

**TENNESSEE AIR POLLUTION CONTROL BOARD**

**IN THE MATTER OF:**

**AYM INC.**

**RESPONDENT**

)  
)  
) **DIVISION OF AIR POLLUTION**  
) **CASE NO. APC19-0060**  
)

**TECHNICAL SECRETARY'S ORDER AND ASSESSMENT OF  
CIVIL PENALTY**

Comes now, Michelle Walker Owenby, Technical Secretary of the Air Pollution Control Board, and states that:

**PARTIES**

**I.**

Michelle Walker Owenby is the Technical Secretary of the Air Pollution Control Board ("Board") and Director of the Division of Air Pollution Control ("Division"), Tennessee Department of Environment and Conservation ("Department").

**II.**

AYM Inc. ("Respondent") is a foreign corporation formed in Iowa and authorized to do business in the State of Tennessee. Respondent's facility address is 100 McDonald Avenue, in Elizabethton, Tennessee. Respondent's registered agent for service of process is Kenneth Eller, 147 Industrial Drive, Elizabethton, Tennessee 37643-4644.

**AUTHORITY**

**III.**

Pursuant to Tennessee Code Annotated ("Tenn. Code Ann.") § 68-201-116, the Technical Secretary may assess a civil penalty of up to TWENTY-FIVE THOUSAND DOLLARS (\$25,000) per day for each day of violation of the Tennessee Air Quality Act ("Act") or any rules or regulations promulgated thereunder ("Division Rules") against any person who violates said Act or Division Rules, and/or the Technical Secretary may issue an order for correction to the responsible person when

provisions of the Act or Division Rules are violated. In addition, such person may also be liable for any damages to the State resulting therefrom.

**IV.**

Respondent is a “person” within the meaning of Tenn. Code Ann. § 68-201-102 and has violated the Division Rules as hereinafter stated.

**V.**

“Air contaminant” means particulate matter, dust, fumes, gas, mist, smoke, vapor, or any combinations thereof, as stated in Tenn. Code Ann. § 68-201-102.

**VI.**

“Air contaminant source” means any and all sources of emission of air contaminants, whether privately or publicly owned or operated, as stated in Tenn. Code Ann. § 68-201-102.

**VII.**

Respondent operates an “air contaminant source” within the meaning of Tenn. Code Ann. § 68-201-102.

**FACTS**

**VIII.**

On or about December 21, 2018, the Division received a construction permit application (“Application”) from Respondent for two (2) spray paint booths. The Application indicated that this was new construction and that the starting date of construction would be as soon as the permit is issued.

**IX.**

On or about April 17, 2019, Respondent submitted a premature Startup Certification to the Division for a surface coating operation consisting of paint booths with exhaust filter control. The Startup Certification indicated that April 22, 2019, was the date of startup for this source. This submittal

was in response to Respondent's review of "draft" construction permit number 975977 ("Permit 975977").

**X.**

On April 18, 2019, a telephone conversation between Respondent and the Division revealed that Respondent had actually begun construction of the air contaminant source on March 4, 2019.

**XI.**

On April 18, 2019, the Technical Secretary issued Permit 975977 to Respondent for a surface coating operation consisting of paint booths with exhaust filter control.

**XII.**

On April 24, 2019, the Division issued a Notice of Violation to Respondent for constructing the surface coating operation consisting of paint booths with exhaust filter control prior to receiving the construction permit.

**XIII.**

On or about April 29, 2019, Respondent submitted a Startup Certification to the Division for a surface coating operation consisting of paint booths with exhaust filter control. The Startup Certification indicated that April 26, 2019, was the date of startup for this source.

**VIOLATION**

**XIV.**

By constructing an air contaminant source not specifically exempted by Tenn. Comp. R. & Regs. 1200-03-09-.04 without first receiving the necessary construction permit, as discussed herein, Respondent has violated Tenn. Comp. R. & Regs. 1200-03-09-.01(1)(a), which states:

Except as specifically exempted in Rule 1200-03-09-.04, no person shall begin the construction of a new air contaminant source or the modification of an air contaminant source which may result in the discharge of air contaminants without first having applied

for and received from the Technical Secretary a construction permit or, if applicable, submitted a notice of intent and obtained a notice of coverage or authorization, for the construction or modification of such air contaminant source.

## RELIEF

### XV.

WHEREFORE, PREMISES CONSIDERED, I, Michelle Walker Owenby, Technical Secretary, under the authority vested in me, hereby ORDER as follows:

1. Respondent is assessed a CIVIL PENALTY in the amount of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500)** for the violation of Division Rules, as discussed herein.

2. Respondent shall pay the assessed **CIVIL PENALTY** in full as follows: Payments of the civil penalty and/or damages shall be made payable to the "Treasurer, State of Tennessee" and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10th Floor, Nashville, Tennessee 37243. The case number, **APC19-0060**, should be clearly shown on the check or money order to ensure that the payment is properly credited. Payment shall be made on or before the thirty-first (31st) day after receipt of this ORDER and ASSESSMENT.

The Technical Secretary does not expressly or implicitly waive her authority pursuant to any provision of the Act or Division Rules by issuing this ORDER AND ASSESSMENT OF CIVIL PENALTY. Failure to comply with any of the requirements of this ORDER could lead to further enforcement actions which may include additional civil penalties, assessment of damages and/or recovery of costs.

## NOTICE OF RIGHTS

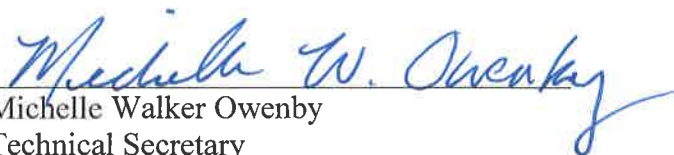
Tenn. Code Ann. §§ 68-201-108(a) and 68-201-116(b), allow Respondent to appeal this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing must be RECEIVED by the Technical Secretary within THIRTY (30) DAYS of the date Respondent received this Order and Assessment or this Order and Assessment becomes final (not subject to review).

If an appeal is filed, an initial hearing of this appeal will be conducted by an Administrative Law Judge (“ALJ”) as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 68-201-108(a), Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Tenn. Comp. R. & Regs. 1360-04-01 *et seq.* (the Department of State’s Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies). Such hearings are legal proceedings in the nature of a trial. Individual respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. **Artificial respondents (corporations, limited partnerships, limited liability companies, etc.) cannot engage in the practice of law and therefore may only pursue an appeal through an attorney licensed to practice law in Tennessee.** Low-income individuals may be eligible for representation at reduced or no cost through a local bar association or legal aid organization.


At the conclusion of any initial hearing the ALJ has the authority to affirm, modify, or deny this Order and Assessment. This includes the authority to modify (decrease or increase) the penalty within the statutory confines of Tenn. Code Ann. § 68-201-116 (up to \$25,000 per day per violation). Furthermore, the ALJ on behalf of the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of the ALJ and a court reporter.

Any petition for review (appeal) must be directed to the Technical Secretary, Tennessee Division of Air Pollution Control, c/o Jenny L. Howard, General Counsel, Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 2nd Floor, Nashville, Tennessee 37243. Payments of the civil penalty and/or damages shall be made payable to the “Treasurer, State of Tennessee” and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10th Floor, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Attn: Tammy Gambill, Division of Air Pollution Control, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 15th Floor, Nashville, Tennessee 37243 or via e-mail to [air.pollution.control@tn.gov](mailto:air.pollution.control@tn.gov). Attorneys should contact the undersigned counsel of record. **The case number, APC19-0060, should be written on all correspondence regarding this matter.**

Issued by the Technical Secretary, Tennessee Air Pollution Control Board, Department of Environment and Conservation, on this 25<sup>th</sup> day of June, 2019.

  
Michelle Walker Owenby  
Technical Secretary  
Tennessee Air Pollution Control Board

Reviewed by:

  
William Freeman Miller  
BPR # 028826  
Assistant General Counsel  
Department of Environment & Conservation  
312 Rosa L. Parks Avenue, 2nd Floor  
Nashville, Tennessee 37243  
(615) 532-0136  
william.f.miller@tn.gov