

**Executive Summary – Enforcement Matter – Case No. 31634
Haider A., Inc. DBA Stop In Food Mart
RN102867678
Docket No. 2010-2006-PST-E**

Order Type:

Default Shutdown Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

8500 Old Galveston Road, Houston, Harris County

Type of Operation:

former convenience store with retail sales of gasoline

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	\$3,268.97 (2006-1928-PST-E)
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: August 19, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$39,780

Amount Deferred for Expedited Settlement: N/A

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$39,780

Compliance History Classifications:

Person/CN – Average

Site/RN – Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: August 26, 2010
Date(s) of NOV(s): October 13, 2009; April 5, 2010
Date(s) of NOE(s): October 8, 2010

Violation Information

1. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN CODE § 37.815(a) and (b)].
2. Failed to notify the agency of any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition [30 TEX. ADMIN CODE § 334.7(d)(3)].
3. Failed to provide a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances; failed to test the line leak detectors at least once per year for performance and operational reliability; failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly; failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; failed to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; and failed to provide an out-of-service UST with corrosion protection [TEX. WATER CODE § 26.3475(a), (c)(1) and (d); 30 TEX. ADMIN. CODE §§ 334.49(c)(2)(C) and (c)(4)(C), 334.50(a)(1)(A) and (b)(2)(A)(i)(III), and 334.54(b)(2) and (c)(1); and TCEQ Agreed Order Docket No. 2006-1928-PST-E, Ordering Provision Nos. 2.a.i. and 2.a.ii.].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

1. Immediately shut down operations of all USTs at the Facility:
 - a. Cease dispensing fuel from the USTs;
 - b. Cease receiving deliveries of regulated substances into the USTs;
 - c. Padlock the dispensers;
 - d. Empty the USTs of all regulated substances; and
 - e. Temporarily remove the USTs from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
2. The USTs shall remain out of service until such time as Respondent demonstrates to the satisfaction of the Executive Director that the release detection and corrosion protection violations have been corrected.

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RN102867678
Docket No. 2010-2006-PST-E

3. Respondent's UST fuel delivery certificate is revoked immediately. Respondent shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements.
4. Within 10 days, Respondent shall surrender its UST fuel delivery certificate.
5. Within 15 days, submit a detailed written report documenting the steps taken to comply with Technical Requirements Nos. 1 and 4.
6. Prior to receiving deliveries of gasoline and resuming sales of gasoline:
 - a. Submit documentation showing corrosion protection system has been tested in the past year by a qualified corrosion technician or corrosion specialist to ensure that the system is fully operational and protective of all UST components at the facility;
 - b. Secure financial assurance for the UST system;
 - c. Return UST system to service; and
 - d. Obtain a new fuel delivery certificate.
7. Upon obtaining a new fuel delivery certificate, post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times.
8. Within 10 days of resuming sales of gasoline, submit written certification to demonstrate compliance with Technical Requirements Nos. 6 and 7.

Litigation Information

Date Petition(s) Filed: April 15, 2011
Date(s) Green Card(s) Signed: Refused
Date(s) Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A

Contact Information

TCEQ Attorneys: Tammy L. Mitchell, Litigation Division (512) 239-3400
Lena Roberts, Litigation Division (512) 239-3400
TCEQ Enforcement Coordinator: Rajesh Acharya, Waste Enforcement Section, (512) 239-0577
TCEQ Regional Contact: Nicole Bealle, Houston Regional Office, (713) 767-3500
Respondent: Zohaib A. Lakhani, Director, Haider A., Inc., 8500 Old Galveston Rd., Houston, Texas 77034
Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	1-Nov-2010	Screening	1-Nov-2010	EPA Due	
	PCW	10-Mar-2011				

RESPONDENT/FACILITY INFORMATION						
Respondent	HAIDER A., INC. dba Stop In Food Mart					
Reg. Ent. Ref. No.	RN102867678					
Facility/Site Region	12-Houston	Major/Minor Source	Minor			

CASE INFORMATION						
Enf./Case ID No.	31634	No. of Violations	3			
Docket No.	2010-2006-PST-E	Order Type	Findings			
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No			
Multi-Media		Enf. Coordinator	Rajesh Acharya			
		EC's Team	Enforcement Team 6			
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$10,000		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$29,000
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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	30.0% Enhancement	Subtotals 2, 3, & 7	\$8,700
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Notes	Enhancement for two NOV's with same or similar violation and one prior order containing a denial of liability.		
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.			
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$3,457	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$32,081	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$37,700
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OTHER FACTORS AS JUSTICE MAY REQUIRE	5.5%	Adjustment	\$2,080
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended enhancement to capture the avoided cost of compliance associated with violation no. 1.		
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Final Penalty Amount	\$39,780
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$39,780
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	No deferral is recommended for Findings Orders.			
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PAYABLE PENALTY	\$39,780
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Screening Date 1-Nov-2010

Docket No. 2010-2006-PST-E

PCW

Respondent HAIDER A., INC. dba Stop In Food Mart

Policy Revision 2 (September 2002)

Case ID No. 31634

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102867678

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	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 (<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) 30%

>> 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

Enhancement for two NOVs with same or similar violation and one prior order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 30%

Screening Date 1-Nov-2010

Docket No. 2010-2006-PST-E

PCW

Respondent HAIDER A., INC. dba Stop In Food Mart

Policy Revision 2 (September 2002)

Case ID No. 31634

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102867678

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 37.815(a) and (b)

Violation Description Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks ("USTs").

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3 365 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$3,000

Three single events (one event per tank) are recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,080

Violation Final Penalty Total \$4,115

This violation Final Assessed Penalty (adjusted for limits) \$4,115

Economic Benefit Worksheet

Respondent HAIDER A., INC. dba Stop In Food Mart
Case ID No. 31634
Req. Ent. Reference No. RN102867678
Media 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				0.00	\$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]	\$1,981	26-Aug-2009	26-Aug-2010	1.00	\$99	\$1,981	\$2,080
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Avoided cost to provide financial assurance for three petroleum USTs. Date Required is one year prior to the investigation date. Final Date is the investigation date.

Approx. Cost of Compliance \$1,981

TOTAL \$2,080

Screening Date 1-Nov-2010

Docket No. 2010-2006-PST-E

PCW

Respondent HAIDER A., INC. dba Stop In Food Mart

Policy Revision 2 (September 2002)

Case ID No. 31634

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102867678

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(3)

Violation Description Failed to notify the agency of any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition. Specifically, the registration was not updated to reflect the current operational status of the UST system.

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 67 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 based on documentation of the violation during the August 26, 2010 investigation.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$1,372

This violation Final Assessed Penalty (adjusted for limits) \$1,372

Economic Benefit Worksheet

Respondent HAIDER A., INC. dba Stop In Food Mart
Case ID No. 31634
Req. Ent. Reference No. RN102867678
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
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)	\$100	26-Aug-2010	26-Jul-2011	0.92	\$5	n/a	\$5

Notes for DELAYED costs

Estimated cost to prepare and submit an updated UST registration. Date Required is the investigation date. Final Date is the estimated date of compliance.

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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$5

Screening Date 1-Nov-2010
Respondent Case ID No. HAIDER A., INC. dba Stop In Food Mart 31634
Reg. Ent. Reference No. RN102867678
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Rajesh Acharya

Docket No. 2010-2006-PST-E

PCW

Policy Revision 2 (September 2002)
PCW Revision October 30, 2008

Violation Number 3

Rule Cite(s) TCEQ Agreed Order Docket No. 2006-1928-PST-E, Ordering Provision No. 2.a.i. and ii., and 30 Tex. Admin. Code §§ 334.50(a)(1)(A), 334.50(b)(2)(A)(i)(III), 334.49(c)(2)(C), 334.49(c)(4)(C), 334.54(b)(2), 334.54(c)(1), and Tex. Water Code § 26.3475(a), (c)(1) and (d)

Violation Description

Failed to provide a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances. Failed to test the line leak detectors at least once per year for performance and operational reliability. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly. Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years. Failed to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons. Also, failed to provide an out-of-service UST with corrosion protection in accordance with §334.49.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

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

\$2,500

Violation Events

Number of Violation Events 10 865 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$25,000

Ten quarterly events are recommended from the order effective date of June 19, 2008 to the November 1, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$25,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,373 Violation Final Penalty Total \$34,293

This violation Final Assessed Penalty (adjusted for limits) \$34,293

Economic Benefit Worksheet

Respondent HAIDER A., INC. dba Stop In Food Mart
Case ID No. 31634
Req. Ent. Reference No. RN102867678
Media 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				0.00	\$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)	\$30,000	26-Aug-2010	26-Jul-2011	0.92	\$1,373	n/a	\$1,373

Notes for DELAYED costs

Estimated cost to permanently remove from service three USTs with a capacity of 30,000 gallons at \$1.00 per gallon. Date Required is the date of investigation. Final Date is the estimated date of compliance.

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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$30,000

TOTAL

\$1,373

Compliance History

Customer/Respondent/Owner-Operator:	CN603117490 HAIDER A., INC.	Classification: AVERAGE	Rating: 19.40
Regulated Entity:	RN102867678 STOP IN FOOD MART	Classification: AVERAGE	Site Rating: 19.40
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	5423
Location:	8500 OLD GALVESTON RD, HOUSTON, TX, 77034		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	December 14, 2010		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	December 14, 2005 to December 14, 2010		

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

Name: Rajesh Acharya Phone: (512) 239-0577

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/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? HAIDER A., INC.
4. If Yes, who was/were the prior owner(s)/operator(s)? Lakhani, Fatima Sadir
5. When did the change(s) in owner or operator occur? 05/23/2007
6. Rating Date: 9/1/2010 Repeat Violator: NO

Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
 - Effective Date: 06/19/2008 ADMINORDER 2006-1928-PST-E
 - Classification: Moderate
 - Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)
30 TAC Chapter 334, SubChapter C 334.49(c)(2)(C)
30 TAC Chapter 334, SubChapter C 334.49(c)(4)
 - Description: Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly. All cathodic protection systems shall be inspected and tested for operability and adequacy of protection within three to six months after installation and at a subsequent frequency of at least once every three years.
 - Classification: Moderate
 - Citation: 2D TWC Chapter 26, SubChapter A 26.3475(a)
2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
30 TAC Chapter 334, SubChapter C 334.50(a)(1)(A)
30 TAC Chapter 334, SubChapter C 334.50(b)(2)
30 TAC Chapter 334, SubChapter C 334.50(b)(2)(A)(i)(III)
 - Description: Failure to have a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances. Failure to provide proper release detection for the pressurized piping associated with -UST systems, Failed to test the line leak detectors at least once per year for performance and operability.
- 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 10/24/2006 (515634)
- 2 10/13/2009 (778052)
- 3 04/06/2010 (786914)
- 4 01/13/2010 (787928)
- 5 10/08/2010 (860178)

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

Date: 10/13/2009 (778052) CN603117490
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
Description: (d) Changes or additional information. (3) Notice of any change or additional information must be filed with the agency within 30 days from the date of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition, as applicable.

Date: 04/05/2010 (786914) CN603117490
Self Report? NO Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)
30 TAC Chapter 334, SubChapter C 334.49(c)(2)(C)
30 TAC Chapter 334, SubChapter C 334.49(c)(4)
Description: Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, All cathodic protection systems shall be inspected and tested for operability and adequacy of protection within three to six months after installation and at a subsequent frequency of at least once every three years.

Self Report? NO Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(a)
2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
30 TAC Chapter 334, SubChapter C 334.50(a)(1)(A)
30 TAC Chapter 334, SubChapter C 334.50(b)(2)
30 TAC Chapter 334, SubChapter C 334.50(b)(2)(A)(i)(III)
Description: Failure to have a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances. Failure to provide proper release detection for the pressurized piping associated with -UST systems, Failed to test the line leak detectors at least once per year for performance and operability. During the investigation it was determined that proper release detection for the piping was not being conducted.

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	§	BEFORE THE
CONCERNING	§	
HAIDER A., INC. DBA STOP IN	§	TEXAS COMMISSION ON
FOOD MART;	§	
RN102867678	§	ENVIRONMENTAL QUALITY

DEFAULT AND SHUTDOWN ORDER

DOCKET NO. 2010-2006-PST-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of the respondent's fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting the entry of an Order requiring the respondent to shutdown and remove from service the underground storage tanks ("USTs") located at 8500 Old Galveston Road in Houston, Harris County, Texas. The respondent made the subject of this Order is Haider A., Inc. DBA Stop In Food Mart ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), a UST system and a former convenience store with retail sales of gasoline located at 8500 Old Galveston Road in Houston, Harris County, Texas (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the TCEQ.
2. During an investigation conducted on August 26, 2010, a TCEQ Houston Regional Office investigator documented that Respondent:
 - a. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs;
 - b. Failed to notify the agency of any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition. Specifically, the registration was not updated to reflect the current operational status of the UST system; and

- c. Failed to provide a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances; failed to test the line leak detectors at least once per year for performance and operational reliability; failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly; failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; failed to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; and failed to provide a temporarily out-of-service UST with corrosion protection.
3. By letter dated October 8, 2010, the TCEQ Houston Regional Office provided Respondent with notice of the violations and of TCEQ's authority to shut down and remove from service USTs not in compliance with release detection, spill and/or overfill prevention, corrosion protection, and/or financial assurance requirements if the violations are not corrected.
4. 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 Haider A., Inc. DBA Stop In Food Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on April 15, 2011.
5. By letter dated April 15, 2011, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service ("USPS") returned the EDPRP sent by certified mail and by first class mail "refused,"¹ indicating that Respondent received notice of the EDPRP.
6. More than 20 days have elapsed since Respondent received notice of the EDPRP provided by the Executive Director. Respondent failed to file an answer and failed to request a hearing.
7. By letter dated June 27, 2011, the Executive Director provided Respondent with notice of TCEQ's intent to order the USTs at the Facility to be shut down and removed from service if Respondent failed to correct the release detection, corrosion protection, and financial assurance violations within 30 days after Respondent's receipt of the notice.
8. As of the date of entry of this Order, Respondent has not provided the Executive Director with documentation demonstrating that the release detection, corrosion protection, and financial assurance violations alleged in Findings of Fact Nos. 2.a. and 2.c. have been corrected.

¹ The U. S. Postal Service returned the EDPRP with the notation "refused" on the envelope. "When a letter is returned as "refused" or "unclaimed," the notice is sufficient if it is apparent that the address was valid and could be located by the postal office." *Wright v. Wentzel*, 749 S.W.2d 228, 232 (Tex. App.-- Houston [1st Dist.] Mar. 31, 1988, no pet.). Respondent's last known address was provided to the TCEQ by Respondent on a PST Self-Certification and Registration Form dated August 12, 2010. Notations on the returned envelopes indicate that the address was valid and could be located by the USPS.

9. The USTs at the Facility do not have release detection, corrosion protection, and financial assurance as required by 30 TEX. ADMIN. CODE §§ 37.815, 334.49, and 334.50 and TEX. WATER CODE §§ 26.3475 and 26.352 and may be releasing petroleum products to the environment. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to notify the agency of any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to provide a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances; failed to test the line leak detectors at least once per year for performance and operational reliability; failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly; failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; failed to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; and failed to provide an out-of-service UST with corrosion protection, in violation of TEX. WATER CODE § 26.3475(a), (c)(1) and (d); 30 TEX. ADMIN. CODE §§ 334.49(c)(2)(C) and (c)(4)(C), 334.50(a)(1)(A) and (b)(2)(A)(i)(III), and 334.54(b)(2) and (c)(1); and TCEQ Agreed Order Docket No. 2006-1928-PST-E, Ordering Provision Nos. 2.a.i. and 2.a.ii.
5. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
6. As evidenced by Finding of Fact No. 6, Respondent failed to file a timely answer 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 Respondent and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the

Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

8. An administrative penalty in the amount of thirty-nine thousand seven hundred eighty dollars (\$39,780.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. As evidenced by Findings of Fact Nos. 3 and 8, Respondent failed to correct documented violations of Commission release detection, corrosion protection, and financial assurance requirements within 30 days after Respondent received notice of the violations and notice of the Executive Director's intent to shut down the Facility.
10. TEX. WATER CODE §§ 26.3475(e) and 26.352(i) authorize the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and/or overfill protection for tanks, corrosion protection for tanks and/or piping, and/or acceptable financial assurance.
11. 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.
12. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Respondent's UST fuel delivery certificate if the Commission finds that good cause exists.
13. Good cause for revocation of Respondent's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 4 through 6 and Conclusions of Law Nos. 2 through 6.
14. As evidenced by Findings of Fact Nos. 8 and 9, current conditions at the Facility constitute an imminent peril to public health, safety, and welfare. Therefore, pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date rendered.

ORDERING PROVISIONS

NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. Immediately upon the effective date of this Order, Respondent shall take the following steps to shut down operations of all USTs at the Facility:
 - a. Cease dispensing fuel from the USTs;
 - b. Cease receiving deliveries of regulated substances into the USTs;
 - c. Padlock the dispensers;
 - d. Empty the USTs of all regulated substances in accordance with 30 Tex. Admin. Code § 334.54(d); and

- e. Temporarily remove the USTs from service in accordance with 30 Tex. Admin. Code § 334.54.
2. Respondent's USTs shall remain out of service, pursuant to TEX. WATER CODE § 26.3475 and as directed by Ordering Provision Nos. 1.a. through 1.e., until such time as Respondent demonstrates to the satisfaction of the Executive Director that the release detection, corrosion protection, and/or financial assurance violations noted in Findings of Fact Nos. 2.a. and 2.c. and Conclusions of Law Nos. 2 and 4 have been corrected.
3. If Respondent elects to permanently remove from service any portion of the UST system at the Facility, Respondent shall, immediately upon the effective date of the Order, permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55, and within 15 days after the effective date of this Order, shall submit a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55 to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
4. Respondent's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ in accordance with 30 TEX. ADMIN. CODE §§ 334.7 and 334.8. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements set forth in this Order.
5. Within 10 days after the effective date of this Order, Respondent shall send its UST fuel delivery certificate to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
6. Within 15 days after the effective date of this Order, Respondent shall submit a detailed written report, in accordance with Ordering Provision No. 12, below, documenting the steps taken to comply with Ordering Provisions Nos. 1.a. through 1.e. and 5.
7. Respondent is assessed an administrative penalty in the amount of thirty-nine thousand seven hundred eighty dollars (\$39,780.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent'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.

8. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Haider A., Inc. DBA Stop In Food Mart; Docket No. 2010-2006-PST-E" to:

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

9. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, Respondent shall undertake the following technical requirements:
- a. Submit documentation showing that the corrosion protection system has been tested in the past year by a qualified corrosion technician or corrosion specialist to ensure that the system is fully operational and protective of all UST components at the facility, in accordance with 30 TEX. ADMIN. CODE § 334.49 (Conclusion of Law No. 4);
 - b. Secure financial assurance for the UST system, in accordance with 30 TEX. ADMIN. CODE § 37.815(a) and (b) (Conclusion of Law No. 2);
 - c. Return the UST system to service in accordance with 30 TEX. ADMIN. CODE § 334.54(c)(3) (Conclusions of Law Nos. 3 and 4);
 - d. Obtain a new fuel delivery certificate from the TCEQ.
10. Upon obtaining a new fuel delivery certificate, Respondent shall post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
11. Within 10 days of resuming retail sales of gasoline, Respondent shall submit written certification and detailed supporting documentation, in accordance with Ordering Provision No. 12, below, to demonstrate compliance with Ordering Provisions Nos. 9 and 10.
12. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall 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."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Nicole Bealle, Waste Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk Street, Suite H
Houston, Texas 77023-1452

13. All relief not expressly granted in this Order is denied.
14. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
15. If Respondent 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, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
16. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
17. 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 Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
18. 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.
19. 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 this Order was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF TAMMY L. MITCHELL

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Tammy L. Mitchell. 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 Haider A., Inc. DBA Stop In Food Mart' (the 'EDPRP') was filed in the TCEQ Chief Clerk's office on April 15, 2011.

The EDPRP was mailed to Respondent's last known address on April 15, 2011, via certified mail, return receipt requested, and via first class mail, postage prepaid The United States Postal Service returned the EDPRP sent by certified mail and the EDPRP sent by first class mail as 'refused,' indicating that Respondents received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2) and applicable state law. Notations made on the envelopes by the USPS indicate that the address was valid and could be located by the USPS.

More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

By letter dated June 27, 2011, sent via first class mail and certified mail, return receipt requested article no. 7011 0470 0000 2420 9885, I provided Respondent with notice of the TCEQ's intent to order the USTs at the Facility shut down and removed from service if the violations pertaining to release detection, corrosion protection, and financial assurance were not corrected within 30 days of Respondent's receipt of the letter. The United States Postal Service returned the letter sent by certified mail and the letter sent by first class mail as 'refused,' indicating that Respondents received notice of the letter, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2) and applicable state law. Notations made on the envelopes by the USPS indicate that the address was valid and could be located by the USPS.

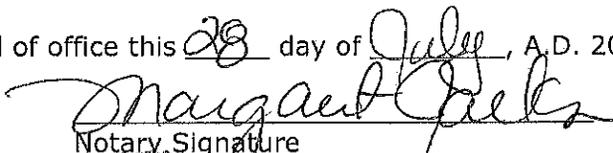
As of the date of this affidavit, I am not aware of any evidence that indicates that Respondent has corrected the violations noted during the August 26, 2010, investigation."



Tammy L. Mitchell, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 28 day of July, A.D. 2011.



Notary Signature

