) and the Environmental Protection Act (EPA) and this Guideline in relation to environmental noise from aggregate extraction and processing facilities.

A7, Noise Assessment Criteria (p. 18)

The work of the National Physical Laboratory in the UK and the US EPA is referred to in relation to relative and absolute criteria, but the draft contains no evidence – based rationale as to how the Ontario criteria were derived in relation to acceptability, health effects and/or feasibility. An explanation of the basis for the standards and a comparison of Ontario’s approach with regimes adopted in other jurisdictions would be helpful.

## **Part B Stationary Sources**

*Tables B-1 to B-4 (pages 22-23)*

There should be an explanation (here or in the EBR posting) as to whether or how these limits differ from those that currently apply.

*B 7.2 Class 4 Area and B.7.3 Class 5 Area (page 24)*

See comments under “Definitions”

*B7.4 Area Classification Issues*

Clarification should be sought to ensure that the copying and distribution of noise studies to owners of Stationary Sources is considered ‘routine disclosure’ under the *Freedom of Information Act* and would not offend any copyright laws.

*B8 Point of Reception on a Vacant Lot (page 25)*

While the suggested approach for zoned land where the design of future development is not known is consistent with recent MOE guidance, the approach for zoned land where the design approach is known is ambiguous. It is unclear at what stage something becomes a ‘design concept’, and through what mechanisms the design becomes ‘known’. Given the public opposition to certain types of stationary sources, clarity on these two matters would be preferred to avoid ‘design concepts’ being communicated for the sole purpose of impeding the development of a stationary source.

It is recommended that the term 'design concept' be changed to a municipal design approval (such as building permit or site plan). It is also recommended that clarity be provided regarding when a proposed stationary source needs to consider such a point of reception. Under amendments to O. Reg. 359/09, a project layout can be crystallized, and must only consider point of receptions approved by a municipality at the time of the crystallization. Therefore it is recommended that a design concept would become 'known' upon municipal approval, and that a stationary source need only take into account such designs approved at the time of their project layout crystallization (utilizing a similar mechanism as found in O. Reg. 359/09).

At the same time, the process should allow for consideration of potential expansion areas within or on the periphery of existing communities that are designated in an Official Plan or intended for sensitive uses but as yet unzoned for such uses.

Diagrams showing the "point of reception" concept as it applies to various situations would be helpful.

#### *B10 Development of Adjacent Lands (page 26)*

Ultimately the development approval decision for a sensitive use is a political one and compliance with the Guideline is not mandatory. At the consultation meeting on December 14 some attendees argued that an operator of a stationary source should not be placed at risk of losing environmental approvals when sensitive uses move in nearby – one suggestion was that new occupants of sensitive uses should sign agreements not to object. OPPI agrees that this is a concern and encourages MOE to research its own approvals history and examples from other jurisdictions to find a solution that affords protection to all parties. Further legislation may be required to implement the preferred approach.

### **Part C Land Use Planning**

#### *C.1.3 Responsibility, p. 29*

The draft Guideline proposes that the proponent of a sensitive use is responsible for ensuring that the applicable sound criteria are met, however this raises a number of concerns. The utility of a Development Agreement under the *Planning Act* is limited since it is not regarded as applicable law for the purpose of obtaining a building permit. It may be difficult to ensure that features such as immovable windows are actually implemented. Also, once residential or other units are sold they are no longer the responsibility of the original proponent and new owner may make changes that can result in non-compliance with the applicable sound criteria.

#### *C2 Noise Impact Studies, p.30*

This section should include discussion of "complete application" requirements under the *Planning Act* and noise study requirements in MNR's "Aggregate Resources of Ontario Provincial Standards".

Also there should be some discussion of the effects of new transportation corridors or significantly increased use of existing corridors on sensitive uses (such as when a rural road becomes a quarry haul route, as discussed in the Rockfort Quarry Decision referenced above), or a cross reference to any other applicable guidelines.

#### *C4 Noise Impact Assessment – Stationary Sources*

*Table C-6 to C-8 (page 42)*

Again, there should be discussion on the Notice or in the Guideline as to any changes between the existing and proposed and sound limits.

#### *C7 Noise Control Measures*

There continues to be a heavy reliance by planners on the creative application of development agreements when dealing with noise sensitive uses. As noted above, noise guidelines and development agreements are not applicable law for the purposes of obtaining a building permit. Planners therefore try to achieve noise compliance for individual buildings through Site Plan Control Approval. Section 51 of the *Planning Act* is explicit in stating that interior design and the layout of interior areas are not subject to Site Plan Control Approval yet many of the mitigation measures mentioned in the Guideline deal with the layout of interiors of buildings. Unless the noise guidelines become applicable law or the site plan control approval legislation is altered, planners will be forced to use creative means to achieve the guidelines and may be subject to challenge.


Another potential mechanism for the implementation of noise-related controls is conditional zoning under Section 34(16) of the *Planning Act*. While this would require “prescribed conditions” to be included in a Regulation, its use should be further explored with the Ministry of Municipal Affairs and Housing. Consideration should be given to potential difficulties in enforcing specific and detailed requirements over the long term, and whether and how such approvals could incorporate a degree of flexibility.

Discussion of warning clauses throughout the document and in Section C 7.9 should highlight their limitations in affording long term protection, and should express a strong preference for good site planning and specific mitigation, in that order, to minimize noise impacts wherever practical.

#### **Conclusion**

We hope these comments will be helpful in your review of the draft NPC-300 Guideline. Representatives of OPPI would be happy to meet with you and your staff and to further discuss our submission, if you desire. To schedule a meeting or for further information, please contact Loretta Ryan, MCIP, RPP, Director, Public Affairs at (416) 483-1873, x226 or by e-mail at [policy@ontarioplanners.on.ca](mailto:policy@ontarioplanners.on.ca)

Sincerely,



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