



# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

**OIL & GAS DOCKET NO.09-0272774**

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**ENFORCEMENT ACTION AGAINST SOGGY BOTTOM BROTHERS, INCORPORATED (OPERATOR NO. 800229), OR IN THE ALTERNATIVE U.S. FUELS, INC. (OPERATOR NO. 879264) FOR VIOLATION OF A STATEWIDE RULE ON THE LUCY STINSON LEASE, WELL NO.1 (RRC NO. 021434), KENDALL (CADDO) FIELD, YOUNG COUNTY, TEXAS**

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**HEARD BY: LAURA E. MILES-VALDEZ**

<b>DATE COMPLAINT FILED:</b>	December 2, 2011
<b>DATE AMENDED COMPLAINT FILED:</b>	May 7, 2013
<b>DATE OF NOTICE OF HEARING:</b>	June 27, 2013
<b>DATE OF HEARING:</b>	July 2, 2013
<b>HEARD BY:</b>	Laura Miles-Valdez, Hearings Examiner
<b>DATE PFD CIRCULATED:</b>	March 24, 2014

**APPEARANCES:**

**FOR MOVANT:**

Elaine Moore  
Becky Tate

**MOVANT:**

Enforcement Section  
Railroad Commission of Texas

**FOR RESPONDENTS:**

David Nelson, Attorney  
Billy Lively, President  
David Jakobot

**RESPONDENTS:**

Soggy Bottom Brothers, Inc.  
Soggy Bottom Brothers, Inc.  
U.S. Fuels, Inc.

**STATEMENT OF THE CASE**

The Commission called this proceeding on the recommendation of the District Office to determine the following:

1. Whether the respondents, Soggy Bottom Brothers, Inc. (Operator No. 800229) (Soggy Bottom Brothers) or U.S. Fuels, Inc. (Operator No. 879264) (U.S. Fuels) violated provisions the of Texas Natural Resources Code, the Texas Water Code, or Railroad Commission Statewide Rule 3(1 and 2) by failing post the signs or identification required by Statewide Rule 3(1 and 2) to be posted at the lease entrance and surface location for the Lucy Stinson Lease, Well No.1 (RRC No. 021434) Kendall (Caddo) Field, Young County, Texas.
2. Whether the respondents, Soggy Bottom Brothers or U.S. Fuels, violated provisions of the Texas Natural Resources Code, the Texas Water Code, or Railroad Commission Statewide Rule 14(b)(2) by failing to commence plugging operations on each dry or inactive well within one year after drilling or operations cease, unless the operator is eligible for and obtains an extension of the plugging deadline under Statewide Rule 14(b)(2), on the Lucy Stinson Lease, Well No.1 (RRC No. 021434) Kendall (Caddo) Field, Young County, Texas.
3. Whether the respondents, Soggy Bottom Brothers or U.S. Fuels, violated provisions of the Texas Natural Resources Code, the Texas Water Code, or Railroad Commission Statewide Rule 46(g)(2) by failing to equip a pressure observation valve on the surface casing on the Lucy Stinson Lease, Well No.1 (RRC No. 021434) Kendall (Caddo) Field, Young County, Texas.
4. Whether the respondents, Soggy Bottom Brothers or U.S. Fuels, violated provisions the of Texas Natural Resources Code, the Texas Water Code, or Railroad Commission Statewide Rule 46(j) by failing to conduct disposal/injection well pressure test on the Lucy Stinson Lease, Well No.1 (RRC No. 021434) Kendall (Caddo) Field, Young County, Texas.
5. Whether Soggy Bottom Brothers or U.S. Fuels is the proper operator of the subject well, as defined by Texas Natural Resources Code §91.113 and/or Railroad Commission Statewide Rules [specifically, 16 Tex. Admin. Code §3.1(a)].
6. Whether Soggy Bottom Brothers or U.S. Fuels, should be assessed administrative penalties of not more than \$6,500.00 for the violations committed regarding the subject lease.
7. Whether any violation of Statewide Rules 3(1), 3(2),14(b)(2), 46(g)(2), and 46(j) by either Soggy Bottom Brothers or U.S. Fuels, should be referred to the Office of the Attorney General for further civil action pursuant to Tex. Nat. Res. Code Ann. § 81.0534.

The Commission held a hearing on July 25, 2013, Elaine Moore, staff attorney, and Becky Tate, legal assistant, appeared to represent the Enforcement Section of the Office of General Counsel ("Enforcement"). Mr. David Nelson, counsel for Respondent Soggy Bottom Brothers, and Billy J. Lively, President of Soggy Bottom Brothers, appeared and presented evidence. Mr. David Jakobot, appeared on behalf of respondent U.S. Fuels, Incorporated, and presented evidence. The certified enforcement case file was admitted into evidence without objection.

Enforcement recommends that Soggy Bottom Brothers be found to be the responsible operator for the violations of Statewide Rules 3(1), 3(2),14(b)(2), 46(g)(2), and 46(j) and that a penalty in the amount of \$6,500.00 be assessed against Soggy Bottom Brothers. The examiner agrees with Enforcement's recommendation that Soggy Bottom Brothers, as the designated operator on RRC Form P-4, is the responsible operator. Therefore, the examiner orders that Soggy Bottom Brothers place the subject lease in compliance with Statewide Rules 3(1), 3(2),14(b)(2), 46(g)(2), and 46(j) and be assessed and pay an administrative penalty of \$6,500.

#### **APPLICABLE LAW**

Statewide Rule 3 requires each property that produces oil, gas, or geothermal resources and each oil, gas, or geothermal resource well and tank, or other approved crude oil measuring facility where tanks are not utilized thereon, shall at all times be clearly identified by: (1) posting a sign at the principal entrance to each such property which shall show the name by which the property is commonly known and is carried on the records of the commission, the name of the operator, and the number of acres in the property; and (2) a sign shall be posted at each well site which shall show the name of the property, the name of the operator, and the well number.

Statewide Rule 14(b)(2) requires an operator to commence plugging operations on each inactive well within a period of one year after drilling or operations cease and shall proceed with due diligence until completed unless the Commission or its delegate approves a plugging extension under Statewide Rule 15 of this title (relating to Surface Equipment Removal Requirements and Inactive Wells).

Statewide Rule 46(g)(2) requires the wellhead shall be equipped with a pressure observation valve on the tubing and for each annulus of the well.

Statewide Rule 46(j) governs the mechanical integrity of an injection well shall be evaluated by conducting pressure tests to determine whether the well tubing, packer, or casing have sufficient mechanical integrity to meet the performance standards of this rule, or by alternative testing methods under paragraph (5) of subsection 46(j).

**MATTERS OFFICIALLY NOTICED**

The examiner has officially noticed the Final Order, Proposal for Decision, and evidentiary exhibits from Oil & Gas Docket No. 09-0270031, an enforcement case against Soggy Bottom Brothers, for violations of Statewide Rules 3, 46(a) and 8(d)(1), and in which the Final Order was served on July 17, 2012. The findings of fact from this previous case are applicable to the current case based on collateral estoppel. The facts were fully and fairly litigated in the first case, the facts were essential to the judgment in the first case, and the issues in the first case are similar to the issues in this case. *Goldstein v. Comm'n. for Lawyer Discipline*, 109 S.W.3d 810, 812 (Tex. App.—Dallas 2003, pet. denied).

**DISCUSSION OF THE EVIDENCE**

**Enforcement's Position and Evidence**

Enforcement asserts that based on Commission inspections conducted on May 16, 2011, June 15, 2011, March 26, 2012, January 28, 2013, and April 26, 2013, for the Lucy Stinson Lease, Well No.1, the responsible operator failed to post the required signs and/or identification at the lease entrance and well, as required pursuant to Statewide Rule 3(1) and (2). Enforcement asserts by failing to maintain legible signs and/or identification as required, Soggy Bottom Brothers or, in the alternative, U.S. Fuels, violated Statewide Rule 3(1) and (2).

Commission inspections conducted on June 15, 2011, March 26, 2012, January 28, 2013, and April 26, 2013, and the absence of injection/disposal reports filed since October 2009, show that the Lucy Stinson Lease, Well No.1, has been inactive for a period of greater than one year. No work overs, re-entries, or subsequent operations have taken place on the subject well within the last 12 months and the subject well has not been plugged. Further, by failing to timely plug the subject well or to obtain an extension of the plugging deadline, Enforcement asserts that Soggy Bottom Brothers or, in the alternative, U.S. Fuels, violated Statewide Rule 14(b)(2).

Also, Commission inspections conducted on June 15, 2011, January 28, 2013, and April 26, 2013, show Soggy Bottom Brothers or, in the alternative, U.S. Fuels, failed to equip Well No. 1 on the Lucy Stinson Lease with a pressure observation valve on the surface casing. Further, by failing to equip Well No. 1 of the Lucy Stinson Lease with a pressure observation valve on the surface casing, Enforcement asserts that Soggy Bottom Brothers or, in the alternative, U.S. Fuels, violated Statewide Rule 46(g)(2).

Lastly, Enforcement asserts based on Commission records, the Lucy Stinson Lease, Well No. 1, was due for a disposal/injection well pressure test (Form H-5) by September 30, 1991. Although Soggy Bottom Brothers filed a Commission Form H-5 for the subject well with a test date December 18, 2008, that test was found to be invalid by the Wichita Falls district office because the H-5 test was not witnessed by Commission staff, as the H-5 test was conducted on an unpermitted injection well. As a result that H-5 test results were inconclusive. Enforcement contends by failing to

conduct a disposal/injection well pressure test of the Lucy Stinson Lease Well No. 1, Soggy Bottom Brothers or, in the alternative, U.S. Fuels, violated Statewide Rule 46(j).

Neither Soggy Bottom Brothers nor U.S. Fuels, dispute that Statewide Rules 3(1), 3(2), 14(b)(2), 46(g)(2), and 46(j) were violated on the subject lease; rather, they dispute which operator should be held responsible for the violations.

### **Soggy Bottom Brothers' Position and Evidence**

Soggy Bottom Brothers designated itself as the operator of the subject lease by filing a Form P-4, effective on July 1, 2006. The Commission approved the Form P-4 on August 9, 2006. Soggy Bottom Brothers contends the subject lease was transferred by an assignment in January of 2011. As evidence of this assignment, Mr. Lively submitted an Assignment of Oil and Gas Interest which conveyed two Stinson Leases (RRC Nos. 07221 and 07222). Yet, the Assignment did not convey the Lucy Stinson Lease (RRC No. 021434). Mr. Lively, on behalf of Soggy Bottom Brothers, signed a dual-signature P-4 dated August 8, 2011, indicating his intent to transfer operations of the subject lease (RRC No. 021434) from Soggy Bottom Brothers to U.S. Fuels. This P-4 was never approved by the Commission staff because of an unresolved good faith claim to operate issue on the subject lease.

In support of its contention that U.S. Fuels should be designated as the responsible operator, Soggy Bottom offered two affidavits and an invoice. Soggy Bottom Brothers contends that David Jakobot, on behalf of U.S. Fuels, had concrete poured into the Lucy Stinson Lease, Well No. 1; thereby demonstrating his control over the operations of the lease.<sup>1</sup> The invoice from Ingram Concrete, LLC, shows concrete was delivered to an address at "3109 Eliasville Stinson Lease" on October 7, 2011. (Mr. Jakobot also offered a similar invoice from Ingram Concrete, LLC, which appears to be for the same job.) Soggy Bottom asserts the Ingram Concrete LLC invoice shows U.S. Fuels had control over the operations and directed the cementing of the Lucy Stinson Well No. 1. An affidavit from Mr. Scott Power stated Mr. Jakobot asked him to assist in the pouring of concrete at the Lucy Stinson Well No. 1, and that Mr. Jakobot "indicated to me that he was the person in control of this lease and the well on which we performed the task." The second affidavit offered was from Harold Bishop, and made a near verbatim re-statement of Mr. Power's affidavit. Neither affiant appeared at the hearing or was made otherwise available for questioning by Mr. Jakobot or Enforcement.

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<sup>1</sup> There was conflicting testimony regarding whether it was concrete or cement poured on October 7, 2011 by Ingram Concrete as well as where the concrete/cement was actually poured (*i.e.*, down the well or on the side of the well).

Soggy Bottom Brothers contends it attempted to correct the outstanding Statewide Rule 14(b)(2) violation by hiring Quail Well Service to plug the subject well. An invoice from Quail Well Service dated April 30, 2012, shows that Quail Well Service attempted to plug the Lucy Stinson Well No. 1, but was unable to plug the well due to suspected "fish in the hole." There was no other evidence offered by Soggy Bottom Brothers which disputed any of the violations alleged by Enforcement, and instead it only disputed who was responsible for the subject lease.

### **U.S. Fuels's Position and Evidence**

Mr. David Jakobot, of U.S. Fuels, denies being the operator of record for the lease at issue (RRC No. 021434). He admits he is the operator of record for the two Stinson Leases assigned by Soggy Bottom Brothers to U.S. Fuels in January 2011 (RRC Nos. 07221 and 07222). And while Mr. Jakobot acknowledged he signed the dual signature P-4 dated August 8, 2011, indicating an intent to transfer operations of the subject lease (RRC No. 021434) from Soggy Bottom Brothers to U.S. Fuels; he changed his mind and contends he didn't want the Lucy Stinson Well No. 1.

The bulk of Mr. Jakobot's testimony outlines a cantankerous business relationship with Mr. Lively. Mr. Jakobot disputes both affidavits filed in support of Soggy Bottom Brother's claim that U.S. Fuels had control over the operation of the Lucy Stinson Well No. 1. He did not dispute he contracted with Ingram Concrete to have concrete poured at a Stinson well on October 7, 2011; although he did not specify which Stinson well or where the concrete had been poured at the well site. In support of Mr. Jakobot's contention that U.S. Fuels is not the responsible operator he offered an April 2, 2013 letter from District Court Judge Stephen E. Bristow ruling in favor of U.S. Fuels, Inc., in its lawsuit against Soggy Bottom Brothers, Inc.<sup>2</sup> The underlying petition of that lawsuit indicates U.S. Fuels sued Soggy Bottom Brothers for fraud, statutory fraud and breach of warranty involving the subject Lucy Stinson Lease. Mr. Jakobot's testimony did not dispute any of the violations alleged by Enforcement, and instead contended Soggy Bottom Brothers is the responsible operator for the subject lease.

### **EXAMINER'S OPINION**

Pursuant to Statewide Rule 14(c)(2), because it became the operator of the Lease by Form P-4, which was approved by the Commission on August 9, 2006, Soggy Bottom Brothers is the operator of record and has the responsibility for operations and plugging the wells and for other regulatory compliance on the Lease.

In general, Statewide Rule 14(c)(2) provides that as to any well for which the most recent Commission-approved operator designation form was filed *prior to September 1, 1997*, the entity

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<sup>2</sup> Cause No. CV30817, In the 90th Judicial District for Stephens County, Texas.

designated as operator on that form is presumed to be the entity responsible for the physical operation and control of the well and the entity responsible for properly plugging the well. The presumption of responsibility may be rebutted only at a hearing called for the purpose of determining plugging responsibility. Soggy Bottom Brothers tried to defend against Enforcement's complaint by attempting to rebut the presumption of Statewide Rule 14(c)(2) that it is the entity responsible for the violations occurring on the Lucy Stinson Lease by showing that another operator, U.S. Fuels and David Jakobot, had taken an assignment from Dr. Lively for the subject lease and had exercised control over the subject well by having Ingram Concrete deliver and pour concrete/cement on October 7, 2011. However, Statewide Rule 14(c)(2) does not apply here because Soggy Bottom Brothers filed its Form P-4 for the subject lease with an effective date of July 1, 2006. The applicable provision of Statewide Rule 14 is subsection 14(c)(1), which provides that "[t]he entity designated as the operator of a well specifically identified on the most recent Commission-approved operator designation form filed on or after September 1, 1997, is responsible for properly plugging the well in accordance with this section and all other applicable Commission rules and regulations concerning plugging of wells." By signing the Form P-4, Soggy Bottom Brothers specifically acknowledged the responsibility for regulatory compliance on the subject lease, including the responsibility for violations occurring on, and the plugging of, Well No. 1 on the Lucy Stinson Lease.

The evidence shows that U.S. Fuels and Soggy Bottom Brothers both signed and filed a Form P-4, indicating an intent to change the operator of the Lease from Soggy Bottom Brothers to U.S. Fuels. However, the Commission never approved the transfer of the operator because there was an unresolved issue regarding whether Soggy Bottom Brothers had a good faith claim to operate the lease. Because the Commission never approved the dual-signature P-4, the last P-4 operator of record, Soggy Bottom Brothers, remains the responsible operator for the lease, in accordance with Statewide Rule 14(c)(1).

Further, because neither party offered any evidence disputing the violations alleged and detailed in the evidence, the examiners take the violations alleged in Enforcement's First Amended Petition as true.

The examiner recommends that Soggy Bottom Brothers be ordered to place the Lease in compliance with all Statewide Rules, including Statewide Rules 3(1), 3(2), 14(b)(2), 46(g)(2), and 46(j), and be assessed and pay an administrative penalty of \$6,500. The recommended penalty is appropriate because (1) the violations of Statewide Rules 3(1), 3(2), 14(b)(2), 46(g)(2), and 46(j) are serious and created a safety hazard; (2) Soggy Bottom Brothers acted in bad faith because it failed to correct Commission rule violations on the subject lease and failed to adequately explain its inaction to the Commission; and (3) Soggy Bottom Brothers has the following history of violations of Commission rules: Oil and Gas Docket 09-0270031; Violations of Statewide Rules 3, 46(j), and 8(d)(1); Order served July 17, 2012.

The examiner recommends that the complaint with respect to U.S. Fuels be dismissed with prejudice.

Based on the record in this case, the examiner recommends that the Commission adopt the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. Soggy Bottom Brothers, Inc. (Soggy Bottom Brothers) was given at least 10 days notice of this proceeding by certified mail, addressed to its most recent Form P-5 (Organization Report) address. Soggy Bottom Brothers appeared at the hearing and presented evidence.
2. U.S. Fuels, Inc. (U.S. Fuels) was given at least 10 days notice of this proceeding by certified mail, addressed to the "organization address" reported on the Form P-5 (Organization Report) filed on October 12, 2012. The receipt for certified mail (green card) was signed and returned to the Commission. U.S. Fuels appeared at the hearing and presented evidence.
3. Soggy Bottom Brothers designated itself as the operator of the Lucy Stinson Lease, Well No.1 (RRC No. 021434), Kendall (Caddo) Field, Young County, Texas, by filing a Form P-4, effective on July 1, 2006. The Commission approved the Form P-4 on August 9, 2006.
4. A P-4 filed after September 1, 1997 is not subject to the "exercised control" argument. Prior to September 1, 1997, there was a rebuttable presumption that the P-4 operator was responsible for the operation and control of the well. After September 1, 1997, there is no rebuttable presumption defense available to a P-4 operator.
5. Mr. Lively, on behalf of Soggy Bottom Brothers, signed a dual-signature Form P-4 dated August 8, 2011, indicating his intent to transfer operations of the subject lease (RRC No. 021434) from Soggy Bottom Brothers to U.S. Fuels. The Commission never approved the August 8, 2011, dual-signature P-4 was never approved.
6. Soggy Bottom Brothers hired Quail Well Service to try to plug the subject well. An invoice from Quail Well Service dated April 30, 2012, indicates Quail Well Service attempted to plug the Lucy Stinson Well No. 1, but was unable to plug the well.
7. In January 2011, Soggy Bottom Brothers assigned to US Fuels two nearby Stinson Leases (RRC Nos. 07221 and 07222).
8. U.S. Fuels, as designated on the P-5, is the operator of record for the two Stinson Leases assigned by Soggy Bottom Brothers to U.S. Fuels in January 2011 (RRC Nos. 07221 and 07222).
9. According to the terms of the Form P-4, by the signature of Owner, Dr. Billy Lively, Soggy Bottom Brothers acknowledged its responsibility for regulatory compliance on the Lucy Stinson Lease, Well No.1 (RRC No. 021434).



10. As of the dates of District Office inspections on May 16, 2011, June 15, 2011, March 26, 2012, January 28, 2013, and April 26, 2013, for the Lucy Stinson Lease, Well No.1, Soggy Bottom Brothers failed to post the required signs and/or identification at the lease entrance and well were missing.
11. Soggy Bottom Brothers' failure to post or maintain the required signs and/or identification at the lease entrance and well is serious and threatens the public health and safety. In the event of a pollution or safety violation, or other emergence, the lack of legible signs or identification displaying the correct information may cause confusion as to the responsible operator to be contacted and the actual location of the violation or emergence. Such confusion will cause delays in containing and remediating the violation or emergency.
12. District Office inspections conducted on June 15, 2011, March 26, 2012, January 28, 2013, and April 26, 2013, and the absence of injection/disposal reports filed since October 2009, show that the Lucy Stinson Lease, Well No.1, has been inactive for a period of greater than one year. No work overs, re-entries, or subsequent operations have taken place on the subject well within the last 12 months and the subject well has not been plugged.
13. Soggy Bottom Brothers' failure to timely plug the subject well or to obtain an extension of the plugging deadline is a serious threat to public safety and health. Unplugged well bores are likely to cause pollution of useable quality ground water and surface water, by serving as a conduit for the passage of oil, gas, saltwater, and other substances from one stratum or formation to another or to the surface or from the surface downward.
14. As of the dates of District Office inspections conducted on June 15, 2011, January 28, 2013, and April 26, 2013, show Soggy Bottom Brothers failed to provide a pressure observation valve on the surface casing on the Lucy Stinson Lease, Well No. 1.
15. Soggy Bottom Brothers' failure to equip the Lucy Stinson Lease, Well No. 1, with a pressure observation valve on the surface casing, is a serious hazard to the public health and safety because undetected and significant pressure on the annulus of an injection/disposal well indicates a possible pollution hazard to useable water if leaks in the wellborn allow communication between the injected saltwater and the useable quality ground water. Without proper observation valves, pressure on the annulus cannot be detected.
16. The Lucy Stinson Lease, Well No. 1, was due for adisposal/injection well pressure test (Form H-5) by September 30, 1991. Soggy Bottom Brothers filed a Commission Form H-5 for the subject well with a test date December 18, 2008, which was found to be invalid by the Wichita Falls district office. The test results were inconclusive.
17. Soggy Bottom Brothers' failure to conduct a disposal/injection well pressure test of the Lucy Stinson Lease Well No. 1 is serious and threatens the public health and safety because a failure to test an injection well may lead to leaks of fluid and cause pollution, as defined in

Statewide Rule 8(a)(28).

**CONCLUSIONS OF LAW**

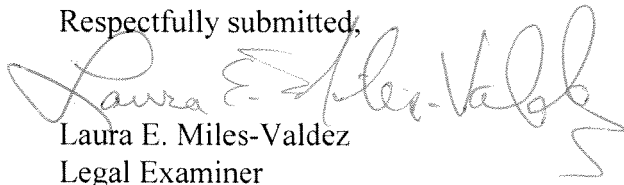
1. Proper notice of hearing was timely issued to the appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Soggy Bottom Brothers, Inc. ("Soggy Bottom Brothers") is the designated Form P-4 operator of the Lucy Stinson Lease, Well No.1 (RRC No. 021434) Kendall (Caddo) Field, Young County, Texas (the "Lease"), and it was the entity responsible for the physical operation and control of the Lease and the entity responsible for plugging the wells and compliance with Statewide Rules 3(1), 3(2),14(b)(2), 46(g)(2), and 46(j) [16 Tex. Admin. Code §§ 3.3(1), 3.3(2), 3.14(b)(2), 3.46(g)(2), and 3.46(j)] on the Lease.
4. U.S. Fuels was not the entity responsible for plugging the wells or for compliance with Statewide Rules 3(1), 3(2),14(b)(2), 46(g)(2), and 46(j) [16 Tex. Admin. Code §§ 3.3(1), 3.3(2), 3.14(b)(2), 3.46(g)(2), and 3.46(j)] on the Lease.
5. Soggy Bottom Brothers violated Statewide Rule 3(1) [16 Tex. Admin. Code §3.3(1)] on the Lease. The Lease has been out of compliance with Statewide Rule 3(1) since May 16, 2011.
6. Soggy Bottom Brothers violated Statewide Rule 3(2) [16 Tex. Admin. Code §3.3(2)] on the Lease. The Lease has been out of compliance with Statewide Rule 3(2) since May 16, 2011.
7. Soggy Bottom Brothers violated Statewide Rule 14(b)(2) [16 Tex. Admin. Code §3.14(b)(2)] on the Lease. The Lease has been out of compliance with Statewide Rule 14(b)(2) since June 15, 2011.
8. Soggy Bottom Brothers violated Statewide Rule 46(g)(2) [16 Tex. Admin. Code §3.46(g)(2)] on the Lease. The Lease has been out of compliance with Statewide Rule 46(g)(2) since June 15, 2011.
9. Soggy Bottom Brothers violated Statewide Rule 46(j) [16 Tex. Admin. Code §3.46(j)] on the Lease. The Lease has been out of compliance with Statewide Rule 46(j) since December 18, 2008.
10. The documented violations committed by Soggy Bottom Brothers constitute acts deemed serious and a hazard to the public health, and demonstrate a lack of good faith as provided by Tex. Nat. Res. Code Ann. § 81.0531(c).

**RECOMMENDATION**

The examiner recommends that the Commission enter the attached final order:

- (1) ordering Soggy Bottom Brothers, Inc. to place the Lease into compliance with all Statewide Rules (including, Statewide Rules 3(1), 3(2), 14(d)(12), 46(g)(2), and 46(j));
- (2) assessing an administrative penalty against Soggy Bottom Brothers, Inc. in the amount of \$6,500.00; and
- (3) as to U.S. Fuels, Inc., dismissing the complaint with prejudice.

Respectfully submitted,



Laura E. Miles-Valdez  
Legal Examiner