

ILLINOIS POLLUTION CONTROL BOARD

January 19, 2006

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 seeking 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 generated at a manufacturing facility located in Cook County in a nonhazardous waste landfill, or alternatively, requesting that the Board determine Silbrico's waste to be analogous to "clean construction and demolition debris" which can be disposed of in a "clean fill" facility.

On September 1, 2005, the Board issued an order identifying a number of deficiencies with the petition, and directing Silbrico to file an amended petition to address those deficiencies. On October 24, 2005, Silbrico filed an amended petition. The Illinois Environmental Protection Agency (Agency) filed a recommendation to deny Silbrico's amended petition on December 16, 2005. Silbrico filed a response to the recommendation on December 30, 2005.

For reasons more fully explained below, the Board finds the amended petition deficient. The amended petition is not accepted, and the docket will be closed.

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 kernel 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 2.¹

¹ In the amended petition, Silbrico states that the amended petition addresses the informational inquiries posed by the Board in its September 1, 2005 order and is intended to be read in conjunction with Silbrico's July 19, 2005 petition. The Board will cite to the original petition as "Pet. at ____." and to the amended petition as "Am. Pet. at ____."

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; Am. 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 filed its recommendation. The Agency recommends that Silbrico’s variance petition be denied because Silbrico is currently in compliance with the Act and Board regulations regarding the disposal of its two perlite waste streams, and does not need relief to allow it to return to compliance. Rec. at 9. Further, the Agency asserts that the waste streams are not within the scope of the definition for clean construction and demolition debris as adopted by the Illinois legislature and granting the variance would expand the definition of clean construction and demolition debris beyond what is intended. *Id.*

Silbrico filed a response to the recommendation on December 30, 2005. In the response, Silbrico asserts that it has demonstrated that compliance with the current disposal requirements for its two perlite waste streams present an arbitrary or unreasonable hardship. Resp. at 4. Silbrico reserves its right to further respond at hearing and in its post-hearing filings. Resp. at 1.

DISCUSSION

The Board’s procedural rules specify the content requirements of a variance petition. *See* 35 Ill. Adm. Code 104.204. The Board’s September 1, 2005 order directed Silbrico to rectify a number of deficiencies in its petition. Of primary importance, was Silbrico’s assertion 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 that disposal of waste from facilities like Silbrico must be disposed of in non-hazardous waste landfills. Pet. at 2. Silbrico was directed to identify any statutory provisions, as well as any specific regulatory provisions from which a variance is being sought.

In the amended petition, Silbrico asserts that additional searching of the Act and the regulations reveal that no statute or regulation specifically requires that industrial process wastes and pollution control wastes must be disposed of in a non-hazardous waste landfill. Am. Pet. at

3. Silbrico believes that the provisions of the Board's waste rules must, at least by implication, require that industrial process wastes and pollution control wastes be disposed of in a non-hazardous waste landfill. *Id.*

Section 104.204 of the Board's rules provides that a variance petition must include the information contained in subsections (a) through (n) of that section, including a statement describing the regulation, requirement or order from which a variance is sought. 35 Ill. Adm. Code 104.204(a). If a variance from a regulation is sought, the petition must include the citation and the effective date of the regulation. *Id.* If a variance is sought from a requirement or order of the Board the petition must include a citation to the requirement or the Board order promulgating the requirement, including the docket number. *Id.*

Currently, Silbrico disposes of its perlite waste in a non-hazardous waste landfill. Silbrico is seeking authorization to dispose of its perlite waste at a "clean fill" facility while its petition for a site-specific rule is pending. In both the petition and the amended petition, Silbrico asserts that no statute or regulation specifically requires that industrial process wastes and pollution control wastes must be disposed of in a non-hazardous waste landfill. As a result, Silbrico's amended petition does not include a citation to a regulation or to a requirement or order of the Board from which a variance is sought. In essence, Silbrico is asking for a variance from a regulation or an order/requirement of the Board that does not exist. Accordingly, Silbrico's amended petition is deficient and will not be accepted by the Board. The Agency's recommendation to deny the variance is therefore moot, and will not be considered.

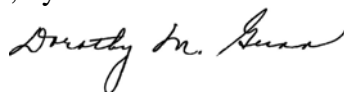
CONCLUSION

The Board finds that Silbrico's amended petition does not meet the content requirements set forth in 35 Ill. Adm. Code 104.204. The petition is not accepted, and the docket is hereby closed.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2000); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 19, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board