

13 November 2015

NSW Environment Protection Authority (EPA)
Noise Branch
PO Box A290
SYDNEY SOUTH NSW 1232

Dear Sir

The Australian Sustainable Business Group (ASBG) has prepared this submission on the [Draft Industrial Noise Guidelines](#) (ING) and generally supports the reform process.

This submission was developed with the assistance of the members of ASBGs Policy Reference Group (PRG) who provided feedback on the issues in the ING.

ASBG wishes to thank the EPA for presenting at our PRG and explaining the ING changes to our members. This greatly assisted in the better understanding of what the changes are and what has not significantly changed.

Should you require additional information on the content and issues raised in this submission please contact me.

Yours sincerely



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Recommendations:

R1 ASBG recommends that Recommended Maximum (L_{Aeq} dB(A)) Noise Levels column in table 2.1 be reinstated in the ING along with its explanatory notes.

R2 ASBG recommends that the criteria for areas of likely increasing ambient noise levels retain the ambient levels minus 10 dB for new developments.

R3 ASBG recommends that additional guidelines and or fact sheets be developed addressing the following noise related issues:

- Use of case studies to clarify the use of the ING project noise trigger level including examples where errors have occurred
- Dealing with poorly undertaken noise measurement studies, both high and low and actions to be taken by sites, proponents and government agencies
- Use of case studies to better define what are and are not extraneous noises
- Case studies on the application of the sleep disturbance maximum noise level assessment

R4 ASBG recommends the Sleep Disturbance criteria require being better ring fenced to avoid misuse or even abuse.

R5 ASBG recommends the ING include a process in Section 6, or alternative, which permits existing industrial sites the option to upgrade their old noise conditions to newer conditions based on the ING.

R6 ASBG recommends that a policy or guideline be developed explaining how the EPA will respond to complaints. This document should include a section on recognising and dealing with *sensitive complainers* and how they and the source are to be dealt with.

1 Introduction

The Australian Sustainable Business Group (ASBG) is a leading environment and energy business representative body that specializes in providing the latest information, including changes to environmental legislation, regulations and policy that may impact industry, business and other organisations. We operate in NSW and Queensland and have over 120 members comprising of many of Australia's largest manufacturing companies. Members were fully involved in the development of this submission and ASBG thanks them for their contribution.

ASBG strives to assist Government to prepare more efficient regulatory process, with the outcome of achieving practical, efficient, low cost solutions to achieve high environmental outcomes consistent with sound business practices.

ASBG has a strong background in noise being a leading organisation in advising the EPA on the current Industrial Noise Policy (INP) in 2000.

This submission is in response to the [Draft Industrial Noise Guidelines](#) (ING). Overall the ING is welcomed with only smaller issues arising.

Most of this is due to the ING being a tighter technical style document compared to the INP. Academically, a concise approach is strived for, but being a public document a more explanatory approach is believed to be a better approach. Many will use the ING to set, assess noise criteria. Some will misinterpret or misunderstand it, deliberately so. Clarification is a key requirement, which in places can mean repetition and restating the issue in case studies or other means. This is perhaps the most significant difference between the INP and the ING.

ASBG has summarised its key issues:

- General support for the reforms to industrial noise
- Changes to the Amenity Criteria
- Clarification of the way the ING will apply
- Dealing with extraneous noise
- Dealing with sensitive neighbours

2 Support for ING Changes

ASBG is in general supportive of proposed changes to the ING including the following:

- Raising the minimum daytime RBL from 35 dB to 40 dB, although this should not be automatically used unless noise measurements have been undertaken.
- Precinct noise permits a small variation over the INP to consider noise reduction from other existing sites
- Use of Fact Sheet A to clarify how the lone site in a rural area is included in background noise if the site has been in operation for more than 10 years.

In general the changes to the ING appear to be in the right direction and have a practical basis. However, in terms of improving the ING further it is more of a question of what can be included in the ING to improve its use and especially its communication. In addition there are some concerns over the revamped Amenity noise criteria.

3 Amenity Noise Changes

Of the changes made the more significant is those in the Amenity Noise levels. Changes of concern include:

- Removal of the Recommended Maximum (L_{Aeq} dB(A)) Noise Levels column in table 2.1 INP
- Changes to the handling of areas where noise is not expected to decrease and removal of table 2.2

3.1 Recommended Maximum (L_{Aeq} dB(A)) Noise Levels

Inclusion of the additional column in table 2.1 was requested by industry in 2000 at the time of the consultation on the INP, to cater for misinterpretation by other government agencies and interested parties. Use of a full column was considered necessary, rather than a simple statement, such as adding on 5 dB to the Recommended Noise Levels. Removal of this column is considered to make the ING more open to misinterpretation by others, especially development opponents.

Development of any EPA guideline is not an easy process and while it may read well from an academic and technical perspective, such guidelines are always open to interpretation and misunderstandings. As a consequence, ASBG considers that the column be reinstated with its appropriate explanation note.

R1 ASBG recommends that Recommended Maximum (L_{Aeq} dB(A)) Noise Levels column in table 2.1 be reinstated in the ING along with its explanatory notes.

3.2 Existing Developments in Rising Noise Areas

Under the INP's Amenity criteria it had the approach:

existing ambient level minus 10 dB' where existing ambient level is greater than 'ANL+1 dB' and existing noise levels are unlikely to decrease in future. (figure 1.3)

This approach has not been transferred to the ING. ASBG recognises that the ING sets out to simply the Amenity Criteria. It has also trimmed the difference by 1 dB against table 2.1 to one of – 5 dB rather than 6 dB under the INP which is welcomed. However, the only means in which high noise can be processed differently is for traffic noise. There are many examples where increasing noise levels are not solely traffic based. For example, aircraft and rail noise levels can increase over time as a port or hub expands its capacity.

Additionally, the reason for putting the above criteria in the INP was that emissions 10 dB below existing ambient levels are inaudible and any increase is very difficult if not impossible to measure.

Perhaps a way around this is to replace the high traffic noise with one of high transport noise to at least cover aircraft, rail, etc. However, this may not capture other noise sources from an area which are unrelated to site generated noise.

R2 ASBG recommends that the criteria for areas of likely increasing ambient noise levels retain the ambient levels minus 10 dB for new developments.

4 Clarification of the ING

4.1 Misinterpretation and Error Prevention and Correction

An on-going issue, and one that affects many technical government policies and guides, is the misinterpretation of thresholds, investigation levels and in the case of noise, the noise level or noise trigger level. Both the INP and ING make it clear that where a *project noise level* is likely to be exceeded further assessment is required. The outcome of this assessment can be about the *project noise level*. Use of further investigation, and if required the use of feasible and reasonable noise mitigation measures, can be missed out, due to complexities and other reasons, and the listed trigger levels used as noise limits.

The ING certainly makes it clear that the use of further investigations is to be applied at the planning stage, but this is ignored at times by both by regulators, consultants and opponents. This issue is not restricted to the INP, but all noise policy documents from the EPA. Consider the following case study.

Company A

Company A is undertaking a major road construction project in a rural area, but are considerably restricted by the noise limits set under the Environmental Impact Statement (EIS) for the project. The EIS had used a Rating Background Level at the minimum 30 dB for day, evening and night as set under the INP. Hence the Intrusiveness Criteria were set at 35 dB.

Company A requested and received permission from local residents to work on Saturday to 5 pm. No complaints were received regarding noise from the site. There was then some question as to the validity of the EISs limits.

To test the validity of the EIS's criteria Company A did its own RBL measurement at night and found it to be 40 dB. Daytime measurements of total measured noise were at 50 dB. Noise contribution from Company's A site was inaudible at the closest receptor. Overall it appears the EIS measurements were greatly flawed resulting in noise levels which are not only unmeasurable from Company's A site, but impossible to meet.

The above example is more a case of poor work and oversight of application of the noise measurement and level setting. While this is not directly an issue with the way noise criteria is assessed under the ING, it does ponder the question if a revisitation process should also be built into the ING. Obviously this can work both ways; raising the noise criteria when set too low, but also lowering if it is set too high. A revisitation would also need to be supported by some evidence that an error was made.

Errors which occur on setting the noise criteria too high are generally well policed by the EPA and other Government agencies. In contrast error where such criteria have been set too low is considered the responsibility of the proponent or the site owner/occupier.

To prevent or correct such errors or misuse of the ING is not an easy task and one that is common for many Government guidelines and policies, worldwide. One approach is to include additional

case studies either as part of the ING or as additional fact sheets or case studies which can be added to as specific issues arise and are, hopefully reasonably solved.

Other areas in which the ING/INP could be /has been misinterpreted includes:

- **Extraneous noise** – ASBG has heard of members receiving noise reports with excessive sensitivity to what is extraneous noise. Comments such as *“All vehicle noise was removed, even though one vehicle every two to three minutes were typical traffic of the time period.”*
- **Sleep disturbance** – While this is considered an increase from the old INP levels, it places L_{Amax} at 52 dB in a much more prominent position. Hence, it is more likely to be abused as an absolute limit rather than a project noise trigger level.

A simple recommendation is to include additional case studies or fact sheets on how these criteria should be used and what actions follow.

R3 ASBG recommends that additional guidelines and or fact sheets be developed addressing the following noise related issues:

- ***Use of case studies to clarify the use of the ING project noise trigger level including examples where errors have occurred***
- ***Dealing with poorly undertaken noise measurement studies, both high and low, and actions to be taken by sites, proponents and government agencies***
- ***Use of case studies to better define what are and are not extraneous noises***
- ***Case studies on the application of the sleep disturbance maximum noise level assessment***

Case studies should venture into the gray areas, as obvious black and white examples are not helpful.

4.2 Sleep Disturbance

Sleep Disturbance also has additional issues which can expand beyond the ING covering other noise sources. In many cases this will be due to:

- Increasing traffic congestion as city traffic levels increase
- Alternative work times at evening and night corresponding to out of peak hours transport which is supported by other Government agencies
- Increasing population densities around employment and transport hubs

In such cases this is not the fault of a regulated site, but of infrastructure and town planning and increasing population densities, encroachment and land use conflict. If Sleep Disturbance criteria is applied to industrial traffic or transport systems this could result in difficult or conflicting outcomes.

For example: garbage collection in city centres during low traffic times will breach the sleep disturbance criteria vs inability to collect waste within a reasonable time and additional traffic holdups.

R4 ASBG recommends the Sleep Disturbance criteria require being better ring fenced to avoid misuse or even abuse.

4.3 Old Noise Limits

ING Section 6 deals with existing industrial premises and lists down when actions may be triggered. However, there are numerous examples of old noise limit conditions dating back to prior to the Protection of The Environment Operations Act 1997 (POEO Act). An example is:

L6.1 Noise from the premises must not exceed:

- (a) an LA10 (15 minute) noise emission criterion of 40 dB(A) between 7am and 10pm; and*
- (b) an LA10 (15 minute) noise emission criterion of 30 dB(A) between 10pm to 7am except as expressly provided by this licence.*

L6.2 Noise from the premises is to be measured at any point within one metre of the boundary of any residential premises to determine compliance with condition L6.1.

This site is located on a major 6 lane highway and the L_{A10} would be impossible to measure as the highway would be at least 30 dB higher in noise levels.

With reverse onus of proof resting on the Environment Protection Licence (EPL) holder, they could be prosecuted at any time for breach of this condition, but would not be able to prove they did not exceed these limits by direct measurement. At best their defence could be they were closed or non-operational at the time.

Many sites can tolerate these types of old noise criteria if noise complaints are minimal or nil. However, a sensitive neighbour can move in to the neighbourhood and start a series of complaints sparking the EPA to act. Sites with the above EPL conditions are vulnerable to being policed at their licence levels. If this occurs, such EPL holders would like the option to have their noise conditions modernised. A formal means to be brought up with the times with a new set of noise conditions based on the ING.

R5 ASBG recommends the ING include a process in Section 6, or alternative, which permits existing industrial sites the option to upgrade their old noise conditions to newer conditions based on the ING.

5 Dealing with Sensitive Neighbours

Noise is dealt with by the EPA primarily on a complaints basis for existing industrial sites. This is an acceptable approach given the reason for having noise limits to assist in achieving a harmonious existence between neighbours. Most noise complaints are legitimate, based on high and unacceptable noise coming from a site. However, there are cases where such complaints are not based on *bona fide* noise emissions. These can fit roughly into two areas which together which ASBG calls them *sensitive complainers*:

- Vexatious complaints - where the complainer, who has other issues with the site, uses noise (and other complaints approaches) to achieve their goals.
- Medical conditions – where the noises heard are either exaggerated or imaginary due to medical conditions.

ASBG appreciates it can be difficult for the EPA to distinguish between *bona fide* complainers and *sensitive complainers*. Where this occurs the approach is for the EPA to investigate and where necessary obtain the necessary noise data, establish if needed a project noise trigger level and if necessary seek feasible and reasonable solutions.

However, there are patterns and evidence that can clearly show if a complainer is a sensitive complainer. Example behaviours of a *sensitive complainer* can include:

- Repeated isolated complaints
- The complainer is not from the general area likely to be impacted from the site's noise
- The complainer had many other receptors between them and the source with no other complaints from the closer receptors
- Complaints where there is evidence the site of alleged noisy site was not in operation or that plant was not in operation at the time
- The complainer states they can still hear the noise when it is obvious that any noise from the site of origin is inaudible
- The complainer states they have a medical condition which makes them very sensitive to noise

ASBG has put forward similar recommendations in the past for the development of a guide on how to deal with *sensitive complainer*. Noise is one of the big three complaints based environmental issues which also includes odour and dust.

R6 ASBG recommends that a policy or guideline be developed explaining how the EPA will respond to complaints. This document should include a section on recognising and dealing with sensitive complainers and how they and the source are to be dealt with.