

ILLINOIS POLLUTION CONTROL BOARD
September 1, 2005

SILBRICO CORPORATION,)
)
 Petitioner,)
)
 v.) PCB 06-11
) (Variance – Land)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by T.E. Johnson):

On July 19, 2005 Silbrico Corporation (Silbrico) filed a petition for variance with the Board. Silbrico seeks a variance from provisions of 35 Ill. Adm. Code Parts 810 through 817 to the extent that these parts require the disposal of Silbrico’s industrial process waste and pollution control waste in a non-hazardous waste landfill. Silbrico generates the waste at a manufacturing facility located in Cook County. Alternatively, Silbrico requests that the Board determine Silbrico’s waste to be analogous to “clean construction and demolition debris” that can be disposed of in a “clean fill” facility. Silbrico has also filed a petition for site-specific rulemaking for a rule to allow it to permanently dispose of its waste in a “clean fill” facility. The Board docketed the rulemaking petition as R06-08. See Proposed Site Specific Perlite Waste Regulation Applicable to Silbrico Corporation (35 Ill. Adm. Code Part 810), R06-8.

The Environmental Protection Act authorizes the Board to grant temporary relief from its regulations in the form of a variance. *See* 415 ILCS 5/35(a) (2004). The person requesting the variance must prove that compliance with the Board’s regulations “would impose an arbitrary and unreasonable hardship.” *Id.* Below, the Board briefly describes Silbrico’s operations and variance request. The Board then identifies informational deficiencies in the petition that preclude accepting it for hearing at this time. Finally, the Board gives Silbrico time to file an amended petition to correct the deficiencies.

BACKGROUND

Silbrico was founded in 1946, and is located at 6300 River Road, Hodgkins, Cook County. Silbrico manufactures products using perlite, a volcanic rock that expands up to 20 times when heated. Silbrico’s product line includes insulation, filter aids, filler and soil conditioner. Perlite soil conditioner is the little white kernels found in potting soil. Wastes are generated from off-specification product and fugitive emissions captured by the bag house and housekeeping. Wastes are currently disposed of at a non-hazardous waste landfill. Pet. at 2.

Silbrico asserts that due to the inert and non-hazardous characteristic of the off-specification perlite and the fugitive perlite (collectively perlite waste), it seeks to dispose of

these wastes at a “clean fill” facility that accepts only clean construction and demolition debris as defined at 415 ILCS 5/3.160(b) (2004). Pet. at 1-2. Silbrico asserts that allowing the disposal of the waste perlite at a “clean fill” facility would save valuable space in municipal waste landfills and result in significant cost savings, while posing no environmental violation or threat. Pet. at 2. The petition for variance seeks authorization for Silbrico to dispose of the perlite waste at a “clean fill” facility while the petition for site-specific rule is pending. Pet. at 2.

Silbrico asserts that the Illinois Environmental Protection Agency (Agency) has taken the position that the waste perlite must be disposed of at a non-hazardous waste landfill, rather than at a “clean fill” facility. Pet. at 2. Silbrico contends that a search of the Board regulations has located no regulation specifically stating that industrial process wastes and pollution control wastes must be disposed of in a non-hazardous waste landfill. Pet. at 2-3. Thus, Silbrico asks the Board to either grant a variance from the provision of Parts 810 through 817 to the extent that those Parts require disposal of the waste perlite in a non-hazardous waste landfill, or in the alternative, declare that the perlite waste are analogous to clean construction and demolition debris and can be disposed of in a clean fill facility. Pet. at 3.

As noted above, the Agency has not yet filed its recommendation. Under the Board’s procedural rules, that recommendation is not generally due until 45 days after the filing of the petition or amended petition, unless ordered otherwise. 35 Ill. Adm. Code 104.216(b). Under the Board’s procedural rules, Silbrico may file a response to the recommendation or an amended petition within 14 days after the date of service of the recommendation. 35 Ill. Adm. Code 104.220.

INFORMATIONAL DEFICIENCIES

The Board’s procedural rules specify what variance petitions must contain. *See* 35 Ill. Adm. Code 104.204. The Board cannot accept Silbrico’s petition for hearing because it is deficient in a number of respects. To attempt to rectify the deficiencies, Silbrico must address the following issues.

1. In the petition, Silbrico asserts that a review of the Board’s landfill regulations at 35 Ill. Adm. Code Parts 810-817 indicates that there are no provisions in the rules that specifically require disposal of waste from facilities like Silbrico to be disposed of in non-hazardous waste landfills. Pet. at 2. Identify any statutory provisions, as well as any specific regulatory provisions you may have identified after the filing of the petition, from which a variance is being sought. *See* 35 Ill. Adm. Code 104.204(a).
2. In the petition, Silbrico identifies “rocks, stone” to show how Perlite as a rock meets this definition. Pet. at 7. The definition’s phrase “generated from construction or demolition activities” modifies “rocks, stone.” The petition does not address how the waste is similar to construction or demolition debris from the perspectives of composition, quantity, or generation. The petition also does not discuss how the circumstances behind the provisions for construction or

demolition debris are similar to the Silbrico waste. *See* 35 Ill. Adm. Code 104.204(a).

3. Provide a formal definition or citation for a “clean fill” facility” as referred to on page 3 of the petition. If no definition can be provided, explain what a “clean fill facility” means in the context of the requested relief. *See* 35 Ill. Adm. Code 104.204(a).
4. Has Silbrico considered recycling the subject waste streams and selling them as “clean fill?” *See* 35 Ill. Adm. Code 104.204(a).
5. Address the area affected by the petitioner’s activity. *See* 35 Ill. Adm. Code 104.204(b)(1).
6. Does Silbrico now self-certify that wastes are not special wastes? If so, provide a copy of the most recent self-certification. *See* 35 Ill. Adm. Code 104.204(b)(2).
7. Indicate the amount of materials used in the perlite manufacturing process. *See* 35 Ill. Adm. Code 104.204(b)(6).
8. The typical chemical analysis for Ryolex Perlite found in Exh. C lists constituents in units of percent. Please provide analyses in units compatible to 35 Ill. Adm. Code 742. Indicate whether the perlite waste streams individually or collectively exceed the Tier 1 Soil Remediation Objectives for the parameters listed in Exh. C. *See* 35 Ill. Adm. Code 104.204(b)(6).
9. In the petition, Silbrico states that “Perlite is a naturally occurring rock, and the expansion process does not add any chemicals or constituents to that rock.” Pet. at 7. Although no chemicals or constituents are added during the expansion process, does Silbrico subsequently add something to manufacture Perlite into different forms under its product line of insulation, filler, filter aid, and soil conditioner? Do the fugitive emissions and off-spec product contain any of these additives or materials? If so, comment on their contribution to the waste stream in terms of quantity and chemical analysis. *See* 35 Ill. Adm. Code 104.204(b)(6).
10. Describe Silbrico’s efforts to reduce off-specification product. Describe any efforts to reuse or recycle the off-spec waste or bag house waste. *See* 35 Ill. Adm. Code 104.204(b)(7).
11. Distinguish how much of the 2,000 cubic yards per year is actually perlite and how much might be other additives or materials – such as packaging or other components of the final product line. *See* 35 Ill. Adm. Code 104.204(b)(8).
12. Provide a cost comparison to dispose of the perlite waste in an inert waste landfill. *See* 35 Ill. Adm. Code 104.204(e).

13. No time schedule is provided for the compliance plan. Does Silbrico intend for the time schedule to be driven by the rulemaking process in R06-8? *See* 35 Ill. Adm. Code 104.204(f).
14. In the petition, Silbrico states that “Silbrico will, of course, continue to use all efforts to minimize the amount of off-specification perlite and fugitive perlite that need to be disposed of.” Pet. at 8. Expand upon this, describing what efforts Silbrico has made in the past and what continuing efforts Silbrico is making. Elaborate quantitatively on Silbrico’s waste minimization efforts to date and how previous waste production compares to the current figures provided of 2,000 cubic yards per year. *See* 35 Ill. Adm. Code 104.204(g).
15. In the petition, Silbrico states that “It is safe to dispose of the waste streams in a ‘clean fill’ facility, and there will be no impact to the environment.” Pet. at 8. Provide further comment on how the waste is currently disposed of to keep the light-weight perlite from blowing around, *i.e.* in containers, covered by daily cover, etc. Comment on how the waste would be disposed of at a clean fill facility, *i.e.* in containers, covered by daily cover, etc. If the clean fill facility provides no dedicated containers or daily cover, comment on how fugitive perlite will not become airborne and blown outside the facility’s fill area. *See* 35 Ill. Adm. Code 104.204(g).

AMENDED PETITION

The Board orders Silbrico to file an amended petition to address the informational deficiencies described above. Pursuant to Board regulations, the decision deadline will be calculated from the date an amended petition is filed. *See* 35 Ill. Adm. Code 104.228; *see also* 35 Ill. Adm. Code 104.232(a)(2). Silbrico must file the amended petition on or before October 3, 2005.

RECOMMENDATION

As noted above, the Agency has not yet filed its recommendation. Under the Board’s procedural rules, that recommendation is not generally due until 45 days after the filing of the petition or amended petition, unless ordered otherwise. 35 Ill. Adm. Code 104.216(b). Under the Board’s procedural rules, Silbrico may file a response to the recommendation within 14 days after the date of service of the recommendation. 35 Ill. Adm. Code 104.220.

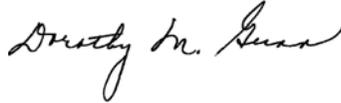
In addition to the requirements set forth at 35 Ill. Adm. Code 216, the Agency should address Silbrico’s assertion that there are no provisions in the rules that specifically require disposal of waste from facilities like Silbrico to be disposed of in non-hazardous waste landfills. The Agency should consider any information Silbrico submits in response to this order in making its recommendation.

CONCLUSION

The Board finds that Silbrico's petition is insufficient in the manner set forth above. Silbrico is directed to file an amended petition to address the issues outlined by the Board on or before October 3, 2005.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 1, 2005, by a vote of 5-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board