

13 November 2015

Draft Industrial Noise Guideline
Noise Policy Section
Environment Protection Authority
PO Box A290
Sydney South 1232

By email: epa.ing@epa.nsw.gov.au

Dear Noise Policy Section,

**Draft Industrial Noise Guideline Technical Background Paper; and
Draft Industrial Noise Guideline**

As you know, EDO NSW is a community legal centre specialising in public interest environmental law, including casework, law reform, science and community outreach. We welcome the opportunity to comment on the Draft Industrial Noise Guideline Technical Background Paper (**Background Paper**), and Draft Industrial Noise Guideline (**draft Guideline**). This submission does not seek to comment extensively on the technical components of the Background Paper or draft Guideline but is informed by the key issues experienced by our clients with the current Industrial Noise Policy. We have addressed the NSW EPA consultation questions where appropriate.

This submission addresses:

1. Objectives
2. Local and regional planning
3. Minimum daytime background noise
4. Proposed changes in the draft guideline
5. Applying the guidelines to existing industrial premises
6. Monitoring and compliance
7. Exclusions

1. Objectives

One of the stated objectives of the draft Guideline is to help determine “achievable noise limits for planning approvals and/or licencing”. As the key regulator for noise in NSW, EPA has an obligation to the community to go beyond determining “achievable noise limits” and develop guidelines that help to determine acceptable noise impacts on the community. Research, including that by the World Health Organisation, is increasingly demonstrating that noise, particularly noise that interrupts sleep, can have significant health impacts. The community reasonably expects that the key regulator for noise in NSW will identify what constitutes unacceptable noise impacts, based on objective criteria, and that this information will also be considered in any project assessment process.

The draft Guideline provides an overview (pg 4) which notes that “the regulatory/consent authority sets statutory compliance levels that reflect the achievable and agreed noise limits for the development”. Again, as the regulator of noise in NSW, the EPA should be providing

guidance on what noise impacts are acceptable, not issuing noise licences that are 'agreed' by the project proponent. This is particularly important given that the discussion on the adequacy of existing 'acceptable noise levels' (Background Paper, pg 5) makes it clear that the proposed amenity noise levels do not meet a target of protecting 90 per cent of an exposed population from being "highly annoyed" by noise impacts for all categories except rural areas.

The draft Guideline also incorporates the significance of residual noise impacts (Table 4.1, pg 28) from the '*Voluntary Land Acquisition and Mitigation Policy*' as a guide to the acceptability of residual noise impacts. As stated in our submission to that draft policy, EDO NSW does not support the application of this policy and believes a more stringent application of noise mitigation measures is required.¹

A key objective of the final Guideline should be to limit noise impacts on the community. All projects should be required to assess and implement all reasonable and feasible noise mitigation, i.e. mitigation should not only be required once noise exceeds industrial noise trigger levels. Such a requirement would appropriately put the focus on reducing noise as part of project development and implementation rather than placing the burden of increased noise on the community.

Within this context, EDO NSW supports an approach that aims to protect the community against intrusive noise in the short term as well as preserve amenity in the long term.

2. Local and regional planning

EDO NSW strongly supports consideration of noise impacts in the local and regional planning process. See EDO NSW submissions on various planning reform proposals for further comment on the consideration of environmental impacts and community consultation into local and regional planning.² In the case of noise, such planning could be expanded to include requirements for noise reducing technology such as the use of sound absorbing materials in developments around industrial areas or major road corridors.

EDO NSW also supports the introduction of a 'noise management precinct' tool. We recognise the benefits that may arise from integrated management of a site but reiterate our earlier comment that to be successful, such a tool needs to ensure that the underlying noise standards that do not allow for unacceptable noise impacts from such precincts. Of some concern is the statement in the draft Guideline (pg 15) that "the use of a precinct must be expected to result in a net reduction in noise impacts over time". It should be made clear that existing noise impacts must be reduced before any developments that will create additional noise impacts are allowed.

3. Minimum daytime background noise

EDO NSW does not support raising the minimum daytime background noise from 30 to 35 decibels (A-weighted (dB(A))). Increased noise impacts from new developments are regularly raised as a concern by our clients. This proposed increase will have a disproportionately negative impact on rural communities who are already being subjected to significant increases in noise from new industrial developments, particularly new coal mines. For example, recent expert advice obtained by the Bylong Valley Protection Alliance in relation to the Bylong Coal Project identified that:

¹ Submission available at: https://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/1833/attachments/original/1418093197/141202_-_Mining_SEPP_amendments_-_Land_Acquisition__Mitigation_policy_-_EDO_NSW_submission.pdf?1418093197

² http://www.edonsw.org.au/planning_reforms

“While there were no major deviations from the INP, due to the very low background noise level in the Bylong area (<19 dBA), the impact of noise from the proposal is likely to be significant. This arises because the INP methodology allows measured background noise levels below 30 dBA to be considered as 30 dBA for the purpose of assessment. In this case, that leads to a prediction of project noise levels of 15-20 dB above the background noise level, instead of the normally accepted 5 dB emergence. This is a serious shortcoming of the INP which only affects rural communities.”

In this case, the combination of an increased minimum daytime background noise and the proposed guide to the acceptability of residual noise impacts mean that the community could be exposed to more than 20 dB of increased noise before the need for mitigation measures is triggered. Any increase to the minimum daytime background noise would create similar problems for many rural communities.

Other proposals in the draft Guideline that would appear to enhance noise impacts on rural or peri-urban communities include:

- Amenity noise levels in areas near an existing or proposed cluster of industry
“Where a greenfield development is proposed and it can be demonstrated that existing levels of industrial noise are lower than the relevant recommended amenity noise level, equation 1 can be modified to reflect ‘amenity noise level’ in lieu of ‘amenity noise level – 5 dB(A)’.” (pg 12)
- Effects of changing land use
“When land uses in an area are undergoing significant change, for example residential subdivisions for new suburbs with associated development of local and regional roads, the background noise levels would be expected to change, sometimes significantly. In these cases, assessments of noise sources for control purposes should be made against the recommended amenity noise level for the modified land use.” (pg 13)

4. Proposed changes in the draft Guideline

Improved transparency

EDO NSW welcomes the comment in the draft Guideline (pg 20) that “(a)ll user-adjusted variables in a noise model should be identified and justified at the project level”. There is currently strong community concern about the quality and independence of noise assessment in many project proposals. Any moves to increase transparency around parameters being used for assessment is welcome. The need for such transparency should be made more explicit in the final Guideline.

Assessment of sleep disturbance

EDO NSW supports attempts to include an assessment of sleep disturbance in the draft Guideline but is concerned that the failure to have mandatory noise limits means that even if sleep disturbance affects are clearly demonstrated, the draft Guideline provides no barrier to the development going ahead.

Consideration of meteorological conditions

EDO NSW supports attempts to introduce clear guidelines on allowable noise impacts under adverse weather conditions but is concerned that the proposed measures do not address problems with measuring compliance in adverse meteorological conditions.

Low frequency noise

EDO NSW supports the proposed method of considering low frequency noise. However, we do not agree with the conclusion in the Background Paper that:

“In addition, the ‘C minus A’ differential will naturally increase as you move away from a noise source due to higher attenuation rates of higher frequencies versus lower frequencies. This can lead to a perverse outcome where a low frequency modification may not apply near to a noise source, but will apply at more removed distances, even though the amplitude of the LFN spectrum has reduced.” (pg 15)

It is entirely reasonable to consider the impact of low frequency noise from an industrial site on sensitive receivers, regardless of the distance from the site that the noise impact is experienced.

Impulsive noise

The community should be given an opportunity to review and comment on this aspect of any proposed guidelines.

Shoulder Periods

The draft Guideline (pg 47) introduces the concept of a shoulder period whereby a proponent may be able to suggest alternative project noise trigger levels. Such a proposal is clearly designed to facilitate increased industrial noise at certain time periods but provides no obvious benefits for protecting community amenity. The existence of existing noise shouldn't be used to justify imposing more noise on an affected community.

5. Applying the guidelines to existing industrial premises

EDO NSW supports the use of noise reduction programs but such programs should not be used as a substitute for appropriate compliance and enforcement including penalties of a scale that will discourage future poor performance where needed.

Clarity is required around the reference in the draft Guidelines to industrial noise sources with no formal consent, namely:

“The need to establish achievable noise limits and implement a noise reduction program may be triggered by actions such as... the site having no formal consent or licence conditions and management wishing to clarify their position” (pg 30)

EDO NSW recognises that such a situation may occur where premises began operation prior to the existing legislative framework coming into effect. However, should any other site that does not have consent to operate be identified, the activity should be halted until the full impact of the activity can be appropriately assessed.

6. Monitoring and compliance

EDO NSW supports the proposals to strengthen requirements around monitoring and remove subjective terms from compliance related sections of the draft Guidelines. However, the current proposals do not provide clear guidance on when compliance is likely to be undertaken and the example provided does not provide confidence that regular enforcement will be undertaken. EDO NSW receives a large number of complaints about noise from industrial premises and recommends that the EPA develop more stringent public guidelines for how complaints will be addressed, what action will be taken in response, and how the results of any investigations and/or compliance measures will be reported.

Environment Protection Licences (**EPLs**) should require annual reporting of any noise exceedances and such reports should be made available to the public via the public register under the *Protection of the Environment Operations Act 1997*. Where these annual reports indicate exceedances, EPA should require a report on what the causes were and what is being done to avoid them in future. Licencees should also be required to update local communities when they have exceeded noise limits and explain what measures have been put in place to prevent future exceedances.

Any improved monitoring or compliance activity is likely to involve increased use of unattended monitoring (pg 34). Any requirements for monitoring that are triggered by the Guideline or an annual report should remind licencees of their obligations under relevant privacy legislation.

7. Exclusions

EDO NSW notes that wind farm developments have been excluded from the draft Guideline (pg 4). The draft Guideline notes "(o)ther government policies and guidelines cover these noise sources". However, it would appear that the only policies relevant to wind farms remain in draft. As a result, the legislative regime in relation to wind farms and noise remains unclear and needs to be addressed to ensure an equitable consideration of noise impacts. As EDO NSW has stated previously,³ proposals that a strict 35 decibel noise limit would apply to all NSW wind farms, but not other development, are highly inappropriate.

Although not explicitly stated as an exclusion, in practice consideration of the full cumulative impacts of a project are not included in the draft Guideline as the proposed amenity criteria only consider industrial noise (not any transport or other noise that is an inevitable consequence of the proposed development). Noise that has substantial components in transportation or other activities should be considered as part of an integrated assessment.

Please contact EDO if you require any further information.

Yours sincerely,
EDO NSW



Rachel Walmsley
Policy & Law Reform Director

³ http://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/124/attachments/original/1380524250/130122POEOregulationofwindfarmnoise_lettertoEPA.pdf?1380524250