

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

**WHEELING-PITTSBURGH STEEL CORPORATION
and MOUNTAIN STATE CARBON, LLC**

APPELLANT,

v.

Appeal No. 08-01-EQB

**DIRECTOR, DIVISION OF WATER RESOURCES,
DEPARTMENT OF ENVIRONMENTAL PROTECTION,**

APPELLEE.

ORDER

Wheeling-Pittsburgh Steel Corporation and Mountain State Carbon, LLC ("Appellant") filed the above-styled appeal on March 26, 2008, seeking the Board to vacate and set aside Notice of Violation No. W-NW-SFC-112807-003 ("NOV"), issued November 28, 2007, by the West Virginia Department of Environmental Protection ("WVDEP") Division of Water and Waste Management.

On April 28, 2008, the Appellee filed a Motion to Dismiss arguing that an NOV is not an Order subject to the jurisdiction of the Board pursuant to West Virginia Code §22-11-21 and therefore the Board should dismiss the appeal from its docket. The Appellant filed a response and stated that it did not oppose the Motion but requested the Board to make a ruling on the matter.

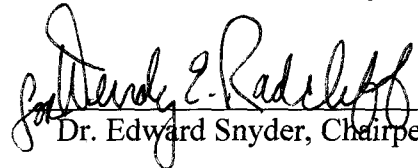
The NOV appears to have been issued pursuant to West Virginia Code §22-11-6 and not an implied cease and desist order issued pursuant to §22-11-12. The language of §22-11-12 does not appear within the NOV. The word "Order" does not appear in the NOV. The NOV is

clearly labeled "NOTICE OF VIOLATION" and the WVDEP made no findings of fact associated with this NOV.

A Notice of Violation without the requisite language, Order, and findings of fact required in §22-11-12 does not constitute an Order conferring the jurisdiction of this Board pursuant to §22-11-21. Therefore the Board finds it necessary and proper to **GRANT** the Appellee's Motion to Dismiss and hereby **DISMISSES** Appeal No. 08-01-EQB from its docket.

ENTERED and ORDERED this 22nd day of May, 2008.

Environmental Quality Board


Dr. Edward Snyder, Chairperson