EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2010-1976-WR-E **TCEQ ID:** RN106019862 **CASE NO.:** 40816

RESPONDENT NAME: DTE Gas Resources, LLC.

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	X WATER RIGHTS	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: DTE Gas Price Lease Well No. 2H, located two miles northeast of Perrin, Jack County

TYPE OF OPERATION: Drill site property

SMALL BUSINESS: X **Yes** ___ **No**

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on April 4, 2011. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Mr. Tom Jecha, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-2576; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495

Respondent: Mr. Steven Prelipp, President, DTE Gas Resources, LLC., 301 Commerce Street, Suite 1800, Fort Worth, Texas 76102

Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint X Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** September 22, 2010 **Date of NOV/NOE Relating to this Case:** November 9, 2010 (NOE) **Background Facts:** This was a routine investigation. This case was remanded from the May 11, 2011 Agenda at the direction of the Commissioners to remove Good Faith. **WATER** Failed to obtain the required authorization prior to impounding, diverting, or using state water. Specifically, the Respondent diverted 12.46 acre feet of water from Wimberly Pond to drill and complete Price 1H and Price 2H wells [TEX. WATER CODE § 11.121 and 30 TEX. ADMIN. CODE § 297.11].	**Total Assessed:** $1,027 **Total Deferred:** $205 X Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $822 **Compliance History Classifications:** Person/CN - Average Site/RN - Average **Major Source:** __ **Yes** X **No** **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that the Respondent ceased diverting state water on August 7, 2010 from Wimberly Pond for the purpose of drilling and completing the Price 1H and Price 2H wells.

Additional ID No(s).: N/A

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES						
Assigned	6-Dec-2010					
PCW	9-Dec-2010	**Screening**	7-Dec-2010	**EPA Due**		

RESPONDENT/FACILITY INFORMATION

Respondent	DTE Gas Resources, LLC.		
Reg. Ent. Ref. No.	RN106019862		
Facility/Site Region	3-Abilene	**Major/Minor Source**	Minor

CASE INFORMATION

Enf./Case ID No.	40816	**No. of Violations**	1
Docket No.	2010-1976-WR-E	**Order Type**	1660
Media Program(s)	Water Rights	**Government/Non-Profit**	No
Multi-Media		**Enf. Coordinator**	Jordan Jones
		EC's Team	Enforcement Team 3

Admin. Penalty $ Limit Minimum $0 Maximum $5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1*: $500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 0.0% Enhancement — *Subtotals 2, 3, & 7*: $0

Notes: No adjustment for Compliance History.

Culpability — No — 0.0% Enhancement — *Subtotal 4*: $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments — *Subtotal 5*: $0

Economic Benefit — 0.0% Enhancement* — *Subtotal 6*: $0

Total EB Amounts: $527
Approx. Cost of Compliance: $527
**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal*: $500

OTHER FACTORS AS JUSTICE MAY REQUIRE — 105.4% — *Adjustment*: $527

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement for avoided costs associated with the violation.

Final Penalty Amount: $1,027

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty*: $1,027

DEFERRAL — 20.0% Reduction — *Adjustment*: -$205

Reduces the Final Assessed Penalty by the indicted percentage. *(Enter number only; e.g. 20 for 20% reduction.)*

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY: $822

Screening Date 7-Dec-2010 **Docket No.** 2010-1976-WR-E **PCW**

Respondent DTE Gas Resources, LLC.

Policy Revision 2 (September 2002)

Case ID No. 40816

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106019862

Media [Statute] Water Rights

Enf. Coordinator Jordan Jones

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 (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		Please Enter Yes or No	
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) 0%

>> 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

No adjustment for Compliance History.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 7-Dec-2010 **Docket No.** 2010-1976-WR-E **PCW**

Respondent DTE Gas Resources, LLC.

Policy Revision 2 (September 2002)

Case ID No. 40816

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106019862

Media [Statute] Water Rights

Enf. Coordinator Jordan Jones

Violation Number 1

Rule Cite(s) Tex. Water Code § 11.121 and 30 Tex. Admin. Code § 297.11

Violation Description Failed to obtain the required authorization prior to impounding, diverting, or using state water, as documented in an investigation conducted on September 22, 2010. Specifically, the Respondent diverted 12.46 acre feet of water from Wimberly Pond to drill and complete Price 1H and Price 2H wells.

Base Penalty $5,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

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

Adjustment $4,500

$500

Violation Events

Number of Violation Events: 1 — 4 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $500

One monthly event is recommended, from August 3, 2010, the date the Respondent started diverting state water, to August 7, 2010, the date diversion of state water ceased.

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 $500

Economic Benefit (EB) for this violation

Estimated EB Amount $527

Statutory Limit Test

Violation Final Penalty Total $1,027

This violation Final Assessed Penalty (adjusted for limits) $1,027

Economic Benefit Worksheet

Respondent DTE Gas Resources, LLC.
Case ID No. 40816
Reg. Ent. Reference No. RN106019862
Media Water Rights
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	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]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]	$527	3-Aug-2010	7-Aug-2010	0.00	$0	$527	$527
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs	Estimated cost to prepare and submit an administratively complete water right permit application, and to obtain a permit. Date required is the date the Respondent started diverting state water. Final date is the date diverting of state water ceased.						

Approx. Cost of Compliance $527

TOTAL $527

Compliance History

Customer/Respondent/Owner-Operator: CN603270059 DTE Gas Resources, LLC. Classification: AVERAGE Rating: 3.01

Regulated Entity: RN106019862 DTE GAS PRICE LEASE WELL NO 2H Classification: AVERAGE BY DEFAULT Site Rating: 3.01

ID Number(s): WATER QUALITY NON PERMITTED ID NUMBER R03106019862

Location: TWO MILES NORTHEAST OF PERRIN (JACK COUNTY)

TCEQ Region: REGION 03 - ABILENE

Date Compliance History Prepared: December 07, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: December 07, 2005 to December 07, 2010

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

Name: Jordan Jones Phone: (512) 239-2569

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? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
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.
N/A

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 11/09/2010 (871562)

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

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

K. Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING DTE GAS RESOURCES, LLC. RN106019862	**§ § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2010-1976-WR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding DTE Gas Resources, LLC. ("the Respondent") under the authority of TEX. WATER CODE ch. 11. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a drill site property located two miles northeast of Perrin in Jack County, Texas (the "Site").

2. The Respondent's Site adjoins, is contiguous with or surrounds state water as defined in TEX. WATER CODE § 11.021 and 30 TEX. ADMIN. CODE § 297.1(50).

3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.

4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about November 14, 2010.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of One Thousand Twenty-Seven Dollars ($1,027) is assessed by the Commission in settlement of the violations alleged in Section

II ("Allegations"). The Respondent has paid Eight Hundred Twenty-Two Dollars ($822) of the administrative penalty and Two Hundred Five Dollars ($205) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director recognizes that the Respondent ceased diverting state water on August 7, 2010 from Wimberly Pond for the purpose of drilling and completing the Price 1H and Price 2H wells.

10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have failed to obtain the required authorization prior to impounding, diverting, or using state water, in violation of TEX. WATER CODE § 11.121 and 30 TEX. ADMIN. CODE § 297.11, as documented in an investigation conducted on September 22, 2010. Specifically, the Respondent diverted 12.46 acre feet of water from Wimberly Pond to drill and complete Price 1H and Price 2H wells.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: DTE Gas Resources, LLC., Docket No. 2010-1976-WR-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. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.

3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

4. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ _____
For the Executive Director Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

_____ _____
Signature Date

STEVEN PRELIPP PRESIDENT
Name (Printed or typed) Title
Authorized Representative of
DTE Gas Resources, LLC.

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.