

**NPC 300:
LEGAL IMPLICATIONS OF THE
DRAFT GUIDELINE**

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Outline

- **What is NPC-300?**
- **MOE Permitting/Approvals**
- **Municipal Land Use Planning**
- **Complaints/Compliance**

What it is

- **NPC-300 updates and consolidates three existing noise-related guidelines issued by the Ministry of the Environment (MOE)**
- **NPC-205 Sound Level Limits for Stationary Sources in Class 1 & 2 Areas (Urban) Oct. 1995**

What it is

- **NPC-232 Sound Level Limits for Stationary Sources in Class 3 Areas (Rural) Oct. 1995**
- **LU-131 Noise Assessment Criteria in Land Use Planning Oct. 1997**

Status

- **Environmental Registry public comment expired January 15, 2011**
- **No background documentation released to explain the rationale**
- **Amended draft document released in April, 2011**
- **More than a year later, no date for final decision and no implementation schedule has been released.**

Differences Between the 2010 and 2011 Drafts

- **Numerous changes made to definitions under the Guideline**
- **Consolidation of Class 4 and Class 5**
- **Inclusion of highly intrusive short duration noise to “background sound level”**
- **Exemptions for some GO transit sites**
- **Reorganization of list of “noise control measures”**
- **Clarification and restriction of noise assessments for “vacant lots”**
- **Restoration of evening “time period” for stationary sources**

To be Used in

- 1. Approvals instruments including Environmental Compliance Approvals, *Aggregate Resources Act* licensing, and Renewable Energy Approvals, but not wind turbine approvals**
- 2. Sound level criteria and guidance to land use planning approval authorities (LUPAAs), including municipalities, planning boards and other ministries and agencies and for inclusion in municipal noise control by-laws**

Creates One New Land Use Class

Class 4 Area	Class 5 Area
Would otherwise be defined as Class 1 or 2	Would otherwise be defined as Class 1
Intended for new noise sensitive land uses	Contains existing or is proposed for new noise sensitive land uses
Is in proximity to an established Stationary Source, such as an industrial or commercial facility	Is in proximity to one or more noise sources (such as an airport or railway) that would normally be excluded from the calculation of background sound levels
Is designated by LUPAA for new development (or redevelopment) with sensitive uses and has been designated by the as a Class 4 Area	Is already subject on a daily basis to sound levels from these sources that are at least 10 dBA higher than the noise criteria applicable in a Class 1 Area

Implementation – Land Use Classes

- **LUPAAs may designate Class 4 and 5 areas in Official Plans, zoning by-laws or Council resolutions**
- **in these areas “appropriate” windows may be assumed to mitigate noise**
- **the use of enclosed noise buffer balconies is permitted**

“Enclosed Noise Buffer (ENB) Balcony”

- **Fully enclosed between 1-2 metres deep**
- **Not air conditioned or heated**
- **Finished on interior surfaces only with exterior materials**

Prohibition on Reclassification

- **Areas with existing noise sensitive uses classified as Class 1, 2, or 3 cannot be reclassified as Class 4**
- **Intended to prevent compliant stationary sources from having to meet tougher limits because of new development**
- **Only exception is if existing noise sensitive land uses were completely “replaced, redeveloped or rebuilt”**

Development Applications

- **for new sensitive land uses, proponent is responsible for compliance**
- **preferred mitigation is at source**
- **cooperation between proponent and stationary source “desirable”**
- **needs tri-partite agreement LUPAA, developer and source**
- **to be registered on title**

Mitigation

mitigation at source

acoustical barriers

architectural design

building construction

site planning

the “enclosed buffer balcony”

**warning clauses for agreements of
purchase and sale and for title**

agreements on title

Complaints

- **Trigger MOE involvement**
- **MOE approaches facility to conduct its own acoustic testing or MOE tests according to NPC-300**
- **Sound level limits used to determine the potential for adverse effects of noise-related incidents reported to the MOE**

Legally Binding Guidelines?

- **Non-compliance with Guidelines not an offence**
- **Punitive provisions under the *Environmental Protection Act* (EPA) may not apply if there is no adverse effect**
- **Exceedance of a guideline not always proof of an adverse effect**

Existing Facilities Compliance

- **current noise assessments based on 1.5 m above grade –**
- **new POR location for assessment may be much higher**
- **grandfathering of existing sources?**

Questions asked

- 1. What do we do about existing facilities that don't comply with the new criteria?**
- 2. How will the proposed "noise sensitive land use" areas be formally defined and designated?**
- 3. Will Official Plans need to be amended to incorporate new Class 4 and 5 Areas?**
- 4. Who will review all the new feasibility and detailed design studies that are required?**
- 5. Will municipalities need to assemble expensive technical expertise to implement requirements?**
- 6. How will the delicate negotiations and compromises between stationary source owners and project proponents be managed and resolved?**
- 7. How will agreements between parties be enforced?**



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