

**TENNESSEE AIR POLLUTION CONTROL BOARD**

**IN THE MATTER OF:**

**AYM INC.**

**RESPONDENT**

)  
)  
) **DIVISION OF AIR POLLUTION**  
)  
) **CASE NO. APC19-0094**  
)

**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, at the same address.

**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 February 20, 2015, the Technical Secretary issued operating permit number 069106P (“Permit 069106P”), emission source reference number 10-0152-01, to Respondent for dry machining operations.

**IX.**

Condition 10 of Permit 069106P states, in pertinent part:

The permittee must prepare and submit annual certifications and compliance reports for this source as follows:

Each annual certification and compliance report must be prepared and submitted no later than January 31 of each year, and will cover the preceding annual reporting period from January 1 through December 31. The annual certification and compliance report must be kept in a readily-accessible location for inspection

by the Technical Secretary or his representative. If an exceedence [sic] has occurred during the year, each annual certification and compliance report must be submitted along with the exceedence [sic] reports, and postmarked or delivered no later than January 31.

**X.**

On or about April 8, 2019, while reviewing Respondent's files, the Division discovered that the annual certification and annual compliance reports ("Reports") required by condition 10 of Permit 069106P had not been submitted for calendar years 2016, 2017, and 2018. On April 8, 2019, the Division sent an e-mail to Respondent requesting that these Reports be submitted within the next 30 days.

**XI.**

On May 20, 2019, the Division sent a second e-mail to Respondent requesting that these Reports be submitted within the next 30 days.

**XII.**

On or about May 20, 2019, the Division received Respondent's Reports for 2016, 2017, and 2018. These Reports were approximately 839 days late, 474 days late, and 109 days late, respectively. Therefore, Respondent was in violation of condition 10 of Permit 069106P.

**XIII.**

On June 4, 2019, the Division issued a Notice of Violation to Respondent for the violations described in paragraphs **XII**.

**VIOLATIONS**

**XIV.**

By failing to comply with a condition of an operating permit as discussed herein, the Respondent has violated Tenn. Comp. R. & Regs. 1200-03-09-.02(6), which states, in pertinent part:

Operation of each air contaminant source shall be in accordance with the provisions and stipulations set forth in the operating permit, all provisions of these regulations, and all provisions of the Tennessee Air Quality Act.

**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 **\$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, **APC19-0094**, 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 31<sup>st</sup> 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 30 DAYS of the date Respondent received this Order and Assessment or this Order and Assessment becomes final (not subject to review).

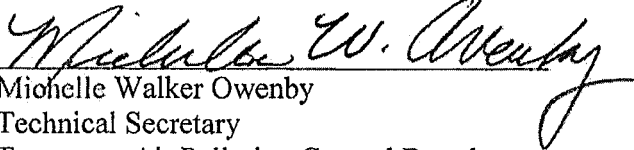
If an appeal is filed, an initial hearing of this appeal will be conducted by an Administrative Law Judge ("ALJ") as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 68-201-108(a), Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Tenn. Comp. 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, APC19-0094, 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 11<sup>th</sup> day of September, 2019.

  
Michelle Walker Owenby  
Technical Secretary  
Tennessee Air Pollution Control Board

Reviewed by:

  
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