

**ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

GO-MART, INC.,

Appellant,

v.

Appeal No. 09-07-EQB

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

Appellee.

ORDER

Go-Mart, Inc. ("Appellant") filed the above-styled appeal on June 5, 2009, requesting that the Board either vacate a Notice of Violation ("NOV") received by Appellant on May 7, 2009 from the Division of Water and Waste Management of the West Virginia Department of Environmental Protection ("WVDEP") or ordering WVDEP to rescind the NOV.

On August 11, 2009, the Appellee filed a Motion to Dismiss arguing that the NOV is not an order subject to the jurisdiction of the Board. The Appellant filed a Response to Appellee's Motion to Dismiss on August 12, 2009, stating that the Appellant believes that the position stated by WVDEP as to the Board's jurisdiction is correct, but noting that the Appellant does not concede any factual or legal issues with respect to the merits of the NOV.

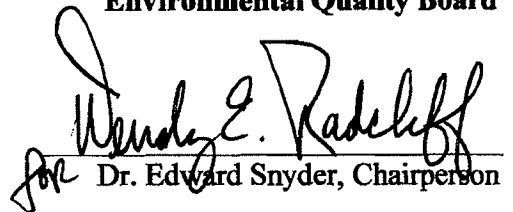
The NOV was not an order issued pursuant to West Virginia Code § 22-11-15. The word "order" does not appear in the NOV. The NOV is clearly labeled "NOTICE OF VIOLATION." In addition, the NOV contains no findings of fact, nor does it fix a time limit for Appellant to complete the remedial action.

West Virginia Code § 22-11-21 provides that any person adversely affected by an order made and entered by the director, aggrieved by the failure or refusal of the agency to act within the specified time on an application for a permit, or aggrieved by the terms and conditions of a permit may appeal to the Environmental Quality Board pursuant to article one, chapter twenty-two-b of the West Virginia Code.

A Notice of Violation does not constitute an order conferring the jurisdiction of this Board pursuant to West Virginia Code § 22-11-21. Therefore the Board finds it necessary and proper to **GRANT** the Appellee's Motion to Dismiss and hereby **DISMISSES** Appeal No. 09-07-EQB from its docket.

ENTERED and ORDERED this 17th day of August, 2009.

Environmental Quality Board


for Dr. Edward Snyder, Chairperson