

**RECEIVED**  
CLERK'S OFFICE

OCT 24 2005

STATE OF ILLINOIS  
Pollution Control Board

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**IN THE MATTER OF:** )  
)  
Proposed site specific waste ) R 06-08  
Regulation Applicable to ) (Site-specific rulemaking--Land)  
Silbrico Corporation )  
(35 Ill. Adm. Code Part 810) )

**NOTICE OF FILING**

To: John Nittle  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
Springfield, Illinois 62794


Chris Perzan  
Office of the Attorney General  
Environmental Division  
188 West Randolph Street, 20<sup>th</sup> Floor  
Chicago, Illinois 60601

Silbrico Corporation  
c/o Elizabeth S. Harvey  
Swanson, Martin & Bell, LLP  
One IBM Plaza, Suite 3300  
330 North Wabash Avenue  
Chicago, Illinois 60611

PLEASE TAKE NOTICE that on this 24<sup>th</sup> day of October 2005, I have filed with the Office of the Clerk of the Pollution Control Board this **Response to Motion to Dismiss** of the Illinois Environmental Protection Agency in the above titled matter, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By:

  
Mark V. Gurnik  
Assistant Counsel  
Division of Legal Counsel

DATE: October 24, 2005  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276  
217-782-5544

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

OCT 24 2005

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

STATE OF ILLINOIS  
Pollution Control Board

**IN THE MATTER OF:** )  
)  
Proposed site specific waste )  
Regulation Applicable to )  
Silbrico Corporation )  
(35 Ill. Adm. Code Part 810) )

R 06-08  
(Site-specific rulemaking--Land)

**RESPONSE TO MOTION TO DISMISS**

Now comes the Illinois Environmental Protection Agency (hereinafter "Agency"), and pursuant to 35 Ill. Adm. Code 101.500(d), files its Response to the Motion To Dismiss filed by the Attorney General of the State of Illinois (hereinafter "AGO"), and states as follows:

On October 11, 2005, the Illinois EPA received a copy of the AGO's Motion to Dismiss in this proceeding. The AGO's first argument in support of its Motion to Dismiss is that the Petitioner, Silbrico Corporation (hereinafter "Silbrico"), failed to serve the AGO with a copy of the Petition for Site-Specific Rule, as required by 35 Ill. Adm. Code 102.208. The Agency reviewed the copy of the Petition that it received and found that the service list includes the Agency and the Illinois Department of Commerce and Economic Opportunity (hereinafter DCEO), as alleged by the AGO. The AGO's allegation is further supported by the Petition for Site-Specific Rule at Page 8 where Silbrico states that it only served copies on the Agency and DCEO (Petition at page 8). Based upon the Petition and service list, the Agency concurs with the AGO's argument that the Petitioner has failed to comply with the service requirements of 35 Ill. Adm. Code 102.208.

The AGO's second argument in support of its Motion to Dismiss is that a Site-Specific Rule cannot amend portions of the Environmental Protection Act (415 ILCS 5/1 et seq (2004)) ("Act"). Silbrico seeks to have the Board adopt a site-specific rule allowing it to dispose two of its waste

streams as clean construction and demolition debris at sites that are allowed to accept clean construction and demolition debris. Silbrico describes the first waste stream, the off-spec perlite, as an "industrial process waste." It describes its second waste stream, fugitive perlite from baghouse dust collection, as a "pollution control waste." The Act defines "industrial process waste" at Section 3.235 (415 ILCS 5/3.235 (2004)) and "pollution control waste" at Section 3.335 (415 ILCS 5/3.335 (2004)). It is important to note that "industrial process waste" specifically excludes "construction and demolition debris" from the definition. Furthermore, at no point does the definition for "construction and demolition debris" include "pollution control waste" within its scope.

The Agency believes that granting Silbrico's requested site-specific rule would be an expansion of the definition of "construction and demolition debris" as set forth in the Act. For that reason, the Agency concurs with the AGO's argument that the Petition, if granted, would result in an invalid rule.

**CONCLUSION:**

For the reasons stated, the Agency supports the AGO's Motion to Dismiss, and requests the Board to dismiss the Petition.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: \_\_\_\_\_

  
Mark V. Gurnik  
Assistant Counsel  
Division of Legal Counsel

DATE: October 24, 2005  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276  
217-782-5544

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

**RECEIVED**  
CLERK'S OFFICE

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD OCT 24 2005**

STATE OF ILLINOIS  
Pollution Control Board

**IN THE MATTER OF:**

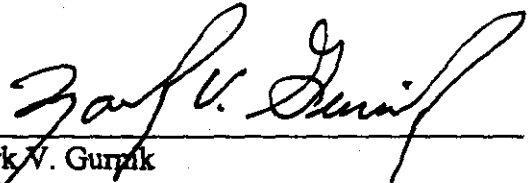
Proposed site specific waste  
Regulation Applicable to  
Silbrico Corporation  
(35 Ill. Adm. Code Part 810)

)  
)  
)  
)  
)  
)

R 06-08  
(Site-specific rulemaking--Land)

**PROOF OF SERVICE**

I, Mark V. Gurnik, as an attorney, hereby certify that I caused the attached Response to Motion to Dismiss to be served upon all parties listed on the attached Notice of Filing via first class U.S. mail from 1021 North Grand Avenue East, Springfield, Illinois, 62794-9276.



Mark V. Gurnik  
Assistant Counsel  
Division of Legal Counsel

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276  
217-782-5544

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**