



What's all the noise about?

OBA Environmental Section – October 31 2012

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Outline

- **What is noise?**
- Who regulates it?
- EPA
- Enforcement
- Nuisance

What is “noise”?



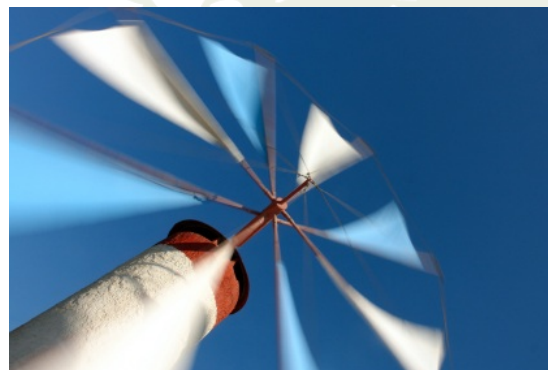
- WHO: Physically, there is no distinction between sound and noise... Noise is ...unwanted sound
- Ontario LU-131- unwanted sound
- SCC: noise...is often, but not necessarily, used in respect of unpleasant sounds...

What is “noise”?

- By-laws – a patchwork of definitions:
 - Sound ...that is **likely to disturb** inhabitants
 - **unwanted sound**
 - **unusual noise or noise likely to disturb** inhabitants
 - sounds that are “**clearly audible**”, e.g., within distance from vehicle; at point of reception in residential area

What is “unwanted”?

- Subjective
- Variable
- Emotional



What is “unwanted”?



What is “noise”?

- Cumulative
- Time of day
 - Sleep
- Duration
- Tonality
- Predictability
- Community expectations

Can you hear us?

- Background (traffic)
- Sensitive receptors
- Indoor/ outdoor
- Doors open?
- New neighbours?

Hard to predict

- Everything varies:
 - Hearing
 - Wind
 - Traffic
 - Other buildings
 - Hard/ soft surfaces
 - Bouncing
 - Potholes
 - Tolerance / Annoyance

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Who regulates noise?

Federal

- Noise labelling
 - CSA: Noise Emission Declarations for Machinery
- Limits noise from products/equipment/vehicles
- Canada Labour Code –federally regulated workplaces
- Health Canada advises on health effects



Who regulates noise?

Municipalities

- *Municipal Act, 2001* – can regulate / prohibit noise
- Land-use planning
- Public health boards: is noise a health hazard?

Who regulates noise?

Province

- OHS: noise in workplace
- *Building Code Act*
- Noise control guidelines -land use
 - *Planning Act*
 - Official plans, zoning by-laws

Province



Provincial Policy Statement

- S. 1.7 – Long-term economic prosperity should be supported by:
 - ...(e) planning so that major facilities and *sensitive land uses* are appropriately designed, buffered and/or separated from each other to prevent *adverse effects* from...noise..

Province

- Noise from products, equipment, vehicles, bars
 - *Highway Traffic Act*
 - *Liquor Licence Act*
- *Environmental Protection Act*

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EPA

- S. 14 – don't discharge
“contaminant” into natural
environment, if may cause
“adverse effect”
- E.g. material discomfort, health
effect, loss of enjoyment of normal
use of property

EPA

- S. 9 ECA for “stationary sources”
 - Extensive guidelines
 - must assess & document all noise to property boundary and receptor
- REA- wind, solar, biomass

MOE Guidelines/Policies

- LU-131 (1997) - Noise Assessment Criteria In Land Use Planning
 - Noise in land use planning
 - In support of PPS

MOE Guidelines/Policies

- NPC-205 (1995) - Sound Level Limits, Stationary Sources (Urban)
- NPC-232 (1995) - Sound Level Limits, Stationary Sources (Rural)
- NPC-233 (1995) –For Approval Of Stationary Sources Of Sound

MOE Guidelines/Policies

*Draft NPC-300? Environmental Noise Guideline:
Noise Assessment Criteria for Stationary Sources
and for Land Use Planning*

- Supposed to replace LU-131, NPC-205, 232
- To be used with MOE D-series guidelines
- (land use policy)
- New mitigation options, definitions, and new land use class
- Does not address sound / vibrations from blasting, wind turbines, landfills

MOE Guidelines/Policies

- Form & Guide – Written summary for basic comprehensive CofA's (Air and noise) (2011)
- Basic Comprehensive Certificates of Approval (Air and Noise) - User Guide (2011)

Wind

- 2011 amendments to Reg. 359/09:
 - Changes definition of “noise receptors” from “overnight accommodation” to “dwelling”; definition of “dwelling” modified
 - Setback provisions
 - Cumulative noise assessment



Guidelines: REA (Wind)

- Development of Noise Setbacks for Wind Farms - Requirements for Compliance with MOE Noise Limits (October 2009)
- Compliance Protocol for Wind Turbine Noise - Guideline for Acoustic Assessment and Measurement
- Noise Guidelines For Wind Farms – Interpretation For Applying MOE NPC Publications To Wind Power Generation Facilities (2008)

Erickson v MOE Director (2011 ERT)

- Suncor's Kent Breeze Wind Farm project, approved by MOE
 - Evidence showed risks, uncertainties
 - Did not establish that Project would cause serious harm to human health
- ERT noted: *"Setting standards for noise levels or setbacks in an emerging field is a complex process..."*

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Enforcement

- MOE
- By-law
- OMB



R. v. Robert E. Young Construction

- Company crushes and hauls aggregate; Neighbour complained, dust and noise
- Crushers operating too close to boundary
- Breached CofA: equipment < 500 m from a Sensitive Receptor when a primary and secondary crusher are operated simultaneously
- Fine: \$4000 + VFS

R. v. Starcan Corp.

- Subdivision built next door, despite Starcan's objections
- >\$1 M for retrofits
- Charged: breach of CofA and POO
 - Late in submitting acoustic audit showing compliance with guidelines
- Company acquitted; exercised due diligence, communicated regularly with MOE

R. v. Kawartha Dairy Ltd.

- Dairy expanded without MOE approval
- Neighbours complained
- Fined \$45,000 + VFS for operating plant without ECA, resulting in noise that caused adverse effects

R. v. Jim Weir Custom Crushing

- Rock crushers make gravel
- Neighbours complained
- Pleaded guilty to discharging noise from rock crushers into environment, contravening EPA
- Fine: \$10,000 + VFS

Bayham (Municipality) v. Hamilton

- Amplifiers etc. in adjacent area at prohibited times
- Noise by-law prohibited “unwanted sounds” that were “clearly audible” at point of reception
 - In specified area
 - At certain times
- City entitled to enforce by-law; reasonably intelligent person could determine what noise prohibited

Lawrence v. Muskoka Lakes

- Noise by-law challenged as vague/uncertain
- Prohibited certain listed sounds by time and place where “clearly audible” at point of reception
- Charge: prohibited sound *clearly audible* at a POR
- Held: Entire by-law invalid as no exemption criteria provided, other issues

Iredale c. Mont-Tremblant (Ville)

- By-law permitted racing without noise limits for 36 days
- Residents' group applied to Court
- While racetrack pre-dated residential development, by-laws cannot permit racing without noise limits

Iredale cont'd

- The absence of any noise restriction for race events **not** a legitimate exercise of the City's powers
- Incompatible with the prohibition under the *Environment Quality Act* of release of a contaminant
- Town and owner have appealed

Menkes Lakeshore Ltd. v. Toronto (City)

- Kraft's Christie Bakery
- Banging the sides of flour delivery trucks, nine times in 20 minutes, was "infrequent"
- NPC-205 guideline of 100 dBAI
- Accepted by the OMB

Hawk Ridge Homes Inc. v. Woolwich

- Rail yard shunting noises
 - several nights a week (>20 impulses in 2 hour)
 - at random hours
- Hawk Ridge: “infrequent” – so 100 dBAI
- Region argued “frequent”, limit of 45 dBAI
- NPC-205 does not define “so infrequent”
- Held: Shunting noises were predictable, so can’t be “so infrequent”; the 45 & 50 dBAI limits applied

Re: 1633799 Ontario Inc. (2012 OMB)

- Proposed development near shooting range (guns, grenades)
- Barriers not expected to reduce impulse noise levels below 50 dBAI (outdoors)
- Cites *Hawk Ridge Homes* – if noise level is predictable, Provincial Standard LU-131 wording “so infrequent” does not apply to permit a higher sound level (100 dBAI standard)

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Nuisance

- Focus on harm suffered
- Unreasonable interference with the use of land:
 - Must be intolerable to ordinary person
 - nature, severity, duration of interference; character of neighbourhood; sensitivity of plaintiff's use; utility of the activity
 - Substantial, not trivial interference

St. Lawrence Cement Inc. v. Barrette

- Noise, dust, odours
 - “abnormal annoyance” for neighbours
- \$15 million to cement plant neighbours
- Company due diligence
- But - No-fault liability under Civil Code where neighbourhood annoyances “excessive”
- Same as nuisance?

Suzuki v. Munroe

- Put noisy A/C under neighbours' bedroom window
- Sleep, health impacts
- Noise by-law vague
- Held: Noise unreasonable. Defendants liable
- \$6000 plus injunction

Carrier c. Québec (PG)

- Noise since 1985
- 1998: Provincial policy for noise barriers along highways >65 dBAI
- 2007: MOT study proved >65 in 10% of homes
- Constant bombardment

Carrier, cont'd

- CA certified class action by freeway neighbours:
 - Premature to determine if province can claim statutory immunity
 - Neighbours permitted to present evidence re impact
 - Proposed group is reasonable class

Balmain Hotel v. 1547648 Ontario

- Hotel sued to stop noise from nightclub:
 - Noise breached by-law; but “unwanted sound” not necessarily a nuisance
 - Noise after 11 p.m. was unreasonable and a nuisance
- Hotel entitled to injunction

Lilydale

- Calgary residents sued Lilydale chicken plant
- Residential area built next to plant
- 24-hour trucking noises – engine noise, air brakes, honking, alarms, shunting

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Questions?

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