

ILLINOIS POLLUTION CONTROL BOARD
March 26, 1992

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

ORDER OF THE BOARD (by B. Forcade):

On September 12, 1991, the Board issued an order granting a motion for reconsideration from World Music Theatre et. al. (Theatre) to reconsider the Board's August 22, 1991, order. In its September 12, 1991, order, the Board noted that the sound measurement data and analysis submitted to the Board by Theatre failed to show compliance or non-compliance with Section 901.102 and the Board found several problem areas with the noise report. Upon reconsideration, Matteson was given the opportunity to request a hearing be held to present evidence on whether future sound control was needed and suggest the method of sound control. The Board required that the hearing and all post-hearing filings be completed by March 2, 1992. Matteson elected not to request a hearing. Absent additional evidence on sound control, the order suggested a possible final order setting numerical noise limitations and mandating Theatre to perform continuous long-term monitoring. On March 2, 1992, Theatre filed supplemental comments. On March 9, 1992, Matteson filed a response and objection to Theatre's comments.

Matteson's response contends that Theatre's comments should not be allowed because it is an attempt to offer collateral facts and unsupported data into the record, without so much as an attempt for leave to do so. Further Matteson argues Theatre is asserting specious arguments in total disregard for the record currently in place. Theatre's comments maintain that Theatre is currently not a source of noise pollution, there has been no demonstration to warrant continuous monitoring and continuous monitoring is expensive and not practical.

The Board notes that Theatre's March 2, 1992, filing is titled as a comment, it does not request any action of the Board but rather summarizes the status of the proceeding, presents information on noise monitoring and discusses the proposed final action. The Board's rules and regulations do not contain a provision for the filing of comments in this type of proceeding and the Board did not authorize this filing. Section 101.242 of the Board's rules and regulations requires that all motions and

responses contain the grounds upon which the motion is made or the reason for the responding parties position, the relief sought and that facts not in the record be supported by affidavits. Theatre's filing does not satisfy the requirements of a motion or response.

Theatre's comments attempt to supplement the record by presenting factual information from a different proceeding to support its argument that continuous monitoring is expensive and not practical. This testimony is not a part of the record in this matter and Matteson has been denied the opportunity to cross examine the witnesses on the testimony presented. In order for the facts presented in Theatre's comment to be considered in this proceeding they would need to be presented in an adversarial setting by qualified witnesses subject to cross examination. Theatre also states that through its experience in operating two summers of concerts it is able to control the sound emitted from the theater. This statement is not supported by any facts or affidavits. The Board cannot consider this statement or other statements in Theatre's comments unless they are supported by testimony that has been subjected to cross examination and admitted in a proceeding where Matteson has been allowed to present opposing testimony. At minimum Theatre's comments can be viewed as an attempt to respond to unresolved issues in this matter. However, because Theatre's assertions are not supported by the record or affidavit and Matteson was not allowed to cross examine or present opposing testimony, the Board cannot consider the comments in making a final determination.

Because Matteson did not request a hearing, "the Board is still unable to determine what, if any, specific additional sound abatement measures are necessary to remedy the noise violations and alleviate the noise complaints." Village of Matteson v. World Music Theatre (September 12, 1991) PCB 90-146, _____ PCB _____. The order of September 12, 1991, allowed Matteson to request a hearing to address the issues raised in that order, a similar right was not extended to Theatre. Absent a hearing, Theatre was denied an opportunity to respond. While Theatre's filing of March 2 may be improper, it does illustrate the fact that Matteson was given the opportunity to present additional evidence in this matter and Theatre was not provided with the same opportunity without filing an additional motion with the Board. While Theatre could have filed a motion requesting a hearing or a motion for reconsideration of the September 12, 1991, Board order, it should have been given the same opportunity for a hearing as Matteson.

The Board finds that the Theatre's March 2, 1992, filing is an unauthorized filing and contains facts not supported by the record or affidavits. Therefore, the Board cannot consider the comment in reaching its final order without the information in the comment being presented at hearing, subjected to cross


examination and opposing testimony. The Board also concludes it should have allowed Theatre to request a hearing on its own behalf to respond to the issue of methods of sound control. The Board in this order seeks to correct its inadvertent omission from its previous order of not allowing Theatre to request a hearing. Therefore, the Board will construe Theatre's comment as a request for hearing and postpone entering a final order, allowing time for a hearing to be held for Theatre to present evidence addressing whether the noise violations still exist and the appropriate sound control techniques to be employed to eliminate any violations.

The hearing officer is directed to set this matter for hearing at the convenience of the parties. Hearing must be scheduled within 14 days of the date of this order and completed within 60 days of the date of this order. The hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of the hearing so that public notice of the hearing may be published.

The Board notes that Theatre will be shortly commencing its series of summer concerts and therefore a timely resolution to this matter is required. The hearing officer is instructed to conduct the hearing as expeditiously as practical to prevent further delay in this proceeding. To insure completion of hearings in a timely manner, any motions that would cause the hearing not to be completed within 60 days must be presented in writing to the Board.

IT IS SO ORDERED.

I, Dorothy Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 26th day of March, 1992, by a vote of 7-0.



 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board