

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NUMBER: 2004-1091-PST-E TCEQ ID NOS.: RN102265972 AND 65411 CASE NO.: 17689
RESPONDENT NAME: DUININCK BROTHERS, INC. DBA DUININCK BROTHERS CONSTRUCTION COMPANY

ORDER TYPE:

<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:

<input type="checkbox"/> AGRICULTURE	<input type="checkbox"/> AIR	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE	<input type="checkbox"/> MUNICIPAL SOLID WASTE
<input type="checkbox"/> OCCUPATIONAL CERTIFICATION	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> RADIOACTIVE WASTE
<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL	<input type="checkbox"/> USED OIL
<input type="checkbox"/> USED OIL FILTER	<input type="checkbox"/> WATER QUALITY		

SITE WHERE VIOLATION(S) OCCURRED: 4701 North Highway 377, Roanoke, Denton County

TYPE OF OPERATION: Road construction equipment storage and maintenance company with underground storage tanks for refueling activities

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no previous complaints. There is no record of additional pending enforcement actions regarding this facility.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on March 26, 2007. No comments were received.

CONTACTS AND MAILING LIST:

- TCEQ Attorney:** Mr. Robert R. Mosley, Litigation Division, MC 175, (512) 239-0627; Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873
- TCEQ Enforcement Coordinator:** Ms. Judy Kluge, Enforcement Division, Section II, MC R-4, (817) 588-5825
- TCEQ Regional Contact:** Mr. Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5903
- Respondent:** Mr. Kyle Duininck, Registered Agent, Duininck Brothers, Inc. dba Duininck Brothers Construction Company, 4701 North Highway 377, Roanoke, Texas 76262
- Respondent's Attorney:** Ms. Jennifer Willingham, Brown, Dean, Wiseman, Liser, Proctor & Hart L.L.P., 200 Fort Worth Club Building, 306 West 7th Street, Fort Worth, Texas 76102-4905

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
 MAY 14 PM 4: 24
 CHIEF CLERK OFFICE

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: ___ Complaint <input checked="" type="checkbox"/> Routine ___ Enforcement Follow-up ___ Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date(s) of Investigation(s) Relating to this Case: June 10, 2004</p> <p>Date(s) of NOV(s)/NOE(s) Relating to this Case: July 16, 2004 (NOE)</p> <p>Background Facts:</p> <p>An EDRP was filed on February 8, 2005. The Respondent filed an answer on February 24, 2005 and the case was referred to SOAH on April 15, 2005. The parties exchanged discovery and decided to discuss settlement options. After lengthy negotiations, an Agreed Order was sent to the Respondent's attorney for signature on February 7, 2006. The signed Agreed Order was received on February 27, 2006.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>PST:</p> <p>1. Failed to provide proper release detection for the product piping associated with UST systems [30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a)].</p> <p>2. Failed to ensure that the Underground Storage Tank Registration & Self-Certification form is fully and accurately completed, and submitted to the agency in a timely manner [30 TEX. ADMIN. CODE § 334.8(c)(4)(B) and TEX. WATER CODE § 26.346(c)(3)].</p> <p>3. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before receiving a delivery of a regulated substance into the Underground Storage Tanks (USTs). Specifically, fuel delivery invoices indicated that the eleven deliveries of gasoline and/or diesel fuel were received on the following dates: April 27, 2004, March 30, 2004, February 18, 2004, January 23, 2004, December 3, 2003, October 21, 2003, October 13, 2003, October 10, 2003, September 26, 2003, September 8, 2003 and July 14, 2003 [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].</p> <p>4. Failed to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first. The verification shall include all functional tests that were required for the initial system test, except for TXP-101 and TXP-103, which are required every 3 years [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Initial Calculated Penalty: \$7,500</p> <p>Total Assessed: \$6,000*</p> <p>Total Deferred: \$0 ___ Expedited Settlement ___ Financial Inability to Pay</p> <p>Total Paid to General Revenue: \$6,000</p> <p>The Respondent has paid the assessed penalty in full.</p> <p>Site Compliance History Classification: ___ High <input checked="" type="checkbox"/> Avg. ___ Poor</p> <p>Person Compliance History Classification: ___ High <input checked="" type="checkbox"/> Avg. ___ Poor</p> <p>Major Source: ___ Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>* Explanation of Initial Calculated Penalty Reduction: Penalty is reduced to \$6,000 due to risk of litigation.</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility in response to this enforcement action:</p> <ol style="list-style-type: none"> 1. Successfully conducted a product piping tightness test, and the required Stage II compliance testing, on July 2, 2004. 2. Completed the required UST Registration and Self-Certification form on June 22, 2004. 3. Obtained a TCEQ delivery certificate on June 23, 2004.



DATES

PCW Screening Priority Due EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent
 Reg. Ent. Ref. No.
 Additional ID No(s)
 Facility/Site Region Major/Minor Source

CASE INFORMATION

Enf./Case ID No. No. of Violations
 Docket No. Order Type
 Case Priority Enf. Coordinator
 Media Program(s) EC's Team
 Multi-Media
 Admin. Penalty \$ Limit Minimum Maximum

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History Subtotals 2, 3, & 7

Notes

Culpability Subtotal 4

Notes

Good Faith Effort to Comply Subtotal 5

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input checked="" type="text" value="x"/>	<input type="text"/>
N/A	<input type="text"/>	<i>(mark with a small x)</i>

Notes

Economic Benefit Subtotal 6

Total EB Amounts *Capped at the Total EB \$ Amount

Approx. Cost of Compliance

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Reduction Adjustment

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

Screening Date 23-Jul-2004

Docket No. 2004-1091-PST-E

PCW

Respondent Duinick Bros, Inc. dba Duinick Brothers Construction Company

ision 2 (September 2002)

Case ID No. 17689

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN102265972

Additional ID No(s) 0

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Site Address 4701 North Highway 377, Roanoke, Denton County, Texas

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment due to average performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 23-Jul-2004

Docket No. 2004-1091-PST-E

PCW

Respondent Duinick Bros, Inc. dba Duinick Brothers Construction Company

ision 2 (September 2002)

Case ID No. 17689

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN102265972

Additional ID No(s) 0

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(2)

Secondary Rule Cite(s) Tex. Water Code § 26.3475(a)

Violation Description Failure to provide proper release detection for the product piping associated with UST systems.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

		Harm			
Release		Major	Moderate	Minor	
OR	Actual				Percent 25%
	Potential	X			

>> Programmatic Matrix

		Falsification	Major	Moderate	Minor	
						Percent

Matrix Notes Failure to provide release detection for the UST system could result in the release of significant amount of pollutants that would exceed levels that are protective of human health and the environment.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 1

	daily	
	monthly	
mark only one	quarterly	X
use a small x	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event is recommended from the June 10, 2004 investigation date to the July 12, 2004 compliance date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$1,875

This violation Final Assessed Penalty (adjusted for limits) \$1,875

Economic Benefit Worksheet

Respondent: Duinick Bros, Inc. dba Duinick Brothers Construction Company
Case ID No.: 17689
Reg. Ent. Reference No.: RN102265972
Additional ID No(s): 0
Media [Statute]: Petroleum Storage Tank
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Product Piping Tightness Test	\$450	10-Jun-2004	12-Jul-2004	0.1	\$2	n/a	\$2
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Approximate cost of testing piping tightness for the UST system. The date required is the investigation date and the final date is the compliance date compliance.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance \$450
TOTAL \$2

Screening Date 23-Jul-2004

Docket No. 2004-1091-PST-E

PCW

Respondent Duinick Bros, Inc. dba Duinick Brothers Construction Company

ision 2 (September 2002)

Case ID No. 17689

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN102265972

Additional ID No(s) 0

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 2

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(4)(B)

Secondary Rule Cite(s) Tex. Water Code § 26.346(c)(3)

Violation Description Failure to ensure that the Underground Storage Tank Registration & Self-Certification form is fully and accurately completed, and submitted to the agency in a timely manner.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

		Harm			
Release		Major	Moderate	Minor	
OR	Actual				Percent
	Potential				

>> Programmatic Matrix

		Falsification	Major	Moderate	Minor	
			X			Percent 10%
Matrix Notes	100% of the rule requirement was not met.					

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
single event	X	

Violation Base Penalty \$1,000

One single event is recommended based on the findings during the investigation conducted on June 10, 2004.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$750

This violation Final Assessed Penalty (adjusted for limits) \$750

Economic Benefit Worksheet

Respondent Duinick Bros, Inc. dba Duinick Brothers Construction Company
Case ID No. 17689
Reg. Ent. Reference No. RN102265972
Additional ID No(s). 0
Media [Statute] Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$50	10-Jun-2004	22-Jun-2004	0.0	\$0	n/a	\$0

Notes for DELAYED costs: This is an estimated cost to complete and submit a UST registration and self-certification form. The date required is the investigation date and the final date is the compliance date.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance \$50
TOTAL \$0

Screening Date 23-Jul-2004

Docket No. 2004-1091-PST-E

PCW

Respondent Duinick Bros, Inc. dba Duinick Brothers Construction Company

ision 2 (September 2002)

Case ID No. 17689

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN102265972

Additional ID No(s) 0

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 3

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(A)(i)

Secondary Rule Cite(s) Tex. Water Code § 26.3467(a)

Violation Description Failure to make available to a common carrier a valid, a current TCEQ delivery certificate before receiving a delivery of a regulated substance into the Underground Storage Tanks (USTs). Specifically, review of fuel delivery invoices indicated that the facility had received eleven deliveries of a regulated substance without a delivery certificate.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (5%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent.

Matrix Notes Failure to provide a common carrier with a delivery certificate prior to receiving fuel could allow the deposit of a regulated substance into an unregistered UST and expose human health or the environment to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors.

Adjustment -\$9,500

Base Penalty Subtotal \$500

Violation Events

Number of Violation Events 11

Frequency selection table with options: daily, monthly, quarterly, semiannual, annual, single event (checked).

Violation Base Penalty \$5,500

Eleven single events are recommended based on the deliveries documented during the investigation conducted on June 10, 2004.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$4,125

This violation Final Assessed Penalty (adjusted for limits) \$4,125

Economic Benefit Worksheet

Respondent Duinick Bros, Inc. dba Duinick Brothers Construction Company
Case ID No. 17689
Reg. Ent. Reference No. RN102265972
Additional ID No(s). 0
Media [Statute] Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	27-Apr-2004	13-Jul-2004	0.2	\$1	n/a	\$1

Notes for DELAYED costs
 This is an estimated cost to ensure that a valid, current TCEQ delivery certificate is presented to a common carrier before delivery of a regulated substance into the UST can be accepted, from the first date of violation through the date the investigator revisited the facility and documented that the facility had ceased accepting fuel until a valid, current TCEQ delivery certificate has been obtained.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$100

TOTAL \$1

Screening Date 23-Jul-2004

Docket No. 2004-1091-PST-E

PCW

Respondent Duinick Bros, Inc. dba Duinick Brothers Construction Company

ision 2 (September 2002)

Case ID No. 17689

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN102265972

Additional ID No(s) 0

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 4

Primary Rule Cite(s) 30 Tex. Admin. Code § 115.245(2)

Secondary Rule Cite(s) Tex. Health & Safety Code § 382.085(b)

Violation Description Failure to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first. The verification shall include all functional tests that were required for the initial system test, except for TXP-101 and TXP-103, required every 3 years.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				10%
Potential		X		

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 1

daily	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$1,000

One single event is recommended as documented during the inspection conducted on June 10, 2004.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$750

This violation Final Assessed Penalty (adjusted for limits) \$750

Economic Benefit Worksheet

Respondent Duinick Bros, Inc. dba Duinick Brothers Construction Company
Case ID No. 17689
Reg. Ent. Reference No. RN102265972
Additional ID No(s). 0
Media [Statute] Petroleum Storage Tank
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Stage II 5 year test	\$500	10-Jun-2004	12-Jul-2004	0.1	\$2	n/a	\$2
Pressure Decay Test	\$300	10-Jun-2004	12-Jul-2004	0.1	\$1	n/a	\$1
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs Estimated cost of successfully performing 3 year tests and the annual pressure decay test.
 Final date is the date compliance information was received by TCEQ.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$800

TOTAL \$4

Compliance History

Customer/Respondent/Owner-Operator:	CN600468508	Duininck Bros, Inc.	Classification: AVERAGE	Rating: 1.690
Regulated Entity:	RN102265972	DUININCK BROTHERS CONST	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	65411
Location:	4701 N HWY 377, ROANOKE, TX, 76262		Rating Date: 9/1/03 Repeat Violator: NO	
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	July 21, 2004			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	July 21, 1999 to July 21, 2004			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Judy Fox Phone: (817) 588-5825

Site Compliance History Components

- | | |
|--|------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 07/15/2004 (275408)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

N/A

- F. Environmental audits.

N/A

- G. Type of environmental management systems (EMSs).

N/A

- H. Voluntary on-site compliance assessment dates.

N/A

- I. Participation in a voluntary pollution reduction program.

N/A

- J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING DUININCK
BROTHERS, INC. DBA DUININCK
BROTHERS CONSTRUCTION
COMPANY; PETROLEUM
STORAGE TANK FACILITY ID
NO. 65411; RN102265972**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2004-1091-PST-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Duinick Brothers, Inc. dba Duinick Brothers Construction Company ("Duinick Brothers") under the authority of TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Duinick Brothers, represented by Ms. Jennifer Willingham of the law firm of Brown, Dean, Wiseman, Liser, Proctor & Hart, L.L.P., appear before the Commission and together stipulate that:

1. Duinick Brothers owns and operates a road construction equipment storage and maintenance company with underground storage tanks for refueling activities located at 4701 North Highway 377, Roanoke, Denton County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 382 and the TCEQ rules.
3. The Commission and Duinick Brothers agree that the Commission has jurisdiction to enter this Agreed Order, and that Duinick Brothers is subject to the Commission's jurisdiction.
4. Duinick Brothers received notice of the violations alleged in Section II ("Allegations") on or about July 21, 2004.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Duininck Brothers of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of six thousand dollars (\$6,000.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Duininck Brothers has paid six thousand dollars (\$6,000.00) of the administrative penalty.
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Duininck Brothers have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Duininck Brothers has implemented the following corrective measures at the Facility in response to this enforcement action:
 - a. Successfully conducted a product piping tightness test, including the required Stage II compliance testing, on July 2, 2004, as confirmed by documentation submitted to the TCEQ on July 12, 2004;
 - b. Completed the required UST Registration and Self-Certification form on June 22, 2004, as confirmed by documentation submitted to the TCEQ on July 12, 2004; and
 - c. Obtained a TCEQ delivery certificate on June 23, 2005.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Duininck Brothers has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

Duininck Brothers is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a) by failing to provide proper release detection for the product piping associated with UST systems, as documented during an investigation conducted on June 10, 2004;
2. 30 TEX. ADMIN. CODE § 334.8(c)(4)(B) and TEX. WATER CODE § 26.346(c)(3) by failing to ensure that the Underground Storage Tank Registration & Self-Certification form is fully and accurately completed, and submitted to the agency in a timely manner, as documented during an investigation conducted on June 10, 2004;
3. 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a) by failing to make available to a common carrier a valid, current TCEQ delivery certificate before receiving a delivery of a regulated substance into the Underground Storage Tanks (USTs). Specifically, fuel delivery invoices indicated that eleven deliveries of gasoline and/or diesel fuel were received on the following dates: April 27, 2004, March 30, 2004, February 18, 2004, January 23, 2004, December 3, 2003, October 21, 2003, October 13, 2003, October 10, 2003, September 26, 2003, September 8, 2003, and July 14, 2003, as documented during an investigation conducted on June 10, 2004;
4. 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first. The verification shall include all functional tests that were required for the initial system test, except for TXP-101 and TXP-103, which are required every 3 years. This violation was documented during an investigation conducted on June 10, 2004.

III. DENIALS

Duininck Brothers generally denies each allegation in Section II ("Allegations").

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Duininck Brothers pay an administrative penalty as set forth in Section I, Paragraph 6 above. The imposition of this administrative penalty and Duininck Brothers's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering requiring corrective action or penalties for violations which

are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Duininck Brothers, Inc. dba Duininck Brothers Construction Company, Docket No. 2004-1091-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon Duininck Brothers. Duininck Brothers is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Duininck Brothers in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Duininck Brothers, or three days after the date on which the Commission mails notice of the Order to Duininck Brothers, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Joergeson Perdue

For the Executive Director

5/11/06

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

B. L. Huizenga
Signature

2.15.06
Date

Barry L. Huizenga
Name (Printed or typed)

Controller
Title

Authorized representative of
Duininck Brothers, Inc. dba Duinick Brothers Construction Company

Instructions: Send the original signed Signature Page and all pages of this Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.