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DEC 30 2005

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **STATE OF ILLINOIS**
Pollution Control Board

SILBRICO CORPORATION,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

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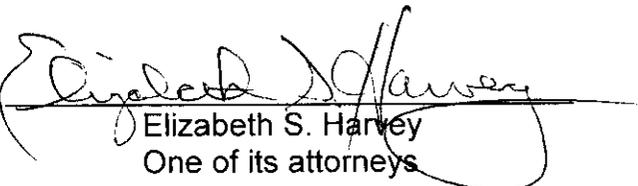
PCB 06-011
(Variance—land)

NOTICE OF FILING

To: (See attached Service List.)

PLEASE TAKE NOTICE that on this 30th day of December 2005, there was filed with the Illinois Pollution Control Board, **Petitioner Silbrico Corporation's Response to Agency Recommendation**, which is attached and herewith served upon you.

SILBRICO CORPORATION

By: 
Elizabeth S. Harvey
One of its attorneys

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CERTIFICATE OF SERVICE

I, the undersigned non-attorney, state that I served a copy of Petitioner Silbrico Corporation's Response to Agency Recommendation to counsel of record in the above-captioned matter via U.S. Mail at One IBM Plaza, Chicago, IL 60611 on or before 5:00 p.m. on December 30, 2005.



Jeanette Podlin

[x] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

2049-001

SERVICE LIST

Case No. PCB 06-011

(Variance -- Land)

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* Courtesy Copy

SILBRICO CORPORATION,)
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 Petitioner,)
)
 v.)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

PCB 06-011
 (Variance—land)

RESPONSE TO AGENCY RECOMMENDATION

Petitioner SILBRICO CORPORATION ("Silbrico"), by its attorneys Swanson, Martin & Bell, LLP, hereby responds to the Illinois Environmental Protection Agency's ("Agency") recommendation. This response is filed pursuant to Section 104.220 of the Board's procedural rules. (35 Ill.Adm.Code 104.220.)

HEARING

Silbrico has previously requested a hearing in this matter. (Petition for variance, page 9.) Silbrico does not waive its right to a hearing.

RESPONSE

The Agency raises several objections to the grant of Silbrico's requested variance. In this response, Silbrico responds to some of those stated objections. Silbrico reserves its right to further respond at hearing, and in post-hearing filings.

Section three¹

In its comments on the facts as presented by Silbrico, the Agency takes issue with Silbrico's reference to Section 20(d)(4) of the Environmental Protection Act (Act). (415 ILCS 5/20(d)(4).) The Agency claims that Section 20(d)(4) deals with hazardous waste monofills, not with clean construction and demolition debris (CCDD) fill operations, and thus Silbrico's citation to that section is inappropriate. However, Silbrico cited to Section 20(d)(4) as an illustration that the legislature has recognized that "there are wastes which have reduced environmental threat ... because they are non-putrescible, homogeneous, do not contain free liquids, or for other reasons." (415 ILCS 5/20(d)(4).) In other words, the General Assembly has recognized that some types of wastes may be disposed of other than in a regulated solid waste landfill. That is the case with Silbrico's perlite wastes: they are non-putrescible, homogeneous, and do not contain free liquids. Thus, the perlite wastes do not present the same environmental threat as wastes which are putrescible, non-homogeneous, or contain free liquids. Silbrico did not intend to imply that CCDD fill operations are in fact monofills, but simply to illustrate that the legislature distinguishes between the environmental concerns presented by different types of wastes.

Section eleven

The Agency notes that the Board has previously held that, where a petitioner is currently in compliance, it is presumed that continued compliance is not arbitrary or unreasonable. *JLM Chemicals, Inc. v. Illinois Environmental Protection Agency*, PCB 95-98 (September 7, 1995). However, that presumption can be overcome, and the Board has in fact granted variances to petitioners who were in current compliance with

¹ Section headings correspond to the appropriate section of the Agency's recommendation.

the Act and regulations. See, e.g., *Marathon Oil Company v. Illinois Environmental Protection Agency*, PCB 95-150 (May 16, 1996), 1996 Ill. ENV LEXIS 359, *32-33. Silbrico has demonstrated that continued compliance with the Act, while it pursues its site-specific rule, presents an arbitrary and unreasonable hardship. Silbrico's current compliance with the Act is not a reason to deny the variance.

The Agency is also apparently uncomfortable with connection between Silbrico's requested variance and its requested site-specific rule. Silbrico is uncertain of the reasoning for this apparent uneasiness. The Board has longstanding practice of considering variance requests in conjunction with petitions for site-specific rules. For example, in *Amerock Corporation v. Illinois Environmental Protection Agency*, PCB 87-131 (January 9, 1992), 1992 Ill. ENV LEXIS 70, the Board granted a water variance to Amerock Corporation. Amerock's compliance plan was pursuing a site-specific rule. If the site-specific rule request was denied, Amerock's alternative compliance plan was to implement one of three control options. 1992 Ill. ENV LEXIS 70, *4-5. The Board accepted that compliance plan, and granted the variance. 1992 Ill. ENV LEXIS 70, *9-10.

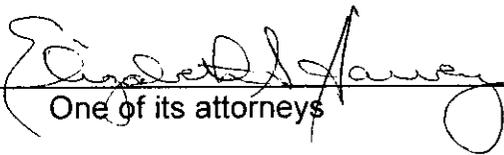
Silbrico's situation is analogous to Amerock's situation. Silbrico has requested a variance while its site-specific rule petition is pending, but has also committed to compliance with the Act if the site-specific rule is denied. (Petition, p. 7; Amended Petition, p. 11.) As in *Amerock*, the Board should reject the Agency's recommendation of denial, and grant the requested variance.

CONCLUSION

Silbrico has demonstrated that compliance with the current disposal requirements for its two perlite waste streams presents an arbitrary or unreasonable hardship. Silbrico looks forward to the hearing on this matter, and to post-hearing filings, to further address the issues.

Respectfully submitted,

SILBRICO CORPORATION

By: 
One of its attorneys

Dated: December 30, 2005

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