

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2008-1874-PST-E    **TCEQ ID:** RN101867893 and RN105650675    **CASE NO.:** 36885

**RESPONDENT NAME:** O'Donnell Oil & Butane Company, Inc.

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Self-Service Key Pumps, 701 Doak Street, O'Donnell, Lynn County and New Moore Key Pumps, 2783 Farm-to-Market Road 179, Lynn County</p> <p><b>TYPE OF OPERATION:</b> Aboveground storage tanks ("ASTs") with key-operated fuel pumps for retail sales of gasoline and diesel</p> <p><b>SMALL BUSINESS:</b>    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on April 6, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Thomas Jecha, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-2576; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Mr. Maurice Jackson, President, O'Donnell Oil &amp; Butane Company, Inc., P.O. Box 517, O'Donnell, Texas 79351-0517  Ms. Patsy J. Jackson, Secretary-Treasurer, O'Donnell Oil &amp; Butane Company, Inc., P.O. Box 517, O'Donnell, Texas 79351-0517  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> October 3, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> November 20, 2008 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WATER</b></p> <p>1) Failure to register ASTs within 30 days of installation. Specifically, the AST installed at 701 Doak Street in O'Donnell on May 1, 1999 and the AST installed at 2783 Farm-to-Market Road 179, Lynn County on May 1, 1999, were not registered until October 15 and November 10, 2008 [30 TEX. ADMIN. CODE § 334.127(a)(1) and TEX. WATER CODE § 26.346].</p> <p>2) Failure to provide notification to the agency at least 30 days prior to installing new ASTs. Specifically, installation notifications for the AST installed at 701 Doak Street in O'Donnell on May 1, 1999 and the AST installed at 2783 Farm-to-Market Road 179, Lynn County, on May 1, 1999 were not submitted to the TCEQ [30 TEX. ADMIN. CODE § 334.126(a)(1)].</p>	<p><b>Total Assessed:</b> \$3,710</p> <p><b>Total Deferred:</b> \$742  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$2,968</p> <p>RN105650675 and RN101867893</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent registered the AST at 701 Doak Street on October 15, 2008 and registered the AST at 2783 Farm-to-Market Road 179 on November 10, 2008.</p>

Additional ID No(s): PST Facility ID No. 2421



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	Assigned	24-Nov-2008	Screening	4-Dec-2008	EPA Due	
	PCW	5-Dec-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	O'Donnell Oil & Butane Company, Inc.
Reg. Ent. Ref. No.	RN105650675
Facility/Site Region	2-Lubbock
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	36885	No. of Violations	2
Docket No.	2008-1874-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Thomas Jecha
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## 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**  Enhancement **Subtotals 2, 3, & 7**

Notes

**Culpability**   Enhancement **Subtotal 4**

Notes

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5**

**Economic Benefit**  Enhancement\* **Subtotal 6**

Total EB Amounts	\$152
Approx. Cost of Compliance	\$200

\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

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** 4-Dec-2008

**Docket No.** 2008-1874-PST-E

**PCW**

**Respondent** O'Donnell Oil & Butane Company, Inc.

Policy Revision 2 (September 2002)

**Case ID No.** 36885

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN105650675

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Thomas Jecha

### 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 judgments 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 <i>(number of events)</i>	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 submitted)</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)**

N/A

**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 change due to Average Performer classification.

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

<b>Screening Date</b> 4-Dec-2008	<b>Docket No.</b> 2008-1874-PST-E	<b>PCW</b>
<b>Respondent</b> O'Donnell Oil & Butane Company, Inc.		<small>Policy Revision 2 (September 2002)</small>
<b>Case ID No.</b> 36885		<small>PCW Revision October 30, 2008</small>
<b>Reg. Ent. Reference No.</b> RN105650675		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Thomas Jecha		
<b>Violation Number</b> <input type="text" value="1"/>		
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 334.127(a)(1) and Tex. Water Code § 26.346"/>	
<b>Violation Description</b>	<input 30="" asts")="" days="" installation."="" of="" type="text" value="Failed to register aboveground storage tanks (" within=""/>	
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>		
<b>OR</b>	<b>Harm</b>	
	Release    Major    Moderate    Minor	
	Actual	<input type="text"/>
	Potential	<input type="text"/>
	<b>Percent</b>	<input type="text" value="0%"/>
<b>&gt;&gt; Programmatic Matrix</b>		
	<b>Falsification</b>	
	Major    Moderate    Minor	
	<input type="text"/>	<input type="text" value="x"/>
	<b>Percent</b>	<input type="text" value="10%"/>
<b>Matrix Notes</b>	<input type="text" value="100% of the rule requirement was not met."/>	
	<b>Adjustment</b>	<input type="text" value="\$9,000"/>
		<input type="text" value="\$1,000"/>
<b>Violation Events</b>		
<b>Number of Violation Events</b>	<input type="text" value="1"/>	<input type="text" value="39"/> <b>Number of violation days</b>
<small>mark only one with an x</small>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text" value="x"/>
	<b>Violation Base Penalty</b>	<input type="text" value="\$1,000"/>
	<input type="text" value="One single event is recommended."/>	
<b>Good Faith Efforts to Comply</b>		
	<input type="text" value="25.0%"/> <b>Reduction</b>	<input type="text" value="\$250"/>
	<small>Before NOV    NOV to EDPRP/Settlement Offer</small>	
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text" value="x"/>	<input type="text"/>
N/A	<input type="text"/>	<small>(mark with x)</small>
<b>Notes</b>	<input type="text" value="The AST was registered on November 10, 2008."/>	
	<b>Violation Subtotal</b>	<input type="text" value="\$750"/>
<b>Economic Benefit (EB) for this violation</b>		
<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>	<input type="text" value="\$47"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$795"/>
	<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$795"/>	

## Economic Benefit Worksheet

**Respondent** O'Donnell Oil & Butane Company, Inc.  
**Case ID No.** 36885  
**Reg. Ent. Reference No.** RN105650675  
**Media** Petroleum Storage Tank  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

**Delayed Costs**

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	31-May-1999	10-Nov-2008	9.45	\$47	n/a	\$47

Notes for DELAYED costs: Estimated cost to properly complete and submit an AST registration form. The date required is the registration due date and the final date is the date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance \$100

TOTAL \$47

<b>Screening Date</b> 4-Dec-2008	<b>Docket No.</b> 2008-1874-PST-E	<b>PCW</b>		
<b>Respondent</b> O'Donnell Oil & Butane Company, Inc.		<small>Policy Revision 2 (September 2002)</small>		
<b>Case ID No.</b> 36885		<small>PCW Revision October 30, 2008</small>		
<b>Reg. Ent. Reference No.</b> RN105650675				
<b>Media [Statute]</b> Petroleum Storage Tank				
<b>Enf. Coordinator</b> Thomas Jecha				
<b>Violation Number</b> <input type="text" value="2"/>				
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 334.126(a)(1)"/>			
<b>Violation Description</b>	<input type="text" value="Failed to provide notification to the agency at least 30 days prior to installing new ASTs. Specifically, a construction notification was not submitted prior to installation of the AST."/>			
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
<b>OR</b>	<b>Harm</b>			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="0%"/>	
<b>&gt;&gt; Programmatic Matrix</b>				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="10%"/>	
<b>Matrix Notes</b>	<input type="text" value="100% of the rule requirement was not met."/>			
	<b>Adjustment</b>	<input type="text" value="\$9,000"/>		
		<input type="text" value="\$1,000"/>		
<b>Violation Events</b>				
	<b>Number of Violation Events</b>	<input type="text" value="1"/>		<b>Number of violation days</b>
		<input type="text" value="30"/>		
<small>mark only one with an x</small>	daily	<input type="text"/>		
	weekly	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input checked="" type="checkbox"/>		
		<b>Violation Base Penalty</b>	<input type="text" value="\$1,000"/>	
	<input type="text" value="One single event is recommended."/>			
<b>Good Faith Efforts to Comply</b>				
	<input type="text" value="0.0%"/>	Reduction	<input type="text" value="\$0"/>	
		<small>Before NOV    NOV to EDPRP/Settlement Offer</small>		
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	<input type="text"/>	<input type="text"/>		
N/A	x	(mark with x)		
<b>Notes</b>	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>			
	<b>Violation Subtotal</b>	<input type="text" value="\$1,000"/>		
<b>Economic Benefit (EB) for this violation</b>				
	<b>Estimated EB Amount</b>	<input type="text" value="\$105"/>		<b>Violation Final Penalty Total</b>
		<input type="text" value="\$1,060"/>		<input type="text" value="\$1,060"/>
		<b>This violation Final Assessed Penalty (adjusted for limits)</b>		
		<input type="text" value="\$1,060"/>		

## Economic Benefit Worksheet

**Respondent** O'Donnell Oil & Butane Company, Inc.  
**Case ID No.** 36885  
**Reg. Ent. Reference No.** RN105650675  
**Media** 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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No commas or \$

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	1-Apr-1999	1-May-1999	1.00	\$5	\$100	\$105
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to notify the agency prior to initiating the construction activities. The date required is 30 days prior to installation of the AST and the final date is the installation date.

Approx. Cost of Compliance \$100

TOTAL \$105

# Compliance History Report

Customer/Respondent/Owner-Operator: CN601017742 O'Donnell Oil & Butane Co., Inc. Classification: AVERAGE Rating: 3.01  
Regulated Entity: RN105650675 NEW MOORE KEY PUMPS Classification: Site Rating:  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 79584  
REGISTRATION  
Location: 2783 FM 179, LYNN CO, TX, 79351  
TCEQ Region: REGION 02 - LUBBOCK  
Date Compliance History Prepared: December 02, 2008  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: December 02, 2003 to December 02, 2008  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Thomas Jecha Phone: 512 - 239 - 2576

## 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? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A
- 6

## 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 11/20/2008 (702916)
  - 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





Policy Revision 2 (September 2002)

# Penalty Calculation Worksheet (PCW)

PCW Revision October 30, 2008

<b>DATES</b>	Assigned	24-Nov-2008	Screening	4-Dec-2008	EPA Due	
	PCW	5-Dec-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	O'Donnell Oil & Butane Company, Inc.
Reg. Ent. Ref. No.	RN101867893
Facility/Site Region	2-Lubbock
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	36885	No. of Violations	2
Docket No.	2008-1874-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Thomas Jecha
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

<b>Penalty Calculation Section</b>	
<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b> <input type="text" value="\$2,000"/>
<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>	
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>	
<b>Compliance History</b>	0.0% Enhancement <b>Subtotals 2, 3, &amp; 7</b> <input type="text" value="\$0"/>
Notes	<input type="text" value="No change due to Average Performer classification."/>
<b>Culpability</b>	No <input type="text" value="0.0% Enhancement"/> <b>Subtotal 4</b> <input type="text" value="\$0"/>
Notes	<input type="text" value="The Respondent does not meet the culpability criteria."/>
<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b> <input type="text" value="\$250"/>
<b>Economic Benefit</b>	0.0% Enhancement* <b>Subtotal 6</b> <input type="text" value="\$0"/>
Total EB Amounts	<input type="text" value="\$152"/>
Approx. Cost of Compliance	<input type="text" value="\$200"/>
	<small>*Capped at the Total EB \$ Amount</small>
<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b> <input type="text" value="\$1,750"/>
<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<input type="text" value="6.0%"/> <b>Adjustment</b> <input type="text" value="\$105"/>
<small>Reduces or enhances the Final Subtotal by the indicated percentage.</small>	
Notes	<input type="text" value="Enhancement recommended to recover the avoided costs associated with the economic benefit of violation No. 2."/>
	<b>Final Penalty Amount</b> <input type="text" value="\$1,855"/>
<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b> <input type="text" value="\$1,855"/>
<b>DEFERRAL</b>	<input type="text" value="20.0%"/> Reduction <b>Adjustment</b> <input type="text" value="-\$371"/>
<small>Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>	
Notes	<input type="text" value="Deferral offered for expedited settlement."/>
<b>PAYABLE PENALTY</b>	<input type="text" value="\$1,484"/>

Screening Date 4-Dec-2008

Docket No. 2008-1874-PST-E

PCW

Respondent O'Donnell Oil &amp; Butane Company, Inc.

Policy Revision 2 (September 2002)

Case ID No. 36885

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101867893

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Jecha

## Compliance History Worksheet

## &gt;&gt; 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 (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgments or consent decrees meeting criteria)	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 (number of counts)	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 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
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%

## &gt;&gt; Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

No change due to Average Performer classification.

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

**Screening Date** 4-Dec-2008 **Docket No.** 2008-1874-PST-E **PCW**  
**Respondent** O'Donnell Oil & Butane Company, Inc. *Policy Revision 2 (September 2002)*  
**Case ID No.** 36885 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101867893  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Thomas Jecha  
**Violation Number** 1  
**Rule Cite(s)** 30 Tex. Admin. Code § 334.127(a)(1) and Tex. Water Code § 26.346  
**Violation Description** Failed to register aboveground storage tanks ("ASTs") within 30 days of installation.  
**Base Penalty** \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

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

**Adjustment** \$9,000

\$1,000

Violation Events

Number of Violation Events: 1      12 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$1,000

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction \$250

	Reduction	
	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes: The AST was registered on October 15, 2008.

**Violation Subtotal** \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$47

Violation Final Penalty Total \$795

This violation Final Assessed Penalty (adjusted for limits) \$795

## Economic Benefit Worksheet

**Respondent** O'Donnell Oil & Butane Company, Inc.  
**Case ID No.** 36885  
**Reg. Ent. Reference No.** RN101867893  
**Media** Petroleum Storage Tank  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**Delayed Costs**

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	31-May-1999	15-Oct-2008	9.38	\$47	n/a	\$47

**Notes for DELAYED costs** Estimated cost to properly complete and submit an AST registration form. The date required is the registration due date and the final date is the date of compliance.

**Avoided Costs**

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

<b>Approx. Cost of Compliance</b>	\$100	<b>TOTAL</b>	\$47
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<b>Screening Date</b> 4-Dec-2008	<b>Docket No.</b> 2008-1874-PST-E	<b>PCW</b>																
<b>Respondent</b> O'Donnell Oil & Butane Company, Inc.		<small>Policy Revision 2 (September 2002)</small>																
<b>Case ID No.</b> 36885		<small>PCW Revision October 30, 2008</small>																
<b>Reg. Ent. Reference No.</b> RN101867893																		
<b>Media [Statute]</b> Petroleum Storage Tank																		
<b>Enf. Coordinator</b> Thomas Jecha																		
<b>Violation Number</b> <input type="text" value="2"/>																		
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 334.126(a)(1)"/>																	
<b>Violation Description</b>	<input type="text" value="Failed to provide notification to the agency at least 30 days prior to installing new ASTs. Specifically, a construction notification was not submitted prior to installation of the AST."/>																	
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>																
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																		
<b>OR</b>	<b>Harm</b>																	
	Major	Moderate	Minor															
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>														
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>															
<b>&gt;&gt; Programmatic Matrix</b>																		
	Falsification	Major	Moderate	Minor														
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="10%"/>													
<b>Matrix Notes</b>	<input type="text" value="100% of the rule requirement was not met."/>																	
	<b>Adjustment</b>				<input type="text" value="\$9,000"/>													
<input type="text" value="\$1,000"/>																		
<b>Violation Events</b>																		
	<b>Number of Violation Events</b>	<input type="text" value="1"/>	<b>Number of violation days</b>	<input type="text" value="30"/>														
<small>mark only one with an x</small>		<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>weekly</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text"/></td></tr> <tr><td>quarterly</td><td><input type="text"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td style="text-align: center;">x</td></tr> </table>	daily	<input type="text"/>	weekly	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	x		<b>Violation Base Penalty</b>
daily	<input type="text"/>																	
weekly	<input type="text"/>																	
monthly	<input type="text"/>																	
quarterly	<input type="text"/>																	
semiannual	<input type="text"/>																	
annual	<input type="text"/>																	
single event	x																	
				<input type="text" value="\$1,000"/>														
<input type="text" value="One single event is recommended."/>																		
<b>Good Faith Efforts to Comply</b>																		
	<input type="text" value="0.0%"/>	<b>Reduction</b>	<input type="text" value="\$0"/>															
	<small>Before NOV</small>	<small>NOV to EDPRP/Settlement Offer</small>																
Extraordinary	<input type="text"/>	<input type="text"/>																
Ordinary	<input type="text"/>	<input type="text"/>																
N/A	x	<small>(mark with x)</small>																
<b>Notes</b>	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>																	
<b>Violation Subtotal</b>				<input type="text" value="\$1,000"/>														
<b>Economic Benefit (EB) for this violation</b>																		
<b>Statutory Limit Test</b>																		
<b>Estimated EB Amount</b>	<input type="text" value="\$105"/>			<b>Violation Final Penalty Total</b>	<input type="text" value="\$1,060"/>													
<b>This violation Final Assessed Penalty (adjusted for limits)</b>				<input type="text" value="\$1,060"/>														

## Economic Benefit Worksheet

**Respondent** O'Donnell Oil & Butane Company, Inc.  
**Case ID No.** 36885  
**Reg. Ent. Reference No.** RN101867893  
**Media** Petroleum Storage Tank  
**Violation No.** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	1-Apr-1999	1-May-1999	1.00	\$5	\$100	\$105
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to notify the agency prior to initiating the construction activities. The date required is 30 days prior to installation of the AST and the final date is the installation date.

Approx. Cost of Compliance \$100

TOTAL \$105

# Compliance History Report

Customer/Respondent/Owner-Operator: CN601017742 O'Donnell Oil & Butane Co., Inc. Classification: AVERAGE Rating: 3.01  
Regulated Entity: RN101867893 SELF-SERVICE KEY PUMPS Classification: Site Rating:  
ID Number(s):  
Location: 701 DOAK ST, O'DONNELL, LYNN CO  
TCEQ Region: REGION 02 - LUBBOCK  
Date Compliance History Prepared: December 02, 2008  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: December 02, 2003 to December 02, 2008  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Thomas Jecha Phone: 512 - 239 - 2576

## 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? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A
- 6.

## 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 11/20/2008 (705218)
  - 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  
O'DONNELL OIL & BUTANE  
COMPANY, INC.  
RN105650675 and RN101867893

§  
§  
§  
§  
§  
§

BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2008-1874-PST-E

I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding O'Donnell Oil & Butane Company, Inc. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates aboveground storage tanks ("ASTs") with key-operated fuel pumps for retail sales of gasoline and diesel at 701 Doak Street in O'Donnell and 2783 Farm-to-Market Road 179, Lynn County, Texas (the "Facilities").
2. The Respondent's two ASTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about November 25, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Three Thousand Seven Hundred Ten Dollars (\$3,710) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Nine Hundred Sixty-Eight Dollars (\$2,968) of the administrative penalty and Seven Hundred Forty-Two Dollars (\$742) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred 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 the Respondent 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 the Respondent registered the AST at 701 Doak Street on October 15, 2008 and registered the AST at 2783 Farm-to-Market Road 179 on November 10, 2008.
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 the Respondent 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

As owner and operator of the Facilities, the Respondent is alleged to have:

1. Failed to register ASTs within 30 days of installation, in violation of 30 TEX. ADMIN. CODE § 334.127(a)(1) and TEX. WATER CODE § 26.346, as documented during an investigation conducted on October 3, 2008. Specifically, the AST installed at 701 Doak Street in O'Donnell on May 1, 1999 and the AST installed at 2783 Farm-to-Market Road 179, Lynn County on May 1, 1999, were not registered until October 15 and November 10, 2008.
2. Failed to provide notification to the agency at least 30 days prior to installing new ASTs, in violation of 30 TEX. ADMIN. CODE § 334.126(a)(1), as documented during an investigation conducted on October 3, 2008. Specifically, installation notifications for the AST installed at 701 Doak Street in O'Donnell on May 1, 1999 and the AST installed at 2783 Farm-to-Market Road 179, Lynn County, on May 1, 1999 were not submitted to the TCEQ.

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent'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 requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: O'Donnell Oil & Butane Company, Inc., Docket No. 2008-1874-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 the Respondent.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent 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), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, 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

John Szellin  
For the Executive Director

3/9/2009  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity 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 failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- 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;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

Patsy J. Jackson  
Signature

1-19-09  
Date

Patsy J. Jackson  
Name (Printed or typed)  
Authorized Representative of  
O'Donnell Oil & Butane Company, Inc.

Sec. Treas  
Title

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