

**STATE OF TENNESSEE**  
**DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF UNDERGROUND</b>
	)	<b>STORAGE TANKS</b>
	)	
	)	
<b>MURPHY OIL USA, INC.</b>	)	<b>CASE NO. UST22-0167</b>
	)	
	)	
<b>RESPONDENT</b>	)	<b>FACILITY: MURPHY USA NO. 7316</b>

**ORDER AND ASSESSMENT**

David W. Salyers, P.E., Commissioner of the Tennessee Department of Environment and Conservation, states:

**PARTIES**

**I.**

David W. Salyers, P.E. ("Commissioner"), is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation ("Department") and is charged with administering and enforcing the Tennessee Petroleum Underground Storage Tank Act ("Act"), Tenn. Code Ann. §§ 68-215-101 to -204. Stanley R. Boyd is the duly appointed Director ("Director") of the Division of Underground Storage Tanks ("Division") and has received written delegation from the Commissioner to administer and enforce the Act.

**II.**

Murphy Oil USA, Inc. ("Respondent") is a corporation created in Delaware and is properly registered to conduct business in Tennessee. The Respondent is the registered owner of three underground storage tank ("UST") systems located in Fentress County at 539 Central Avenue East, Jamestown, Tennessee 38556—control map 063C, group E, parcel 028.01 ("Facility"). Service of process may be made on the Respondent's Registered Agent, C T Corporation System, at 300 Montvue Road, Knoxville, Tennessee, 37919-5546.

## **JURISDICTION**

### **III.**

When the Commissioner finds upon investigation that any provision of the Act is not being carried out, and that effective measures are not being taken to comply with the provisions of the Act, the Commissioner may issue an Order for correction to the responsible party, and this Order shall be complied with within the time limit specified in the Order. Tenn. Code Ann. § 68-215-114. If this Order becomes final, the Commissioner may affix a notice of petroleum delivery prohibition (“red tag”) to the facility fill ports and/or dispensers and give notice on the Department’s website of petroleum delivery prohibition. Tenn. Code Ann. § 68-215-106(c). Further, the Commissioner is authorized to assess civil penalties against any person who violates or fails to comply with the Act. Tenn. Code Ann. § 68-215-121. Rules governing USTs have been promulgated pursuant to Tenn. Code Ann. § 68-215-107(f) and are effective as Tenn. Comp. R. & Regs. 0400-18-01-.01 to -.17 (“Rules”).

### **IV.**

The Respondent is a person as defined at Tenn. Code Ann. § 68-215-103(11) and a responsible party as defined at Tenn. Code Ann. §§ 68-215-103(17)(A)(i) and (ii) and has violated the Act as hereinafter stated.

## **FACTS**

### **V.**

On February 6, 2006, the Division received a Notification for Underground Storage Tanks form, signed by Kevin Roussel, listing the Respondent as the owner of the three UST systems located at 523 East Central Avenue,<sup>1</sup> Jamestown, Tennessee 38556. The facility ID number is 4-250082.

### **VI.**

On June 27, 2022, Division personnel contacted Respondent’s Authorized Representative, Brad Weinischke, by email and scheduled a compliance inspection to be conducted on July 6, 2022. On June 30, 2022, Division personnel also sent a letter confirming the inspection date.

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<sup>1</sup> Although this is the address listed on the Notification Form, publicly available property assessor records for the state of Tennessee indicate that the correct street address for the Facility and UST systems is 539 Central Avenue East, Jamestown, Tennessee 38556.

## **VII.**

On July 6, 2022, Division personnel performed a compliance inspection at the subject facility. The inspector discovered the following violations:

- Violation #1: Failure to install an adequate overfill prevention system, in accordance with Rule 0400-18-01-.02(3)(a)1.(ii). Specifically, at the time of the inspection, the overfill operability test from July 17, 2020, indicated the ball floats were set for greater than 90% for Tank 1A (20,000-gallon Regular), Tank 2A (12,000-gallon Diesel), and Tank 2B (8,000-gallon Premium).
- Violation #2: Failure to install, calibrate, operate, or maintain release detection method for piping in accordance with manufacturer's instructions, in accordance with Rule 0400-18-01-.04(1)(a)2. Specifically, at the time of the inspection, the mechanical line leak detector test from June 21, 2022, indicated a failing result for the Tank 1A (Regular-UNL 2) leak detector.
- Violation #3: Failure to report a change of status for a UST system within 30 days, in accordance with Rule 0400-18-01-.03(1)(g). Specifically, at the time of the inspection, it was discovered that the piping release detection method was annual line leak detector and annual line tightness testing, instead of Interstitial Monitoring (as registered).

## **VIII.**

On July 19, 2022, Division personnel sent a Results of Compliance Inspection – Action Required letter to the Respondent's Authorized Representative, Brad Weinischke. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by August 18, 2022, to document correction of the violations. The letter also required the Respondent to successfully complete operator retraining by October 17, 2022.

## **IX.**

On August 26, 2022, Division personnel sent a Results of Compliance Inspection – No Response Received letter to Mr. Weinischke. The letter required the Respondent to submit documentation to the Division by September 25, 2022, to document correction of the violations discovered during the July inspection.

## **X.**

On September 30, 2022, Division personnel sent a Follow-up Letter and Enforcement Action Notice letter to Mr. Weinischke. The letter cited the violations discovered during the inspection and the Respondent's failure to return to compliance.

## **XI.**

On October 28, 2022, Division personnel sent a Notice of Violation certified letter to the Respondent. The letter cited the violations discovered during the inspection, as well as the following violation for failing to complete operator retraining by the October 17, 2022, deadline:

Violation #4: Failure to successfully complete retraining to the appropriate level of operator Class within a time frame determined by the Division when a significant operational compliance violation is discovered, in accordance with Rule 0400-18-01-.16(4).

The letter required the Respondent to submit documentation to the Division by November 28, 2022, to document correction of the violations. U.S. Postal Service tracking records delivery on November 3, 2022.

## **XII.**

The Respondent failed to meet the November 28, 2022, deadline, and thereby committed the following additional violation:

Violation #5: Failure to cooperate with the Division in accordance with Rule 0400-18-01-.03(2).

## **XIII.**

On January 13, 2023, Division personnel received an email containing compliance documentation from the Authorized Representative. The following documentation was received:

- A passing precision line leak detector test report conducted on June 29, 2022, by Daniel Huffaker with the service provider company DATZ UST Management.
- An image of the first page of the overfill operability test form. The image was not readable and appeared to show that only one overfill device had been tested, instead of each overfill device for all three tanks.

The documentation confirmed that the violation #2 discovered during the inspection had been addressed.

Later that same day, Division personnel emailed the authorized representative to request that a clearer copy of the overfill operability test be sent to the Division. The email clarified that all three overfill devices needed to be tested.

#### **XIV.**

On January 16, 2023, Division personnel received an email containing compliance documentation from the Authorized Representative. The following documentation was received:

- A copy of the amended notification form changing the piping release detection method to annual line leak detector and annual line tightness testing.

The documentation confirmed that the violation #3 discovered during the inspection had been addressed.

#### **XV.**

On January 26, 2023, Division personnel received an email containing compliance documentation from the Authorized Representative. The following documentation was received:

- A UST overfill prevention operability test for Tank 2B (8,000-gallon Premium), conducted on January 25, 2023, by Daniel Bradley with the service provider company SPATCO.
  - A review of the test result showed that the overfill prevention operability test had been done incorrectly and the results could not be accepted.

#### **XVI.**

On January 27, 2023, Division personnel emailed the Authorized Representative about the incorrect entries in the overfill prevention operability test and requested that the technician correct the incorrect entries. Later that same day, Division personnel received an email containing compliance documentation from the Authorized Representative. The following documentation was received:

- A corrected passing UST overfill prevention operability test for Tank 2B (8,000-gallon Premium), conducted on January 25, 2023, by Mr. Bradley.

#### **XVII.**

On May 12, 2023, Division personnel received an email containing compliance documentation from another of the Respondent's Authorized Representative, Amanda Boshears. The following documentation was received:

- A UST overfill prevention operability test for Tank 1A (20,000-gallon Regular) and Tank 2A (12,000-gallon Diesel), conducted on November 29, 2022, by Andrew Paul with the service provider company SPATCO.
  - A review of the test result showed that the overfill prevention operability test had been done incorrectly and the results could not be accepted.

Later the same day, Division personnel emailed both Authorized Representatives about the incorrect entries in the November 29, 2022, overfill prevention operability test and requested that the technician correct the incorrect entries.

**XVIII.**

On July 27, 2023, Division personnel verified that the Respondent's Authorized Representative Mr. Weinischke had completed the Class A and Class B Operator retraining and had been designated as the Class A and B Operator for the facility.

**XIX.**

To date, the Respondent has not cooperated and remains in non-compliance with the Division.

**VIOLATIONS**

**XX.**

By failing to operate a petroleum underground storage tank system in compliance with the Act, the Respondent violated Tenn. Code Ann. § 68-215-104(2), which states:

It is unlawful to: Construct, alter or operate a petroleum underground storage tank in violation of this chapter or the rules or regulations established pursuant thereto[.]

**XXI.**

By failing to have an adequate overfill prevention system, the Respondent has violated Rule 0400-18-01-.02(3)(a)1.(ii), which states:

0400-18-01-.02 UST Systems: Installation and Operation.

(3) Spill and overfill prevention.

(a) Equipment.

1. Except as provided in part 2 of this subparagraph, to prevent spilling and overfilling associated with petroleum transfer to the UST system, owners and/or operators shall use the following spill and overfill prevention equipment:

(ii) Overfill prevention equipment that will:

(I) Automatically shut off flow into the tank when the tank is no more than ninety-five percent (95%) full;

- (II) Alert the transfer operator when the tank is no more than ninety percent (90%) full by restricting the flow into the tank or triggering a high-level alarm; or
- (II) Restrict flow thirty (30) minutes prior to overfilling, alert the operator with a high-level alarm one (1) minute before overfilling, or automatically shut off flow into the tanks so that none of the fittings located on top of the tank are exposed to product due to overfilling.

**XXII.**

By failing to successfully complete retraining to the appropriate level of operator class within a time frame determined by the division when a significant operational compliance violation is discovered, the Respondent violated 0400-18-01-.16(4), which states:

0400-18-01-.16 Certified Operator Program.

(4) Retraining

If the division determines that the UST system is out of compliance at any time, then successful completion of operator retraining appropriate to the level of the operator Class must be completed within 30 days from the date the division determines that the UST system is out of compliance.

**XXIII.**

By failing to cooperate with the Division by failing to provide documents, testing, or monitoring records to the Division, the Respondent has violated Rule 0400-18-01-.03(2), which states:

0400-18-01-.03 Notification, Reporting, and Record Keeping.

(2) Reporting and record keeping.

Owners, operators, and/or other responsible parties of UST systems shall cooperate fully with inspections, monitoring and testing conducted by the Division, as well as requests for document submission, testing, and monitoring by the owner, operator, and/or other responsible parties in accordance with the Tennessee Petroleum Underground Storage Tank Act T.C.A. §§ 68-215-101 et seq.

## ORDER AND ASSESSMENT

### XXIV.

Pursuant to the authority vested by Tenn. Code Ann. §§ 68-215-107, -114, and -121 of the Act, the Respondent is issued the following Order:

1. If the Respondent fails to comply with this order and/or file an appeal within the timeframes stated below, **the above-referenced facility will be placed on the Delivery Prohibition List and the fill ports and dispensers will be red tagged until compliance is achieved.** Tenn. Code Ann. § 68-215-106(c).
2. The Respondent shall perform all actions necessary to correct the outstanding violations and to bring the facility into full compliance with regulatory requirements. The Respondent shall provide the Division with documentation of the corrective action performed; the documentation shall be sufficient to establish a return to full compliance.
  - i. On or before the thirty-first day after receipt of this Order, the Respondent shall perform a new overfill prevention equipment operability test for Tank 1A (20,000-gallon Regular) and Tank 2A (12,000-gallon Diesel) and submit the results to the Division for review.
3. On or before the thirty-first day after receipt of this Order, the Respondent shall pay a total civil penalty in the amount of \$7,200.00. This amount consists of the following:
  - i. Three violations assessed at \$2,000.00 per tank for a total of \$6,000.00 failing to have overfill protection equipment that will alert the transfer operator when the tank is no more than ninety percent (90%) full by restricting the flow into the tank or triggering a high-level alarm.
  - ii. One violation assessed at 20% of the civil penalty for all outstanding violations for a total of \$1,200.00 for failing to provide documents, testing, or monitoring records to the Division.
4. 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.
5. With the exception of the deadline for filing the appeal of this Order, the Director may extend the compliance dates contained within this Order for a fixed time period for good cause shown by the Respondent. To be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay. The Director will reply to the Respondent's



request in writing, establishing a new deadline for compliance with this Order. Should the Respondent fail to meet the requirements of this Order by the new deadline, then any associated civil penalty shall be due within 30 days after that deadline. The request for an extension of time does not change the deadline to submit an appeal. See Notice of Rights.

### **RESERVATION OF RIGHTS**

In issuing this Order and Assessment, the Department does not implicitly or expressly waive any provision of the Act or the regulations promulgated thereunder or the authority to assess costs, civil penalties, and/or damages incurred by the State against the Respondent. The Department expressly reserves all rights it has at law and in equity to order further corrective action, assess civil penalties and/or damages, and to pursue further enforcement action including, but not limited to, monetary and injunctive relief. Compliance with this order will be considered as a mitigating factor in determining the need for future enforcement action(s).

### **NOTICE OF RIGHTS**

The Respondent may appeal this Order and Assessment. Tenn. Code Ann. § 68-215-119. To do so, a written petition setting forth the reasons for requesting a hearing must be received by the Commissioner within 30 days of the date the Respondent received this Order and Assessment or this Order and Assessment will become final.

If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Law Judge (ALJ) as a contested case hearing. Tenn. Code Ann. § 68-215-119; Tenn. Code Ann. §§ 4-5-301 to -326 (the Uniform Administrative Procedures Act); Tenn. Comp. R. & Regs. 1360-04-01 (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 the Order and Assessment. 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 Commissioner of the Tennessee Department of Environment and Conservation, 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 37243-1548. The petition may be mailed or delivered to this address, or it may be sent to [TDEC.Appeals@tn.gov](mailto:TDEC.Appeals@tn.gov). 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, 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 Mark Brinton, Nashville Environmental Field Office, 711 R. S. Gass Boulevard, Nashville, Tennessee 37216. Attorneys should contact the undersigned counsel of record. **The case number, UST22-0167, should be written on all correspondence regarding this matter.**

Issued by the Director of the Division of Underground Storage Tanks, Tennessee Department of Environment and Conservation, on this 11th day of August, 2023.



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Stanley R. Boyd, Director  
Division of Underground Storage Tanks  
TN Department of Environment and Conservation

Reviewed by:

*Samantha Buller-Young*  
Samantha Buller-Young (Aug 11, 2023 16:38 EDT)

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Samantha Buller-Young  
BPR # 040466  
Assistant Counsel  
Department of Environment & Conservation  
Knoxville Environmental Field Office  
3711 Middlebrook Pike  
Knoxville, TN 37921  
p. (865) 440-8303  
[Samantha.Buller-Young@tn.gov](mailto:Samantha.Buller-Young@tn.gov)