

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NUMBER: 2005-0505-PST-E TCEQ ID NO: RN103046363 ENF ID: 24446**  
**RESPONDENT NAME: HARDIN FOOD MART INC. DBA SHORT STOP**

**ORDER TYPE:**

<input 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 checked="" 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	<input type="checkbox"/> DRY CLEANER REGISTRATION	

**SITE WHERE VIOLATION(S) OCCURRED:** 4345 US Highway 96 North, Silsbee, Hardin County

**TYPE OF OPERATION:** convenience store with retail sales of gasoline

**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 January 29, 2007. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Shawn A. Slack, Litigation Division, MC 175, (512) 239-0063; Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873

**TCEQ Enforcement Coordinator:** Ms. Judy Kluge, Enforcement Division, MC R-4, (817) 588-5825

**TCEQ Regional Contact:** Mr. Keith Anderson, Beaumont Regional Office, MC R-10, (409) 898-3838

**Respondent:** Mr. Mohammed R. Islam, Hardin Food Mart Inc., 6750 Demoss, #209, Houston, Texas, 77074

**Respondent's Attorney:** Not represented by counsel.

**RESPONDENT'S NAME: HARDIN FOOD MART INC. DBA SHORT STOP**  
**DOCKET NO.: 2005-0505-PST-E**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b> ___ Complaint <input checked="" type="checkbox"/> Routine            ___ Enforcement Follow-up ___ Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date(s) of Investigation(s) Relating to this Case:</b> December 10, 2004</p> <p><b>Date(s) of NOE(s) Relating to this Case:</b> November 10, 2004 (NOV), and February 2, 2005 (NOE)</p> <p><b>Background Facts:</b> An EDPRP was filed on April 6, 2006, an EDFARP was filed on July 26, 2006, and an EDSARP was filed on September 26, 2006, and on October 24, 2006. The Respondent received notice of the EDSARP on or about October 29, 2006. The staff attorney attempted to contact the Respondent but was unable to reach him. The Respondent has not filed an answer or requested a hearing.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p><b>PST:</b></p> <ol style="list-style-type: none"> <li>Failed to have an operable emergency shut-off valve (shear valve) which includes a means of providing a positive shut-off of product in the event of a collision involving a dispenser [30 TEX. ADMIN. CODE § 334.45(c)(3)(A)].</li> <li>Failed to ensure that nozzle boots are not torn or damaged in a way that could reduce the efficiency of the vapor recovery system [30 TEX. ADMIN. CODE § 115.242(3)(C)(i),(ii), and (iii) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</li> <li>Failed to maintain and produce all current Stage II records [30 TEX. ADMIN. CODE § 115.246(7)(A) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</li> <li>Failed to ensure that each current and future employee is made aware of the purpose and correct operation of the Stage II equipment [30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</li> </ol>	<p><b>Total Assessed:</b> \$9,450</p> <p><b>Total Deferred:</b> \$0            ___ Expedited Settlement            ___ Financial Inability to Pay</p> <p><b>Total Due to General Revenue:</b> \$9,450</p> <p>This is a Default Order.</p> <p>The Respondent has not actually paid any of the assessed penalty, but will be required to do so under the terms of this Order.</p> <p><b>Site Compliance History Classification:</b>  <input checked="" type="checkbox"/> High ___ Avg. ___ Poor</p> <p><b>Person Compliance History Classification:</b>  <input checked="" type="checkbox"/> High ___ Avg. ___ Poor</p> <p><b>Major Source:</b> ___ Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provision(s)</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Within 30 days           <ol style="list-style-type: none"> <li>Repair Number 4 dispenser shear valve;</li> <li>Replace all damaged boots/vapor guards;</li> <li>Maintain all required Stage II record-keeping requirements; and</li> <li>Train all existing and future employees who are responsible for operating fuel dispensing equipment in the vapor recovery system by a certified Stage II facility representative.</li> </ol> </li> <li>Within 60 days, submit a written certification by a State of Texas Notary Public and include detailed supporting documentation including photographs, receipts, and or other records to demonstrate compliance with Ordering Provisions.</li> <li>The Respondent's UST delivery certificates are revoked immediately upon the effective date of this Order. The Respondent may submit an application for a new delivery certificate only after the Respondent has complied with all of the requirements of the Order.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

DATES	Assigned	08-Feb-2005	Screening	09-Feb-2005	EPA Due	09-Apr-2005
	PCW	23-Jun-2005				

RESPONDENT/FACILITY INFORMATION	
Respondent	Hardin Foodmart, Inc. dba Short Stop
Reg. Ent. Ref. No.	RN103046363
Facility/Site Region	10-Beaumont <input type="checkbox"/>
Major/Minor Source	Minor Source <input type="checkbox"/>

CASE INFORMATION			
Enf./Case ID No.	24446	No. of Violations	4
Docket No.	2005-0505-PST-E	Order Type	Findings <input type="checkbox"/>
Media Program(s)	Petroleum Storage Tank <input type="checkbox"/>	Enf. Coordinator	Judy Kluge
Multi-Media		EC's Team	Enforcement Team 3 <input type="checkbox"/>
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$9,000</b>
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	-5% Enhancement	<b>Subtotal 2, 3, &amp; 7</b>	<b>-\$450</b>
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Notes: Penalty enhanced due to receiving a NOV for same or similar violations on November 10, 2004. A reduction is due to high performer classification.

Culpability	No <input type="checkbox"/>	0% Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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Notes: Respondent does not meet culpability criteria.

Good Faith Effort to Comply	0% Reduction	<b>Subtotal 5</b>	<b>\$0</b>
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes: Respondent is not yet in compliance.

Economic Benefit	0% Enhancement	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts	\$42	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,200	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$8,550</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	11% Enhancement	<b>Adjustment</b>	<b>\$900</b>
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes: Because this is a Default Order, the Executive Director recommends an upward adjustment to offset the reduction for compliance history

**Final Penalty Amount** **\$9,450**

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$9,450</b>
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<b>DEFERRAL</b>	Reduction	<b>Adjustment</b>	<b>\$0</b>
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: This is not an expedited settlement.

<b>PAYABLE PENALTY</b>	<b>\$9,450</b>
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Screening Date 09-Feb-2005

Docket No. 2005-0505-PST-E

PCW

Respondent Hardin Foodmart, Inc. dba Short Stop

Policy Revision 2 (September 2002)

Case ID No. 24446

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN103046363

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

**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 (number of NOVs meeting criteria)	1	5%
	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 judgements 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 disclosed)	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%
Other	<i>Please Enter Yes or No</i>		
	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) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes: Penalty enhanced due to receiving a NOV for same or similar violations on November 10, 2004. A reduction is due to high performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) -5%

Screening Date	09-Feb-2005	Docket No.	2005-0505-PST-E	PCW
Respondent	Hardin Foodmart, Inc. dba Short Stop		Policy Revision 2 (September 2002)	
Case ID No.	24446	PCW Revision May 19, 2005		
Reg. Ent. Reference No.	RN103046363			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Judy Kluge			
Violation Number	1			
Primary Rule Cite(s)	30 Tex. Admin. Code § 334.45(c)(3)(A)			
Secondary Rule Cite(s)				
Violation Description	Failure to have an operable emergency shut-off valve (shear valve) which includes a means of providing a positive shut-off of product in the event of collision involving a dispenser, as documented in an investigation conducted on December 10, 2004.			
Base Penalty	\$10,000			

>> Environmental Property and Human Health Matrix

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

>> 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: -\$7,500

Base Penalty Subtotal: \$2,500

Violation Events

Number of Violation Events: 2

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

Violation Base Penalty: \$5,000

Two quarterly events are recommended based on the December 10, 2004 investigation to the May 5, 2005 compliance date.

Economic Benefit (EB) for this violation      Statutory Limit Test

Estimated EB Amount	\$3	Violation Final Penalty Total	\$5,250
This violation Final Assessed Penalty (adjusted for limits)		\$5,250	

### Economic Benefit Worksheet

Respondent: Hardin Foodmart, Inc. dba Short Stop  
 Case ID No: 24446  
 Reg. Ent. Reference No: RN103046363  
 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
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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	\$100	10-Dec-2004	05-May-2005	0.4	\$0	\$3	\$3
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)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost of replacing dispenser shear valve (emergency shut-off dispenser); date required is the date of the first investigation; final date is the date of 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 \$100

**TOTAL** \$3

<b>Screening Date</b>	09-Feb-2005	<b>Docket No.</b>	2005-0505-PST-E	<b>PCW</b>
<b>Respondent</b>	Hardin Foodmart, Inc. dba Short Stop			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	24446			<i>PCW Revision May 19, 2005</i>
<b>Reg. Ent. Reference No.</b>	RN103046363			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Judy Kluge			
<b>Violation Number</b>	<input type="text" value="2"/>			
<b>Primary Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin Code § 115.242(3)(C)(i),(ii) and (iii)"/>			
<b>Secondary Rule Cite(s)</b>	<input type="text" value="THSC § 382.085(b)"/>			
<b>Violation Description</b>	<input type="text" value="Failure to ensure that nozzle boots are not torn or damaged in a way that could reduce the efficiency of the vapor recovery system."/>			
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>		

>> **Environmental, Property and Human Health Matrix**

OR	<b>Harm</b>			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	X
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
				<b>Percent</b> <input type="text" value="10%"/>

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text"/>
<b>Matrix Notes</b>	<input type="text" value="Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environment."/>				
					<b>Adjustment</b> <input type="text" value="-\$9,000"/>

**Base Penalty Subtotal**

**Violation Events**

<b>Number of Violation Events</b>	<input type="text" value="2"/>	
mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	X
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>
		<b>Violation Base Penalty</b> <input type="text" value="\$2,000"/>
	<input type="text" value="Two quarterly events are recommended based on the December 10, 2004 investigation to the May 25, 2005 date of compliance."/>	

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <input type="text" value="\$10"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$2,100"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$2,100"/>	

### Economic Benefit Worksheet

Respondent: Hardin Foodmart, Inc. dba Short Stop  
 Case ID No: 24446  
 Reg. Ent. Reference No: RN103046363  
 Media [Statute]: Petroleum Storage Tank  
 Violation No: 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	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)	\$300	10-Dec-2004	25-May-2005	0.5	\$0	\$9	\$10
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)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Approximate cost to repair or replace damaged nozzle boots. Date required is initial investigation; Final Date is the date of 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: \$300 **TOTAL** \$10

<b>Screening Date</b>	09-Feb-2005	<b>Docket No.</b>	2005-0505-PST-E	<b>PCW</b>
<b>Respondent</b>	Hardin Foodmart, Inc. dba Short Stop		Policy Revision 2 (September 2002)	
<b>Case ID No.</b>	24446	PCW Revision May 19, 2005		
<b>Reg. Ent. Reference No.</b>	RN103046363			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Judy Kluge			
<b>Violation Number</b>	3			
<b>Primary Rule Cite(s)</b>	30 Texas Admin. Code § 115.246(7)(A)			
<b>Secondary Rule Cite(s)</b>	THSC § 382.085(b)			
<b>Violation Description</b>	Failure to maintain and produce all current Stage II records.			
<b>Base Penalty</b>				\$10,000

>> **Environmental, Property and Human Health Matrix**

<b>Harm</b>				
<b>Release</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Percent <input type="text"/>
Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

>> **Programmatic Matrix**

<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Percent <input type="text" value="10%"/>
<b>Matrix Notes</b>	100% of the rule has not been met.			

**Adjustment:** -\$9,000

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

**Violation Events**

Number of Violation Events

mark only one use a small x	daily	<input type="checkbox"/>
	monthly	<input type="checkbox"/>
	quarterly	<input type="checkbox"/>
	semiannual	<input type="checkbox"/>
	annual	<input type="checkbox"/>
	single event	<input checked="" type="checkbox"/>

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

One single event is recommended, based on the investigation on December 10, 2004.

**Economic Benefit (EB) for this violation**      **Statutory Limit Test**

Estimated EB Amount       Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

### Economic Benefit Worksheet

Respondent: Hardin Foodmart, Inc. dba Short Stop  
 Case ID No: 24446  
 Reg. Ent. Reference No: RN103046363  
 Media [Statute]: Petroleum Storage Tank  
 Violation No: 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	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	\$300	10-Dec-2004	10-Dec-2005	1.0	\$15	n/a	\$15
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)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Approximate cost to maintain required record-keeping. Date required is the date of the investigation; final date is the projected date of 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 \$300 TOTAL \$15

<b>Screening Date</b>	09-Feb-2005	<b>Docket No.</b>	2005-0505-PST-E	<b>PCW</b>
<b>Respondent</b>	Hardin Foodmart, Inc. dba Short Stop			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	24446			<i>PCW Revision May 19, 2005</i>
<b>Reg. Ent. Reference No.</b>	RN103046363			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Judy Kluge			
<b>Violation Number</b>	<input type="text" value="4"/>			
<b>Primary Rule Cite(s)</b>	<input type="text" value="30 Texas Admin. Code §.115.248(1)"/>			
<b>Secondary Rule Cite(s)</b>	<input type="text" value="THSC § 382.085(b)"/>			
<b>Violation Description</b>	<input type="text" value="Failure to ensure that each current and future employee are made aware of the purpose and correct operation of the Stage II equipment, as documented by an investigation conducted on December 10, 2004."/>			
		<b>Base Penalty</b>	<input type="text" value="\$10,000"/>	

>> **Environmental, Property and Human Health Matrix**

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

		Falsification	Major	Moderate	Minor	
		<input type="text"/>	<input checked="" type="text" value="X"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>
<b>Matrix Notes</b>	<input type="text" value="100% of the rule has not been met."/>					

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

**Number of Violation Events**

<i>mark only one use a small x</i>	<i>daily</i>	<input type="text"/>
	<i>monthly</i>	<input type="text"/>
	<i>quarterly</i>	<input type="text"/>
	<i>semiannual</i>	<input type="text"/>
	<i>annual</i>	<input type="text"/>
	<i>single event</i>	<input checked="" type="text" value="X"/>

**Violation Base Penalty**

**Economic Benefit (EB) for this violation**      **Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

### Economic Benefit Worksheet

Respondent: Hardin Foodmart, Inc. dba Short Stop  
 Case ID No: 24446  
 Reg. Ent. Reference No: RN103046363  
 Media [Statute]: Petroleum Storage Tank  
 Violation No: 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	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	\$500	10-Dec-2004	07-Jul-2005	0.6	\$14	n/a	\$14
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: Approximate cost of training by a certified Stage II facility representative. Date required is the December 10 investigation; final date is the date of 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 \$500 TOTAL \$14

## Compliance History

Customer/Respondent/Owner-Operator: CN601586316 Hardin Foodmart Inc. Classification: HIGH Rating: 0.000  
Regulated Entity: RN103046363 SHORT STOP Classification: HIGH Site Rating: 0.00  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 23988  
REGISTRATION  
Location: 4345 US HIGHWAY 96 N, SILSBEE, TX, 77656 Rating Date: 9/1/04 Repeat Violator: NO  
TCEQ Region: REGION 10 - BEAUMONT  
Date Compliance History Prepared: April 06, 2005  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: April 07, 2000 to April 06, 2005

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

Name: Susan Longenecker Phone: 239-0968

### 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

### Components (Multimedia) for the Site :

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

N/A

2. Any criminal convictions of the state of Texas and the federal government.

N/A

3. Chronic excessive emissions events.

N/A

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

2 04/14/2000 (51556)  
4 11/10/2004 (334954)  
6 02/03/2005 (345585)

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

Date: 11/10/2004 (334954)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.45(c)(3)(A)

Description: Failure to have an operable emergency shut off valve (shear valve) which includes a means of providing a positive shutoff of product in the event of collision involving a dispenser.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(C)(i)

30 TAC Chapter 115, SubChapter C 115.242(3)(C)(ii)

30 TAC Chapter 115, SubChapter C 115.242(3)(C)(iii)

Description: Failure to insure that nozzle boots are not torn or damaged in a way that could reduce the efficiency of the vapor recovery system.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(7)(A)

Description: Failure of the facility representative to provide all required Stage II records for review upon request.

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  
HARDIN FOOD MART INC.  
DBA SHORT STOP;  
RN103046363**

§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER  
DOCKET NO. 2005-0505-PST-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ" ) considered the Executive Director's Second Amended Report and Petition filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the revocation of the respondent's underground storage tank delivery certificate, the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Hardin Food Mart Inc. dba Short Stop ("Hardin").

The Commission makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. Hardin owned and operated a convenience store with retail sales of gasoline located at 4345 US Highway 96 North, Silsbee, Hardin County, Texas (the "Store").
2. Hardin's four underground storage tanks ("USTs") were not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Hardin's USTs contain a regulated substance as defined in the rules of the Commission. The Store consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During an inspection conducted on or about December 10, 2004, a TCEQ Beaumont Regional Office investigator documented that Hardin:
  - a. Failed to have an operable emergency shut-off valve (shear valve) which includes a means of providing a positive shut-off of product in the event of a collision involving a dispenser.
  - b. Failed to ensure that nozzle boots are not torn or damaged in a way that could reduce the efficiency of the vapor recovery system.

- c. Failed to maintain and produce all current Stage II records.
  - d. Failed to ensure that each current and future employee is made aware of the purpose and correct operation of the Stage II equipment.
4. Hardin received notice of the violations on or about February 7, 2005.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Hardin Food Mart Inc. dba Short Stop" (the "EDPRP") in the TCEQ Chief Clerk's office on April 6, 2006.
6. By letter dated April 6, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Hardin with notice of the EDPRP. Although the return receipt "green card" was never returned to the ED, according to the United States Postal Service Track & Confirm website, the envelope was "delivered at 11:40 am on April 08, 2006". Additionally, the first class mail has not been returned, indicating that Hardin received notice of the EDPRP.
7. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Hardin Food Mart Inc. dba Short Stop" (the "EDFARP") in the TCEQ Chief Clerk's office on July 26, 2006.
8. By letter dated July 26, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Hardin with notice of the EDFARP. According to the return receipt "green card," Hardin received notice of the EDFARP on July 27, 2006, as evidenced by the signature on the card.
9. The Executive Director filed the "Executive Director's Second Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Hardin Food Mart Inc. dba Short Stop" (the "EDSARP") in the TCEQ Chief Clerk's office on September 26, 2006, and again on October 24, 2006.
10. By letter dated October 24, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Hardin with notice of the EDSARP. The United States Postal Service returned the wrapper sent by certified mail as

“unclaimed.” The first class mail has not been returned, indicating that Hardin received notice of the EDSARP.

- 11 More than 20 days have elapsed since Hardin received notice of the EDPRP, the EDFARP, and the EDSARP provided by the Executive Director. Hardin failed to file an answer to the EDPRP, the EDFARP, or the EDSARP, failed to request a hearing, and failed to schedule a settlement conference.
- 12 The Executive Director recognizes that Hardin has taken the following corrective measures:
  - a. On or about May 5, 2005, obtained an operable emergency shut-off valve (shear valve) which includes a means of providing a positive shut-off of product in the event of a collision involving a dispenser.
  - b. On or about May 25, 2005, ensured that nozzle boots were not torn or damaged in a way that could reduce the efficiency of the vapor recovery system.

### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Hardin is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Hardin failed to have an operable emergency shut-off valve (shear valve) which includes a means of providing a positive shut-off of product in the event of a collision involving a dispenser, in violation of 30 TEX. ADMIN. CODE § 334.45(c)(3)(A).
3. As evidenced by Finding of Fact No. 3.b., Hardin failed to ensure that nozzle boots are not torn or damaged in a way that could reduce the efficiency of the vapor recovery system, in violation of 30 TEX. ADMIN. CODE § 115.242(3)(C)(i), (ii), and (iii) and TEX. HEALTH & SAFETY CODE § 382.085(b).
4. As evidenced by Finding of Fact No. 3.c., Hardin failed to maintain and produce all current Stage II records, in violation of 30 TEX. ADMIN. CODE § 115.246(7)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b).
5. As evidenced by Finding of Fact No. 3.d., Hardin failed to ensure that each current and future employee is made aware of the purpose and correct operation of the Stage II equipment, in

- violation of 30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH & SAFETY CODE § 382.085(b).
6. As evidenced by Finding of Fact Nos. 5, 6, 7, 8, 9, and 10, the Executive Director has timely served Hardin with proper notice of the EDPRP, the EDFARP, and the EDSARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a) and (c)(2).
  7. As evidenced by Finding of Fact No. 11, Hardin has failed to file a timely answer to the EDPRP, the EDFARP, and the EDSARP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Hardin and assess the penalty recommended by the Executive Director.
  8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Hardin for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
  9. An administrative penalty in the amount of nine thousand four hundred fifty dollars (\$9,450.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
  10. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
  11. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Hardin's UST delivery certificates if the Commission finds that good cause exists.
  12. Good cause for revocation of Hardin's UST delivery certificates exists as justified by Findings of Fact Nos. 5, 6, 7, 8, 9, 10, and 11 and Conclusions of Law Nos. 6 and 7.

### ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Hardin is assessed an administrative penalty in the amount of nine thousand four hundred fifty dollars (\$9,450.00) for violations of TEX. HEALTH & SAFETY CODE ch. 382 and rules of the TCEQ. The payment of this administrative penalty and Hardin's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by

this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Hardin Food Mart Inc. dba Short Stop; Docket No. 2005-0505-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. Hardin shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Order, Hardin shall:
    - i. Maintain all required Stage II record-keeping requirements; and
    - ii. Train all existing and future employees who are responsible for operating fuel dispensing equipment in the vapor recovery system by a certified Stage II facility representative.
  - b. Within 60 days after the effective date of this Order, Hardin shall submit a written certification as described below, and include detailed supporting documentation to demonstrate compliance with the Ordering Provisions.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Keith Anderson, Manager  
Waste Section  
Beaumont Regional Office  
Texas Commission on Environmental Quality  
3870 Eastex Freeway  
Beaumont, Texas 77703

3. Hardin's UST delivery certificates are revoked immediately upon the effective date of this Order. Hardin may submit an application for a new delivery certificate only after Hardin has complied with all of the requirements of this Order.
4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Hardin. Hardin is ordered to give notice of this Order to personnel who maintain day-to-day control over the Store's operations referenced in this Order.
6. If Hardin fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Hardin's failure to comply is not a violation of this Order. Hardin shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Hardin shall notify the Executive Director within seven days after Hardin becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Hardin shall be made in writing to the Executive Director. Extensions are not effective until Hardin receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Hardin if the

Executive Director determines that Hardin has not complied with one or more of the terms or conditions in this Order.

9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Hardin Food Mart Inc. dba Short Stop  
Docket No. 2005-0505-PST-E  
Page 8

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

## AFFIDAVIT OF SHAWN A. SLACK

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Shawn A. Slack. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Hardin Food Mart Inc. dba Short Stop” (the “EDPRP”) was filed with the Office of the Chief Clerk on April 6, 2006.

The EDPRP was sent to Hardin at his last known address on April 6, 2006, via certified mail, return receipt requested, and via first class mail, postage prepaid. Although the return receipt “green card” was never returned to the ED, according to the United States Postal Service Track & Confirm website, the envelope was "delivered at 11:40 am on April 08, 2006". Additionally, the first class mail has not been returned, indicating that Hardin received notice of the EDPRP in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Hardin Food Mart Inc. dba Short Stop” (the “EDFARP”) in the TCEQ Chief Clerk’s office on July 26, 2006.

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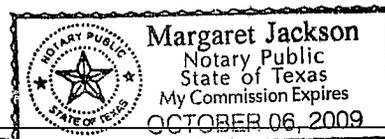
More than 20 days have elapsed since Hardin received notice of the EDPRP, the EDFARP, and the EDSARP. Hardin failed to file an answer to the EDPRP, the EDFARP, or the EDSARP, failed to request a hearing, and failed to schedule a settlement conference.”



Shawn A. Slack  
Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Shawn A. Slack, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 5 day of December A.D., 2006.



Notary Stamp

