IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED
November 10, 2026
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INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

J.C. BAKER & SON, INC.,
AND BAKER OIL COMPANY,
Appellants Below, Petitioners

v.) No. 26-ICA-12 (Appeal No. 22-03-EQB)

JEREMY W. BANDY, in his official capacity
as Director of the Division of Water and Waste Management,
West Virginia Department of Environmental Protection,
Appellee Below, Respondent

MEMORANDUM DECISION

Petitioners J.C. Baker & Son, Inc., and Baker Oil Company (collectively "Baker") appeal the orders entered by the West Virginia Environmental Quality Board ("EQB") on March 4, 2024, and December 11, 2025, affirming the order issued by Respondent, Jeremy W. Bandy, in his official capacity as Director of the Division of Water and Waste Management, West Virginia Department of Environmental Protection ("WVDEP") that held Baker to be the owners/operators of numerous leaking underground storage tanks ("USTs"), and ordered the companies to perform corrective and remedial actions. WVDEP filed a response.[1] Baker filed a reply.

By order dated September 18, 2026, this Court directed the parties to file supplemental briefs concerning whether this Court has jurisdiction to consider this matter in light of West Virginia Code §§ 22B-1-9 (2018), 22B-3-3(c) (2018), and 29A-5-4(b) (2021).

After considering the parties' supplemental briefing, the record on appeal, and the applicable law, we find that this Court lacks jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4(b)(4) (2026). For the reasons set forth below, a memorandum decision dismissing this appeal is appropriate under Rule 21 of the West Virginia Rules of Appellate Procedure.

Baker delivers petroleum products to small gas stations in West Virginia and has operated since 1939. In 1994, the West Virginia Legislature passed the Underground

[1] Baker is represented by R. Terrance Rodgers, Esq. WVDEP is represented by C. Scott Driver, Esq.

Storage Tank Act (W. Va. Code §§ 22-17-1 to -23), requiring UST owners to notify WVDEP about their tanks, perform inspections, and take corrective action for leaks. On April 26, 2022, WVDEP issued an order (UST-22-005) directing Baker to take corrective or remedial action regarding confirmed releases or leaks from thirteen UST sites in West Virginia. These USTs are located in seven different counties in the state. Baker appealed the order to the EQB.

At Baker's request, the EQB bifurcated the case and first heard arguments regarding whether Baker owned the USTs. In its March 4, 2024, order, the Board found that Baker owned and operated the USTs at issue. After additional arguments about liability for taking corrective and remedial actions, the Board issued an order on December 11, 2025, holding that Baker is the responsible party liable for performing the remediation required for any releases/leaks from the USTs identified in the DEP order. This appeal of the two EQB orders followed.

As we have recognized, the Intermediate Court of Appeals is a court of limited appellate jurisdiction. *See G&G Builders, Inc. v. Cent. Mut. Ins. Co.*, 252 W. Va. 635, 644, 924 S.E.2d 743, 752 (Ct. App. 2025). "It is, of course, axiomatic that a court of limited appellate jurisdiction is obliged to examine its own power to hear a particular case." *James M.B. v. Carolyn M.*, 193 W. Va. 289, 292, 456 S.E.2d 16, 19 (1995).

Baker argues that this Court was created in 2021 by the enactment of the West Virginia Appellate Reorganization Act. As part of the reorganization, many sections of the West Virginia Code were amended, including § 29A-5-4(b), a section of the Administrative Procedures Act ("APA"). The phrase "[n]otwithstanding any provision of this code to the contrary," within that particular passage of the APA, Baker contends, should be construed as showing the legislature's intent to supersede conflicting law – namely, the previously enacted provisions contained in Chapter 22B of the West Virginia Code. Thus, Baker argues that this Court has jurisdiction over all administrative appeals under the APA. We disagree.

We find that this Court does not have jurisdiction to consider the appeal of the EQB's orders of March 4, 2024, and December 11, 2025. We note that West Virginia Code § 29A-5-4(b) provides, in pertinent part, that:

> [n]otwithstanding any provision of this code to the contrary, proceedings for judicial review of any final order or decision issued after June 30, 2022, must be instituted by filing an appeal to the Intermediate Court of Appeals as provided in § 51-11-1 *et seq*. of this code. . . .

However, we also note the Legislature provided certain exceptions to the above-cited statute. Applicable to the present case, West Virginia Code § 22B-1-9(a) provides that

appeals of orders issued by several West Virginia environmental boards, including the EQB, are to be filed elsewhere. West Virginia Code § 22B-1-9(a) provides that:

> [a]ny person, or the secretary, as the case may be, adversely affected by an order made and entered by a board after an appeal hearing, held in accordance with the provisions of this chapter, is entitled to judicial review thereof. **All of the provisions of § 29A-5-4 of this code apply to and govern the review with like effect as if the provisions of § 29A-5-4 of this code were set forth in extenso in this section, with the modifications or exceptions set forth in this chapter: Provided, That the exceptions set forth in § 22B-2-3, § 22B-3-3, and § 22B-4-3 of this code apply**.

(emphasis added.) The provision that applies to the present case, and which provides an exception to this Court's jurisdiction of the present appeal, is West Virginia Code § 22B-3-3(c), which states:

> As to cases involving an order directing that any and all discharges or deposits of solid waste, sewage, industrial wastes, or other wastes, or the effluent therefrom, determined to be causing pollution be stopped or prevented or else that remedial action be taken, the petition shall be filed in the circuit court of the county in which the establishment is located or in which the pollution occurs.

Were it not for the above statute, this Court would have jurisdiction of this appeal pursuant to West Virginia Code § 29A-5-4. However, we cannot ignore the exception provided in West Virginia Code § 22B-3-3(c).[2]

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[2] Baker argues in its supplemental brief that West Virginia Code § 22B-3-3(c) does not apply in this case because here, the substance leaked was not "waste." Relying on dictionary definitions of "waste," Baker argues that refined petroleum products are not waste. We disagree. West Virginia Code § 22B-3-2(b) provides that "[a]ll the terms defined in [W. Va. Code § 22-11-3] are applicable to this article and have the meanings ascribed to them therein." West Virginia Code § 22-11-3(12) defines "other wastes" to include, among other things "oil" and "all other materials and substances not sewage or industrial wastes which may cause or might reasonably be expected to cause or to contribute to the pollution of any of the waters of the state."

Baker also briefly argues that West Virginia Code § 22B-3-3(c) does not apply to this appeal because, in Baker's words, it "applies only to orders directing that any and all discharges . . . . be stopped or prevented or else that remedial action be taken." Baker insists that the EQB order on appeal is not such an order. According to Baker, the underlying WVDEP order directed Baker to cease discharges and take remedial action, but the EQB

Baker maintains that West Virginia Code § 22B-3-3 conflicts with, or is contrary to, West Virginia Code § 29A-5-4, thereby making them unable to be harmonized, and thus, the APA supersedes the Chapter 22B provision. We do not agree, as we find that the two provisions are not in disharmony nor do they conflict. *See State v. Schober*, 251 W. Va. 34, 42, 909 S.E.2d 69, 77 (2024) (explaining that a "notwithstanding" clause in a statute only applies where a conflict with another statute exists). There are simply some carved-out exceptions to this Court's jurisdiction over certain cases that would otherwise follow the APA's provisions for judicial review.

Again, this Court has appellate jurisdiction over "[f]inal judgments, orders, or decisions of an agency or an administrative law judge entered after June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County pursuant to § 29A-5-4 or any other provision of this code." W. Va. Code § 51-11-4(b)(4) (2024). West Virginia Code § 22B-3-3(c) provides an exception to this Court's jurisdiction. As such, this Court does not have appellate jurisdiction over agency decisions appealable under earlier statutes to "the circuit court of the county in which the establishment is located or in which the pollution occurs" rather than to the Circuit Court of Kanawha County.

The dissent would find that orders involving remediation of waste that occurred in Kanawha County should be appealable to this Court, since those orders would have been appealable to the Circuit Court of Kanawha County prior to July 1, 2022. However, we read the Legislature's grant of jurisdiction to this Court in West Virginia Code § 51-11-4(b)(4) to encompass orders and decisions that, as a class, were specifically appealable to the Circuit Court of Kanawha County as a matter of right. This interpretation would *not* include statutes like West Virginia Code § 22B-3-3(c) that set forth a class of orders that,

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order now on appeal simply affirmed that order. Indeed, Baker argues that the EQB does not enter remediation orders at all.

As an initial matter, Baker's argument is flawed in that it presumes the Legislature enacted a meaningless statute. *See W. Va. Auto. v. Ford Motor Co.*, 251 W. Va. 352, 913 S.E.2d 534 (2025) ("It is always presumed that the legislature will not enact a meaningless or useless statute." (citation modified)). If West Virginia Code § 22B-3-3(c) governs appeals of EQB remediation orders, but the EQB cannot enter such orders, § 22B-3-3(c) would never apply. Moreover, Baker misreads West Virginia Code § 22B-3-3(c). West Virginia Code § 22B-3-3(c) is not restricted to appeals of EQB orders directing remedial action or the cessation of pollution. Rather, it applies to "cases involving an order directing that any and all discharges or deposits . . . be stopped or prevented or else that remedial action be taken." W. Va. Code § 22B-3-3(c). Baker concedes that the WVDEP order in this case was a remediation order, and this case involves that order. Therefore, even accepting Baker's argument that the EQB order did not directly order remediation, West Virginia Code § 22B-3-3(c) applies.

because they could be appealable to *any* circuit court depending on the facts of the case, necessarily includes some orders that would be appealable to the Circuit Court of Kanawha County.[3]

For the foregoing reasons, we dismiss this appeal of the EQB's orders dated March 4, 2024, and December 11, 2025, pursuant to West Virginia Code § 22B-3-3(c).

Dismissed as Improvidently Docketed.

ISSUED: November 10, 2026

CONCURRED IN BY:

Chief Judge Daniel W. Greear
Judge Charles O. Lorensen

DISSENTING:

Judge S. Ryan White

WHITE, J., dissenting:

While I understand the reasoning of the majority's opinion, I must respectfully dissent. West Virginia Code § 51-11-4(b)(4) provides that the ICA shall have jurisdiction over: "Final judgments, orders, or decisions of an agency or an administrative law judge entered after June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County pursuant to § 29A-5-4 or any other provision of this code[.]" Thus, if the Circuit Court of Kanawha County would have had jurisdiction over this appeal prior to the creation of the ICA, this Court currently has jurisdiction to hear this matter. Because I believe that prior

[3] Assuming for the sake of argument that both this construction and the dissent's construction of West Virginia Code § 51-11-4(b)(4) are reasonable, our reading avoids an absurd result from the dissent's alternative reading. *See In re D.K.*, 252 W. Va. 495, 503, 923 S.E.2d 425, 433 (2025) (recognizing that the absurd results doctrine "permits a court to favor an otherwise reasonable construction of the statutory text over a more literal interpretation where the latter would produce a result demonstrably at odds with any conceivable legislative purpose"). For instance, orders regarding pollution in Putnam County would remain appealable to the Circuit Court of Putnam County, but orders regarding pollution in Kanawha County would be appealable to the Intermediate Court of Appeals.

to the ICA's creation, jurisdiction would have been vested in the Circuit Court of Kanawha County, I must respectfully disagree with the majority.[4]

[4] Although reaching a different conclusion than the author of this dissent, WVDEP succinctly stated the issue as follows: "[T]he EQB order in this case was heretofore, and remains, appealable in the Circuit Court of Kanawha County, as one of the sites is located in Kanawha County. If this satisfies the language of 51-11-4(b)(4), the ICA would have jurisdiction."