

**ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

NATURAL LEWWAYS CORPORATION,

Appellant,

v.

Appeal No. 08-07-EQB

**DIRECTOR, DIVISION OF WATER AND
WASTE MANAGEMENT, WV DEPARTMENT
OF ENVIRONMENTAL PROTECTION,**

Appellee.

ORDER

Natural Lifeways Corporation (“Appellant”) filed the above-styled appeal on February 4, 2008, seeking the Board to vacate and set aside Notices of Violation (“NOV”), issued July 10, 2007 and December 10, 2007, by the West Virginia Department of Environmental Protection (“WVDEP”) Division of Water and Waste Management and seeking the Board to review and revise the Waste Tire Management Rule. The Appellant also seeks review of a letter sent by the Appellee. At the time the Notice of Appeal was filed the Appellant was not represented by counsel. The Appellant later retained Britt Bernheim Ludwig, Esquire to represent it in this matter.

On June 2, 2008, the Appellee filed a Motion to Dismiss arguing that neither a NOV nor the letter from the WVDEP is an Order subject to the jurisdiction of the Board and that the Board is not authorized to review or revise the Waste Tire Management Rule. The Appellant filed a response opposing the Motion and requesting leave of the Board to allow it to amend its Notice of Appeal.

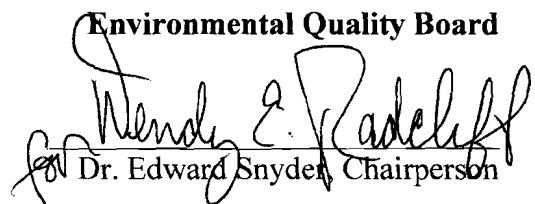
The NOVs appear to have been issued pursuant to West Virginia Code §22-15-21 and not an implied cease and desist order issued pursuant to §22-15-15. The word "Order" does not appear in the NOVs. The NOVs are clearly labeled "NOTICE OF VIOLATION" and the WVDEP made no findings of fact associated with these NOVs.

The letter from Mr. Patel of the WVDEP is not an enforcement order by the Appellee. It is a letter stating his office had reviewed three proposed plans submitted by the Appellant and determined that the WVDEP would like to pursue a particular option. Again, the WVDEP made no findings of fact associated with the letter and it did not call the letter an Order subject to the jurisdiction of the Board.

W.Va. Code § 22-15-16 provides that any person having an interest which is or may be adversely affected, or who is aggrieved by an order of the director, or by the issuance or denial of a permit or by the permit's terms or conditions, may appeal to the environmental quality board as provided in article one, chapter twenty-two-b of this code.

A Notice of Violation does not constitute an Order conferring the jurisdiction of this Board pursuant to West Virginia Code §22-15-16. In addition, the Board is a creature of statute and is not authorized by the legislature to revise or review the Waste Tire Management Act or its companion Rule. Therefore the Board finds it necessary and proper to **GRANT** the Appellee's Motion to Dismiss and hereby **DISMISSES** Appeal No. 08-08-EQB from its docket.

ENTERED and ORDERED this 3rd day of October, 2008.

Environmental Quality Board

for Dr. Edward Snyder, Chairperson