

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**RECEIVED**  
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OCT 07 2005

IN THE MATTER OF: )  
)  
PROPOSED SITE SPECIFIC WASTE )  
WASTE REGULATION APPLICABLE )  
TO SILBRICO CORPORATION )  
(35 Ill. Adm. Code Part 810) )

R06-08  
(Site-specific rulemaking  
land)

STATE OF ILLINOIS  
Pollution Control Board

**NOTICE OF FILING**

TO: John Knittle  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Ave. East  
Springfield, Illinois 62794

Mark Gurnik  
Assistant Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62794

Elizabeth S. Harvey  
Michael J. Maher  
Swanson, Martin & Bell, LLP  
One IBM Plaza, Suite 3300  
Chicago, Illinois 60611

PLEASE TAKE NOTICE that we have on October 7, 2005, filed the attached APPEARANCE and MOTION TO DISMISS with the Clerk of the Illinois Pollution Control Board, copies of which are hereby served upon you.



CHRISTOPHER P. PERZAN  
Assistant Attorney General

Office of the Attorney General  
Environmental Bureau  
188 W. Randolph Street, 20<sup>th</sup> Floor  
Chicago, Illinois 60601  
312 814-3532

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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**APPEARANCE**

The undersigned hereby enters his appearance in this matter on behalf of the People of the State of Illinois.



Christopher P. Pezanz  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph Street, 20<sup>th</sup> Floor  
Chicago, Illinois 60601  
312 814-3532

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**MOTION TO DISMISS**

NOW COMES the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and, pursuant to 35 Ill. Adm. Code 101.212, moves the Illinois Pollution Control Board to dismiss the pending site-specific rulemaking, and, in support thereof, states and alleges as follows:

**I. INTRODUCTION AND STANDARDS**

The Petitioner, Silbrico Corporation, filed this Petition for Site-Specific Rulemaking ("Petition") on July 19, 2005. Contained with the Petition is a service list that lists service as having been made on the Illinois Environmental Protection Agency and the Illinois Department of Commerce and Economic Opportunity ("DCEO").

The Petition purports to be authorized by Section 27 of the Illinois Environmental Protection Act, 415 ILCS 5/27(2004). The Petition asks the Board to add a provision to Part 810 of Illinois Administrative Code Title 35 allowing it to dispose of "perlite" at a clean construction and demolition debris facility, as that term is defined at 415 ILCS 5/3.160(b).

The Board's rules provide that a rulemaking petition may be dismissed for failure to comply with content requirements or for inadequacy. 35 Ill. Adm. Code 101.212(a) & (c). Any person may file a motion challenging the "statutory authority or sufficiency" of a rulemaking petition. 35 Ill. Adm. Code 101.212(d).

**II. PETITION SHOULD BE DISMISSED FOR FAILURE TO COMPLY WITH 35 ILL.ADM. CODE 102.208**

Section 102.208 of the Board rules provides that petitions for site-specific rulemakings should be served on the “Agency, DNR and the Attorney General.” 35 Ill. Adm. Code 102.208. The Petition, on its face, fails to comply with this requirement. The Petitioner served the Agency and the DCEO, but, its service list includes neither Department of Natural Resources nor the Attorney General. Because it failed to comply with 35 Ill. Adm. Code 102.208, the Petition should be dismissed.

**III. PETITION SHOULD BE DISMISSED AS WITHOUT STATUTORY AUTHORITY**

**A. Petitioner’s manufacturing process waste is not generated by construction or demolition activities and thus not within the scope of 415 ILCS 5/3.160(b)**

The Petition cites Section 27 of the Act, 415 ILCS 5/27, as authority. However, that provision does not provide sufficient authority for the request. The Petitioner seeks to have manufacturing process wastes reclassified as clean construction and demolition debris. By so doing, the Petition creates a conflict between the proposed rule and the statutory definition of clean construction and demolition debris.

Both subsections of Section 3.160 of the Act, 415 ILCS 5/3.160, apply to construction and demolition debris. The provision specifically relied upon by the Petitioner, Section 3.160(b), reads, in pertinent part, as follows:

**"Clean construction or demolition debris" means uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed asphalt pavement, or soil generated from construction or demolition activities.**

415 ILCS 5/3.160(b)(emphasis added).

The Petition attempts to justify the relief in the Petition by arguing that the perlite is a rock, and that thus it falls within the definition of clean construction and demolition

debris. Regardless of whether this material actually can be considered a rock within the meaning of the statute, nowhere in the Petition does the Petitioner even claim that the materials are “generated from construction or demolition activities.” Quite the contrary, the Petition specifically asserts that “[d]uring the manufacturing process, several wastes are generated, including off-specification perlite and fugitive perlite from baghouse dust collections.” Petition at 1 (emphasis added). Thus, the Petitioner, in no uncertain terms, seeks to have manufacturing process wastes categorized as construction and demolition debris.

Because, by the Petitioner’s own assertion, the material the Petitioner seeks to reclassify is not generated by construction or demolition activities, and thus does not come within the definition of Section 3.160(b) of the Act, this Petition cannot be granted consistent with the statute. Because it cannot be granted consistent with the plain language of the statute, the Petition should be dismissed as without authority.

**B. Petitioner cannot amend a statute through a site-specific regulation**

In the Petition, the Petitioner is essentially requesting that the Board expand the scope of Section 3.160(b) of the Act, 415 ILCS 5/3.160(b), through a regulation. The only way a manufacturing process waste can come within the scope of Section 3.160(b) of the Act would be through a legislative amendment to that section. Nowhere is authority granted to extend the explicit scope of Section 3.160(b) of the Act by a rulemaking.

An administrative agency cannot extend the operation of a statute by regulation.

*Montgomery Ward Life Ins. Co. v. State, Dept. of Local Government Affairs*

89 Ill.App.3d 292, 302, 411 N.E.2d 973, 980 (1s Dist 1980). To the extent that a

regulation conflicts with a statute, the regulation is invalid. *Greaney v. Industrial Commission*, -- Ill. App. 3d --, 832 NE2d 331, 353 (1<sup>st</sup> Dist 2005).

Because the language of Section 3.160(b) of the Act, 415 ILCS 5/3.160(b), limits its applicability to materials generated from construction and demolition activities, and does not extend to manufacturing process wastes, a rule that extends the definition to manufacturing process wastes would be in direct conflict with Section 3.160(b) of the Act. As such, it would be invalid. Because the Petition, if granted, would result in an invalid rule, it should be dismissed.

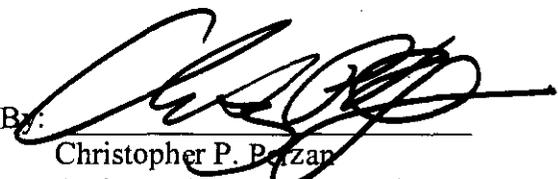
#### IV. CONCLUSION

For the reasons stated, this Petition is fatally flawed and should be dismissed. The rule the Petitioner seeks would be in conflict with a statute and could lead to a massive and legislatively unauthorized expansive of the scope of construction and demolition debris regulatory scheme in the State of Illinois.

WHEREFORE, the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, requests that the Board dismiss this Petition.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
by LISA MADIGAN, Attorney General of  
the State of Illinois

By: 

Christopher P. Perzan  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph Street, 20<sup>th</sup> Floor  
Chicago, IL 60601  
312 814-3532

CERTIFICATE OF SERVICE

I, Christopher P. Perzan, hereby certify that I have served the attached APPEARANCE and MOTION TO DISMISS upon the following parties:

John Knittle  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Ave. East  
Springfield, Illinois 62794

Mark Gurnik  
Assistant Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62794

Elizabeth S. Harvey  
Michael J. Maher  
Swanson, Martin & Bell, LLP  
One IBM Plaza, Suite 3300  
Chicago, Illinois 60611

by depositing the same in the U.S. Mail on October 7, 2005 on or before 5 pm at 100 W. Randolph Street, Chicago, Illinois.



Christopher P. Perzan