

ILLINOIS POLLUTION CONTROL BOARD  
April 22, 1993

VILLAGE OF MATTESON, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 90-146  
 ) (Enforcement)  
 DISCOVERY SOUTH GROUP, LTD., )  
 MUSIC CENTER ASSOCIATES LIMITED )  
 PARTNERSHIP and TINLEY PARK )  
 JAM CORP., )  
 )  
 Respondents. )

ORDER OF THE BOARD (by B. Forcade):

On March 29, 1993, respondents (Theatre) filed a motion for clarification of the Board's February 25, 1993 order. The Village of Matteson (Matteson) filed its response to the motion on April 5, 1993. On April 6, 1993, Theatre filed a motion for leave to file a reply and its reply to Matteson's response. The Board grants Theatre leave to file its reply. On April 15, 1993, Discovery South Group, Ltd filed a "Motion for Leave to File Stipulation and Amended Appearance". The motion for leave to file is granted and the Board accepts the filing of the stipulation and the amended appearance.

Theatre seeks clarification of the following issues from the Board's final order dated February 25, 1993.

1. On page 28 of the order Stephen McCarthy was misspelled. Page 37 and 39 refer to testimony by Mike McCarthy which should be changed to Stephen McCarthy.
2. A sentence was omitted from the bottom of page 51 continuing to the top of page 52.
3. Theatre requests that the requirement that "Theatre shall provide the complainants with a copy of the sound monitoring report for each concert event within 3 days of such event" on page 50 and 57 be changed to "within 3 working days of such event."
4. The order should be clarified to reflect that Discovery South Group is the only proper respondent to this action.

Theatre argues that many concerts occur on Fridays and Saturdays and consultants do not perform data analysis during weekends. Theatre contends that 3 working days is consistent with the procedure used with prior monitoring. Theatre contends that World Music Theatre is a building and not a legal entity. Theatre also contends that Jam Productions Ltd. is a talent

booking Agency but does not book talent for World Music Theatre. Theatre asserts that Discovery South Group, Ltd. is solely responsible for the management of the theater and is therefore the proper party.

Matteson contends that the court of first hearing loses jurisdiction after 30 days from entry of a final order. (Midwest Bank and Trust Co. v. Village of Lakewood (1983), 113 Ill. App. 3d 962, 447 N.E.2d 1358.) Matteson in its response presented no objection to clarification of the first three issues but objected to dismissing any of respondents.

In its reply, Theatre seeks to name the proper entities as respondents. Theatre contends that the proper respondents are Discovery South Group, Ltd. (theater's operator), Music Center Associates Limited Partnership (theater's owner), and Tinley Park JAM Corp. (the booking agent for theater). Theatre contends that it has previously informed counsel for Matteson that Discovery South Group, Ltd. was the only properly named respondent in the petition. Theatre maintains that this matter can be settled by the Board on the present motions and that delaying resolution of this matter will cause the expenditure of additional time and money.

The stipulation entered by Matteson and Discovery South Group states that the parties have agreed that the proper respondents should be Discovery South Group, Ltd., Music Center Associates Limited Partnership and Tinley Park JAM Corp. Further, the parties agree that World Music Theatre, JAM Productions and Gierczyk's Development, Inc. should be dismissed from the action and removed from the caption. The stipulation also states that Music Center Associates Limited Partnership and Tinley Park JAM Corp. waive their due process right to have participated in the Board's hearings and acknowledge they are fully and completely bound by all Board orders entered in this matter. Considering the filing of the stipulation, Matteson has withdrawn the objections presented in its response and agrees to a change of the respondents.

The Board finds that it has jurisdiction to review this motion. The Board's procedural rules allow for the correction of clerical mistakes or errors at any time. (35 Ill. Adm. Code 103.241.) Therefore, the motion for clarification is properly before the Board. As Matteson does not object to clarification of the first three issues in the motion and the parties have entered a stipulation on the fourth issue, the Board grants the motion for clarification.

The Board notes that on page 37 and 39 of the February 25, 1993 order Mike McCarthy should be changed to Stephen McCarthy. The Board further notes that the correct spelling is Stephen and was misspelled on page 28 of the order.

A sentence was inadvertently omitted from the final order on page 51. The last paragraph on page 51 should have read (the portion which was mistakenly omitted from the final order is underlined):

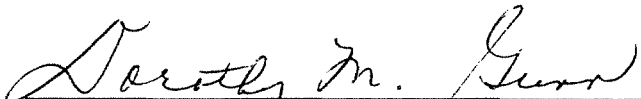
Based on the nature of this violation and the history of this proceeding, the Board finds it appropriate to assess a penalty at this time. While the Board finds merit in imposing an incremental penalty to deter future violations, due to the particulars of the present situation an automatic incremental penalty may be inappropriate. Section 42(a) of the Act allows the Board to impose a penalty, not to exceed \$50,000 for each violation and an additional penalty, not to exceed \$10,000 for each day the violation continues. In determining the appropriate amount of any penalty the Board reviews the factors in Section 42(h) of the Act.

The requirement that "Theatre shall provide the complainants with a copy of the sound monitoring report for each concert event within 3 days of such event" on page 50 and 57 should be changed to "within 3 working days of such event."

As the stipulation represents that the parties have agreed to the change in respondents, the Board grants clarification on this issue. The Board will add Music Center Associates Limited Partnership and Tinley Park JAM Corp. as respondents in this matter. The Board also dismisses World Music Theatre and JAM Productions, Ltd. as respondents in this matter. The stipulation notes that Gierczyk Development, Inc. should be dismissed from this proceeding and removed from the caption. The Board notes that Gierczyk Development, Inc. was dismissed from this proceeding in the Board's April 25, 1991 Interim Opinion and Order for lack of service and that the caption was subsequently modified. The Board has modified the caption in this order to reflect the change in respondents as agreed to by the parties.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 22<sup>nd</sup> day of April, 1993, by a vote of 6-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board