

ILLINOIS POLLUTION CONTROL BOARD
March 19, 1981

ALBURN, INC.,)
)
) Petitioner,)
)
) v.) PCB 81-23
) PCB 81-24
 ILLINOIS ENVIRONMENTAL PROTECTION)
 AGENCY,)
)
) Respondent.)

ORDER OF THE BOARD (by I. Goodman):

Respondent's February 26, 1981 motion to dismiss these construction and operating permit appeals, amended on March 3, 1981, is granted.

Contrary to Respondent's allegations that both petitions are procedurally inferior under the Board's Procedural Rule 502(a)-(2)(iii), the contents of the petitions are sufficient for the Board to exercise jurisdiction. However, the Board finds that its prior docketing of construction and operating permit appeals filed on October 14, 1980 (PCB 80-189 and 80-190) preempts it from considering these appeals of permits which should not have been issued by the Agency.

The permits issued on September 9, 1980 to Petitioner, once appealed to the Board, could not be nullified by Agency modification or reissuance until dismissal of the petitions. Negotiations and settlements subsequent to the lawful issuance of a permit cannot render the permit of no legal import once it has been appealed to the Board.

Unless the proceedings in PCB 80-189 and 80-190 are to be withdrawn, and modified or new permits are to be subsequently issued, the prior permits remain in full legal effect. It is axiomatic that two permits covering the same process or equipment and issued pursuant to the same legal authority cannot have simultaneous legal effect. Because neither Petitioner nor Respondent has alleged that either permit is of no legal effect, the Board concludes that the ones issued prior in time have primacy and that the later permits, assuming they exist, did not nullify the legal effect of the prior permits.

Nothing in this Order is intended to limit the lawful modification of permits by the Agency. However, if permit applicants appeal a permit to the Board, and subsequently try to settle their contentions with the Agency, then upon resolution of those contentions the appeal to the Board should be dismissed.

Petitioner's February 17, 1981 motion to consolidate is denied.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 14th day of March, 1981 by a vote of 5-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board