

ILLINOIS POLLUTION CONTROL BOARD
April 25, 1991

VILLAGE OF MATTESON,)
)
 Complainant,)
)
 v.) PCB 90-146
) (Enforcement)
 WORLD MUSIC THEATRE)
 JAM PRODUCTIONS, LTD.,)
 DISCOVERY SOUTH GROUP, LTD.,)
 and GIERCZYK DEVELOPMENT, INC.,)
)
 Respondents.)

MR. JOSEPH R. PEROZZI AND DAVID A. BRAUER, OF MCGRANE, PEROZZI, STELTER, GERARDI, BRAUER & ROSS, APPEARED ON BEHALF OF COMPLAINANT.

SAMUEL J. VINSON, MICHAEL SCHNEIDERMAN, CHRISTOPHER W. ZIBART AND STEVEN A. LEVY, OF HOPKINS & SUTTER, APPEARED ON BEHALF OF RESPONDENTS.

INTERIM OPINION AND ORDER OF THE BOARD (by B. Forcade):

This matter comes before the Board on a Complaint filed by the Village of Matteson ("Matteson") in Cook County, alleging that noise pollution in violation of Sections 23, 24, and 25 of the Illinois Environmental Protection Act (hereinafter, "the Act") was caused by World Music Theatre, JAM Productions, Ltd., Discovery South Group, Ltd., and Gierczyk Development, Inc. (hereinafter collectively referred to as "Theatre") in the operation of an outdoor theater located within Cook County, in Tinley Park, Illinois.

Procedural History

The complaint was filed on August 2, 1990. On August 9, 1990 the matter was held for duplicitous/frivolous determination. Proof of service was filed on August 14, 1990, indicating that William Gaston, Registered Agent for Gierczyk Development, Inc., refused service. The Board accepted this matter for hearing on August 30, 1990. Since Matteson took no action to perfect service against Gierczyk or seek other Board action, the complaint is dismissed as against Gierczyk Development, Inc.

On December 7, 1990, Matteson filed its answers to interrogatories and its response to the Theatre's request for production of documents. The documents included a record of complaints filed with the police, correspondence, part of the preannexation agreement between the Theatre and Tinley Park, and a concert schedule. The Board received extensive testimony at three hearings held in Matteson on December 10, 11, and 20, 1990.

Also at hearing the parties resolved the matter of a subpoena for a local newspaper reporter and a motion to quash. The hearing officer noted that 20-35 members of the public attended the hearings; several citizens testified. Matteson produced several witnesses, including residents, Matteson Village Trustees and personnel, and the Mayor of Country Club Hills. The Theatre also produced several witnesses, including area residents, a general partner of one respondent, and certain key personnel. Matteson and the Theatre both filed their briefs on February 1, 1991. The Board has been requested to render its decision by May 1, 1991.

The Facility

The facility is an outdoor amphitheater, at 19100 Ridgeland Road, Tinley Park, Illinois. It is approximately 1 mile north of the northwest boundary of the Complainant, Village of Matteson. Matteson alleges the noise emissions impact areas up to 2 1/2 miles from the Theatre. The Theatre faces east toward a large forest preserve. Other land uses in the area include farm land, a golf course, and a drive-in theater. Other than the homes in Tinley Park, residential areas are approximately 1 mile away. These include Matteson, a community of about 11,000 residents, approximately 1 mile to the southeast, and Country Club Hills, with about 15,000 residents, approximately 2 miles to the east. The distribution, by day, of the concerts or sound producing events was roughly: Monday (4), Tuesday (2), Wednesday (3), Thursday (4), Friday (5), Saturday (10), Sunday (9).

The Theatre's "season" for performances is generally Memorial Day to Labor Day. Tr. 3 at p. 492.¹ For 1990, the first season the Theatre was open, attendance totalled about 457,000 persons, who came to hear 32 performances. Tr. 3 at p. 486 and p. 470. The Theatre could possibly accommodate 40-50 performances per season. Tr. 3 at p. 492. The Theatre is a major source of part-time employment, with 650-700 employees, many of whom are local residents.

The Complaint

The complaint alleges violations of Sections 23, 24, and 25 of the Act. The alleged noise pollution is "(n)oise created by the over amplification of sound being generated from the World Music Theatre, during the presentation of various concerts." The complaint does not specifically identify the noise as music only. At hearing, the noise was more particularly described in terms of music, low repetitive bass sounds, singing, conversation by the performers, and crowd noises, including applause and loud bangs

¹ The transcript of the December 10, 1990, hearing will be (Tr. 1 at p. XX), the December 11 hearing will be (Tr. 2 at p. XX), and the December 20 hearing will be (Tr. 3 at p. XX).

that may have been firecrackers. The complaint states that "(t)he excessive noise is being created by the business operated by the Respondents, which occurred at the various concerts between the hours of 8:00 p.m. and 11:00 p.m. on June 30, July 4, July 14, July 21, July 23, July 29, and July 30, 1990." At hearing the alleged violations were stated as beginning on June 2, 1990 and continuing on various dates in July, August and September, as well as on October 4-7, 1990, the dates on which Tinley Park was permitted to hold an Octoberfest celebration in the Theatre parking lot.

The complaint alleges that the effects on human health, plant or animal life, or the environment were as follows:

The excessive noise created by the business operated by the Respondent has directly resulted in disruption and loss of sleep; preventing the use and enjoyment of back yards and back yard patios; forcing residents to keep windows closed during the summer months; adversely and unreasonably interfering with the enjoyment and use of the residential homes owned by the citizens primarily located in the Woodgate and Creekside subdivisions of the Village of Matteson.

Complaint, p. 3.

At hearing, the Complainant stated that the "Act was violated through incessant, numerous, and unreasonable intrusions into the private lives of our residents." Tr. 1 at p. 11. Essentially, the complaint and proof address noise pollution in the nature of "unreasonable interference" under Section 24, rather than violations of specific numeric limitations. The complainant also alleges noise pollution has extended into the neighboring City of Country Club Hills.

The relief requested in the complaint is "that the Respondent be required to control the amplification of sound emanating from the concert area so that it does not unreasonably interfere with the enjoyment of life by the residents of the Village of Matteson." In its brief, Complainant elaborates on the request for relief to include mandatory monitoring and architectural studies at the Respondent's expense, periodic reports, the possibility of modifications to the facility, and the possibility of penalties for failure to remediate. See complaint at p. 14.

Title VI of the Act establishes procedures and standards for noise control. Section 23 sets forth the legislature's purpose of preventing noise which causes a public nuisance. Section 24 prohibits emitting noise beyond one's property that unreasonably

interferes with the enjoyment of life or lawful activities so as to violate Board rules or standards. Section 25 authorizes the Board to adopt noise regulations.

Sections 23 and 24 of Title VI provide as follows:

Section 23

The General Assembly finds that excessive noise endangers physical and emotional health and well-being, interferes with legitimate business and recreational activities, increases construction costs, depresses property values, offends the senses, creates public nuisances, and in other respects reduces the quality of our environment.

It is the purpose of this Title to prevent noise which creates a public nuisance.

Section 24

No person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under this Act.

The Board implemented these sections of the Act in two ways. First, the Board has adopted specific numerical limitations on the characteristics of sound that may be transmitted from source to receiver. Second, the Board has adopted an unreasonable interference with the enjoyment of life standard, this is similar to a public nuisance standard.

Numerical test data, consistent with the regulations' use of frequency bands, was not presented in this case. Respondents introduced some evidence of dB(A) readings, but this is inappropriate to show compliance with the noise nuisance regulatory standard. The Board previously addressed this issue in Will County Environmental Network v. Gallagher Blacktop, PCB 89-64, 113 PCB 291 (January 11, 1990, at pp. 9-10):

The Board notes several problems with Gallagher's reliance on numerical sound measurements as a defense to the noise nuisance action. First, compliance with one set of regulations (the numerical noise emissions values) does not present an absolute bar to finding of violation regarding another set of regulations (the general nuisance noise prohibitions).

Second, the numerical noise measurements taken by Gallagher are for the years 1973, 1974, and 1984. The complainant's nuisance action is for the years 1987, 1988, and 1989. Thus, the respective claims represent substantially different time periods.

Third, the numerical noise values asserted by Gallagher do not show "compliance" with the numerical noise limitations of the State of Illinois. The original noise regulations that apply here were adopted by the Board in R72-2, In the Matter of: Noise Pollution Control Regulations, Order of July 23, 1973; Opinion of July 31, 1973, as Rule 202 and Rule 203. Those rules provided maximum allowable octave band sound pressure levels for nine octave band center frequencies. The single number A weighted scale for noise measurement was never adopted by this Board as a regulatory standard. These 1973 octave band pressure levels were codified at 35 Ill. Adm. Code 901.102. In 1987, the Board adopted amendments which provided that the particular regulatory standards should be measured based on one-hour Leq measurement techniques, see R83-7, In the matter of : General Motors Corp. Proposed Amendments to 35 Ill. Adm. Code 900.103 and 101.104 January 22, 1987. Gallagher's "A scale" noise measurements do not show compliance with any past or present numerical regulatory standard of the Board.

Here, the dB(A) numerical data (as cited in the compiled notes and videotape, Respondents' Exhibits C & E) cannot show compliance with a nuisance standard; the numerical data are from a night with no nuisance complaints; and the numerical data are not recorded in compliance with 35 Ill. Adm. Code 901.102. Therefore, compliance with numerical noise limitations is not at issue.

The second method of implementing the noise provisions of the Act is found in 35 Ill. Adm. Code 900.101 and 900.102.

Section 900.101 Definitions

Noise pollution: the emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity.

Section 900.102 Prohibition of Noise Pollution

No person shall cause or allow the emission of sound beyond the boundaries of his property, as property is defined in Section 25 of the Illinois Environmental

Protection Act, so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter.

In effect, these Board regulations adopt a public nuisance provision for noise control using the statutory phrase "unreasonable interference with the enjoyment of life or with any lawful business or activity" as the standard. The pleadings, testimony and exhibits of the complainant here are founded in this public nuisance theory, rather than in terms of noise levels that exceed specific sound emissions levels.

Various noise enforcement cases, which the Board has previously decided, include: James Kaji, Dorothy Kaji v. R. Olson Manufacturing Co., Inc., PCB 80-46, 41 PCB 245 (1981), aff'd 109 Ill. App. 3d 1168, 441 N.E. 2d 185 ; Citizens of Burbank v. Overnite Transportation Company, PCB 84-124, 65 PCB 131, (1985), 88 PCB 285 (1988); Citizens of Burbank and People of the State of Illinois, ex. rel., Richard M. Daley v. Clairmont Transfer Company, PCB 84-125, 74 PCB 255 (1986); John W. Eilrich v. James Smith, d/b/a Maywood Shell Car Wash, PCB 85-4, 77 PCB 245 (1987); Thomas & Lisa Annino v. Browning-Ferris Industries of Illinois, PCB 87-139, 91 PCB 349 (1988); Anthony W. Kochanski v. Hinsdale Golf Club, PCB 88-16, 101 PCB 11 (1989), rev'd 197 Ill. App. 3d 634, 555 N.E. 2d 31; William E. Brainerd v. Donna Hagan, David Bromaghim and Phil Robbins, d/b/a The Gables Restaurant, PCB 88-171, 98 PCB 247 (1989); and Brian J. Peter v. Geneva Meat and Fish Market and Gary Pikulski, PCB 89-151, 109 PCB 531 (1990); Will County Environmental Network v. Gallagher Asphalt, PCB 89-64, 113 PCB 291 (1990); Kvatsak v. St. Michael's Lutheran Church, PCB 89-182, 114 PCB 765 (1990); Zivoli v. Prospect Dive and Sport Shop, Ltd., PCB 89-205, _____ PCB _____, March 14, 1991.

The "reasonableness" of the noise pollution must be determined in reference to statutory criteria in Section 33(c). Wells Manufacturing Company v. Pollution Control Board, 73 Ill.2d 226, 383 N.E.2d 148 (1978); Mystic Tape, Div. of Borden, Inc. v. Pollution Control Board, 60 Ill.2d 330, 328 N.E.2d 5 (1975); Incinerator, Inc. v. Pollution Control Board, 59 Ill.2d 290, 319 N.E.2d 794 (1974); City of Monmouth v. Pollution Control Board, 57 Ill.2d 482, 313 N.E.2d 161 (1974). However, complainants are not required to introduce evidence on these criteria. Processing & Books v. Pollution Control Board, 64 Ill.2d 68, 351 N.E.2d 865 (1976).

Sections 900.101 and 900.102, which apply here, were given judicial interpretation in Ferndale Heights Utilities Company v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, 41 Ill. App. 3d 962, 358 N.E.2d 1224 (1st Dist. 1976). The First District Court held the regulatory language to be constitutional since sufficient standards could be comprehended from reading Section 24, the Board's regulations,

and the guidelines for enforcement cases found in Section 33(c) of the Act. The Court affirmed the Board's finding of unreasonable interference with the enjoyment of life, in light of adequate testimony describing the noise; explaining the type and severity of the interference caused by the noise; and indicating the frequency and duration of the interference. Despite conflicting testimony, the Court upheld the Board's finding that the interference was unreasonable.

The Board has adopted the Ferndale Court's approach to noise pollution in cases that involve unreasonable interference rather than numeric limitations. A 1985 case, finding a violation of Section 24 of the Act and of Section 900.102 of the Board's rules, provides an example of this approach:

This testimony meets the Ferndale standard of providing a description of the noise, explaining the type and severity of interference caused by the noise (sleep interruption) and providing information on the frequency and duration of the interference. This type of testimony must be provided in any proceeding for the Board to make a finding regarding interference with the enjoyment of life.

* * * * *

Based on the above-cited evidence, the Board finds that noises emanating from Overnite's facility, specifically from vehicle movement, maintenance, horns and the public address system, are causing interference with the sleep and normal leisure time activities of adjacent residents. Further, the Board finds this interference is frequent and severe.

Citizens of Burbank v. Overnite Trucking, PCB 84-124, 65 PCB 131, 136, 138 (1985).

Testimony at Hearing on Behalf of Matteson

To summarize, Matteson bases its proof on the testimony of fourteen individuals living up to 2 1/2 miles from the Theatre, who testified that noise disturbed them between around 8:30 p.m. to 11:00 p.m. on many occasions. At least 4 families have children whose sleep was disturbed by noise resounding within the home, even with windows closed and air conditioning running. Adults, too, had sleep disturbed and in two cases the families had working adults who were required to get up exceptionally early for work. Besides sleep disruption, one individual physically felt the vibrations from the music. Three individuals also reported the wall, house, or window rattling or vibrating from the booming, thumping bass. T.V. watching was disrupted and

the T.V. could not be heard at its regular volume due to the intrusion of the music, crowd noise etc. Outdoor enjoyment was also curtailed. The problem continued throughout the summer, with some variation at each concert and some possible reduction later in the summer. Most people were also disturbed by the Octoberfest celebration that the Theatre permitted Tinley Park to hold on its grounds.²

Mr. Michael Perry, a Matteson Trustee, testified that, on an ongoing basis, the noise disturbed both him and his wife, who also testified. Tr. 1 at 179. Mr. Perry indicated that he agreed with his wife's testimony, but would add that they also heard the noise on June 2, before going out for the evening. He stated that he did not hear all the concerts because he travels out of town for business. Tr. 1 at p. 171. He testified that on July 20 a fellow Matteson trustee, Mr. Tindall, came to Mr. Perry's house and heard concert sounds that could not be heard at a church lot, which lies at a lower elevation, approximately 60-80 feet away. Mr. Tindall complained that, on his elevated deck, the sounds were loud and in his second story bedroom it was "virtually impossible" to sleep because of the noise.

On cross examination, he admitted that besides avoiding outdoors because of noise, he also came indoors because of mosquitoes. Tr. 1 at p. 184. However, the thrust of his testimony was clearly that his outdoor enjoyment and entertaining was seriously curtailed due to the Theatre's sound transmissions. Tr. 1 at p. 174.

Mr. Perry stated that another witness, John Rangel, came to his home on July 21, 22, or 23 and heard how the noise was "annoying" and how "it severely affects the quality of life in our subdivision". Tr. 1 at p. 175. He noted, however, that when he joined other Matteson and Country Club Hills representatives on an investigative tour on June 15 or 16, the noise was not a problem. Tr. 1 at p. 177.

Many people called Mr. Perry's home to complain about the concerts, although the number dropped later in the season. He attributed this to either people being tired of complaining or the noise being somewhat reduced. Tr. 1 at p. 185. He mentioned that the Matteson Trustees voted unanimously on July 25, 1990 to adopt the motion directing a complaint to Tinley Park. See Complainant's Exhibit C, Tr. 1 at p. 180, 181.

² Note: Where witnesses referred to concerts by performers' names rather than by dates, the Board has inserted dates as nearly accurate as possible. The Board finds that no material prejudice will result.

Mr. Perry explained that he had some difficulty identifying dates when there was a noise problem, but made this general characterization:

The entire summer was dedicated to dealing with complaints from residents, from spouses, from children, my own children, and also dealing with the village board in trying to resolve this issue so, you know, each one of these concerts again ran together.

Tr. 1 at p. 178.

Mr. Bernard Tindall, a Matteson Village Trustee, has lived in the Woodgate subdivision of Matteson for three years. There were four members of his household until August, 1990, when his daughter got married. The Theatre's sound transmissions disturbed him on June 3, and he noted that the noise was louder on his second floor. The problem was essentially an ongoing one for his family. Mr. Tindall indicated that music and lyrics could be heard within the house. Also, the "beat" caused the windows in the house to vibrate. Tr. 1 at p. 190. With respect to locations outside his property, Mr. Tindall testified regarding one night in particular. On the night in question he found at many locations the noise was audible but not aggravating. However, Mr. Tindall stated that at Michael Perry's house, "it was like if he was right in the theatre." Tr. 1 at pp. 191-192. Mr. Tindall also heard the noise in his bedroom even when it was not heard on his investigative tours of Matteson and Country Club Hills. Tr. 1 at p. 194.

Mr. Tindall described the impact on his family and the extent of community complaints to him as follows:

I've also got so many calls that I just lost thought of how many calls we got and which one was the loudest because I don't think there was any of them that it wasn't -- you couldn't hear it.

You would hear almost every one of them.

* * *

My threshold of comfort is if I can hear it.

I'm not a music fan, there's no two ways about it.

To discomfort me -- number one, in my bedroom, adjoining my bedroom is a reading room. My wife is an avid reader.

She could not read. She had to put her books down.³

* * *

I've got so many complaints on my personal phone -- in fact, there was a time there were my weekends were taken up just driving around listening to the sounds in the different communities.

* * *

I'll tell you it's hard to keep under control when you think about that because when you can't sleep and when people call you and they think because you're an elected official, you have the power to shut that thing off.

I was suggesting everybody call Tinley Park, let the police over there go and do something about it.

Tr. 1 at pp. 188, 189, 192, and 193.

Mr. Daniel Dubriel, resides in Matteson and has been Matteson's Village Administrator for approximately eight years, including the period from June through October, 1990. Mr. Dubriel provided some background concerning Matteson's early contacts with individuals then involved with developing a theatre in the area. He described meetings with Cathy Cardona of Gierczyk Development Group as follows:

- Q. Did this initial contact develop into any further negotiations?
- A. No. Basically her approach to us was whether or not the Village of Matteson might be interested in entertaining development of this nature within the community in some location within the municipality, and I indicated to her that I doubt that would be the case.

It did not seem to me to be consistent with the type of development that we had envisioned for much of the property within the village or it would be large enough to accommodate such a development.

³ The witness testified that this happened on the nights of June 2, 3, 27, and July 21, 22, 23 and other unspecified dates.

Q. Was that the sum and substance of the contact and the village's response?

A. Yes, it was.

Tr. 1 at pp. 199-200.

Mr. Dubriel also described the letter marked Exhibit E from Matteson to Tinley Park. The letter urged Tinley Park to enforce the pre-annexation agreement with the Theatre to eliminate the noise problem and to inform them of Matteson's bringing this action before the Board. That letter was written after a special Matteson village board meeting at which citizens complained. Tr. 1 at pp. 201-202.

Mr. Dubriel also described how he and others in Matteson's administration received citizens' complaints by phone including many received by the police department. He identified Exhibit G as the synopsis of those complaints from June 3 through July 30, before the filing of this complaint with the Board. These complaints covered June 3, July 20-23, July 29-30, in particular. Tr. 1 at pp. 205-208. The summary labeled as Exhibit G records 52 complaints. Other complaints were registered in person at three or four separate open forum trustee meetings. Tr. 1 at pp. 208-210. When asked if complaints stopped in July, Mr. Dubriel responded that there were fewer complaints after July. He was not aware of specific complaints, except that a significant number were received during Octoberfest. Exhibit G was described as a partial listing only. He noted that the police reports did not show complaints for August or September. Tr. 2 at p. 257. Tr. 1 at pp. 211-212.

Mr. Dubriel also noted that he made 6-9 tours of the area to monitor sound. He recalled that on 2 occasions, including one chance meeting with Mr. Hartman of the Theatre, noise was hardly noticeable. Tr. 1 at pp. 213, 215-216. He also indicated that Mr. Hartman said to him that the sound system had not been altered as of their August 1 meeting. Tr. 1 at pp. 213, 214. He stated that he sometimes thought that atmospheric conditions had some effect on whether sound was heard on a particular night. Tr. 2 at pp. 259-260.

Mr. Dale Graham, a Matteson Trustee, resides in the Applewood subdivision of Matteson. He testified with regard to the extent of the noise problem in Matteson as follows:

We had complaints start coming in almost from the first concert.

* * *

Well, there was one particular board meeting I recall that we had about 30 residents in here that were very adamant about the effect of this Music Theatre and on the quality of their life.

We had had numerous complaints throughout the summer. I don't think there was a board meeting as I mentioned before where this subject did not come up at some point during the board meeting.

Tr. 2 at pp. 273, 278.

Mr. Graham identified an area in Matteson where most of the complaints originated. This area lies within the Woodgate subdivision. He defined the location as being "approximately 100 feet west of Red Barn Road and approximately 250 feet east of St. Paul's Church, and then...take a line from those two points and draw them out in a fan direction." Tr. 2 at p. 273-274.

Mr. Graham stated that on approximately 10-12 nights he drove all around Matteson to monitor the noise level. Tr. 2 at pp. 273-275. On August 1 he found the sound transmissions to be substantially reduced from the levels heard on July 29 and 30. He commented that he happened to meet with Mr. Dubriel and Mr. Hartman (a Theatre employee) on August 1. He commended Mr. Hartman on the noise reduction and Mr. Hartman responded that the change may be attributable to the Theatre's adjusting the speakers. Tr. 2 at pp. 276-277.

Ms. Janet Muchnik, the city manager of the City of Country Club Hills, testified regarding the impact of the noise in her community. She described her role as being the same as Mr. Dubriel's; she oversees all city departments, including the police. She reports to the city council and the mayor. Ms. Muchnik described the magnitude of the complaints received by Country Club Hills as follows:

- Q. Drawing on your personal experience and the receipt of these complaints from whichever source, how many identifiable complaints did your city receive on any given night as far as a high water mark?
- A. The highest water mark was on the 27th of June where we kept punch cards up until a certain time and then the calls were too numerous to keep punch cards, so then we just wrote down addresses.

And between the punch cards and the addresses, we had 76 calls, but I had to bring in extra sergeants off the street that

night and overlap the TOC's hours of operation.

And at that point, we couldn't even write things, we just kept track that the calls were coming in. We hit about 150 that night, but 76 on punch cards and documented addresses.

- Q. Was there a trend observed by the city in receiving these complaints as the season progressed?

* * *

- A. Well, after -- that night our emergency network was pretty much knocked out, and so we called each of the homeowners associations in the community and asked them to get the word out to the members, please not call the police department at night, we can't handle it, despite -- and so the calls tended then to come in the next day, although there was always some during some of the concerts.

The worst event after that was on the 17th of August, the police logged 25 calls that night.

- Q. So if there was a trend, it was more in the receipt of documents, not necessarily sound level because you had changed your program?
- A. We changed our reporting. We couldn't afford to go through what we went through that night, not to have your lines open for emergencies for a period of almost two hours which for a small city --

Tr. 2 at pp. 284, 285.

Ms. Muchnik indicated that Country Club Hills logged complaints from as far as 3-1/2 miles away from the Theatre in its Winston Park subdivision. The greatest number of complaints came from its Marycrest subdivision which is 1-3/4 to 2 miles away from the Theatre. Tr. 2 at pp. 286-287.

The second worst night of complaints occurred on August 17 and the last night of complaints took place on September 1. Tr. 2 at pp. 286-287. Ms. Muchnik drove the streets of all areas which generated complaints in July and August. She also drove into residents' driveways to verify complaints. Tr. 2 at p. 288.

She noted that residents taped concerts, including the one held on June 27, when residents could hear announcements too. Tr. 2 at pp. 288, 289. She stated that weather did not seem to be a factor in whether Country Club Hills received complaints. Tr. 2 at p. 290.

Mr. John Rangel, who lives with his wife and two children, has resided in the Woodgate subdivision in Matteson since 1976. He is a former Village trustee and has been associated with the Woodgate Civic Organization. Tr. 1 at pp. 16-22. He testified that he and his wife found the noise from the Theatre to be a problem, particularly on the second floor of their home. The noise was especially disturbing because his wife goes to sleep early due to her early work schedule. To counteract the noise they closed windows and turned on the air conditioning. Tr. 1 at p. 21.

On June 2 and July 20, 21 and 23 and on other dates he could not remember, the noise was bothersome to him. On those four specified dates he called Tinley Park and the Matteson police to complain. Tr. 1 at p. 23. He also wrote various letters to lodge his complaints. He recalled August 17 and September 1 as other dates when the concert noise was disturbing, but noted that on some other nights the noise was not unreasonable. Tr. 1 at pp. 24, 25. Summarizing the impact on homeowners in his subdivision, Mr. Rangel stated, "I think this has not enhanced the quality of life but has detracted from it as I have experienced in my family personally." Tr. 1 at p. 27.

Mr. Paul F. Landini has been a resident of the Cricket Hill subdivision in Matteson since 1981. Tr. 1 at p. 32. His home is approximately 2.4 miles from the Theatre. Tr. 1 at p. 41. He resides with his wife and two children. He testified that he registered complaints with the Village. He first became disturbed by the Theatre's sounds on June 3, 1990, when, in his bedroom with the windows closed he felt vibrations on his skin and on the bedroom window pane that faces the Theatre. Tr. 1 at p. 37. He also heard booming sounds outside on his driveway. Tr. 1 at p. 35. He described the same things as happening on July 20, 21, 22, and 23. Tr. 1 at p. 37. At other times the noise did not last as long and he did not make a complaint. Tr. 1 at p. 38. Mr. Landini stated that he "heard it throughout the summer," and pointed to later in the season, on July 29, when it was especially loud. Tr. 1 at p. 38. The Octoberfest was also disturbing to him and his household. Tr. 1 at p. 42. He indicated that the noise was not as much of a problem in August. Tr. 1 at p. 45.

Mr. Landini described his personal discomfort over the noise as follows:

I found it to be very irritating because it was noise that came and went, and I had no control over it, and personally, I find that very irritating.

I mean I like music but I like to be able to turn it on and turn it off at will.

I feel inside my house, when someone else is imposing this noise upon me, I feel very irritated and frustrated because I can't turn it off.

Tr. 1 at p. 39.

Mr. Reginald Richardson, lives with his wife in the Woodgate subdivision of Matteson. He indicated that he experienced unreasonably loud noise on June 2, 3, and July 22.

On June 2, 1990 while mowing his lawn he heard a "thumping and bumping" sound, which he also later heard in his house with the windows shut. Tr. 1 at pp. 48-50. He found the noise irritating, although not as irritating as the louder music later in the season. Tr. 1 at p. 50. The June 2 and 3 concerts were very loud and irritating. Tr. 1 at p. 53. These were followed by concerts that could be heard, but were not so loud he felt the need to call to complain. Tr. 1 at p. 53. However, the July 22 concert was exceptionally loud. He and his wife made several calls to the Village police, and his wife and some neighbors went to Tinley Park and filed a formal complaint. Tr. 1 at p. 52. They also attended a Matteson Village trustee meeting where complaints were heard. On July 30, the music disturbed him after he had gone to bed and his windows were closed and the air conditioning was on. Tr. 1 at pp. 53-54. In August, he and his wife were out of town at least two weekends and he did not recall other times that he heard much until Octoberfest. Tr. 1 at p. 55.

Ms. Beth Brophy has four members in her household and lives in the Woodgate subdivision of Matteson. Her family includes her three and seven year old children. On June 2 and 3 and July 4 and 21, for 1½ - 2 hours until 11:00 p.m., she heard the music, some lyrics and the bass sounds both inside and outside her home. Tr. 1 at pp. 58-59. Regarding the first three dates she described this impact on her household, within the home, with the air conditioning off and windows open due to the heat:

Well, I had a hard time getting my children to sleep.

They heard the noise, and being small children, I prefer them to be in bed at 8:00 o'clock, and it will be till 1:00 o'clock before I could get them to sleep.

Tr. 1 at p. 61.

The same effect was felt on June 21. Tr. 1 at pp. 62-63. July 30 the music was also loud enough to hear lyrics, music and the beat. Tr. 1 at p. 63. Octoberfest was also very loud and she called the police in Matteson and Tinley Park. She testified that on each specified date she called the Matteson police, who told her to call the Tinley Park police. Tr. 1 at p. 64. On some occasions noise may not have been a problem, but on other unspecified dates the problem continued and a solution seemed hopeless:

Q. We have with other witnesses voids here, there are openings where maybe you didn't hear things.

Did you hear anything or sense anything on any of these other dates?

A. Yes. But I can't be specific and tell you exactly that it was Manhattan Steamroller that night.

Q. It would have been on dates where there were other events happening at the theatre?

A. Right. But I cannot specifically tell you right now that it was specifically because as the summer progressed I got used to hearing it, got tired of hearing it, I thought it was a way of life for us.

Tr. 1 at pp. 64-65 (emphasis added).

Mr. David Hearns, is a resident of the Woodgate subdivision in Matteson, with five members of his household, including two young children. Tr. 1 at p. 66. On June 2 he found the singing, lyrics and bass unreasonably loud while he was trying to sleep. Tr. 1 at p. 67. He indicated that he and his wife accepted the Theatre as "a fact of life" but did not anticipate the volume levels. Tr. 1 at pp. 69-70. The music was not drowned out by passing cars and interfered with his children's sleep:

It was very difficult to get them to sleep that night.

We kind of gave it up for loss, and when the concert was over, we tried to get them back down.

Tr. 1 at p. 72.

On June 3 and 30th the noise was noticeably loud. On June 30th he heard the noise again while trying to sleep although his

windows were closed. Tr. 1 at p. 73. His household again experienced a lack of sleep.

Mr. Hearn's complained to the Matteson police on July 21 and during Octoberfest. They referred him to the Tinley Park police. Tr. 1 at p. 74. The July 20 concert was also audible but Mr. Hearn's concluded that "it was going to be a way of life. It wasn't overly oppressive." Tr. 1 at p. 74. However, July 21 and 22 the noise was "incredible" and conversations, crowd noise, and vocals were heard.

After July 23, the sounds were less prominent until Octoberfest when the sound was "incredibly loud" and the impact was again "difficulty getting the children asleep and getting asleep myself." He heard some concert sounds from July 29 - August 2, but testified that the sound persisted, but was not oppressive:

Q. You've given us an open space between Grateful Dead and Octoberfest, did you not hear any sound at all during that time frame?

A. I did hear sounds, but as I said, I realized it was going to be a way of life, and it wasn't oppressive, so I tried to ignore it.

Tr. 1 at pp. 76-77 (emphasis added).

Mr. Hearn's also shared a concern that filing complaints proved unproductive:

I found that in terms of voicing my complaint to the Tinley Park Police Department, I was kind of upset that I couldn't get relief from them.

I specifically asked them if it was something they could do. They said it was not.

They would take down my complaint, and that would be the end of it. And again instances would come on again and again where I would hear the sound, and I felt I could get no relief from this.

Tr. 1 at p. 77 (emphasis added).

Ms. Victoria Panos lives with her husband and five year old child in the Woodgate subdivision in Matteson. She has resided there for fourteen years. Tr. 1 at pp. 126-127. On June 2 she could hear concert noises in her home while her front windows were closed and bedroom windows were slightly open. Outside the vocals could be heard along with the booming bass sounds. Tr. 1 at pp. 127-128. The sounds could be heard while watching

television and were not overridden by traffic noise. Tr. 1 at p. 129. On June 3, her walls were rattling and she heard the repetitive boom sounds. She closed windows and storm windows so they could sleep, noting that her husband gets up at 4:30 a.m. Tr. 1 at pp. 130-131. She heard the noise from 10:30 to 11:00 p.m. while they were trying to sleep. Tr. 1 at p. 131. She did not complain because she believed something would be done to correct the situation.

On June 27 and July 2 and 3, Ms. Panos had similar experiences with the concert noise. She also heard applause and what seemed to be fireworks at the end of the concerts. Tr. 1 at p. 144. She made several calls to the Matteson police, who referred her to Tinley Park and also called Tinley Park directly. She testified that due to the noise she could not get her son to sleep. Eventually, she had to close windows and turn on the air conditioning for the express purpose of overriding the sound. Even then the noise often kept him up. Tr. 1 at pp. 133-134.

The July 20, 21-23, and 29 concerts were very loud, with similar impact within her home. The July 21-23 concerts were "very annoying to say the least", with vocals and applause audible. The July 29 concert was very loud; the same performer sang on July 30, but "wasn't that loud." Tr. 1 at pp. 134-135. Ms. Panos then concluded that "they can turn it down if they want to." Tr. 1 at p. 135. On July 29 the noise distracted her from working on the computer and she called to complain. Tr. 1 at p. 136. In August she found the sound was lower, but also said that she believed the continuing sounds, though annoying, were not going to stop.

Q. There are some areas here, some dates where you've made no reference, is it fair to say or is it your statement that there were no sounds coming?

A. No. There were sounds, it's just that --I was quite angry during the whole season.

It ruined my summer, and you just got to the point where you were sick of making complaints and phone calls and you accepted it as a way of life.

I do admit that the sound was lower during August, but I heard -- definitely heard, there was some country western music going on, I don't know who was there, but I could hear it was country western, and I gave up literally.

Tr. 1 at p. 137.

Mr. Mark Boyd lives with his wife in the Woodgate subdivision in Matteson, where he has resided since May, 1988. He testified that the June 2 concert was extraordinarily loud. From 8:30 until 11:00 p.m. he and his wife heard a bumping, bass noise while watching television with the windows closed. They also heard it outdoors in the neighborhood. They drove to Tinley Park to the Theatre to confirm the noise. He and his wife called the Matteson police. The Matteson police suggested they call the Tinley Park police. The Tinley Park police said they had to physically come over to file a complaint, so they did. But, their complaint was not recorded on a formal document. Two weeks later there was no record or recollection of it by the Tinley Park police office, the watch commander or the officer they spoke with. Tr. 1 at pp. 142-143.

Mr. Boyd found the noise very irritating. On June 3 he and his wife heard lyrics, conversation, crowd noise, guitar music and the bass. He again called both police departments and drove to the Theatre and confirmed the source of the sound. Tr. 1 at pp. 146-147. On June 27 he had a similar experience although the noise was less loud. He filed another complaint with the Matteson police. He was again disturbed by the July 4 concert, which was louder than the June 2 concert but not as loud as the one held on June 3. He again confirmed the sound by driving to the Theatre. He also found the noise excessive for performances held July 21, 22, 23, 29, and 30, August 26, and October 4-7. He stated that the sounds were louder than sounds from nature and from traffic, and explained the interference with his life as follows:

We had a deck built last summer off my living room, we had a picture window, we purposely knocked out the window, put French doors and a deck so we can enjoy the evening, and it was irritating to sit on a deck and hear music especially when we first got into the neighborhood, we liked how quiet it was, and now you hear all the music and noise when you're sitting outside and when you're inside.

We shut the windows and turned the air conditioning on once we got in, and you can still hear it.

* * *

...the sound is way too loud for the area, I think it reduces my enjoyment, especially of the area -- the backyard that I built, enjoying my backyard and enjoying my house.

Tr. 1 at pp. 149, 151.

Mr. Boyd added that he found it insulting when a house guest commented on the noise level from the Theatre in Mr. Boyd's home. Mr. Boyd noted that the noise "seemed to quiet out some" over the summer. Tr. 1 at pp. 152-153.

Ms. Deborah Perry has lived in the Woodgate subdivision in Matteson for 6 1/2 years. She resides with her husband and three children, aged seven, nine and eleven. Her husband is a Matteson Village Trustee and she has served on the Board of Education for Matteson. She experienced unreasonably loud sounds beginning on June 3, both outside and inside with the windows closed and air conditioning on. Tr. 1 at pp. 156-157. She heard the noise most on the second story. In their bedroom the sound interfered with watching television. She also felt the bathroom wall vibrating. Tr. 1 at p. 158.

On June 27, the noise also was unreasonably loud to her. She testified that the impact each night was that "we would have residents calling the house all during the night with complaints and what they should do". Also, her children "could not sleep because of the noise level." Tr. 1 at p. 159. They received "several complaints on any given concert night" except when they were out of town in August. Tr. 1 at p. 159.

When asked about any other dates of excessive noise, Ms. Perry said, "In fact, it would be easier to select the ones we really didn't hear". Tr. 1 at p. 160. She noted that the July 20 concert was very loud. The July 21, 22, 23, 26, 29, 30 concerts were also unreasonably loud. Tr. 1 at pp. 162-163. The August 12 concert "faded in and out" but was unreasonable to her. The September 1 concert was also heard in the house, with windows shut and air conditioning on. Oktoberfest, October 4-7, was also very loud, with October 4 being the loudest of those four nights. Regarding the sound on other concert nights, Ms. Perry stated:

....there may be one or two nights that we didn't hear anything, but I could not tell you what they were, but for the majority of the time, we just about heard every concert that took place during the summer months.

Tr. 1 at p. 164.

Mayor Welch of Country Club Hills ("CCH") testified extensively at hearing that the problem is ongoing, involves serious safety issues, and has not been adequately resolved by the Theatre. See Tr. 1 at pp. 79-113; cross examination at pp. 114-124. He indicated that he could not cite the specific dates when the Theatre's sound emissions caused significant problems for residents or himself. Tr. 1 at pp. 82, 112, 123. Rather, he discussed the noise and complaints generally, and referred to the problem as constant. Tr. 1 at p. 116. Counsel for complainants

specifically chose not to mark Exhibit A with the few dates Mayor Welch described as noisy (June 2, 3, 27), preferring to use that exhibit solely for individual residents who were testifying. Tr. 1 at p. 83.

Beginning with the concert on June 2, 1990 the CCH City administration received complaints from the south end of the City. Mayor Welch also received complaints at home. Tr. 1 at p. 83. "I think what occurred was that most people, you know, said, well, this is just the first time and maybe they got to adjust their speakers, things like that." Tr. 1 at p. 84. However, Mayor Welch's testimony clearly points to an escalating problem. He stated that the June 3 concert "blew us away" and the June 27 concert was "really loud." Tr. 1 at p. 85. When asked of other incidents, Mayor Welch testified that he personally experienced the theatre's sound emissions "over the period of all the concerts." Tr. 1 at p. 87.

Mayor Welch noted that his city contains about 16,000 residents, of whom 8,000 - 9,000 persons live south of 183rd Street. Tr. 1 at p. 87. This is the area where sound problems seem to most affect the community. Besides hearing excessive noise at his home on 187th, Mayor Welch noted that he found that the sound was noticeable or many complaints came from near 1) Flossmoor and Crawford, 1) Vollmer and Ridgeland in Matteson, and 3) Cicero and Flossmoor. See Tr. 1 at pp. 86, 108, 115.

Mayor Welch described how his experience of the noise contradicts the Theatre's experience with taking decibel readings:

Q. Did you meet on any later occasions with Hartman and the other Mayors?

A. The other Mayors I meet all the time, physically at the Music Theatre but we talked about this quite often.

Mike Hartman, I actually had him to my house for one night.

Q. Was that a night when there was a concert going?

A. Yes, because he said that they weren't getting -- they had been out that evening taking decibel readings and they weren't getting anything, and I said come to my home.

He came to my home and stood in the driveway and heard the sound as clear as if you were

standing -- just about as clear if you were at the concert. The words were legible and so forth.

Tr. 1 at pp. 104-105.

Mayor Welch also testified that the magnitude of the noise problem required his continuing attention and became a source of frustration for the community and for him personally:

Well, I've been out with Mr. Hartman. I've been out with his sound engineers on several occasions. I've hollered at Mike, and Mike's tried to work with us.

It became a personal frustration especially when you get calls at home from the people in the community that are frustrated with it.

To be quite honest with you, I am like everyone else, I would like to enjoy my weekends, and it came to the point during the summer that I had to sit around and make sure everyone was all right, so there was a number of times that Mike will tell you that I was very upset with this whole situation trying to work it out.

Tr. 1 at pp. 95-96.

Mayor Welch also testified on cross examination that the problem "was pretty constant throughout the summer" and did not lessen. Tr. 1 at p. 116. He further stated:

Our complaints went down only because our people felt we could not do anything about it, and I made public speeches and privately told the people that we were working with the theatre developers and the Village of Tinley Park in trying to correct the situation bought some time.

Tr. 1 at p. 116.

Mayor Welch participated in driving around Matteson and Country Club Hills to investigate the noise from the Theatre. Regarding one night, Mayor Welch testified that the decibel readings "weren't that bad, and it was muffled. Of course in this area, you could hear it all the time. Tr. 1 at p. 108. "This area of Matteson, south of Vollmer and east of Ridgeland" heard the noise "pretty much all the time...You can hear it pretty well." Tr. 1 at p. 108. Mayor Welch personally heard the sounds in Matteson more than once, though sometimes the noise was not a problem, as on the evening a videotape was taken by Theatre personnel. Tr. 1 at p. 108.

Mayor Welch discussed safety as a critical aspect of his concern that the noise problem be resolved. He noted that he met early in the season with the other two Mayors and the Theatre's Mike Hartman for this reason.

Q. What precipitated this meeting out there?
Why did you get together?

A. Because of the number of complaints we had from our local residents.

It's a very concerning thing to me to make sure our life safety issue would be met, life safety in that there was one concert that our staff will talk about where we actually had so many phone calls into our police dispatch, physically we couldn't have gotten police out because the phone lines were tied up.

Country Club Hills is like many cities in the suburbs, we have four or five incoming lines in a police department, and generally they're adequate for standard needs.

They become clogged so to speak when you have a tornado or major incident, you know, for instance, if you had a plane crash, a major fire where people are going to call and asking information.

But in this case for almost a solid hour we had constant calls from our residents complaining about the noise, and what we tried to do as an education program with our residents in that we asked them to call the next day our City Hall and make those complaints at that time to alleviate tying up our police lines.

Tr. 1 at pp. 99-100 (emphasis added).

In closing, Mayor Welch clearly indicated that as of the December 10, 1990 hearing date, he believed that the Theatre had not adequately eliminated the problem and should be required to do so.

I think what I would like to say to the Board is that what's got to be done here is the theatre people have to get down to business and deal with the problem.

I think it's wonderful with Mike Hartman coming out and discussing things with us, but I have not seen one physical change in the facility that would alleviate this problem.

When it came on early on in the season as with the traffic, to give you a comparison, the traffic, we had problems with it in the beginning, we worked it out, and that's what we're supposed to do, we're supposed to work together, but I have not seen them work this problem out.

And the problem is not adjudicated yet, it's still a problem, and we'll deal with it next year a lot firmer.

Tr. 1 at p. 113.

Testimony at Hearing on Behalf of Theatre

Respondents assert that "whatever problems local residents may have initially experienced when the Theatre opened, those problems have been and will continue to be dealt with effectively and promptly by the Theatre's management." Resp. Br. at p. 5. The Theatre presented witnesses who claimed the noise was not unreasonable and witnesses who discussed past and potential solutions.

Mr. Michael Hartman is the general manager of the Theatre. He testified that he has worked for the company that manages the Theatre for 4½ years, during which time he has worked at facilities in several states. Tr. 2 at pp. 293-294.

Mr. Hartman described the configuration of the Theatre, noting that the stage faces directly east toward the forest preserve. Tr. 2 at p. 296. The Theatre has 650-700 part-time employees, who live in the south suburbs. Mr. Hartman stated that a large portion of an estimated 475,000 patrons also came from the south suburbs. Tr. 2 at pp. 298-299.

Mr. Hartman clarified that Tinley Park used the Theatre's parking lot, not the stage, for Oktoberfest. Tinley Park did not use the Theatre's sound equipment or involve the Theatre in planning the event. Tr. 2 at pp. 299-300.

Mr. Hartman explained that the Theatre received noise complaints and attempted to be very responsive. He went outside the Theatre 9 times to monitor sound. He thought the Theatre's Steve McCarthy made 25-27 such trips. Tr. 2 at pp. 300-301. The trips varied among locations in Matteson, Country Club Hills, and Tinley Park. He stated that "our first stop was always at Vollmer and Red Barn Road" in Matteson. Tr. 2 at p. 303. Mr.

Hartman testified that only once did he hear anything and passing cars were louder than what he heard.

There was only one instance in the Matteson area where I heard anything, and that was at the -- at Red Barn Road, and I can't recall which show it was. I think it was for Aerosmith, but I'm not for sure, and that was a very faint noise, and I quite honestly had to stop my car to hear it.

Tr. 2 at p. 303.

Mr. Hartman also testified regarding a videotape which he made and which was submitted at the Board's hearing. Tr. 2 at pp. 307-313. He indicated that the tape recording represents the typical events of the Theatre's sound monitoring trips.

Mr. Hartman indicated that the performers bring their own equipment and staff, including production and sound technicians. Tr. 2 at pp. 318-319, 321. He stated that the Theatre's own sound equipment is positioned at the catwalk level, which is set out from the stage facing the lawn. Tr. 2 at p. 322. The speaker system includes 26 speakers, aimed at a downward slope pointing toward the lawn seating. Tr. 2 at pp. 324-326. The production manager employed by Tinley Park Jam determines where and how the performers place their equipment. Tr. 2 at 329-330. Mr. Hartman identified Mr. Buddy Sokolick as the person charged with these duties. Tr. 2 at p. 231.

Mr. Hartman testified that sound experiments were made to resolve any sound problems. These included repositioning the speakers and working with equalizers. Tr. 2 at pp. 335-336.

Mr. Steve McCarthy, the Theatre's head technician for the audio department, testified extensively regarding the Theatre's sound monitoring and control efforts. Tr. 2 at pp. 338-408. He oversees the set-up and installation of the performers sound equipment and supervises the maintenance and operation of the Theatre's sound system, "the lawn system". Tr. 2 at p. 339. He has approximately 10 years of experience in the field.

Mr. McCarthy testified that each performer has their own equipment, and that this equipment varies significantly. Tr. 2 at p. 340. Each performer has particular "fixed" ways of presenting their show, and "within those parameters, we can alter it one way or another to accommodate our space". Tr. 2 at p. 341. Mr. McCarthy described his customary recommendations regarding placement of the performer's equipment as follows:

Some general notes I give them. We have discovered through testing and experimenting, we have found when we hang speakers high in downward firing into the

audience we get the best sound coverage, and I suggest to them they hang their -- when they bring in their main speaker systems, we try to get it elevated as high as we can over the audience, but that's not always possible because it can cause sight blocks depending on the kind of show that they have.

Many shows have a lot of scenery, things like that, they can't hang the speakers quit(e) as high because it will affect the way the stage looks, it might block the view from the sky boxes, any affect what the lighting - - how the lighting will look to the audience.

Tr. 2 at pp. 341-342.

Mr. McCarthy noted that the actual stage is below ground level and the bottom of the speakers would be located usually around 15 - 20 feet above the stage. He stated that the speakers are hung at about the height of the berm around the Theatre, facing about the middle of the hill. He added that sky boxes above the berm obstruct sound from escaping from the Theatre. Tr. 2 at pp. 342-343.

Mr. McCarthy described the routine practice of doing sound checks within the Theatre in the afternoon before the concert. He indicated that he uses a sound meter, that uses an "A weighted" decibel scale. Tr. 2 at pp. 344-348. He takes measurements from various points, including a "mix position", in the center of the theatre about 125 feet from the stage, and from the top of the berm. Tr. 2 at pp. 344-346. He believed that this latter location provided an indication of the sound levels radiating from the Theatre. Tr. 2 at p. 346.

Mr. McCarthy also took sound readings outside the Theatre which were summarized in Respondent's Exhibit E. Tr. 2 at pp. 347-370. Respondent's Exhibit D marks the locations at which Mr. McCarthy monitored sound levels. These readings do not reflect the Board's numeric regulations for sound, but rely on the A weighted decibel scale. See also Tr. 2 at pp. 384-394, 402-403.

Mr. McCarthy also detailed the process by which the performers set up their equipment. He noted that these "road shows" have a predetermined pattern for setting up equipment and that testing is done after this set up. Tr. 2 at pp. 375-381.

Mr. McCarthy discussed the Theatre's efforts in repositioning the speakers. Tr. 2 at pp. 393-401. He expressed his belief that by late summer the speaker positioning was near optimal conditions.

Mr. Buddy Sokolick, the Theatre's production manger, works with all aspects of staging each performance, including labor,

staging, transportation, catering, sound and lights. Tr. 2 at pp. 410, 411. In addition to describing the Theatre's progress with redirecting the sound, Mr. Sokolick testified regarding the changes made since the close of the concert season. Tr. 2 at pp. 411-425.

Q. There's also been testimony about the berm or the lawn portion. Can you describe the shape of that lawn portion?

A. Well, that's been since (sic) changed since the end of the season now.

Originally we had the lawn -- I have this -- mean this is part of the ongoing changes that we're constantly experimenting with.

The lawn had basically settled, you know, for the season. Once you're into the season, there's nothing we can do with the lawn until the season is over because it takes a whole season for the grass to retake it.

As the lawn had settled throughout the season it turned out that the center of is almost had like a belly type affect so it like bubbled a little bit in the middle.

What we've done in the last two months is we have gone back and changed the lawn configuration around. It's actually higher in the back now.

It's two, three feet higher at least in the back now, and it's more of a bowl shape (e)ffect.

So, I mean, again any sound that might be emanating out of there would go in a straight up direction, but the majority of it based on the bowl shape effect will go and stay into that.

Q. When was this modification to the hill made?

A. In the last six weeks.

Q. Would that be after the completion of the summer concert schedule?

- A. Oh, completely after, yes. We were completely shut down at that point.

Tr. 2 at pp. 418-420.

Mayor Edward Zabrocki has been Village President or "Mayor" of Tinley Park since 1981. He stated that the Theatre's property was annexed to Tinley Park by ordinance dated October 25, 1988. Tr. 1 at p. 227. He noted that the annexation agreement requires the Theatre to monitor and try to maintain good sound control. Tr. 1 at p. 228. He indicated that the Theatre has cooperated with Tinley Park and that the Theatre took some measures to reduce noise in late summer. He cited changing the angles of the speakers as one example. Tr. 1 at p. 229. Mayor Zabrocki testified that the Theatre has brought significant economic benefits, including tax benefits and opening the area for future development of approximately 500 acres for new commercial and industrial development. Tr. 1 at pp. 230-233.

Mayor Zabrocki stated that because of complaints he toured the area to monitor sound on about 12 occasions, beginning around July 2 or 3. He heard nothing on his first such trip, and on other occasions found that background noise from cars, trucks and airplanes was louder. Tr. 1 at pp. 235-236. He did not find the noise unreasonable or irritating. Tr. 1 at p. 236.

Mayor Zabrocki commented that Tinley Park received about 45-50 complaints, primarily through the police department. Tr. 1 at p. 245. He said that he observed two trends:

One, they got less as the summer went on and, secondly, we got probably a dozen to fifteen complaints from folks who identified themselves from Matteson on nights there were no concerts, and that came through our radio department.

Tr. 1 at p. 237.

On cross examination Mayor Zabrocki clarified that Tinley Park did not keep a log of dates when there were complaints but no concerts and that he asked his staff whether this had happened when he was subpoenaed to testify. He also stated that he could not detail the time of year, groups, or performers when this happened. Tr. 1 at p. 237-239. Complaints dropped off gradually during the summer, notably after August 2, with a couple of "blips" of numerous complaints, such as on July 21, 22, and 23. Tr. 1 at p. 246-247.

On the third day of hearing, Linda Chinni of Matteson, (Tr. 3 at p. 450) Rosemary Winkler of Matteson (Tr. 3 at p. 457), and Betty Boskey of County Club Hills testified on behalf of the Theatre that each either heard no sound emissions or found the levels faint or unobjectionable.

Ms. Linda Chinni lives in the Cricket Hill subdivision of Matteson with her husband and sixteen year old child. She has lived there for 16 years. She noted that she lives next door to Mr. Landini (a witness for Matteson) who sued Mr. and Mrs. Chinni in connection with an accident at his home in 1982. That matter is still pending according to Mrs. Chinni's testimony. Her husband is employed by the Theatre in the summer, and was at every concert. Mrs. Chinni personally attended about fifteen, or approximately half, of the concerts. Tr. 3 at pp. 450-454.

Mrs. Chinni did not experience a noise problem at her home on those nights when she did not attend the concerts. She stated that her windows are always open and that she was often in her yard at night. Tr. 3 at p. 451. In particular, she attempted to hear the concert of July 20 by going out into her yard and was unable to hear it. Tr. 3 at p. 452. She indicated that she lives 2 - 2.5 miles from the Theatre and she is "very excited it's this close". Tr. 3 at pp. 454-455.

Ms. Rosemary Winkler has lived in the Cricket Hill subdivision in Matteson for 13 years. She has two children living at home who are seventeen and twenty. They reside within one block of Mrs. Chinni and Mr. Landini. Tr. 3 at pp. 454-458.

Ms. Winkler did not hear any noise from the Theatre either in her yard or when in her home with the windows and patio door open. Tr. 3 at pp. 459, 461. She sometimes hears and feels vibrations from cars going by on a nearby road. Tr. at pp. 459-460. Her daughter attended one or two concerts. She also drove around with her daughter twice, on June 3 and June 27 according to her recollection, to see if they could hear anything. However, she only heard the sounds "practically in front of the Theatre". Tr. 3 at pp. 459-465. It also appears from the record that on various dates which she could not remember, Mrs. Winkler drove to a convenience store in the Woodgate subdivision of Matteson and did not detect concert sounds. Tr. 3 at pp. 463, 465.

Ms. Betty Boskey, has lived in Country Club Hills for 18 years. She resides with her husband and three sons. One son is employed at the Theatre. Tr. 3 at pp. 469-470. Mrs. Boskey did not hear music in her home with the windows open. On July 29 or 30 or August 1 or 2, she went outside to try to hear the concert sounds. She could only hear it faintly if she walked into the middle of the street and asked the children to be quiet; and she found traffic, car radios, dogs, crickets, and other neighborhood

sounds to be louder. Tr. 3 at pp. 471-472. The music did not interfere with her family's lives. Tr. 3 at pp. 471-473.

On cross examination Mrs. Boskey stated that she had heard that on some evenings hundreds of other Country Club Hills residents registered complaints regarding the noise. Tr. 3 at p. 473.

Mr. Jerry Mickelson is a general partner of the Theatre. He is also an owner and officer of Tinley Park Jam, which books and promotes the concerts and performs other services to the Theatre. Tr. 3 at p. 476. He stated that he and his partners have been in this business for 19 years. Tr. 3 at p. 477. Mr. Mickelson testified that during the summer he was aware of complaints from the neighborhoods regarding music. He did not recall that any complaints extended to the sound checks performed in the afternoon before the concerts started. Tr. 3 at p. 507.

Mr. Mickelson indicated that they considered locating the subject facility in either Tinley Park or Country Club Hills. He testified that both municipalities wanted the facility to be located within their respective borders. Tr. 3 at pp. 478-479. He stated, "Mayor Welch did a lot of things to try and entice us to go there, whether it be with tax increment financing that he was promising or revenue bonds, he was bending over backwards to try and get us there. Tr. 3 at p. 479.

Mr. Mickelson identified Respondent's Exhibit E as a summary of the sound readings for each concert for which the Theatre's staff took decibel readings as part of their sound monitoring efforts. Tr. 3 at p. 482. Mr. Mickelson had directed that the sound be monitored in the neighborhoods and around the Theatre. His staff added the descriptive paragraphs which accompany the numeric records. Tr. 3 at p. 482.

Mr. Mickelson also stated that his group has always attempted to minimize any inconvenience to the neighborhoods. He asserted that no Board action is necessary since they took action on their initiative and would continue to do so. Tr. 3 at pp. 483-485.

On the subject of scheduling concerts, Mr. Mickelson commented on the apparent lack of a pattern as to which days of the week concerts would be scheduled. He indicated that the performers choose the days they want to play. Additionally, he stated that concerts could not be scheduled for every night of the season. He indicated that although 32 groups performed in 1990, the facility could schedule 40 to 50 performances. Their "season" for concerts is generally Memorial Day through Labor Day. Tr. 3 at pp. 487-493.

Mr. Mickelson testified regarding the Theatre's ability to control the noise levels from the performers' own speaker systems as follows:

Q. And each group that came in, once the concert began, the concert as far as the sound was in the exclusive hands of those technicians, not your people?

A. No. I would disagree with that.

Q. How would you disagree with that, what way?

A. Because when they do their sound checks in the afternoon, they take -- Mr. Sokolick or Mr. McCarthy takes sound level readings and will determine whether they think it's too loud or not too loud, and if it's -- if the group wants to play too loud, we make a demand that they turn it down and do it under what we feel is a satisfactory sound level.

Q. Do you agree with Mr. Sokolick that when that sound check was made in the afternoon before the concert began it was made exclusively within the theatre and not outside in the other communities or in the parking lot, but within the theatre?

A. It was made within the theatre under the guidelines of knowing that -- how loud it will take in the theatre to bleed outside the theatre.

In other words, they know if it's above a certain level, it's going to bleed outside the theatre, so they keep it within the level they feel it doesn't bleed outside the theatre.

Tr. 3 at pp. 493-494 (emphasis added).

Mr. Mickelson also testified that, since the close of the concert season, physical changes were made in the Theatre. Specifically, the Theatre changed the berm to add a three foot increment of height at a cost of \$80,000 - \$100,000. Tr. 3 at p. 499, 503. Additionally, he confirmed that throughout the season the Theatre adjusted sound directions, equipment and configurations of the speaker systems. He stated that this latter process will continue, albeit a step at a time, if there are problems. Mr. Mickelson suggested that the reduced number of

complaints resulted from the changes already made by the Theatre. Tr. 3 at p. 505. Commenting on whether the changes resulted in the "optimum position for noise suppression", Mr. Mickelson testified:

- Q. But we can agree that the step by step process that you addressed a second ago isn't completed?
- A. Well, I can't say it's not completed. I think we have to see what happens with the change we made.

It was a major change with some major dollars going into making that change. We'll have to get back on there next year and see what that change did and how it affected everything else, and we hope that it made it a lot better.

Tr. 3 at pp. 500-501.

Various members of the public also testified briefly on behalf of the Theatre. Tr. 3 at pp. 507-514. Mr. Lyman lives on Sayre Avenue in an unincorporated area about 3-1/2 blocks north of 183rd Street. He testified that he found the music unobjectionable. He also stated his belief that certain constitutional issues were involved. Ms. Rosemary Winkler, who testified earlier, asserted that the complainants' concerns about the quality of life are inappropriate. Tr. 3 at p. 508. Ms. Audrey Boskey, a Theatre employee who resides in Park Forest, stated that she could only hear "muffled and dim" sounds when she parked on the street outside the Theatre's gates. Tr. 3 at p. 509. Ms. Kim Bokosz lives on Crawford Avenue in an unincorporated area which she said was about 1/2 to 3/4 miles off the east end of the map used at hearing. She testified that she drove to the Theatre on June 3 and could hear the music there, but not elsewhere. Her family has not been disturbed by sounds when her windows are open. Tr. 3 at p. 510. Mr. Bob Murphy works at the Theatre and lives in Country Club Hill at a location about 1/2 mile off the north end of the map used at hearing. He could not hear the noise at his home. Tr. 3 at pp. 511-513. Mr. George Winkler lives in the Cricket Hill subdivision of Matteson and is not bothered by the sounds from the Theatre. Tr. 3 at p. 513. Ms. Mary Beth Muckien works at the Theatre and testified that on 4 nights she could not hear any noise in front of the Theatre at the intersection of Ridgeland and Flossmoor Roads. Tr. 3 at p. 514.

Findings of Frequent and Severe Interference

The threshold issue in any noise enforcement proceeding is whether the sounds have caused some type of interference with the complainants' enjoyment of life or lawful business activity. Interference is more than an ability to distinguish sounds attributable to a particular source. Rather, the sounds must objectively affect the complainants' life or business activities. (See e.g., Kvatsak v. St. Michael's Lutheran Church, PCB 89-182 (August 30, 1990); Zivoli v. Dive Shop, PCB 89-205 (March 14, 1991).) Based on the testimony above, the Board finds that sound transmissions from the Theatre's property caused an interference with the enjoyment of life in Matteson and in Country Club Hills on numerous occasions. The Board notes, however, that not all of the testimony supports a finding of interference on every day of every concert. Testimony to the effect that the sound constitutes an interference solely because it could be heard is insufficient to support a finding beyond a "trifling interference, petty annoyance or minor discomfort." Wells Manufacturing Co. v. PCB, 73 Ill.2d 226, 383 N.E.2d 148, 150 (1978).

The Board finds that the testimony does demonstrate the necessary interference on at least some of the concert or Octoberfest dates involved. Of the approximately 25 dates for which there was testimony of loud sound, the record in this particular case clearly supports a conclusion that the interference was frequent and was severe, in Matteson, on at least 12 dates. These include at least the following dates: June 2, 3; July 20, 21, 22, 23, 29, 30; October 4, 5, 6, and 7. In Country Club Hills the record also establishes that the sound transmissions caused frequent and severe interference with the enjoyment of life. The testimony is less clear here with respect to the individual dates on which this occurred, but it is clear that the interference occurred at least on June 2, 3, and 27 and other dates throughout the concert season. The Board notes that although the Octoberfest was not a Theatre concert, the Theatre allowed the event to take place on its premises, and the Board's regulations clearly prohibit causing or allowing the emission of sound beyond the property's boundaries. See 35 Ill. Adm. Code 900.102.

Section 33(c) Factors

As the Ferndale Court noted, in order to make a determination concerning the reasonableness of the noise emissions, the Board must consider the statutory factors found in Section 33(c) of the Act. That Section provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the

emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any economic benefits accrued by a non-complying pollution source because of its delay in compliance with pollution control requirements; and
6. any subsequent compliance.

Section 33(c) of the Act.

As stated earlier, the "reasonableness" of the noise pollution must be determined in reference to these statutory criteria. Wells Manufacturing Company v. Pollution Control Board, 73 Ill.2d 226, 383 N.E.2d 148 (1978); Mystic Tape, Div. of Borden, Inc. v. Pollution Control Board, 60 Ill.2d 330, 328 N.E.2d 5 (1975); Incinerator, Inc. v. Pollution Control Board, 59 Ill.2d 290, 319 N.E.2d 794 (1974); City of Monmouth v. Pollution Control Board, 57 Ill.2d 482, 313 N.E.2d 161 (1974). However, complainants do not bear the burden of introducing evidence on these criteria. Processing & Books v. Pollution Control Board, 64 Ill.2d 68, 351 N.E.2d 865 (1976).

In evaluating the first of the Section 33(c) factors, the Board finds there is a frequent and severe interference with sleep and normal leisure activities of numerous residents. Television watching, reading, home computer use, outdoor relaxation, outdoor entertaining, adult's sleep, children's sleep and police responsiveness have all been negatively impacted. This interference goes far beyond trifling interference, petty annoyance or minor discomfort. The noise thus constitutes a substantial interference with the enjoyment of life and property.

Concerning the second of the Section 33(c) factors, the Board finds that the Theatre provides substantial social and economic benefits in that it generates tax revenues, provides valuable services, employs people, and offers entertainment to its many patrons. However, the social and economic benefit is significantly reduced by the widespread negative impact of the noise emissions from the property to the surrounding communities.

The third Section 33(c) factor concerns suitability of the pollution source to the area in which it is located and priority of location. The facility appears to comply with current zoning uses. The Board finds that the Theatre is suitable for the area in which it is located if noise problems can be reduced to acceptable levels, so that the impact no longer negatively affects property 1 - 2.5 miles away.

On the priority of location issue, the Board finds that complainants have the clear priority. The record is undisputed that local area residents generally, and several complainants in particular, lived in the area before the Theatre's opening in June of 1990.

Concerning the fourth of the Section 33(c) factors, the Board finds that there are technically feasible and economically reasonable methods of making some reductions in noise levels such as turning the sound down or redirecting the speakers, and the Theatre has implemented some of these measures. Other methods such as sound baffles, fencing, or increasing the berm height may be possible. However, the record is insufficient to support a detailed Order commanding what specific sound abatement steps, if any, must be taken, by what certain time, and what steps will be necessary to completely cure the problems. The Theatre argues that Matteson has not demonstrated that reducing sound levels to some arbitrary level would not reduce audience appreciation, causing them to refuse to return to the Theatre. The Board notes that the burden for Section 33(c)(4) is not on Matteson. Processing & Books v. Pollution Control Board, 64 Ill.2d 68, 351 N.E.2d 865 (1976). Further, many nights during the season did not produce sound complaints. The Board must presume that sound at those levels would satisfy audience demands as well as eliminate sound complaints.

With respect to the fifth Section 33(c) factor, the record is devoid of information on any economic benefits that may have accrued to the Theatre because of delays in compliance. The Board notes that the report required by this Interim Order should contain some information on the economic costs of compliance.

On the last of the Section 33(c) factors, the record clearly shows that the Theatre had not come into compliance by the end of the 1990 season. Although the Theatre made some alterations at

the close of the 1990 season, the effectiveness of the alterations is unknown. It is therefore not possible to conclude that compliance was subsequently achieved.

Based on the Board findings of substantial interference with the enjoyment of life and after consideration of the factors listed in Section 33(c), the Board finds that noise emissions from the Theatre are unreasonable and constitute a violation of 35 Ill. Adm. Code 900.101 and 900.102 and Section 24 of the Environmental Protection Act on June 2, 3, 27; July 20, 21, 22, 23, 29, 30; October 4, 5, 6, and 7.

REMEDY

As relief in this proceeding, Matteson requests the Board order the Theatre to control the amplification of sound emanating from the concert area so that it does not unreasonably interfere with the enjoyment of life.

The Board notes that the U.S. Supreme Court has ruled that the constitution does not prohibit government from regulating noise from concerts. Accordingly, the Court upheld New York City's requirement that only the city's sound system, operated by a City engineer, could be used for amplification in a Central Park bandshell. See Benjamin R. Ward v. Rock Against Racism, 491 U.S. ____, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989):

The city's regulation is also "narrowly tailored to serve a significant government interest." Community for Creative Non-Violence, 468 U.S. at 293, 104 S.Ct. at 3069. Despite respondent's protestations to the contrary, it can no longer be doubted that government "ha[s] a substantial interest in protecting its citizens from unwelcome noise." City Council of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 806, 104 S.Ct. 2118, 2129, 80 L.Ed.2d 772 (1984) (citing Kovacs v. Cooper, *supra*); see Grayned, *supra*, 408 U.S., at 116, 92 S.Ct. at 2303. This interest is perhaps at its greatest when government seeks to protect "the well-being, tranquility, and privacy of the home", Frisby v. Schultz, 487 U.S. at ____, 108 S.Ct. at 2502 (quoting Carey v. Brown, 447 U.S. 455, 471, 100 S.Ct. 2286, 2295, 65 L.Ed.2d 263 (1980))....

The Board believes, therefore, that one available remedy would be to prohibit use of the performer's amplification systems and to require the Theatre to use only its own systems to project sound that does not create a violation of the Act. However, the Board will not order this remedial action at this time in order to allow a limited opportunity to resolve the noise pollution by other methods.

The Board finds that the past violations provide ample basis for requiring a program to address the noise problem. Because of the improvements made to the facility after the close of the last season (See Tr. 3 at pp. 503-504), the Board is unable to determine if additional remediation measures may be necessary. Thus, the Board will require the Theatre to conduct a study of future noise control options. The Board will also require meaningful and effective noise monitoring by an independent consultant. That monitoring can be utilized to evaluate compliance with existing numerical regulatory limitations on sound emissions, and it also can be used as an effective focal point for evaluating future sound abatement activities which may or may not be necessary.

Here, there is no question that the sound can be controlled. Mr. Jerry Mickelson, a partner in Theatre, testified that during the afternoon sound check by the groups, "... Mr McCarthy takes sound level readings and will determine whether they think it's too loud or not too loud, and if it's -- if the group wants to play too loud we make a demand that they turn it down and do it under what we feel is a satisfactory sound level." See Tr. 3 at 493-494; see also Tr. 2 at pp. 344-345 and pp. 380-381. While other methods of reducing sound impacts are discussed in the record, this method can be employed until a more particular resolution is implemented.

Turning down the sound amplifiers is a method of control, but does not identify the amount of control needed. The Board believes that the monitoring of sound levels pursuant to the Octave Band Sound Pressure Levels of 35 Ill. Adm. Code 901.102(a) and (b), measured in conformity with 35 Ill. Adm. Code 900.103, will provide an appropriate temporary measure until the completion of the interim evaluation. In making this determination, the Board notes that it is not imposing any new sound control obligations on the Theatre. The sound limitations of Section 901.102 already apply to the Theatre independent of this proceeding. The Board is simply reiterating those requirements and providing an obligation to monitor and report so that compliance with 35 Ill. Adm. Code 901.102 is clearly demonstrated.

Additionally, the Board believes that appropriate sound monitoring is a necessary component of both the interim compliance obligation and the requirement for planning long term sound control options. The Board will require the Theatre to retain an independent consultant to monitor the sound levels. He or she must attest to the accuracy of the monitoring data during the full concert time frame from now until the final report to the Board. The Board will provide a current copy of the noise regulations to both parties so they can ensure that future measurements are made in accordance with the one-hour Leq

methods. The sound monitoring will commence with the first concert and continue for each sound producing event until further order of the Board.

The Board will mandate at least two monitoring locations, one in Matteson and one in Country Club Hills. The Board will not require the Theatre to monitor at more than two locations, but the Theatre may choose more locations in consultation with Matteson if it so desires. The Board will allow some discretion in choosing the monitoring locations, anticipating that a locations will be chosen to demonstrate the areas of most severe impact. If the parties do not agree on the locations, the consultant shall choose locations to reflect the most severe impact (including consideration of elevation). These may be chosen after an initial noise survey conducted by the consultant during the first concert. Once chosen the locations shall not be modified. Full and complete access to all data shall be afforded Matteson within 72 hours of data recording. The record identifies the area of most complaints (See Tr. 2 at pp. 273-274) in Matteson, and the Board will require at least one monitoring location in that area. Serious consideration shall be given to locating the sound measurement device on the property of one of the complaining witnesses. Additionally, the Board believes that monitoring is appropriate in at least one other location, Country Club Hills. The 153 noise complaints from that area (See Tr. 2 at p. 387) mandate that the Board ensure improvements in Matteson do not simply exacerbate the impact in Country Club Hills. The same criteria shall apply to selecting the monitoring location in Country Club Hills, i.e., either agreement of the parties or a location chosen by the consultant to reflect the most severe impact.

The final report on future noise control options should be prepared by a competent individual or firm that is independent of the Theatre. It shall be filed with the Board and served on the Complainant not later than August 2, 1991. The final report should contain the results of all sound monitoring (including conditions at the Theatre during the sound monitoring period) and should evaluate all methods of noise control (not just those already discussed). Each control option should include the anticipated noise reductions in both Matteson and Country Club Hills, the cost of implementation and an estimate of a reasonable time for implementation. The final report shall make a recommendation about what additional actions, if any, are required to abate any noise pollution problems caused by concerts, Octoberfest, or any other sound producing event at the Theatre.

In addition, the final report shall evaluate any appropriate and cost effective methods for continuous long-term sound monitoring (i.e. after August 2, 1991) that will accurately record sound levels in communities that are impacted by the

Theatre. The purpose of this evaluation is to establish a protocol for obtaining continuous measurements of sound levels in the impacted communities during all future sound producing events. The protocol should specify the locations, the measurement methodology to be used, and the instrumentation needed to obtain direct measurements at a receptor location in the impacted community. In lieu of direct measurements at a receptor location in the impacted community, an alternate location (at or closer to the Theatre) may be chosen. An alternate location may be chosen only if it can be shown (by the consultant preparing this report) that sound level measurements at the alternate location will serve as a suitable and appropriate surrogate for evaluating the impacts to the impacted communities from sounds emanating from the Theatre.

Because today's Order is interim in nature, the Board will continue to have jurisdiction in this matter pending receipt of the final report. The Board anticipates that citizen noise complaints this season would be few or none because of the physical changes already made to the Theatre and the anticipated compliance with the numerical regulatory limitations in the impacted communities. Should Matteson believe that severe sound disruption continues unabated and that additional action is necessary prior to the final report, it can petition the Board for additional interim relief as the situation warrants. This request may be premised either on citizen complaints of unreasonable interference or on sound data showing numerical violations (either data acquired as part of the monitoring program required today or data acquired by Matteson). Nothing in today's Order is intended to discourage Matteson from taking its own sound measurements or from recording citizen complaints. If Matteson disagrees with the recommendations in the final report, it can petition for a hearing on that report within 21 days of the filing the final report.

Section 42

Section 42 of the Act authorizes the Board to impose a civil penalty for violation of the Act or Board regulations. Effective September 7, 1990, Section 42(h) allows the Board to consider various factors if a penalty is to be imposed. These considerations include: the duration and gravity of the violation, the presence or absence of due diligence to comply or secure relief, any economic benefits accrued through a delay in compliance, the amount that will deter future violations and aid in voluntary compliance, and other previously-adjudicated violations. Ill. Rev. Stat. 1989, ch. 111½, par. 1042(h), as added by P.A. 86-1363. Since hearing in this matter was after the effective date of Section 42(h), those factors may be considered in assessing any penalty. See People v. Sure-Tan, PCB 90-62 (April 11, 1991).

Here, Matteson requests that the Board impose a penalty if the Theatre does not comply in a timely fashion. The Board is not constrained by Matteson's recommendations regarding a penalty, but will refrain from imposing a penalty at this time. The Board will decide that issue at a later time, and here makes no findings on this issue. See Brian J. Peter v. Geneva Meat and Fish Market, PCB 89-151, March 22, 1990.

This Interim Opinion and Order constitutes the Board's findings of facts and conclusions of law in this matter.

ORDER

1. The World Music Theatre, JAM Productions, Ltd. and Discovery South Group, Ltd. (hereinafter "Theatre") are found to have violated 35 Ill. Adm. Code 900.101 and 900.102 and Section 24 of the Environmental Protection Act on the following dates:

June 2, 3, 27; July 20, 21, 22, 23, 29, 30;
October 4, 5, 6, and 7.
2. Theatre shall retain an independent consultant to monitor sound levels in conformance with 35 Ill. Adm. Code 901.102 (a) and (b) as measured in accordance with 900.103 as follows:
 - a) The sound monitoring shall occur at one location on Class A land in the Woodgate subdivision of Matteson, mutually agreed upon by Matteson and the Theatre, or if no agreement is reached, then the independent consultant shall choose a location on Class A land in Matteson within 2500 feet south of Woodgate Road, which the consultant believes will show the most severe impact from noise.
 - b) Sound Monitoring shall also occur at one location on Class A land in Country Club Hills, mutually agreed upon by Matteson and the Theatre, or if no agreement is reached, then the independent consultant shall choose a location on Class A land which the consultant believes will show the most severe impact from noise.
 - c) If the Theatre agrees to additional monitoring, the locations shall be chosen by mutual consent of Matteson and the Theatre.
 - d) At a minimum, the sound monitoring shall commence at least 10 minutes prior to the beginning of each concert and shall continue until at least 10 minutes after the conclusion of each concert. Sound monitoring shall


commence with the first concert and shall continue until a final order by this Board.

- e) All sound monitoring information shall be provided to the Village of Matteson within 72 hours of the monitoring event.
3. Theatre shall retain an independent consultant to prepare a final report on noise levels in the surrounding areas based on the monitoring data and recommend potential methods of reducing the sound impacts to preclude unreasonable interference.
- a) The final report shall be filed with the Board and served on the Complainant not later than August 2, 1991.
 - b) The final report shall contain the results of all sound monitoring.
 - c) The final report shall evaluate all methods of noise control (not just those already discussed). Each control option shall include anticipated noise reductions in both Matteson and Country Club Hills, the cost of implementation, and an estimate of a reasonable time for implementation.
 - d) The final report shall make a recommendation about what additional actions, if any, are required to abate any noise pollution problems caused by concerts, Octoberfest, or any other sound producing event at the Theatre.
 - e) The final report also shall evaluate any appropriate and cost-effective methods for continuous long-term monitoring of sound impact on the surrounding communities during all future sound producing events at the Theatre after August 2, 1991.

IT IS SO ORDERED.

Board Member J.T. Meyer Concurred

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Interim Opinion and Order was adopted on the 25th day of April, 1991, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board