EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2010-0665-LII-E **TCEQ ID:** RN105210652 **CASE NO.:** 39573

RESPONDENT NAME: Steven M. Sluder dba "A" Affordable Landscaping

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	X OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Steven M. Sluder, 22019 State Highway 135, Troup, Smith County

TYPE OF OPERATION: Landscaping business

SMALL BUSINESS: __X__ **Yes** ___ **No**

OTHER SIGNIFICANT MATTERS: A complaint was received on August 24, 2009, alleging that the Respondent advertised irrigation services in the 2009 Tyler AT&T Yellow Pages and did not include a licensed irrigator number in the advertisement. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.

COMMENTS RECEIVED: The *Texas Register* comment period expired on August 30, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Miriam Hall, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-1044; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495
Respondent: Mr. Steven Sluder, Owner, "A" Affordable Landscaping, P.O. Box 603, Troup, Texas 75789
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: X Complaint __ Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** August 24, 2009 **Date of Investigation Relating to this Case:** March 23, 2010 **Date of NOV/NOE Relating to this Case:** March 30, 2010 (NOE) **Background Facts:** This was a complaint investigation. **WATER** Failure to refrain from advertising or representing himself to the public as a holder of a license or registration unless he possesses a current license or registration. Specifically, the Respondent advertised irrigation services via a website, www.aaffordablelandscape.com, and an advertisement in the 2009 AT&T Tyler Yellow Pages [30 TEX. ADMIN. CODE §§ 30.5(b) and 344.30(a)(2) and TEX. WATER CODE § 37.003].	**Total Assessed:** $450 **Total Deferred:** $90 X Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $360 **Site Compliance History Classification** **__ High __ Average __ Poor** **Person Compliance History Classification** **__ High __ Average __ Poor** **Major Source:** __ Yes X No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that the Respondent has ceased advertising irrigation system services as of April 26, 2010.

Additional ID No(s).: LI0015860 (Cancelled)

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES					
Assigned	5-Apr-2010				
PCW	28-Apr-2010	Screening	26-Apr-2010	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Steven M. Sluder dba "A" Affordable Landscaping		
Reg. Ent. Ref. No.	RN105210652		
Facility/Site Region	5-Tyler	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	39573	No. of Violations	1
Docket No.	2010-0665-LII-E	Order Type	1660
Media Program(s)	Irrigators	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Miriam Hall
		EC's Team	Enforcement Team 4

Admin. Penalty $ Limit Minimum $0 Maximum $2,500

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 due to 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*	$50
Economic Benefit	0.0% Enhancement*	*Subtotal 6*	$0

Total EB Amounts $1
Approx. Cost of Compliance $25
**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7	*Final Subtotal*	$450
OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0%	*Adjustment*	$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount	$450
STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty*	$450
DEFERRAL 20.0% Reduction *Adjustment*	-$90

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	$360

Screening Date	26-Apr-2010	**Docket No.**	2010-0665-LII-E
Respondent	Steven M. Sluder dba "A" Affordable Landscaping		
Case ID No.	39573		
Reg. Ent. Reference No.	RN105210652		
Media [Statute]	Irrigators		
Enf. Coordinator	Miriam Hall		

PCW

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

Compliance History Worksheet

>> Compliance History *Site* Enhancement (Subtotal 2)

Component	Number of...	*Enter Number Here*	Adjust.
NOVs	Written 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)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment due to compliance history.

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

Screening Date 26-Apr-2010 **Docket No.** 2010-0665-LII-E **PCW**

Respondent Steven M. Sluder dba "A" Affordable Landscaping *Policy Revision 2 (September 2002)*

Case ID No. 39573 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN105210652

Media [Statute] Irrigators

Enf. Coordinator Miriam Hall

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 30.5(b) and 344.30(a)(2) and Tex. Water Code § 37.003

Violation Description Failed to refrain from advertising or representing himself to the public as a holder of a license or registration unless he possesses a current license or registration. Specifically, the Respondent advertised irrigation services via a website, www.aaffordablelandscape.com, and an advertisement in the 2009 AT&T Tyler Yellow Pages.

Base Penalty $2,500

>> Environmental, Property and Human Health Matrix

Release	Major	Moderate	Minor
Actual			
Potential			

OR

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: The Respondent failed to meet 100% of the rule requirement.

Adjustment $2,250

$250

Violation Events

Number of Violation Events 2 | 34 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $500

Two single events are recommended, one for the website and one for the Yellow Pages ad.

Good Faith Efforts to Comply

10.0% Reduction $50

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

Notes: The Respondent came into compliance by April 26, 2010, and the NOE was issued on March 30, 2010.

Violation Subtotal $450

Economic Benefit (EB) for this violation

Estimated EB Amount $1

Statutory Limit Test

Violation Final Penalty Total $450

This violation Final Assessed Penalty (adjusted for limits) $450

Economic Benefit Worksheet

Respondent Steven M. Sluder dba "A" Affordable Landscaping
Case ID No. 39573
Reg. Ent. Reference No. RN105210652
Media Irrigators
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	$25	24-Aug-2009	26-Apr-2010	0.67	$1	n/a	$1

Notes for DELAYED costs

The estimated cost of submitting the request to have the website changed and the Yellow Pages ad revised for the next edition. The website and Yellow Pages are both maintained by AT&T. The begin date is the date a complaint was received about the Yellow Pages ad (approximate publication/distribution date). The final date is the date by which the advertisements were changed.

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

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

34

Approx. Cost of Compliance $25

TOTAL $1

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603179599	SLUDER, STEVEN M.	Classification:	Rating:
Regulated Entity:	RN105210652	SLUDER, STEVEN M.	Classification:	Site Rating:

ID Number(s):

Location: 22019 State Highway 135, Troup, Texas 75789

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: April 26, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 26, 2005 to April 26, 2010

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

Name: Miriam Hall Phone: (512) 239 - 1044

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
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.

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, 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.)

N/A

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

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
STEVEN M. SLUDER DBA "A"	§	
AFFORDABLE LANDSCAPING	§	
RN105210652	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2010-0665-LII-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 Steven M. Sluder dba "A" Affordable Landscaping ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 37 and TEX. OCCUPATIONS CODE ch. 1903. 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 landscaping business at 22019 State Highway 135 in Troup, Smith County, Texas.

2. TCEQ has general authority to regulate the design and installation of landscape irrigation systems, and the licensing of landscape irrigators and installers, pursuant to TEX. OCCUPATIONS CODE ch. 1903.

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 April 4, 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 Four Hundred Fifty Dollars ($450) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Hundred Sixty Dollars ($360) of the administrative penalty and Ninety Dollars ($90) 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 has ceased advertising irrigation system services as of April 26, 2010.

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

The Respondent is alleged to have failed to refrain from advertising or representing himself to the public as a holder of a license or registration unless he possesses a current license or registration, in violation of 30 TEX. ADMIN. CODE §§ 30.5(b) and 344.30(a)(2) and TEX. WATER CODE § 37.003, as documented during a record review conducted on March 23, 2010. Specifically, the Respondent advertised irrigation services via a website, www.aaffordablelandscape.com, and an advertisement in the 2009 AT&T Tyler Yellow Pages.

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: Steven M. Sluder dba "A" Affordable Landscaping, Docket No. 2010-0665-LII-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.

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 multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.

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

John Sadler
For the Executive Director

Date 8/13/2010

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 6/25/10

STEVEN SLUDER
Name (Printed or typed)
Authorized Representative of
Steven M. Sluder dba "A" Affordable Landscaping

OWNER
Title

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.