

**Saddleback Ridge Wind, LLC** // Natural Resource Protection Act (NRPA) and Site Location of Development Act applications

- *Exhibit 22: BEP Provisionally Noise Rule Amendments, Chapter 375(10)(I) Sound Level Standards for Wind Energy Developments*

The Department of Environmental Protection Rule Chapter 375, Section 10 is amended by adding the following new subsection, subsection I, Sound Level Standards for Wind Energy Developments:

**I. Sound Level Standards for Wind Energy Developments.**

(1) Applicability:

This subsection applies to grid-scale wind energy developments as defined by 35-A M.R.S.A. § 3451(6) and small-scale wind energy developments governed by 35-A M.R.S.A. § 3456, hereinafter referred to as "wind energy developments." The provisions in Section 10(C)(1), 10(D)(2), 10(F), and 10(H) of this Rule do not apply to wind energy developments.

(2) Sound Level Limits for Routine Operation of Wind Energy Developments.

The sound levels resulting from routine operation of a wind energy development measured in accordance with the measurement procedures described in subsection I(8) shall not exceed the following limits:

- (a) 75 dBA at any time of day at any property line of the wind energy development or contiguous property owned or controlled by the wind energy developer, whichever is farther from the proposed wind energy development's regulated sound sources; and
- (b) 55 dBA between 7:00 a.m. and 7:00 p.m. (the "daytime limit"), and 42 dBA between 7:00 p.m. and 7:00 a.m. (the "nighttime limit") at any protected location.

(3) Tonal Sounds.

For the purposes of this subsection, a tonal sound exists if, at a protected location, the 10 minute equivalent average one-third octave band sound pressure level in the band containing the tonal sound exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third octave bands by 5 dB for center frequencies at or between 500 Hz and 10,000 Hz, by 8 dB for center frequencies at or between 160 and 400 Hz, and by 15 dB for center frequencies at or between 25 Hz and 125 Hz. 5 dBA shall be added to any average 10 minute sound level ( $Leq_{A, 10-min}$ ) for which a tonal sound occurs that results from routine operation of the wind energy development.

(4) Short Duration Repetitive Sounds ("SDRS").

For the purposes of this subsection SDRS is defined as a sequence of repetitive sounds that occur within a 10-minute measurement interval, each clearly discernible as an event resulting from the development and causing an increase in the sound level of 5 dBA or greater on the fast meter response above the sound level observed immediately before and after the event, each typically  $\pm 1$  second in duration, and which are inherent to the process or operation of the development.

- (a) When routine operation of a wind energy development produces short duration repetitive sound, a 5 dBA penalty shall be arithmetically added to each average 10-minute sound level ( $Leq_{A, 10-min}$ ) measurement interval in which greater than 5 SDRS events are present.

## (5) Compliance with the Sound Level Limits

A wind energy development shall determine compliance with the sound level limits as set forth in subsection I(2) of this rule in accordance with the following:

- (a) Sound level data shall be aggregated in 10-minute measurement intervals within a given compliance measurement period (daytime: 7:00 am to 7:00 pm or nighttime: 7:00 pm to 7:00 am) under the conditions set forth in subsection I(8) of this rule.
- (b) Compliance will be demonstrated when the arithmetic average of the sound level of, at a minimum, twelve, 10-minute measurement intervals in a given compliance measurement period is less than or equal to the sound level limit set forth in subsection I(2).
- (c) Alternatively, if a given compliance measurement period does not produce a minimum of twelve, 10-minute measurement intervals under the atmospheric and site conditions set forth in subsection I(8) of this rule, the wind energy development may combine six or more contiguous 10-minute measurement intervals from one 12 hour (7:00 am to 7:00 pm daytime or 7:00 pm to 7:00 am nighttime) compliance measurement period with six or more contiguous 10-minute intervals from another compliance measurement period. Compliance will be demonstrated when the arithmetic average of the combined 10-minute measurement intervals is less than or equal to the sound level limit set forth in subsection I(2).

## (6) Variance From Sound Level Limits

A variance may be granted by the Department if: (1) a development is deemed necessary in the interest of national defense or public safety and the applicant has shown that the sound level limits cannot practicably be met without unduly limiting the development's intended function, and (2) a finding is made by the Department that the proposed development will not have an unreasonable impact on protected locations. The Department shall consider the request for a variance as part of the review of a completed Site Location of Development Law application or a request for certification for a small-scale wind energy development. In granting a variance, the Department may, as a condition of approval, impose terms and conditions to ensure that no unreasonable sound impacts will occur.

## (7) Submissions

Technical information shall be submitted describing the wind energy developer's plan and intent to make adequate provision for the control of sound. The wind energy developer's plan shall contain the following:

- (a) A map depicting the location of all proposed sound sources associated with the wind energy development, property boundaries for the proposed wind energy development, property boundaries of all adjacent properties within one mile of the proposed wind energy development, and the location of all protected locations located within one mile of the proposed wind energy development;
- (b) A description of the major sound sources, including tonal sound sources and sources of short duration repetitive sounds, associated with the construction, operation and maintenance of the proposed wind energy development;

- (c) A description of the equivalent noise levels expected to be produced by the sound sources at protected locations located within one mile of the proposed wind energy development. The description shall include a full-page isopleth map depicting the modeled decay rate of the predicted sound pressure levels expected to be produced by the wind energy development at each clearly identified protected location within one mile of the proposed wind energy development. The predictive model used to generate the equivalent noise levels expected to be produced by the sound sources shall be designed to represent the "predictable worst case" impact on adjacent properties and shall include, at a minimum, the following:
1. The maximum rated sound power output (IEC 61400-11) of the sound sources operating during nighttime stable atmospheric conditions with high wind shear above the boundary layer and consideration of other conditions that may affect in-flow airstream turbulence;
  2. Attenuation due to geometric spreading, assuming that each turbine is modeled as a point source at hub height;
  3. Attenuation due to air absorption;
  4. Attenuation due to ground absorption/reflection;
  5. Attenuation due to three dimensional terrain;
  6. Attenuation due to forestation;
  7. Attenuation due to meteorological factors such as but not limited to relative wind speed and direction (wind rose data), temperature/vertical profiles and relative humidity, sky conditions, and atmospheric profiles;
  8. Inclusion of an "uncertainty factor" adjustment to the maximum rated output of the sound sources based on the manufacturer's recommendation; and
  9. Inclusion, at the discretion of the Department, of an addition to the maximum rated output of the sound sources to account for uncertainties in the modeling of sound propagation for wind energy developments. This discretionary uncertainty factor of up to 3 dBA may be required by the Department based on the following conditions: inland or coastal location, the extent and specificity of credible evidence of meteorological operating conditions, and the extent of evaluation and/or prior specific experience for the proposed wind turbines. Subject to the Department's discretion based on the information available, there is a rebuttable presumption of an uncertainty factor of 2 to 3 dBA for coastal developments and of 0 to 2 dBA for inland developments.
- (d) A description of the protected locations near the proposed wind energy development.
- (e) A description of proposed major sound control measures, including their locations and expected performance.
- (f) A comparison of the expected sound levels from the proposed development with the sound level limits of this regulation.
- (g) A comparison of the expected sound levels from the proposed development with any quantifiable noise standards of the municipality in which the proposed development will be located and of any municipality which may be affected by the noise.
- (h) A description and map identifying one or more compliance testing locations on or near the proposed wind energy development site. The identified compliance testing locations

shall be selected to take advantage of prevailing downwind conditions and be able to meet the site selection criteria outlined in subsection I(8)(d)(2).

- (i) A description of the compliance measurement protocol as required by subsection 8 below.
- (j) A description of the complaint response protocol proposed for the wind energy development. The complaint response protocol shall adequately provide for, at a minimum:
  - 1. A 24-hour contact for complaints;
  - 2. A complaint log accessible by the Department;
  - 3. For those complaints that include sufficient information to warrant an investigation, the protocol must provide for an analysis as set forth in (a) through (c) below. Sufficient information includes, at a minimum: the name and address of the complainant; the date, time and duration of the sound event; a description of the sound event, indoor or outdoor, specific location and a description of any audible sounds from other sources outside or inside the dwelling of the complainant. Analysis of the complaint by the licensee must include:
    - (a) documentation of the location of the nearest turbines to the complaint location and ground conditions in the area of the complaint location;
    - (b) weather conditions at the time of the complaint and surface and hub height wind speed and direction;
    - (c) power output and direction of nearest turbines; and
    - (d) notification of complaint findings to the Department and the complainant;
  - 4. A plotting of complaint locations and key information on a project area map to evaluate complaints for a consistent pattern of site, operating and weather conditions; and
  - 5. A comparison of these patterns to the compliance protocol to determine whether testing under additional site and operating conditions is necessary and, if so, a testing plan that addresses the locations and the conditions under which a pattern of complaints had occurred.

(8) Measurement Procedures

These procedures specify measurement criteria and methodology for use with wind energy development applications, compliance and complaint response. They provide methods for measuring the sound from operation of the wind energy development and set forth the information to be reported.

## (a) Measurement Criteria

## 1. Measurement Personnel

Measurements shall be supervised by personnel who are well qualified by training and experience in measurement and evaluation of environmental sound, or by personnel trained to operate under a specific measurement plan approved by the Department.

## (b) Measurement Instrumentation

1. A sound level meter or alternative sound level measurement system used shall meet all of the Type 0 or 1 performance requirements of American National Standard Specifications for Sound Level Meters, ANSI S1.4.
2. An integrating sound level meter (or measurement system) shall also meet the Type 0 or 1 performance requirements for integrating/averaging in the International Electrotechnical Commission Standard on Integrating-Averaging Sound Level Meters, IEC Publication 61672-1 and ANSI 1.43.
3. A filter for determining the existence of tonal sounds shall meet all the requirements of the American National Standard Specification for Octave-Band and Fractional Octave-Band Analog and Digital Filters, ANSI S1.11 and IEC 61260, Type 3-D performance.
4. The acoustical calibrator used shall be of a type recommended by the manufacturer of the sound level meter and one that meets the requirements of American National Standard Specification for Acoustical Calibrators, ANSI S1.40.
5. The microphone windscreen used shall be of a type recommended by the manufacturer of the sound level meter.
6. Anemometer(s) used for surface (10 meter (m)) (32.8 feet) wind speeds shall have a minimum manufacturer specified accuracy of  $\pm 1$  mph providing data in one second integrations and 10 min. average/maximum values for the evaluation of atmospheric stability.
7. Audio recording devices shall be time stamped (hh:mm:ss) and at a minimum 16 bit digital, recording the sound signal output from the measurement microphone at a minimum sampling rate of 24 thousand (k) samples per second to be used for identifying events. Audio recording and compliance data collection shall occur through the same microphone/sound meter and bear the same time stamp.

## (c) Equipment Calibration

1. The sound level meter shall have been calibrated by a laboratory within 12 months of the measurement, and the microphone's response shall be traceable to the National Institute of Standards and Technology.
2. Field calibrations shall be recorded before and after each measurement period and at shorter intervals if recommended by the manufacturer.

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3. Anemometer(s) and vane(s) shall be calibrated annually by the manufacturer to maintain stated specification.
- (d) Compliance Measurement Location, Configuration, and Environment.
1. Compliance measurement locations shall be at nearby protected locations that are most likely affected by the sound from routine operation of the wind energy development subject to permission from the respective property owner(s).
  2. To the greatest extent possible, compliance measurement locations shall be at the center of unobstructed areas that are maintained free of vegetation and other structures or material that is greater than 2 feet in height for a 75-foot radius around the sound and audio monitoring equipment.
  3. To the greatest extent possible, meteorological measurement locations shall be at the center of open flat terrain, inclusive of grass and a few isolated obstacles less than 6 feet in height for a 250-foot radius around the anemometer location. The meteorological data measurement location need not be coincident with the sound and audio measurement location provided there is no greater than a 5 mile of separation between the data collection points and the measurement locations have similar characterization, i.e. same side of the mountain ridge, etc.
  4. Meteorological measurements of wind speed and direction shall be collected using anemometers at a 10-meter height (32.8 feet) above the ground. Results shall be reported, based on 1-second integration intervals, and shall be reported synchronously with hub level and sound level measurements at 10-minute measurement intervals. The wind speed average and maximum shall be reported.
  5. The sound microphone shall be positioned at a height of approximately 4 to 5 feet above the ground, and oriented in accordance with the manufacturer's recommendations.
  6. When possible, measurement locations should be at least 50 feet from any sound source other than the wind energy development's power generating sources.
- (e) Compliance Data Collection, Measurement and Retention Procedures.
1. Measurements of operational, sound, audio and meteorological data shall occur as set forth in subsection I(8)(e)(7 through 10).
  2. All operational, sound and meteorological data collected shall be retained by the wind energy development for a period of 1 year from the date of collection and is subject to inspection by the Department and submission to the Department upon request.
  3. All audio data collected shall be retained by the wind energy development for a period of four weeks from the date of collection unless subject to a complaint filed in accordance with the complaint protocol approved by the Department and is subject to inspection by the Department and submission to the Department upon request. Specific audio data collected that coincides with a complaint filed in accordance with the approved complaint protocol shall be retained by the wind energy developer for a

period of 1 year from the date of collection and is subject to inspection by the Department and submission to the Department upon request.

4. Written notification of the intent to collect compliance data must be received by the Department prior to the collection of any sound level data for compliance purposes. The notification shall state the date and time of the compliance measurement period.

*Note: Notice received via electronic mail is sufficient regardless of whether it is received during business hours.*

5. Compliance data from the operation of a wind energy development shall be submitted to the Department, at a minimum:
  - (a) Once during the first year of facility operation;
  - (b) Once during each successive fifth year thereafter until the facility is decommissioned;
  - (c) In response to a complaint regarding operation of the wind energy development as set forth in subsection I(7)(j) of the rule and any subsequent enforcement by the Department; and
  - (d) For validation of an applicant's calculated sound levels when requested by the Department.
6. All sound level, audio and meteorological data collected during a compliance measurement period for which the Department has been notified that meets or exceeds the specified wind speed parameters shall be submitted to the Department for review and approval. All data submittals shall be submitted to the Department within 30 days of notification of intent to collect compliance data.
7. Measurement shall be obtained during weather conditions when the wind turbine sound is most clearly noticeable, generally when the measurement location is downwind of the wind energy development and maximum surface wind speeds  $\leq 6$  miles per hour (mph) with concurrent turbine hub-elevation wind speeds sufficient to generate the maximum continuous rated sound power from the nearest wind turbines to the measurement location. A downwind location is defined as within  $45^\circ$  of the direction between a specific measurement location and the acoustic center of the five nearest wind turbines.

*[Note: These conditions typically occur during inversion periods usually between 11 pm and 5 am.]*

8. In some circumstances, it may not be feasible to meet the wind speed and operations criteria due to terrain features or limited elevation change between the wind turbines and monitoring locations. In these cases, measurement periods are acceptable if the following conditions are met:
  - (a) The difference between the  $L_{A90}$  and  $L_{A10}$  during any 10-minute period is less than 5 dBA; and
  - (b) The surface wind speed (10 meter height) (32.8 feet) is 6 mph or less for 80% of the measurement period and does not exceed 10 mph at any time, or the turbines are shut down during the monitoring period and the difference in the observed  $L_{A50}$  after shut down is equal to or greater than 6 dBA; and

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- (c) Observer logs or recorded sound files clearly indicate the dominance of wind turbine(s).
9. Measurement intervals affected by increased biological activities, leaf rustling, traffic, high water flow, aircraft flyovers or other extraneous ambient noise sources that affect the ability to demonstrate compliance shall be excluded from all compliance report data. The intent is to obtain 10-minute measurement intervals that entirely meet the specific criteria.
  10. Measurements of the wind energy development sound shall be made so as to exclude the contribution of sound from other development equipment that is exempt from this regulation.
- (f) Reporting of Compliance Measurement Data.

Compliance Reports shall be submitted to the Department within 30 days of notification of intent to collect compliance data or upon request by the Department and shall include, at a minimum, the following:

1. A narrative description of the sound from the wind energy development for the compliance measurement period result;
2. The dates, days of the week and hours of the day when measurements were made;
3. The wind direction and speed, temperature, humidity and sky condition;
4. Identification of all measurement equipment by make, model and serial number;
5. All meteorological, sound, windscreen and audio instrumentation specifications and calibrations;
6. All A-weighted equivalent sound levels for each 10-minute measurement interval;
7. All  $L_{A10}$  and  $L_{A90}$  percentile levels;
8. All 10 minute 1/3 octave band linear equivalent sound levels (dB);
9. All short duration repetitive events characterized by event amplitude. Amplitude is defined as the peak event amplitude minus the average minima sound level immediately before and after the event, as measured at an interval of 50 milliseconds ("ms") or less, A-weighted and fast time response, i.e. 125 ms. For each 10-minute measurement interval short duration repetitive sound events shall be reported by number for each observed amplitude integer above 5 dBA.
10. Audio recording devices shall be time stamped (hh:mm:ss) and at a minimum 16 bit digital, recording the sound signal output from the measurement microphone at a minimum sampling rate of 24 thousand (k) samples per second to be used for identifying events. Audio recording and compliance data collection shall occur through the same microphone/sound meter and bear the same time stamp. Should any sound data collection be observed by a trained attendant, the attendant's notes and observations may be substituted for the audio files during the compliance measurement period;
11. All concurrent time stamped turbine operational data including the date, time and duration of any noise reduction operation or other interruptions in operations if present; and
12. All other information determined necessary by the Department.

**BASIS STATEMENT**

## Amendments to Chapter 375, Section 10 Control of Noise

**History**

- By letter dated December 17, 2010, the Board of Environmental Protection (Board) was petitioned to initiate rulemaking for specific sound standards related to wind power developments. The petition contained more than 150 signatures of Maine registered voters. The petitioners' proposal was to add to Section 10 a new subsection I, entitled Sound Level Limits and Measurements for Wind Turbine Projects.
- The petitioners' basis for requesting rule amendments was that noise generated by wind turbine projects is unique and significantly different than noise generated from common and industrial developments and that the Department had no experience with grid-scale wind energy projects at the time the noise standards were last amended. The petitioners proposed a lower nighttime sound level limit of no more than 5 dBA above the pre-existing background level, not to exceed 35 dBA. The petitioners proposed requiring that a number of uncertainty factors be included in the predictive modeling required of applicants as well as more restrictive definitions of, and penalties for, short duration repetitive sounds (SDRS) and tonal sounds. In addition, the petitioners proposed standards for conducting post-construction compliance measurements and a procedure for complaint response.
- The Board posted the petitioners' proposed rule to a public hearing at its meeting on February 3, 2011, but did not set a date for the hearing at that time. The Board subsequently scheduled the hearing for May 19, 2011. That hearing was postponed.
- A public hearing on the proposed rules was held on July 7, 2011. Prior to the hearing and in comments submitted at the hearing, the petitioners proposed changes to the rule that they had originally petitioned the Board to adopt. At the hearing and during the subsequent comment period, the focus of the evidence presented was a revised version of the petitioners' proposed rule.
- The comment period ended July 18, 2011 at 5:00 p.m.
- After review of comments and the evidence received, the Department staff, in consultation with its noise consultant, presented recommended amendments to Chapter 375, section 10 to the Board at its meeting on August 8, 2011. Deliberations by the Board resulted in some changes to the staff recommendation. To allow for comments on the amended proposed rule, the Board posted the proposed rule for additional public comment. The second comment period ended August 29, 2011 at 5:00 p.m.
- The existing rule governing noise from wind energy developments is the general rule under the Site Law, Chapter 375, section 10, which was adopted in 1989 before significant wind energy development was proposed in Maine. This rule takes into account the increased knowledge concerning noise generated by wind energy developments since the rule was adopted. The department has utilized certain practices and protocols in assessing whether proposed wind energy developments will meet the requirements in existing general rule. The codification of sound level limits specific to wind energy developments and the currently used practices and methodologies will help developers by providing consistency as they develop applications for permits and design projects, will assist the department and the public in the process of assessing the applications for these developments, and will protect the environment and existing uses of the areas surrounding such developments.