

ILLINOIS POLLUTION CONTROL BOARD
January 17, 2019

WEGLARZ HOTEL III, LLC, WEGLARZ)
HOTEL IV, LLC, and WEGLARZ HOTEL V,)
LLC,)
)
Complainants,)
)
v.) PCB 19-64
) (Citizens Enforcement - Noise)
THE BELT RAILWAY COMPANY OF)
CHICAGO,)
)
Respondent.)

ORDER OF THE BOARD (by C.M. Santos):

On October 2, 2018, Weglarz Hotel III, LLC, Weglarz Hotel IV, LLC, and Weglarz Hotel V, LLC (collectively, Weglarz Hotels) filed a complaint against The Belt Railway of Chicago (The Belt). The complaint concerns The Belt's freight rail switching and clearing yard located at 6900 South Central Avenue in Bedford Park, Cook County. In today's order, the Board grants The Belt's motion to stay this enforcement case pending resolution of a federal court action described below.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2016)), any person may bring an action before the Board to enforce Illinois' environmental requirements. *See* 415 ILCS 5/3.315, 31(d)(1) (2016); 35 Ill. Adm. Code 103. In this case, Weglarz Hotels allege that The Belt violated Section 24 of the Act and Sections 900.102 and 901.102 of the Board's noise regulations (415 ILCS 5/24 (2016); 35 Ill. Adm. Code 900.102, 901.102) by the emission of noise from operating inert retarders at its East Classification Yard. Weglarz Hotels ask the Board to order The Belt to pay a civil penalty and cease and desist from the alleged violations. Further, Weglarz Hotels' complaint asserts that federal law does not preempt the Board's jurisdiction over noise emitted by The Belt's inert retarders.

On November 5, 2018, The Belt filed a motion to stay (Mot.). The Belt requests that the Board stay this enforcement proceeding pending the resolution of The Belt Railway Co. of Chicago v. Weglarz Hotel III, LLC, et al., No. 1:18-cv-7361, which it filed in the United States District Court for the Northern District of Illinois on November 5, 2018. Mot. at 1.

In count I of its federal complaint, the Belt requests that the court enter a judgment declaring that the relief sought in Weglarz Hotels' complaint filed with the Board is preempted by the ICC Termination Act of 1995. Mot., Exh. A at 7 (¶22). In count II, The Belt requests that the court enter a judgment declaring that relief Weglarz Hotels seek from the Board "constitutes an impermissible deprivation of The Belt's rights" under the Commerce Clause of the U.S. Constitution. *Id.* at 9 (¶30). In both counts, The Belt asks the court to enjoin the Board and

Weglarz Hotels from taking any action on the noise complaint pending before the Board. *Id.* at 7 (¶22), 9 (¶30).

Weglarz Hotels filed their response to the motion for stay on November 19, 2018 (Resp.). Weglarz Hotels argue that comity toward the federal court is not a concern “because there is no threat of conflicting legal decisions at this time.” Resp. at 4. Weglarz Hotels discount The Belt’s argument that a stay would promote administrative economy. *Id.* at 4-5. Weglarz Hotels also argue that a stay would cause them ongoing injury (*id.* at 10-11) and that the Belt’s “preemption argument is not likely to prevail” (*id.* at 9).

On November 3, 2018, The Belt filed a motion for leave to file a reply in support of its motion for stay, accompanied by its reply. As The Belt notes, it does not have a right to reply, except as the Board allows “to prevent material prejudice.” 35 Ill. Adm. Code 101.500(e). The Board is not persuaded that a reply is needed to avoid material prejudice. The Board denies the motion for leave and does not address the reply submitted by The Belt.

A motion to stay “must be accompanied by sufficient information detailing why a stay is needed.” 35 Ill. Adm. Code 101.514. The decision to grant or deny a motion for stay is “vested in the sound discretion of the Board.” *See People v. State Oil Co.*, PCB 97-103, slip op. at 2 (May 15, 2003), *aff’d. sub nom. State Oil Co. v. PCB*, 822 N.E.2d 876, 291 Ill. Dec. 1 (2nd Dist. 2004). When exercising its discretion to determine whether an arguably related matter pending elsewhere warrants staying a Board proceeding, the Board may consider the following factors: (1) comity; (2) prevention of multiplicity, vexation, and harassment; (3) likelihood of obtaining complete relief in the foreign jurisdiction; and (4) the *res judicata* effect of a foreign judgment in the local forum, *i.e.*, in the Board proceeding. *See A. E. Staley Mfg. Co. v. Swift & Co.*, 84 Ill. 2d 245, 254, 419 N.E.2d 23, 27-28 (1980).

While the federal court has not resolved The Belt’s complaint, the outcome may be determinative of issues in this enforcement case and render it moot. Weglarz Hotels discounts comity as a factor in deciding the motion for stay, but the Board weighs it in favor of granting the stay. If both actions proceed independently of one another, the Board and the federal court could conceivably grant inconsistent relief. Under these circumstances, administrative efficiency weighs in favor of granting the stay. Weglarz Hotels argues that proceeding with the Board case promotes administrative economy. Resp. at 4. However, it would waste the resources of the Board and the parties to proceed with this enforcement case before the federal court resolves The Belt’s complaint.

For these reasons, the Board finds that a stay is warranted. The Board therefore grants The Belt’s motion and stays this enforcement proceeding until the U.S. District Court resolves The Belt’s pending complaint for declaratory and injunctive relief.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 17, 2019, by a vote of 5-0.

A handwritten signature in black ink that reads "Don A. Brown". The letters are cursive and fluid, with a large initial "D" and "B".

Don A. Brown, Clerk
Illinois Pollution Control Board