

**SOAH DOCKET NO. 582-09-5891
TCEQ DOCKET NO. 2007-1259-PST-E**

**EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
*PETITIONER***

V.

**4200 ROSEDALE LLC AND THE
GOODYEAR TIRE & RUBBER
COMPANY,
*RESPONDENTS***

§ **BEFORE THE STATE OFFICE**
§
§
§
§
§ **OF**
§
§
§
§ **ADMINISTRATIVE HEARINGS**

**THE GOODYEAR TIRE & RUBBER COMPANY'S EXCEPTIONS
TO THE PROPOSAL FOR DECISION AND PROPOSED ORDER**

The Goodyear Tire & Rubber Company (“Goodyear”) submits its Exceptions to the Proposal for Decision (“PFD”) and Order (“Proposed Order”) issued by the Administrative Law Judge (“ALJ”) in the above-captioned case.

As the record of the hearing reflects, this case required the ALJ to resolve the disputed ownership of an underground storage tank (“UST”) located on property (“Property”) owned by 4200 Rosedale LLC (“Rosedale”). The resulting PFD shows that the ALJ reached her conclusion after conducting a thorough review and analysis of the evidence and arguments set forth by Goodyear, Rosedale, and the Executive Director. Goodyear believes the ALJ has reached the correct conclusion. Therefore, Goodyear urges the Commission to approve the PFD and the Proposed Order, as modified by the exceptions presented herein.

GOODYEAR’S EXCEPTIONS TO FINDINGS OF FACT IN THE PROPOSED ORDER

Goodyear Excepts to Finding of Fact No. 8

Finding No. 8: Rosedale did not demonstrate by appropriate documentation that the UST on the Property was owned by Goodyear or any other person and, therefore, Rosedale is the presumed UST owner in light of Section 26.342(9) of the Texas Water Code provides

that “[i]f the actual ownership of an underground storage tank system or an aboveground storage tank is uncertain, unknown, or in dispute, the fee simple owner of the surface estate of the tract on which the tank system is located is considered the owner of the system unless that person can demonstrate by appropriate documentation, including a deed reservation, invoice, or bill of sale, or by other legally acceptable means that the underground storage tank system or aboveground storage tank is owned by another person.”

Goodyear excepts to Finding of Fact No. 8 because it does not completely incorporate the ALJ’s findings as discussed in the PFD and does not adequately reference the statutory and regulatory framework upon which the ALJ based her decision. Therefore, Goodyear proposes that Finding No. 8 be supplemented and revised to state:

Proposed Finding of Fact No. 8: The actual ownership of the UST is uncertain, unknown, or in dispute, and because Rosedale did not demonstrate by appropriate documentation that the UST on the Property was owned by Goodyear or any other person, Rosedale is the presumed UST owner in light of Section 26.342(9) of the Texas Water Code, which provides that “[i]f the actual ownership of an underground storage tank system or an aboveground storage tank is uncertain, unknown, or in dispute, the fee simple owner of the surface estate of the tract on which the tank system is located is considered the owner of the system unless that person can demonstrate by appropriate documentation, including a deed reservation, invoice, or bill of sale, or by other legally acceptable means that the underground storage tank system or aboveground storage tank is owned by another person.”

Goodyear Excepts to Finding of Fact No. 23

Finding No. 23: The hearing on the merits was held on February 25, 2010. All parties appeared and participated in the hearing. The record closed on April 26, 2010, upon the submission of closing briefs by the ED and Respondents.

Goodyear excepts to Finding of Fact No. 23 because it contains an incorrect hearing date. The hearing in this case was originally scheduled for February 25, 2010; however, after the Executive Director filed a Motion for Continuance on February 23, 2010, the hearing was postponed. The parties conferred on a date to hold a rescheduled hearing, and the hearing subsequently took place on April 8, 2010, as agreed to by the parties. Therefore, Goodyear proposes that Finding No. 23 be revised as follows:

Proposed Finding No. 23: The hearing on the merits was originally scheduled for February 25, 2010, and was continued to April 8, 2010. All parties appeared and participated in the hearing on April 8, 2010. The record closed on April 26, 2010, upon the submission of closing briefs by the ED and the Respondents.

CONCLUSION

Goodyear proposes the revisions suggested herein so that the PFD more accurately and completely reflects the ALJ's findings, based on her careful consideration of the evidence and arguments presented by Goodyear, Rosedale and the Executive Director at the April 8, 2010 hearing and throughout the course of this case. For the reasons stated above, Goodyear requests that the Commission adopt the Proposal for Decision and issue the Administrative Law Judge's Proposed Order, as modified by these exceptions.

Respectfully Submitted,

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**ATTORNEYS FOR THE GOODYEAR
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CERTIFICATE OF SERVICE

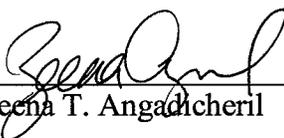
By my signature below, I certify that a true and correct copy of the foregoing was filed with the Chief Clerk of the Texas Commission on Environmental Quality, Austin, Texas and was served on the following parties on July 12, 2010, as noted below:

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