Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 12, 2010

Via Facsimile to (512) 475-4994 and Via Interagency Mail

The Honorable Ami L. Larson
State Office of Administrative Hearings
300 West 15th Street, Suite 502
P.O. Box 13025
Austin, Texas 78711-3025

Re: Texas Commission on Environmental Quality ("TCEQ") Enforcement Proceeding
Against 4200 Rosedale LLC and The Goodyear Tire & Rubber Company
TCEQ Docket No. 2007-1259-PST-E
SOAH Docket No. 582-09-5891

Dear Judge Larson:

Enclosed please find the Executive Director's Exceptions to the Administrative Law Judge's Proposed Order regarding the above-referenced matter. If you have any questions, please do not hesitate to call me at (512) 239-0974. Thank you for your attention to this matter.

Sincerely,

Anna Treadwell

Anna Treadwell
Attorney
Litigation Division

Enclosure

cc: TCEQ Chief Clerk (original)
Mr. Wallace Myers, Enforcement Division, TCEQ, MC 128
Mr. Blas Coy, Public Interest Counsel, TCEQ, MC 103
Mr. Les Trobman, Office of General Counsel, TCEQ, MC 101
Mr. Al Axe, Attorney for The Goodyear Tire & Rubber Company
Mr. S. George Alfonso, Attorney for 4200 Rosedale LLC

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

EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, PETITIONER	§	**BEFORE THE**
	§	
VS.	§	**STATE OFFICE OF**
	§	
4200 ROSEDALE LLC AND THE GOODYEAR TIRE & RUBBER COMPANY, RESPONDENTS	§	**ADMINISTRATIVE HEARINGS**

EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER

NOW COMES the Executive Director, by and through his attorney, Anna Treadwell, and submits the following proposal to modify the Administrative Law Judge's Proposed Order. While the Executive Director agrees with the substance of the Proposed Order, these suggested modifications are intended to clarify the provisions of the Order and to correct typographical errors. These suggested modifications are proposed pursuant to 30 TEX. ADMIN. CODE § 80.257.

The Executive Director recommends the following modifications:

1. Capitalize the first letter of "county" in Findings of Fact No. 1.

2. Insert a comma after the word "Code" and add the word "which" before "provides" in Findings of Fact No. 8.

3. Remove the extra space between "9," and "2007" in Findings of Fact No. 9. Also, revise "UST's" to "UST" in the first bullet point of Findings of Fact No. 9.

4. Pluralize the word "Respondent" to "Respondents" and revise "USTs" to "UST" in Findings of Fact No. 14(b).

5. Revise Findings of Fact No. 15 to reflect both Respondents names by adding "and/or Goodyear" after Rosedale.

6. Capitalize the first letter of "congress" in Findings of Fact No. 17.

7. Revise "ED" to "Executive Director" in Findings of Fact No. 18.

8. Pluralize the word "Respondent" to "Respondents" and change the period to a semi-colon on the third bullet point of Findings of Fact No. 21. Pluralize the word "Respondent" to "Respondents" in the forth bullet point of Findings of Fact No. 21. Also, revise the last bullet point of Findings to Fact No. 21 to read "…penalty calculation worksheets, which show how the penalties were calculated…"

9. Revise the hearing date from February 25, 2010 to April 8, 2010 and revise "ED" to "Executive Director" in Findings of Fact No. 23.

10. Revise "ED" to "Executive Director" in Conclusions of Law No. 5.

11. Revise Conclusions of Law No. 8 to reflect the second violation as subparagraph "(b)" instead of "(c)" and make the word "UST" singular throughout subparagraph (b).

12. Revise the address of the Regional Office in Ordering Provision No. 4 to:

    Sam Barrett, Waste Section Manager
    Texas Commission on Environmental Quality
    Dallas/Fort Worth Regional Office
    2309 Gravel Drive
    Fort Worth, Texas 76118-6951

13. Revise "Respondent" to "4200 Rosedale LLC" in Ordering Provision No. 5.

14. Remove "ANN." from the citations in Findings of Fact No. 14, Conclusions of Law Nos. 1, 3, 4, 5, 6, 7, 9 and 11, and Ordering Provisions Nos. 7 and 8.

PRAYER

To the extent that the Administrative Law Judge's Proposal for Decision is inconsistent with these recommended modifications, the Executive Director excepts to the Proposal for Decision. Copies of the Proposed Order with the recommended modifications are attached. Attachment "A" is a redline/strikeout version which clearly delineates the recommended modifications. Attachment "B" is a copy of the Proposed Order incorporating the Executive Director's recommended changes.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Stephanie Bergeron Perdue, Deputy Director
Office of Legal Services

Kathleen C. Decker, Division Director
Litigation Division

by Anna Treadwell
Anna Treadwell
State Bar of Texas No. 24053154
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-3400
(512) 239-3434 (FAX)

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of July, 2010, the original of the foregoing Executive Director's Exceptions to the Administrative Law Judge's Proposed Order ("Exceptions") was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day true and correct copies of the foregoing Exceptions were sent to the following persons by the method of service indicated:

Mr. S. George Alfonso, Attorney Law Office of S. George Alfonso 5340 Alpha Road Dallas, Texas 75240	Via Electronic Mail Transmission to geoalfo@aol.com (pdf format) and Facsimile to (972) 458-6801
Mr. Al Axe, Attorney Winstead PC 401 Congress Avenue, Suite 2100 Austin, Texas 78701	Via Electronic Mail Transmission to aaxe@winstead.com (pdf format) and Facsimile to (512) 370-2850
The Honorable Ami L. Larson State Office of Administrative Hearings 300 West 15th Street, Suite 502 P.O. Box 13025 Austin, Texas 78711-3025	Via interagency mail and via facsimile to (512) 475-4994
Mr. Blas Coy Office of the Public Interest Counsel Texas Commission on Environmental Quality Mail Code 103	Via Electronic Mail
Mr. Les Trobman Office of General Counsel Texas Commission on Environmental Quality Mail Code 101	Via Electronic Mail

Anna Treadwell

Anna Treadwell
Attorney
Litigation Division
Texas Commission on Environmental Quality

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER Assessing Administrative Penalties Against and Ordering Corrective Action by 4200 Rosedale LLC; TCEQ Docket No. 2007-1259-PST-E; SOAH Docket No. 582-09-5891

On _____, 2010, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's Second Amended Report and Petition (EDSARP) recommending that the Commission enter an order assessing administrative penalties against and requiring corrective action by Respondents 4200 Rosedale LLC (Rosedale) and/or the Goodyear Tire & Rubber Company (Goodyear). A Proposal for Decision (PFD) was presented by Ami L. Larson, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH).

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. Rosedale is the current owner of the property located at 4200 East Rosedale Street, Fort Worth, Tarrant County, Texas (the Property).

Deleted: county

2. One inactive underground storage tank (UST) that was not exempt or excluded from regulation existed on the Property when Rosedale purchased the Property in 2005.
3. The deed pursuant to which Rosedale purchased the Property did not exclude the UST

from conveyance to Rosedale with the Property.

4. No deed for prior sales of the Property excluded the UST from conveyance to owners of the Property prior to Rosedale.

5. In 1970, Goodyear entered into a lease with Doug Corder and Glenn Walls (Corder and Walls), who owned the Property at that time.

6. Goodyear's lease for the Property expired on January 31, 1986.

7. Goodyear acknowledged having leased and operated, but denied ever having owned, the UST located on the Property.

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, 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."

9. On January 9, 2007, and July 18, 2007, TCEQ Dallas/Ft. Worth Regional Office Investigator Lonnie Gilley inspected the Property and documented the following violations:

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- Failure to notify TCEQ of any change or additional information regarding the UST within 30 days of the occurrence of the change or addition; specifically, the registration was not updated to reflect the correct ownership information and

Deleted: 's

current operational status of the UST at the Property pursuant to 30 TEX. ADMIN. CODE §334.7(d)(3); and

- Failure to permanently remove from service, no later than 60 days after the prescribed implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements as required by 30 TEX. ADMIN. CODE § 334.47(a)(2).

10. In 2008, Rosedale hired a licensed contractor to remove the UST from the Property and notified the ED of the removal.

11. On June 30, 2008, Mr. Gilley conducted an investigation of the UST removal at the Property and observed that the UST had visible holes, obvious corrosion, and an oily substance remained in the soil underneath where the UST had been.

12. Soil samples taken at the UST site on the Property were analyzed and found to have prohibited concentrations of various chemical compounds.

13. Rosedale did not submit a release determination report, conduct a site assessment, or complete any necessary corrective action following the removal of the UST in 2008.

14. On May 13, 2009, the Executive Director filed a First Amended Report and Petition, and on January 15, 2010, the Executive Director filed a Second Amended Report and Petition (EDSARP), in accordance with TEX. WATER CODE § 7.054. The EDSARP alleged that:

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(a) Respondents violated 30 TEX. ADMIN. CODE § 334.47(a)(2) by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST for which any applicable component of the system was not brought into timely compliance with the upgrade requirements; and

(b) Respondents violated 30 TEX. ADMIN. CODE § 334.7(d)(3) by failing to provide an amended UST registration to the Commission for any change or additional information regarding UST, within 30 days from the date of the occurrence of the change or addition.

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15. The Executive Director recommended that the Commission enter an enforcement order assessing total administrative penalties of $3,675 against Rosedale and/or Goodyear and that the Commission order Rosedale and/or Goodyear to take certain corrective actions.

16. The $3,675 administrative penalty sought in the EDSARP is an accumulation of the different penalties assessed for each violation.

17. The Executive Director mailed a copy of the First Amended Petition and Report and the EDSARP to Respondents via counsel at 5430 Alpha Road, Dallas, Texas 75240 and 401 Congress Avenue, Suite 2100, Austin, Texas 78701 on the same dates that they were filed.

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18. Respondents each filed an answer to the Executive Director's First Amended Report and Petition and requested a hearing.

19. On August 3, 2009, the TCEQ referred this matter to SOAH for a contested case hearing.

20. On September 2, 2009, the TCEQ Chief Clerk mailed notice to Respondents of the preliminary hearing scheduled for October 8, 2009.

21. The notice of hearing:

- Indicated the time, date, place, and nature of the hearing;
- Stated the legal authority and jurisdiction for the hearing;
- Indicated the statutes and rules the Executive Director alleged Respondents violated.

- Advised Respondents, in at least twelve-point bold-faced type, that failure to appear at the preliminary hearing or the evidentiary hearing in person or by legal representative would result in the factual allegations contained in the notice and First Amended Report and Petition being deemed as true and the relief sought in the notice possibly being granted by default; and
- Included a copy of the Executive Director's penalty calculation worksheets, which show how the penalties were calculated for the alleged violations.

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22. On October 8, 2009, the Executive Director and Respondents appeared at a preliminary hearing and agreed to a procedural schedule.

23. The hearing on the merits was held on April 8, 2010. All parties appeared and participated in the hearing. The record closed on April 26, 2010, upon the submission of closing briefs by the Executive Director and Respondents.

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II. CONCLUSIONS OF LAW

1. Under TEX. WATER CODE § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code or of the Texas Health and Safety Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.

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2. Respondent Rosedale owns the UST located on the Property, which was transferred to Rosedale in 2005 as part of its purchase of the Property.

3. Under TEX. WATER CODE § 7.052, a penalty may not exceed $10,000.00 per violation, per day for the violations alleged in this proceeding.

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4. In addition to imposing an administrative penalty, the Commission may order the violator to take corrective action, as provided by TEX. WATER CODE § 7.073.

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5. As required by TEX. WATER CODE §7.055 and 30 TEX. ADMIN. CODE §§ 1.11 and 70.104, Respondents were notified of the Executive Director's First Amended Report and Petition and EDSARP and of the opportunity to request a hearing on the alleged violations and the proposed penalties and corrective actions.

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6. As required by TEX. GOV'T CODE §§ 2001.051(1) and 2001.052; TEX. WATER CODE § 7.058; 1 TEX. ADMIN. CODE § 155.27; and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.25, 70.104, and 80.6, Respondents were notified of the hearing on the alleged violations and the proposed penalties and corrective actions.

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7. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to TEX. GOV'T CODE ch. 2003.

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8. Based on the Findings of Fact and Conclusions of Law:

(a) Rosedale violated 30 TAC § 334.47(a)(2) by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and

(b) Rosedale violated 30 TAC § 334.7(d)(3) by failing to provide an amended UST registration to the Commission for any change or additional information regarding UST within 30 days from the date of the occurrence of the change or addition.

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9. In determining the amount of an administrative penalty, TEX. WATER CODE § 7.053 requires the Commission to consider several factors including:

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- Its impact or potential impact on public health and safety, natural resources and their uses, and other persons;
- The nature, circumstances, extent, duration, and gravity of the prohibited act;
- The history and extent of previous violations by the violator;
- The violator's degree of culpability, good faith, and economic benefit gained through the violation;
- The amount necessary to deter future violations; and
- Any other matters that justice may require.

10. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.

11. Based on consideration of the above Findings of Fact, the factors set out in TEX. WATER CODE § 7.053, and the Commission's Penalty Policy, the Executive Director correctly calculated the penalties for each of the alleged violations and a total administrative penalty of $3,675 is justified and should be assessed against Rosedale.

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12. Based on the above Findings of Fact, Rosedale should be required to take the corrective action that the Executive Director recommends.

13. Based on the above Findings of Fact, no sanctions should be imposed against Goodyear.

NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. 4200 Rosedale LLC is assessed an administrative penalty in the amount of $3,675 for violations of 30 TAC §§334.7(d)(3) and 334.47(a)(2). The payment of this administrative penalty and 4200 Rosedale LLC's compliance with all the terms and conditions set forth in this Order will completely resolve the matters set forth by this Order.

The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. All checks submitted to pay the penalty assessed by this Order shall be made out to "Texas Commission on Environmental Quality." Administrative penalty payments shall be sent with the notation "Re: 4200 Rosedale LLC; Docket No. 2007-1259-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. Within 30 days after the effective date of this Order, 4200 Rosedale LLC shall permanently remove the UST system from service, in accordance with 30 TAC § 334.55.

3. Within 30 days after the effective date of this Order, 4200 Rosedale LLC shall submit an amended registration to indicate the current ownership and operational status of the UST system, in accordance with 30 TAC § 334.7, to:

Registration and Reporting Section
Permitting & Remediation Support Division, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin TX 78711-3087

4. Within 45 days after the effective date of this Order, 4200 Rosedale LLC shall submit written certifications as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions Nos. 2 and 3. 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 fines and imprisonment for knowing violations."

The certification shall be sent to:

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

with a copy to:

Sam Barrett, Waste Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, TX 76118-6951

Deleted: Frank Burleson
Deleted: Waco
Deleted: 6801 Sanger Avennue, Suite 2500
Deleted: Waco, TX 76710-7826

5. 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 4200 Rosedale LLC if the Executive Director determines that 4200 Rosedale LLC has not complied with one or more of the terms or conditions in this Commission Order.

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6. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

7. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE § 2001.144.

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8. As required by TEX. WATER CODE § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to Respondents.

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9. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____

Bryan W. Shaw, Chairman
For the Commission

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER Assessing Administrative Penalties Against and Ordering Corrective Action by 4200 Rosedale LLC; TCEQ Docket No. 2007-1259-PST-E; SOAH Docket No. 582-09-5891

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After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. Rosedale is the current owner of the property located at 4200 East Rosedale Street, Fort Worth, Tarrant County, Texas (the Property).
2. One inactive underground storage tank (UST) that was not exempt or excluded from regulation existed on the Property when Rosedale purchased the Property in 2005.
3. The deed pursuant to which Rosedale purchased the Property did not exclude the UST

from conveyance to Rosedale with the Property.

4. No deed for prior sales of the Property excluded the UST from conveyance to owners of the Property prior to Rosedale.

5. In 1970, Goodyear entered into a lease with Doug Corder and Glenn Walls (Corder and Walls), who owned the Property at that time.

6. Goodyear's lease for the Property expired on January 31, 1986.

7. Goodyear acknowledged having leased and operated, but denied ever having owned, the UST located on the Property.

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, 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."

9. On January 9, 2007, and July 18, 2007, TCEQ Dallas/Ft. Worth Regional Office Investigator Lonnie Gilley inspected the Property and documented the following violations:

   - Failure to notify TCEQ of any change or additional information regarding the UST within 30 days of the occurrence of the change or addition; specifically, the registration was not updated to reflect the correct ownership information and

current operational status of the UST at the Property pursuant to 30 TEX. ADMIN. CODE §334.7(d)(3); and

- Failure to permanently remove from service, no later than 60 days after the prescribed implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements as required by 30 TEX. ADMIN. CODE § 334.47(a)(2).

10. In 2008, Rosedale hired a licensed contractor to remove the UST from the Property and notified the ED of the removal.

11. On June 30, 2008, Mr. Gilley conducted an investigation of the UST removal at the Property and observed that the UST had visible holes, obvious corrosion, and an oily substance remained in the soil underneath where the UST had been.

12. Soil samples taken at the UST site on the Property were analyzed and found to have prohibited concentrations of various chemical compounds.

13. Rosedale did not submit a release determination report, conduct a site assessment, or complete any necessary corrective action following the removal of the UST in 2008.

14. On May 13, 2009, the Executive Director filed a First Amended Report and Petition, and on January 15, 2010, the Executive Director filed a Second Amended Report and Petition (EDSARP), in accordance with TEX. WATER CODE § 7.054. The EDSARP alleged that:

    (a) Respondents violated 30 TEX. ADMIN. CODE § 334.47(a)(2) by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST for which any applicable component of the system was not brought into timely compliance with the upgrade requirements; and

(b) Respondents violated 30 TEX. ADMIN. CODE § 334.7(d)(3) by failing to provide an amended UST registration to the Commission for any change or additional information regarding UST within 30 days from the date of the occurrence of the change or addition.

15. The Executive Director recommended that the Commission enter an enforcement order assessing total administrative penalties of $3,675 against Rosedale and/or Goodyear and that the Commission order Rosedale and/or Goodyear to take certain corrective actions.

16. The $3,675 administrative penalty sought in the EDSARP is an accumulation of the different penalties assessed for each violation.

17. The Executive Director mailed a copy of the First Amended Petition and Report and the EDSARP to Respondents via counsel at 5430 Alpha Road, Dallas, Texas 75240 and 401 Congress Avenue, Suite 2100, Austin, Texas 78701 on the same dates that they were filed.

18. Respondents each filed an answer to the Executive Director's First Amended Report and Petition and requested a hearing.

19. On August 3, 2009, the TCEQ referred this matter to SOAH for a contested case hearing.

20. On September 2, 2009, the TCEQ Chief Clerk mailed notice to Respondents of the preliminary hearing scheduled for October 8, 2009.

21. The notice of hearing:

- Indicated the time, date, place, and nature of the hearing;
- Stated the legal authority and jurisdiction for the hearing;
- Indicated the statutes and rules the Executive Director alleged Respondents violated.

- Advised Respondents, in at least twelve-point bold-faced type, that failure to appear at the preliminary hearing or the evidentiary hearing in person or by legal representative would result in the factual allegations contained in the notice and First Amended Report and Petition being deemed as true and the relief sought in the notice possibly being granted by default; and
- Included a copy of the Executive Director's penalty calculation worksheets, which show how the penalties were calculated for the alleged violations.

22. On October 8, 2009, the Executive Director and Respondents appeared at a preliminary hearing and agreed to a procedural schedule.

23. The hearing on the merits was held on April 8, 2010. All parties appeared and participated in the hearing. The record closed on April 26, 2010, upon the submission of closing briefs by the Executive Director and Respondents.

II. CONCLUSIONS OF LAW

1. Under TEX. WATER CODE § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code or of the Texas Health and Safety Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.

2. Respondent Rosedale owns the UST located on the Property, which was transferred to Rosedale in 2005 as part of its purchase of the Property.

3. Under TEX. WATER CODE § 7.052, a penalty may not exceed $10,000.00 per violation, per day for the violations alleged in this proceeding.

4. In addition to imposing an administrative penalty, the Commission may order the violator to take corrective action, as provided by TEX. WATER CODE § 7.073.

5. As required by TEX. WATER CODE §7.055 and 30 TEX. ADMIN. CODE §§ 1.11 and 70.104, Respondents were notified of the Executive Director's First Amended Report and Petition and EDSARP and of the opportunity to request a hearing on the alleged violations and the proposed penalties and corrective actions.

6. As required by TEX. GOV'T CODE §§ 2001.051(1) and 2001.052; TEX. WATER CODE § 7.058; 1 TEX. ADMIN. CODE § 155.27; and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.25, 70.104, and 80.6, Respondents were notified of the hearing on the alleged violations and the proposed penalties and corrective actions.

7. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to TEX. GOV'T CODE ch. 2003.

8. Based on the Findings of Fact and Conclusions of Law:

   (a) Rosedale violated 30 TAC § 334.47(a)(2) by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and

   (b) Rosedale violated 30 TAC § 334.7(d)(3) by failing to provide an amended UST registration to the Commission for any change or additional information regarding UST within 30 days from the date of the occurrence of the change or addition.

9. In determining the amount of an administrative penalty, TEX. WATER CODE § 7.053 requires the Commission to consider several factors including:

- Its impact or potential impact on public health and safety, natural resources and their uses, and other persons;
- The nature, circumstances, extent, duration, and gravity of the prohibited act;
- The history and extent of previous violations by the violator;
- The violator's degree of culpability, good faith, and economic benefit gained through the violation;
- The amount necessary to deter future violations; and
- Any other matters that justice may require.

10. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.

11. Based on consideration of the above Findings of Fact, the factors set out in TEX. WATER CODE § 7.053, and the Commission's Penalty Policy, the Executive Director correctly calculated the penalties for each of the alleged violations and a total administrative penalty of $3,675 is justified and should be assessed against Rosedale.

12. Based on the above Findings of Fact, Rosedale should be required to take the corrective action that the Executive Director recommends.

13. Based on the above Findings of Fact, no sanctions should be imposed against Goodyear.

NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. 4200 Rosedale LLC is assessed an administrative penalty in the amount of $3,675 for violations of 30 TAC §§334.7(d)(3) and 334.47(a)(2). The payment of this administrative penalty and 4200 Rosedale LLC's compliance with all the terms and conditions set forth in this Order will completely resolve the matters set forth by this Order.

The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. All checks submitted to pay the penalty assessed by this Order shall be made out to "Texas Commission on Environmental Quality." Administrative penalty payments shall be sent with the notation "Re: 4200 Rosedale LLC; Docket No. 2007-1259-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. Within 30 days after the effective date of this Order, 4200 Rosedale LLC shall permanently remove the UST system from service, in accordance with 30 TAC § 334.55.

3. Within 30 days after the effective date of this Order, 4200 Rosedale LLC shall submit an amended registration to indicate the current ownership and operational status of the UST system, in accordance with 30 TAC § 334.7, to:

Registration and Reporting Section
Permitting & Remediation Support Division, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin TX 78711-3087

4. Within 45 days after the effective date of this Order, 4200 Rosedale LLC shall submit written certifications as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions Nos. 2 and 3. 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 fines and imprisonment for knowing violations."

The certification shall be sent to:

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

with a copy to:

Sam Barrett, Waste Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, TX 76118-6951

5. 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 4200 Rosedale LLC if the Executive Director determines that 4200 Rosedale LLC has not complied with one or more of the terms or conditions in this Commission Order.

6. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

7. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE § 2001.144.

8. As required by TEX. WATER CODE § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to Respondents.

9. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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Bryan W. Shaw, Chairman
For the Commission