

ILLINOIS POLLUTION CONTROL BOARD
June 4, 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):

This matter is before the Board on a motion to hear an appeal of the hearing officer's ruling and to expedite ruling, filed by Respondent on June 1, 1992.

On May 19, 1992, Respondent, Discovery South Group (hereinafter Theatre), filed a motion to postpone the hearing scheduled for June 9, 1992. On May 22, 1992, Village of Matteson (hereinafter Matteson) filed its objection to the motion to postpone the scheduled hearing. After considering the motion and response, the hearing officer denied the motion. On May 29, 1992, Theatre filed a motion to reconsider the hearing officer's order. In its motion appealing the hearing officer's decision Theatre stated that the hearing officer has indicated that he will not rule on the motion for reconsideration and directed Theatre to obtain a ruling from the Board. However, the hearing officer issued an order on June 2, 1992, affirming his prior decision and stating his belief that the hearing could proceed as scheduled.

Counsel for Matteson has indicated to counsel for Theatre, that Matteson does not intend to file a response to the motion appealing the hearing officer's denial of the motion to postpone. Because the scheduled hearing date is less than a week away, the Board will rule on this motion prior to the expiration of the 7-day response period.

Theatre is requesting the hearing be postponed for 30 days in order to present its case effectively. Theatre contends that Matteson has indicated that it will raise several new issues at the hearing, expanding the scope of the hearing. Theatre argues that it does not have adequate time to prepare for the scheduled hearing. Theatre argues that there is inadequate time to conduct discovery and that two of its witnesses will not be available the week prior to the hearing for preparation. Theatre contends that the scheduled hearing coincides with the start of the concert season for which its employees and consultants are critically needed.

Matteson argues that the hearing should proceed as scheduled because it has scheduled the testimony of Village residents, sound technicians and expert witnesses. It further argues that because Theatre's operation is limited to the summer months any delay will unnecessarily subject the residents to prejudice and harm as a result of the chronic noise pollution.

While the Board agrees that the hearing should proceed as scheduled, it does not believe that a delay in the proceeding will subject the residents of Matteson to prejudice and harm from chronic noise pollution. The Board notes that the sound limitations of Section 900.102 and Section 901.102 apply to Theatre independent of this proceeding. (See April 25, 1991 Interim Order at p. 37.) The Board has instructed Theatre to perform continuous monitoring during all concerts and to correct any violations. This monitoring is to be performed in accordance with the Board's previous orders. The Board again reiterates that the results of this monitoring are to be submitted to the Board and Matteson on a weekly basis.

The Board is disturbed by Theatre's inability to prepare for a scheduled hearing. The Board is also concerned with Theatre's failure to propose an alternate expedited schedule to conduct the hearing. The Board's March 26, 1992 order instructed the parties to conduct an additional hearing in this matter. In this order the Board expressed the need for this matter to proceed as expeditiously as possible. The order further instructed the parties to agree to a date for the hearing within 14 days of the order (April 9, 1992) and complete all hearings within 60 days of the order (May 26, 1992). This timeframe provided adequate time to prepare for the hearing, especially considering that the matters to be covered at hearing had been previously addressed in earlier filings by the parties.

The June hearing date was agreed to by the parties in the beginning of May, 40 days after the order instructing the parties to set a hearing date. Given the delay in setting the hearing date, it was no longer possible to complete the hearing within 60 days as specified by the order. Two weeks after the hearing date was agreed on by the parties, Theatre filed its motion to postpone the hearing for 30 days. Theatre did not justify why 30 additional days would provide adequate time to prepare for the hearing. The Board believes that this matter has already been unnecessarily delayed and that all efforts should be employed to prevent future delays in this proceeding.

However, the Board is also concerned that the testimony and evidence presented at the hearing be complete and accurate. The Board's goal in holding this hearing is to obtain information on sound control procedures to formulate a final order in this matter preventing future violations by Theatre of the noise regulations. The Board believes that a complete and accurate

record can be developed by proceeding with the hearing as scheduled and scheduling additional hearings, if required.

The two main issues to be presented at the hearing were discussed in detail in the Board's orders dated March 26, 1992 and September 12, 1991. The two matters to be discussed are:

- 1) whether unreasonable interference continued through the 1991 concert season such that sound control is necessary and
- 2) if sound control is necessary, the nature of the sound control, i.e. measurement times and sound levels that may not be exceeded at the sound monitoring locations and recommended averaging time.

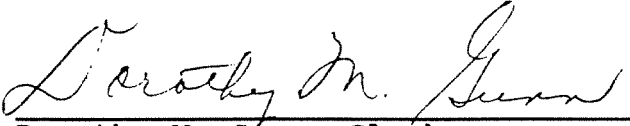
The hearing officer's denial of Theatre's motion to postpone the hearing is affirmed. The parties are instructed to proceed with the hearing as scheduled. Matteson has stated that it is prepared to go ahead with the scheduled hearing. The Board believes that the issues are such that Theatre will be able to effectively cross examine the witnesses presented by Matteson and present testimony on its own behalf. The hearing shall proceed in the following manner: Matteson shall present its available witnesses who will be subject to cross examination by Theatre and then Theatre will present its available witnesses who will be subject to cross examination by Matteson. The hearing shall continue in this manner from day to day as required by the testimony.

After all available testimony has been presented, the hearing officer may schedule additional hearing time, if Theatre demonstrates that additional hearing time is required to prevent material prejudice. The Board reiterates that all hearings should be completed as expeditiously as possible.

IT IS SO ORDERED.

J. T. Meyer dissented.

I, Dorothy Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 14th day of June, 1992, by a vote of 6-1.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board