

# ENVIRONMENTAL LAW

## STRONGER NOISE CONTROL & ENFORCEMENT IN ONTARIO

### Practical Implications:

1. *New noise/vibration rules make industrial air approvals more costly and difficult to obtain. Applicants need to apply well before approval is needed. High technical quality of application is essential.*
2. *Compliance will be harder to maintain as standards and regulatory scrutiny increase. Operators need to deal promptly with complaints, and document their activities.*
3. *Industrial / institutional / commercial operators must be vigilant and proactive in the land use planning process to prevent official plan and zoning permission for incompatible development. Once a residential land use is permitted the rules of your game have changed forever!*

New emphasis on noise and vibration by Ontario regulators has put another hurdle on the environmental compliance track. In the past year, the Ministry of the Environment (MOE) has strengthened, expanded and formalized noise and vibration-related

approval requirements. Abatement and enforcement activities are also increasing.

Since noise and vibration approvals are now inextricably linked with air approvals, this can result in increased cost and delay for some air approval applicants.

New requirements for independent acoustical audits have been described by industry and consulting stakeholders as “regulatory overkill.”

MOE’s new focus on noise and vibration also means increased reaction by abatement officers and investigators to the ever increasing volume of noise-related complaints — as urban sprawl and infilling inexorably encroaches into industrial enclaves.

### Ad Hoc Era Ends

Since 1971, noise and vibration have been “contaminants” controlled under the *Environmental Protection Act*. However, provincial regulators exercised control only on a limited and *ad hoc* basis. Until recently, the MOE has not been rigorous, particularly at the approval stage, and most regulated industries were able to safely ignore the problem. MOE treated noise and vibration as local problems, left to municipalities or civil lawsuits.

### Noise Assessment For All Air Approvals

Since 1995, the MOE has placed a slowly increasing emphasis on noise and vibration issues, culminating in April 2004 when the Environmental Assessment & Approvals Branch (EAAB) published a new user guide for the *Basic Comprehensive Certificates of Approval (Air)*. This signaled the MOE’s new focus on noise and vibration compliance at the approval stage. The guide detailed the requirements for noise and vibration assessments. Now these assessments are becoming part of all EPA section 9 air approval applications.

A new MOE document called *Noise Screening Process for S. 9 Applications Supplement to Application for Approval*

states that all applicants for EPA section 9 air approvals must assess and document the impacts of noise emissions at the closest points of reception (PORs), according to sound level limits for urban, suburban and rural environments. These are set out in the MOE Noise Pollution Control (NPC) guidance documents. The screening process allows applicants to describe their operation and equipment, then a point-based weighted system would be applied to determine whether a full assessment is required. While

## OTHER RECENT NEWS

MOE and OMAF have released their proposed *Guide for the Beneficial Use of Non-Agricultural Source Materials on Agricultural Land* in accordance with O. Reg. 267/03 under the *Nutrient Management Act*. Consultation deadline is January 28, 2005.

The **Ministry of Labour** has published new or revised **occupational exposure limits** for 92 compounds, based on the 2004 recommendations of the American Conference of Governmental Industrial Hygienists (ACGIH).

To permit further consultation, compliance deadlines for installing the required treatment equipment under the **Drinking-Water Systems Regulation** (O. Reg. 170/03) have been pushed back a year or longer for most facilities.

A revised maximum acceptable limit of 0.005 mg/L for **arsenic** in drinking water has been proposed with a deadline for comments of May 17, 2005.

In December, the MOE published the **Reports of the Expert Committees on Source Water Protection**. Our February W+SEL newsletter will deal with long and short term implications for municipalities and industry.

The new **Water Taking and Transfer Regulation** O. Reg. 387/04 took effect January 1, 2005.

The Reports, regulation and related links are posted on our Online Compliance Centre, [www.willmsshier.com/compliance](http://www.willmsshier.com/compliance).

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the screening document has been released to some stakeholders, it has not been formally published.

**Detailed Acoustic Assessments**

More detailed assessment and documentation will be required where noise impacts are predicted to exceed permissible impacts, or where facilities are closer to PORs than the minimum separation distances established by the MOE or calculated according to MOE procedures.

An applicant in these circumstances is required to complete a very detailed Acoustic and/or Vibration Assessment Report. These are equivalent to the *Emission Summary and Dispersion Modelling (ESDM)* reports used to describe the regulated discharge of chemical or particulate contaminants into the air. Reports must cover all the bases for noise and vibration impacts, including:

- ◆ a full description of the facility and its operations;
- ◆ a summary identifying all noise and vibration sources, including a worst case impacts scenario;
- ◆ a POR noise impact analysis;
- ◆ an acoustic assessment summary and a summary of mitigation measures ;
- ◆ a statement of compliance with the selected noise limits; and
- ◆ a series of technical supporting documents.

Now that noise and vibration assessments are a potential component of every air approval, many applicants prepare both an ESDM and the new noise/vibration assessment. Further details are provided in the *MOE Guide to Applying for Approval (Air): (Noise and Vibration)*. This 1998 guide is slated to be replaced once the Screening document is finalized. The guide is not currently available online.

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**\$65,000 NOISE CONVICTION**

On August 20, 2004, a company that stamps out steel parts for bus seats and fire extinguishers, Banner Metal Products (Windsor, ON) was fined \$65,000, plus a victim surcharge, for permitting the discharge of noise and vibrations into the natural environment, in contravention of section 14(1) of the *Environmental Protection Act*. Between October 1998 and May 2000, residents complained of sleep disruptions, and were forced to close windows, move to other rooms or even leave their properties for short periods. The company was convicted of a single offence on February 23, 2004.

Check with EAAB or call Doug Petrie or Barry Spiegel at W+SEL for a copy of the latest guide.

Noise and vibration assessment requirements don't stop with the issuance of your certificate of approval. A noise complaint can spur an abatement officer to issue a Provincial Officer's Order requiring the preparation of a detailed noise assessment that meets new MOE requirements. In addition, any company expanding or changing its operations will be subject to the noise assessment requirements. Finally, for facilities with Comprehensive CofAs, an acoustic/vibration assessment summary table must be included in the permit holder's annual written report.

**Who Will Handle the Workload?**

Each noise assessment must be conducted by "a qualified individual, preferably a professional engineer with experience in environmental acoustics." There is currently a very limited pool of consultants capable of undertaking such work. To complicate matters, the MOE has not yet defined "qualified acoustic professional."

The Ministry's staff is also stretched thin. With only five expert reviewers available to process all the new acoustic and vibration assessments, the frustrating nine-month CofA backlog is sure to grow even longer.

Some stakeholders are pleased that the MOE has settled on a consistent

assessment format. Less consistent requirements in the past meant applicants needed to continually revise and resubmit data. While the aggregate average processing time may increase, experts believe that more complex assessments could be expedited.

The screening process could allow some small businesses to save the time and expense of hiring qualified experts and preparing full noise assessment reports. This will depend on how enthusiastically MOE staff administer it in practice.

**Regulatory Overkill Sparks Concern**

To support its revamped noise assessment requirements, MOE staff conducted seminars, spelling out the basics to industry, consulting and institutional stakeholders. Attendees have appreciated the detailed updates. However, many stakeholders are disturbed by the prospect of subsequent acoustic audits.

Even when the Ministry issues an approval based on internal review of an expert assessment, where the results depend on noise mitigation measures, the MOE requires an audit by an independent acoustical consultant to verify the predicted results. Thus the applicant has to retain another qualified consultant who had nothing to do with the project design or assessment report, to complete an on-site acoustical audit. Some stakeholders regard this as impractical and unnecessary overkill.

**ENGAGEMENTS OF NOTE**

**Doug Petrie** and **Marc McAree** will speak at *New Air Emissions Challenges for the Auto Parts Industry* on January 27, 2005. [APMA \(www.apma.ca\)](http://www.apma.ca)

**Marc McAree** and **Juli Abouchar** will speak at CI's 11th Annual Provincial / Municipal Government *Liability Conference* on February 17, 2005. [www.canadianinstitute.com](http://www.canadianinstitute.com)

**Donna Shier** will speak at the Law Society Real Estate Summit on April 7, 2005. [LSUC-CLE \(www.lsuc.ca\)](http://www.lsuc.ca)

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