



**AQUIND Limited**

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# **AQUIND INTERCONNECTOR**

## **Statutory Nuisance Statement**

The Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 – Regulation 5(2)(f)

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**AQUIND Limited**

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**DOCUMENT: STATUTORY NUISANCE STATEMENT**

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## DOCUMENT

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# 1. INTRODUCTION

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## 1.1. BACKGROUND

- 1.1.1.1. This Statutory Nuisance Statement has been prepared on behalf AQUIND Limited (the 'Applicant'). It forms part of the suite of documents which accompany the application (the 'Application') for a Development Consent Order ('DCO'). The draft DCO has been submitted to the Secretary of State for Business, Energy and Industrial Strategy (the 'SoS'), under Section 37 of 'The Planning Act 2008' (the 'PA 2008').
- 1.1.1.2. The Applicant is proposing to construct and operate an electricity interconnector between France and the UK known as AQUIND Interconnector ('the Project'). The UK elements of the Project are referred to as the 'Proposed Development'. On 19 June 2018, the Applicant sought a Direction from the SoS under Section 35 of the PA 2008 and on 30 July 2018 the SoS issued a Direction (PINS Ref: EN020022-000013) confirming that the Proposed Development and any development associated with it is to be treated as development for which development consent under the PA 2008 is required and that the Proposed Development by itself is nationally significant.
- 1.1.1.3. This Statutory Nuisance Statement identifies whether the Proposed Development engages any of the statutory nuisances in Section 79(1) of the Environmental Protection Act 1990 ('EPA') and, if so, how the Applicant proposes to mitigate or limit such nuisances.
- 1.1.1.4. The requirement for such a statement is set out in the Infrastructure Planning (Application: Prescribed Forms and Procedure) Regulations 2009 (the 'APFP Regulations 2009') at regulation 5(2)(f), which states that: *"The application must be accompanied by...a statement whether the proposal engages one or more of the matters set out in section 79(1) (statutory nuisances and inspections therefor) of the Environmental Protection Act 1990, and if so how the applicant proposes to mitigate or limit them"*.

## 1.2. THE PROPOSED DEVELOPMENT

- 1.2.1.1. The Project comprises the construction and operation of an electricity interconnector between France and UK. Electricity interconnectors are the physical links which allow the transfer of electricity across borders.
- 1.2.1.2. The Project includes a new marine and onshore High Voltage Direct Current ('HVDC') power cable transmission link between Normandy in France and Eastney, Hampshire, converter stations in both England and France, and will also include fibre optic data transmission cables.

- 1.2.1.3. The purpose of the Project is to make a significant contribution towards increasing the cross-border capacity between the UK and France (providing a net capacity of 2,000 megawatts ('MW')). Increasing cross border capacity, through the provision of interconnectors, improves competition in energy markets, delivers security and flexibility of energy supply in both countries as well as helping to fight climate change by integrating more renewable energy sources like solar and wind.
- 1.2.1.4. The Proposed Development would comprise the following elements:
- UK Onshore Components:
    - Works at the existing National Grid Lovedean substation in Hampshire where AQUIND Interconnector will connect to the existing Great Britain grid;
    - Underground alternating current cable circuits, connecting Lovedean substation to the proposed Converter Station;
    - The construction of a Converter Station comprising a mix of buildings and outdoor electrical equipment;
    - Up to two Telecommunications buildings (one for each circuit) to be located outside the main Converter Station security fence;
    - Two pairs of underground HVDC cable circuits together with smaller diameter fibre optic cables for data transmission from the proposed Landfall site in Eastney (near Portsmouth) to the Converter Station at Lovedean, approximately 20 km in length; and
    - Up to two Optical Regeneration Stations ('ORS') (one for each circuit) housed in separate buildings are required at the Landfall.
  - UK Marine Components:
    - Two marine HVDC cable circuits to be located within the Martine Cable Corridor (from MHWS to the Exclusive Economic Zone ('EEZ') boundary line), as well as smaller diameter fibre optic cables for data transmission.
- 1.2.1.5. The Order Limits of the DCO Application encompass the land required to construct, operate and maintain the Proposed Development, including working areas for cable installation, construction compounds, dredging and laydown areas.
- 1.2.1.6. A full description of the Proposed Development is detailed in Chapter 3 (Description of the Proposed Development) of the Environmental Statement ('ES') Volume 1 (document reference 6.1.3).

### 1.3. THE PURPOSE OF THIS DOCUMENT

- 1.3.1.1. The purpose of this document is to comply with Regulation 5(2)(f) of the APFP Regulations 2009, which states that any application for a DCO should be accompanied by a statement setting out whether the development proposal could cause a statutory nuisance pursuant to Section 79(1) of the EPA). If such a nuisance could occur, the statement must set out how the applicant proposes to mitigate or limit the effects.
- 1.3.1.2. Paragraph 4.14.1 of the Overarching National Policy Statement for Energy EN-1 (Department of Energy and Climate Change, 2011) states that:
- “Section 158 of the Planning Act 2009 confers statutory authority for carrying out development consented to by, or doing anything else authorised by, a development consent order. Such authority is conferred only for the purpose of providing a defence in any civil or criminal proceedings for nuisance. This would include a defence for proceedings for nuisance under Part III of the Environmental Protection Act 1990 (statutory nuisance) but only to the extent that the nuisance is the inevitable consequence of what has been authorised. The defence does not extinguish the local authority’s duties under Part III of the EPA 1990 to inspect its area and take reasonable steps to investigate complaints of statutory nuisance and to serve an abatement notice where satisfied of its existence, likely occurrence or recurrence. The defence is not intended to extend to proceedings where the matter is ‘prejudicial to health’ and not a nuisance.”*
- 1.3.1.3. Paragraph 4.14.2 states the importance of considering possible sources of nuisance under Section 79(1) of the EPA and how these can be mitigated or limited, so that appropriate ‘requirements’ can be included in any DCO that is granted.
- 1.3.1.4. Whilst it is not expected that the construction, operation or maintenance of the Proposed Development would cause a statutory nuisance, Article 9 of the draft DCO (document reference 3.1) which accompanies the Application contains a provision that would provide a defence to proceedings in respect of statutory nuisance falling within sub-paragraph (g) and (ga) of Section 79(1) of the EPA (noise emitted from premises so as to be prejudicial to health or a nuisance), subject to certain criteria.
- 1.3.1.5. This Statement first describes the legislative context for the identification of matters which constitute statutory nuisance and the methodology for the assessment of these. This is followed by a summary of the assessment of the statutory nuisances, using information from the ES (document reference 6.1), including any relevant mitigation measures and residual effects, which may either be embedded within the design of the Proposed Development or secured through requirements within the DCO.

## 2. APPROACH TO THE ASSESSMENT OF STATUTORY NUISANCE

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### 2.1. LEGISLATIVE FRAMEWORK

2.1.1.1. Section 79(1) of the EPA identifies the statutory nuisances, subject to specified caveats, as follows:

- *a) any premises in such a state as to be prejudicial to health or a nuisance;*
- *b) smoke emitted from premises so as to be prejudicial to health or a nuisance;*
- *c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;*
- *d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;*
- *e) any accumulation or deposit which is prejudicial to health or a nuisance;*
- *f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;*
- *fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;*
- *fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;*
- *g) noise emitted from premises so as to be prejudicial to health or a nuisance;*
- *ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street;*
- *h) any other matter declared to by an enactment to be a statutory nuisance.*

## **2.2. ASSESSMENT OF SIGNIFICANCE**

- 2.2.1.1. The ES for the Proposed Development assesses the likelihood of significant effects arising that could constitute a statutory nuisance, as identified in Section 79(1) of the EPA. Chapter 2 (Consideration of Alternatives) of the ES Volume 1 (document reference 6.1.2) and Chapter 3 (Description of the Proposed Development) describe impact avoidance measures inherent to the proposed design and methods of operation. Chapters 15 (Landscape and Visual Amenity), 22 (Traffic and Transport), 23 (Air Quality), 24 (Noise and Vibration), 25 (Socio-economics), 26 (Human Health) and 27 (Waste and Material Resources) of the ES Volume 1 (document references 6.1.15, 6.1.22, 6.1.23, 6.1.24, 6.1.25, 6.1.26 and 6.1.27) and their associated appendices (document reference 6.2) provide detailed assessments of the likely significant effects and identify mitigation measures, where necessary.
- 2.2.1.2. Mitigation is detailed within ES Volume 1 (document reference 6.1.2) and in the Mitigation Schedule (document reference 6.6). Location-specific mitigation measures and best practice measures to be implemented during construction are outlined within the Onshore Outline Construction Environmental Management Plan ('CEMP') (document reference 6.9) and the Outline Marine Construction Environmental Management Plan (document reference 6.5).
- 2.2.1.3. The ES categorises the potential effects as negligible, minor, moderate or major. Moderate and major impacts are considered to be significant for the purposes of the EIA.
- 2.2.1.4. The only matters which have been assessed for the purposes of the EIA as likely to be significant for the Proposed Development and which are relevant to the EPA relate to visual amenity and noise and vibration. However, it is demonstrated in Section 3 of this document that the Proposed Development would not result in any statutory nuisance following implementation of the identified embedded mitigation measures.
- 2.2.1.5. The potential for any other statutory nuisance to arise from the Proposed Development has been considered in Section 4, which demonstrates that through embedded mitigation no statutory nuisance is considered likely to occur.
- 2.2.1.6. Matters which are considered to be a statutory nuisance under Section 79(1) of the EPA are covered within Section 3, 4 or are excluded as outlined in Table 1, depending on whether potentially significant effects were identified within the ES.

**Table 1 - EPA Section 79(1) Matters and Significance of Effects**

EPA Section 79(1) Matter	Section within Statement to be Considered
<i>a) any premises in such a state as to be prejudicial to health or a nuisance</i>	The landscape and visual impact assessment identified likely significant effects for visual receptors. This matter is therefore considered under Section 3 of this Statement.
<i>b) smoke emitted from premises so as to be prejudicial to health or a nuisance</i>	No smoke is expected to be generated during construction, operation or maintenance of the Proposed Development. This matter is not considered further in this Statement.
<i>c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance</i>	The use of mobile construction vehicles and plant on site has the potential to release exhaust gases produced by the combustion of fossil fuels. This matter is considered further in Section 4 of this Statement.
<i>d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance</i>	On-site earthworks, construction activities and the tracking of material to the road network from the site are the sources of fugitive dust with the potential to impact amenity. This matter is considered further in Section 4 of this Statement.
<i>e) any accumulation or deposit which is prejudicial to health or a nuisance</i>	With the application of embedded and additional mitigation measures, the ground conditions assessment has identified no significant effects to potential receptors from ground-related activities during the construction, operation and decommissioning stages of the project. Therefore, this matter is not considered further within this Statement.
<i>f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance</i>	No animals will be kept at the Proposed Development. This matter is not considered further within this Statement.
<i>fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance</i>	It is not anticipated that insects will emanate from the Proposed Development or be attracted to it. This matter is not considered further within this Statement.
<i>fb) artificial light emitted from premises so as to be</i>	No significant effects are anticipated from light emitted from the Proposed Development. This matter is considered, however, under Section 4 of this Statement.

<p><i>prejudicial to health or a nuisance</i></p>	
<p><i>g) noise emitted from premises so as to be prejudicial to health or a nuisance</i></p>	<p>Whilst the noise and vibration assessment has identified potentially significant effects at sensitive receptors during the Construction Stage, the use of agreed best practice mitigation measures and controls should ensure that any such effects do not constitute a statutory nuisance. This is considered further in Section 3 of this statement. No significant noise or vibration effects have been predicted during the Operational Stage of the development and the adopted design criteria are highly conservative so nuisance conditions are highly unlikely to arise from the Operational Stage (which includes maintenance). This matter is considered further in Section 4 of this Statement.</p>
<p><i>ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street or in Scotland, road</i></p>	<p>Noise emitted from vehicles, machinery or equipment in a street is only considered to occur during the Construction Stage of the Proposed Development.</p> <p>Whilst the noise and vibration assessment has identified potentially significant effects at sensitive receptors during the Construction Stage, the use of agreed best practice mitigation measures and controls should ensure that any such effects do not constitute a statutory nuisance. This is considered further in Section 3 of this statement.</p>
<p><i>h) any other matter declared to by any enactment to be a statutory nuisance</i></p>	<p>No other matters are considered to be a potential statutory nuisance associated with the construction, operation or maintenance of the Proposed Development.</p> <p>Whilst vehicular access to residential properties will be temporarily restricted in some locations during construction of the Onshore Cable Route, pedestrian and cycle access will be maintained at all times. This restriction should only be in place for a 1 to 2 week period for any affected properties.</p>

## 3. LIKELY SIGNIFICANT EFFECTS

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### 3.1. LANDSCAPE AND VISUAL AMENITY

#### 3.1.1. EPA SECTION 79(1)(A) “ANY PREMISES IN SUCH A STATE AS TO BE PREJUDICIAL TO HEALTH OR A NUISANCE”

- 3.1.1.1. The assessment of effects on landscape and visual amenity is presented within Chapter 15 (Landscape and Visual Amenity) of the ES Volume 1 (document reference 6.1.15), supporting appendices (document reference 6.2) and Chapter 29 (Cumulative Effects) of the ES Volume 1 (document reference 6.1.29).
- 3.1.1.2. For Section 1 – Lovedean (Converter Station Area), the ES concludes that after 20 years as planting matures there are likely to be significant landscape and visual amenity effects upon some residents within a 1.2 km radius of the Converter Station, and some recreational and transport users over very localised sections of PRow and roads within a 3 km radius. Recreational and transport users likely to experience a significant effect include users of some PRow as well as the Monarch’s Way, cyclists of the Horndean Technology College cycle route and users of Broadway Lane (east) and (south), and Day Lane. Remaining effects after 20 years would either be a neutral significant effect or not significant as planting matures.
- 3.1.1.3. Significant adverse effects are predicted on townscape landscape features (including tranquillity, footpaths, National Cycle Route 2 and openness) and on visual amenity and visual receptors including, residents, recreational and transport users and tranquillity during construction. Significant adverse effects are predicted on landscape features (openness), residents and recreational users immediately after construction and on commencement of operation. At Section 10 – Eastney (Landfall) after 10 years, as planting matures, there would be no significant effects.
- 3.1.1.4. Whilst significant adverse effects have been identified as likely, these do not constitute a statutory nuisance under EPA Section 79(1)(a).
- 3.1.1.5. Statutory nuisance occurring as a result of poor maintenance is not anticipated and the Proposed Development will be kept in good working order as a matter of course in connection with its operation. The land used for construction will be required to be restored in accordance with requirements in the DCO and measures to ensure landscape planting is implemented and maintained are also to be secured through the requirements of the DCO. These measures are set out in both the Onshore Outline CEMP and the Outline Landscape and Biodiversity Strategy (‘OLBS’) (document reference 6.10).

## **3.2. NOISE**

### **3.2.1. EPA SECTION 79(1)(GA) “NOISE THAT IS PREJUDICIAL TO HEALTH OR A NUISANCE AND IS EMITTED FROM OR CAUSED BY A VEHICLE, MACHINERY OR EQUIPMENT IN A STREET OR IN SCOTLAND, ROAD”**

- 3.2.1.1. The assessment of effects on noise and vibration is presented within Chapter 24 (Noise and Vibration) of the ES Volume 1 (document reference 6.1.24).
- 3.2.1.2. The ES concludes that significant adverse effects are likely during the installation of the Onshore Cable Route between the Converter Station and the Landfall if works take place on weekday evenings, at weekends or during the night.
- 3.2.1.3. Whilst it is possible for noise from construction activities to be determined as a statutory nuisance, it is highly unlikely in practice because construction is a necessary activity. Best Practicable Means ('BPM') will be applied as embedded mitigation measures during all stages of construction as detailed in the Onshore Outline CEMP and Appendix 24.2 of the ES Volume 3 (document reference 6.3.24.2). Examples of BPM specified include considerate timing of certain noisy activities, use of screening, effective community liaison, appropriate use and selection of equipment and effective planning of deliveries. The application of BPM will ensure that noise from construction activities will be reduced as much as practicably possible and hence activities should be considered reasonable.

## 4. INSIGNIFICANT EFFECTS

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### 4.1. AIR QUALITY

- 4.1.1. EPA SECTION 79(1)(C) “FUMES OR GASES EMITTED FROM PREMISES SO AS TO BE PREJUDICIAL TO HEALTH OR A NUISANCE” AND EPA SECTION 79(1)(D) “ANY DUST, STEAM, SMELL OR OTHER EFFLUVIA ARISING ON INDUSTRIAL, TRADE OR BUSINESS PREMISES AND BEING PREJUDICIAL TO HEALTH OR A NUISANCE”**
- 4.1.1.1. Construction of the Converter Station has the potential, in the absence of mitigation, to cause statutory nuisance from the fugitive release of dust from on-site activities, the raising of dust tracked from the construction site by on-road construction vehicles and plant, and exhaust gas emissions.
- 4.1.1.2. At the Converter Station Area, a medium risk of adverse amenity impacts has been qualitatively identified following Institute of Air Quality Management (‘IAQM’) guidance. This risk is a result of the extensive earthworks required to prepare soils (chalky clay to chalky loam) for the construction of the Converter Station buildings, construction of the buildings and the presence of high sensitivity residential receptors within 50 m of the site and construction traffic route.
- 4.1.1.3. The IAQM guidance recommends the application of mitigation for fugitive dust and exhaust gas emissions commensurate to the identified risk. The required measures have been described in Table 36 of Appendix 23.2 (IAQM Construction Assessment) of the ES Volume 3 (document reference 6.3.23.2) and are summarised in the Onshore Outline CEMP. The proposed measures will reduce the risk of adverse amenity impacts to low. Therefore, the impact of the release of fugitive dust and exhaust gas emissions from the Converter Station is assessed as not significant.
- 4.1.1.4. The IAQM guidance has been used to assess the risk from fugitive and vehicle raised dust for the remaining nine cable construction sections (Sections 2 to 10 illustrated in Figure 3.9 of the ES Volume 2 (document reference 6.2.3.9)). Sections 2-8 were assessed as high risk sites and sections 9 and 10 medium risk. The implementation of the mitigation measures required to mitigate these emissions will reduce the risk of adverse amenity impacts to low. Therefore, the impact of the release of fugitive dust and exhaust gas emissions from all construction corridor sections is assessed as not significant.

- 4.1.1.5. The overall dust risk for the Proposed Development during the Construction Stage can be classified as high, driven by the magnitude of the works and number of potential exposures in each route section. However, these effects will be temporary and transient. Following the implementation of commensurate mitigation measures, no statutory nuisance is expected to arise from the fugitive release of dust from on-site activities, the raising of dust tracked from the construction site by on-road construction vehicles and plant, or exhaust gas emissions from the Proposed Development. The impacts during the Construction Stage are assessed as not significant.

## **4.2. ARTIFICIAL LIGHTING**

### **4.2.1. EPA SECTION 79(1)(FB) “ARTIFICIAL LIGHT EMITTED FROM PREMISES SO AS TO BE PREJUDICIAL TO HEALTH OR A NUISANCE”**

- 4.2.1.1. Artificial lighting is proposed to illuminate the outdoor areas of the Converter Station Area during both the Construction and Operational stages.
- 4.2.1.2. A requirement has been included in the draft DCO in relation to external construction lighting at the Converter Station, which is to include measures to prevent light spillage.
- 4.2.1.3. Lighting columns will be installed along the perimeter fence and around the outdoor equipment areas in relation to operation. A further requirement has been included in the draft DCO requiring there to be no external lighting at the Converter Station during the period of operation during the hours of darkness save for in exceptional circumstances, including in the case of emergency and where urgent maintenance is required.
- 4.2.1.4. Accordingly, in normal night time operation there will be no illumination of the Converter Station site. Lighting would only be used in the event of unauthorised access to the site or if emergency repair work was required on the outdoor equipment. The light fittings will be appropriately designed to ensure that light is only directed to the necessary areas.
- 4.2.1.5. The use of artificial lighting along the Onshore Cable Corridor and at the Landfall during the Construction Stage is not anticipated to constitute a statutory nuisance. Furthermore, control measures to be applied in relation to lighting during construction works are set out in the Onshore Outline CEMP.
- 4.2.1.6. No significant artificial light emissions are expected from the Proposed Development which would have the potential to give rise to a statutory nuisance.

## **4.3. NOISE**

### **4.3.1. EPA SECTION 79(1)(G) “NOISE EMITTED FROM PREMISES SO AS TO BE PREJUDICIAL TO HEALTH OR A NUISANCE”**

- 4.3.1.1. With respect to the Converter Station, the noise assessment has concluded that, subject to the inclusion of the mitigation measures specified in the assessment, the broadband noise level from the Converter Station (dB,  $L_{Aeq,T}$ ) is predicted to not exceed the typical background noise level (dB,  $L_{A90,T}$ ) during both daytime and night-time, as determined using the British Standard BS 4142:2014. In addition to the broadband A-weighted predicted noise level, consideration has been given to noise levels across the frequency spectrum, to ensure adequate consideration of potential tonal features (e.g. hums). During the daytime, the noise level from the Converter Station is predicted to not exceed the typical background noise level in any octave band (31.5 Hz to 8000 Hz) by more than 0.3 dB. During the night-time, the noise level from the Converter Station is predicted to not exceed noise rating (‘NR’) 20 internally at surrounding residential receptors (see Chapter 24 (Noise and Vibration) of the ES Volume 1 (document reference 6.1.24)).
- 4.3.1.2. Therefore, it is considered unlikely that a statutory nuisance would result from the operation of the Converter Station.
- 4.3.1.3. These control measures are considered to be highly conservative, conferring a high degree of protection to noise sensitive receptors, and therefore likely to avoid nuisance conditions arising. Notwithstanding the absence of any operational noise and vibration impacts anticipated, it is understood that the primary operation of the development will benefit from statutory authority in any event pursuant to Article 9 of the draft DCO.

## 5. CONCLUSION

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### 5.1. POTENTIAL FOR NUISANCE

- 5.1.1.1. This Statement identifies the matters set out in Section 79(1) of the EPA in respect of statutory nuisance and considers whether the Proposed Development could cause a statutory nuisance.
- 5.1.1.2. Matters which have been assessed for the purposes of the EIA as likely to be significant for the Proposed Development and which are relevant to the EPA are visual amenity and noise and vibration. However, it is demonstrated in Section 3 of this document that the Proposed Development would not result in any statutory nuisance following the implementation of the identified embedded mitigation measures.
- 5.1.1.3. The potential for any other statutory nuisance to arise from the Proposed Development has been considered in Section 4, which demonstrates that through embedded mitigation no statutory nuisance is considered likely to occur.

### 5.2. DEVELOPMENT CONSENT ORDER

- 5.2.1.1. The draft DCO that accompanies the DCO Application contains a provision in Article 9 that would provide a defence, subject to certain criteria, to proceedings in respect of statutory nuisance falling within Section 79(1)(g) and (ga) of the EPA (noise emitted from premises so as to be prejudicial to health or a nuisance), subject to certain criteria).

## REFERENCES

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Department of Energy and Climate Change. (2011). National Policy Statement for Energy (EN-1).

