

ILLINOIS POLLUTION CONTROL BOARD
November 19, 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 comes before the Board on Village of Matteson's (Matteson's) October 29, 1992 "Withdrawal of Motion to Reopen Evidentiary Hearings" and November 4, 1992 "Withdrawal of Prior Pleading". Also before the Board is a "Motion to Reset Last Allowable Hearing Date" filed by the respondents (Theatre) on November 12, 1992. Matteson filed its response to Theatre's motion on November 12, 1992.

On October 9, 1992, Matteson filed a motion to reopen evidentiary hearings in this matter. The Board granted this motion in an October 29, 1992 order. The Board in granting the motion limited the scope of the hearing to noise complaints after the date of the last hearing and comments on a draft order proposed by the Board. The Board further ordered that all hearings be completed by December 18, 1992.

On the same date that the motion was granted, Matteson filed a request to withdraw its motion to reopen evidentiary hearings. On November 4, 1992, Matteson filed a "Withdrawal of Prior Pleading". Matteson seeks to withdraw its request to withdraw its motion to reopen the hearings in this matter. Matteson states that after a review of the Board's October 29, 1992 order, it "welcomes the opportunity to supplement the record consistent with the recent directive of the Board". Matteson's request to withdraw its October 29, 1992 filing is granted.

On November 12, 1992, respondent (Theatre) filed a motion to reset the last allowable hearing date. Theatre requests additional time to prepare for the hearing because Theatre expects the use of substantial expert testimony at hearing. Theatre notes that there is no basis for the December 18, 1992 completion date. Theatre argues that setting the hearing for a later date will allow additional time to provide public notice of the hearing. Theatre contends that holding the hearings prior to January 31, 1993 will still allow ample time for the Board to reach its final decision and for Theatre to take any actions that may be ordered by the Board before the first concert in late May

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or early June.

Matteson's response to the motion was received by the Board on November 12, 1992. Matteson asserts that the date for the hearing should not be extended. Matteson argues that there is sufficient time to prepare given the extended record in this matter. Matteson argues that the date for the completion of hearing should be firmly set to avoid additional delays.

The Board notes that this matter was originally filed before the Board in August of 1990. An interim order was issued by the Board on May 25, 1991, finding Theatre in violation of the Act and ordering Theatre to prepare a report on the sound levels and suggest a remedy. The Board is concerned with the length of this proceeding and the numerous delays and extensions in the history of this proceeding.

Theatre has previously requested to postpone a scheduled hearing to allow additional time to prepare for a hearing. In a March 26, 1992 order, the Board ordered the parties to conduct additional hearings on possible sound control measurements. A hearing was scheduled for June 9, 1992. On May 19, 1992, Theatre sought a 30 day postponement in order to present its case effectively because the hearing would coincide with the re-opening of the theater, prohibiting Theatre personnel from testifying at the hearing. On June 4, 1992, the Board denied respondents motion for postponement but noted that the hearing could be continued to allow for additional testimony. At the completion of the June 9 hearing an additional hearing was scheduled for July 9, later another hearing was scheduled for July 27. Despite these additional hearing dates, respondents did not present any witnesses at the hearings held in 1992. The respondents had adequate time in which to prepare for hearing considering the continuing nature of this matter and that subsequent hearings were scheduled 30 and 48 days after the completion of the June 9, 1992 hearing.

Considering Theatre's failure to present testimony on noise abatement methods in prior hearings and their request for previous postponements, the Board is reluctant to extend the date for the completion of the additional hearings. The Board feels that if noise control is required that it should be implemented by Theatre at the start of the 1993 concert season. The Board also feels that control concepts must be known before commitments are made by the various performing artists. In this manner the artists can be forewarned of any sound limitations or controls when contracting a performance. While the Board realizes that a limited amount of time was allowed to prepare for hearing, the Board believes that the time allowed was adequate to prepare for the hearing considering the limited scope of the hearing and the continuing nature of the proceeding. The scope of the hearing was articulated in the Board's October 29, 1992.

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Theatre contends that holding the hearing at a later date will not prohibit Theatre from taking any actions required by any future Board orders prior to the start of the concert season. However, the extent of any actions required to remedy the noise problem are not presently known, so a definite timetable cannot be determined at this time. The earlier that the Board is able to issue its final decision will increase the amount of time available to Theatre before the start of the concert season to implement any sound control program. The Board is also aware that any noise control system will require a considerable amount of fine tuning to properly control the sound. The additional time will help to assure that any sound control system satisfies the goals of the Board order.

In Theatre's response to the motion to reopen evidentiary hearings filed on October 16, 1992, Theatre noted that reopening of the hearings may jeopardize the 1993 concert season by reducing the length of time Theatre has to prepare for the 1993 concert season in compliance with the final order. The Board selected December 18, 1992 deadline to permit the Board to issue its final order in early 1993 and not cause a substantial reduction in the time available for Theatre to prepare for the 1993 season. In selecting a completion date, the Board also considered the time needed to schedule a hearing date and provide public notice.

Public notice of any hearing must be published at least 20 days prior to the hearing date in a paper of general circulation in the county in which the hearing is to be held. (35 Ill. Adm. Code 102.162(a)(1).) Under the present hearing schedule there is no problem of providing sufficient public notice of the hearing.

While Theatre requests additional time to prepare for the hearing, it provides no specific reason why additional time is needed. Theatre's motion is not supported by affidavit. The motion does not specify any witness that is unavailable for the scheduled date or inability to obtain specific information by the date of the hearings. Theatre does not provide a specified reason why a change of the date for completion of hearings to January 31, 1993 would provide sufficient time.

The Board denies Theatre's motion to extend the date for completion of the hearing. Accordingly, the Board instructs the parties to proceed with the additional hearings in this matter in accordance with the October 29, 1992 Board order.

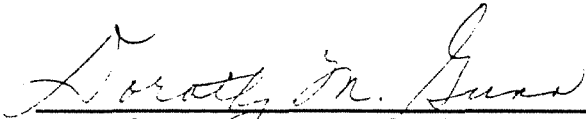
The Board notes that hearings have been scheduled in this matter for December 16 and 17, 1992. Considering the motions presently before the Board and the scheduled dates of the hearings, the Board will allow the hearing officer some flexibility in satisfying the date for completion of hearing. If

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at the completion of the scheduled hearings, upon a showing by either party that time constraints prohibited the moving party from presenting testimony from an available witness, the hearing officer may continue the hearing. However, in no event shall any hearing be continued beyond December 23, 1992.

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 19th day of November, 1992, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board