

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.:** 2009-1522-IHW-E **TCEQ ID:** RN105772735 **CASE NO.:** 38390  
**RESPONDENT NAME:** CHANGING SURFACE, INC.

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> CHANGING SURFACE, INC., 9650 Datapoint Drive, Suite 104, San Antonio, Bexar County</p> <p><b>TYPE OF OPERATION:</b> Resurfacing business</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> A complaint was received on July 23, 2009, alleging a painting contractor was disposing of waste paint and solvent in a trash dumpster. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on March 29, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Rajesh Acharya, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-0577; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Ms. Jo Ann Karambis, President, CHANGING SURFACE, INC., 9650 Datapoint Drive, Suite 104, San Antonio, Texas 78229  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b>                      July 23, 2009</p> <p><b>Date of Investigation Relating to this Case:</b>                      July 23, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b>                      October 31, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a complaint investigation.</p> <p><b>WASTE</b></p> <p>1) Failure to prevent the discharge of industrial solid waste in a manner that creates a nuisance and endangers the public health and welfare. Specifically, the investigator observed three five-gallon waste paint containers and used paper towels laden with paint and paint solvent in the trash dumpster. The investigator also detected a strong odor of solvent emanating from the dumpster [30 TEX. ADMIN. CODE § 335.4(3)].</p> <p>2) Failure dispose of waste solvent, a hazardous waste, at an authorized facility [30 TEX. ADMIN. CODE § 335.2].</p> <p>3) Failure to conduct a hazardous waste determination for each solid waste generated. Specifically, the Respondent did not conduct a hazardous waste determination for paint and solvent wastes generated at the Facility [30 TEX. ADMIN. CODE § 335.62 and 40 CODE OF FEDERAL REGULATIONS ("CFR") § 262.11].</p> <p>4) Failure to keep a container holding paint or paint-related waste closed, except when adding or removing waste. Specifically, the investigator observed a five-gallon metal container of paint waste in a pick-up truck and the container was open [30 TEX. ADMIN. CODE §§ 335.69(f)(2), 335.262(c)(2)(A) and 40 CFR § 265.173(a)].</p>	<p><b>Total Assessed:</b> \$9,000</p> <p><b>Total Deferred:</b> \$1,800  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$7,200</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, begin disposing of industrial solid waste in a manner that does not create a nuisance or endangers public health and welfare.</p> <p>b. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Develop and implement procedures to properly dispose of solid waste at facilities authorized to accept the waste;</p> <p>ii. Conduct hazardous waste determinations on all waste streams generated at the Facility; and</p> <p>iii. Develop and implement procedures to ensure that all containers storing hazardous waste are kept closed except when adding or removing wastes.</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. through b.iii.</p>

Additional ID No(s): F2048



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	14-Sep-2009	Screening	16-Sep-2009	EPA Due	
	PCW	16-Sep-2009				

## RESPONDENT/FACILITY INFORMATION

Respondent	CHANGING SURFACE, INC.		
Reg. Ent. Ref. No.	RN105772735		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

## CASE INFORMATION

Enf./Case ID No.	38390	No. of Violations	4
Docket No.	2009-1522-IHW-E	Order Type	1880
Media Program(s)	Industrial and Hazardous Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Rajesh Acharya
Admin. Penalty \$ Limit Minimum	\$0	EC's Team	Enforcement Team 6
Maximum	\$10,000		

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History**  Enhancement Subtotals 2, 3, & 7

Notes

**Culpability**   Enhancement Subtotal 4

Notes

**Good Faith Effort to Comply Total Adjustments** Subtotal 5

**Economic Benefit**  Enhancement\* Subtotal 6   
\*Capped at the Total EB \$ Amount

Total EB Amounts	\$99
Approx. Cost of Compliance	\$2,650

**SUM OF SUBTOTALS 1-7** Final Subtotal

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  Adjustment

Reduces or enhances the Final Subtotal by the Indicated percentage.

Notes

Final Penalty Amount

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty

**DEFERRAL**  Reduction Adjustment

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

Notes

**PAYABLE PENALTY**

Screening Date 16-Sep-2009

Docket No. 2009-1522-IHW-E

PCW

Respondent CHANGING SURFACE, INC.

Policy Revision 2 (September 2002)

Case ID No. 38390

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105772735

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Rajesh Acharya

### 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%
<i>Please Enter Yes or No</i>			
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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

No adjustments due to compliance history.

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

Screening Date 16-Sep-2009

Docket No. 2009-1522-IHW-E

PCW

Respondent CHANGING SURFACE, INC.

Policy Revision 2 (September 2002)

Case ID No. 38390

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105772735

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Rajesh Acharya

Violation Number

1

Rule Cite(s)

30 Tex. Admin. Code § 335.4(3)

Violation Description

Failed to prevent the discharge of industrial solid waste in a manner that creates a nuisance and endangers the public health and welfare. Specifically, the investigator observed three five-gallon waste paint containers and used paper towels laden with paint and paint solvent in the trash dumpster. The investigator also detected a strong odor of solvent emanating from the dumpster.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

55 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended from the July 23, 2009 investigation date to the September 16, 2009 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDRP/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 \$1,000

Economic Benefit (EB) for this violation

Estimated EB Amount \$38

Statutory Limit Test

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

## Economic Benefit Worksheet

**Respondent** CHANGING SURFACE, INC.

**Case ID No.** 38390

**Reg. Ent. Reference No.** RN105772735

**Media** Industrial and Hazardous Waste

**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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	\$1,000	23-Jul-2009	23-Apr-2010	0.75	\$38	n/a	\$38
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly dispose of the waste at an authorized facility. Date Required is the investigation date.  
Final Date is the estimated date of compliance

**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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$38

Screening Date 16-Sep-2009

Docket No. 2009-1622-IHW-E

PCW

Respondent CHANGING SURFACE, INC.

Policy Revision 2 (September 2002)

Case ID No. 38390

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105772735

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Rajesh Acharya

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 335.2

Violation Description

Failed to dispose of waste solvent, a hazardous waste, at an authorized facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

55 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One quarterly event is recommended from the July 23, 2009 investigation date to the September 16, 2009 screening date.

Good Faith Efforts to Comply

0.0% Reduction Before NOV NOV to EDRP/Settlement Offer

\$0

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$38

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

# Economic Benefit Worksheet

**Respondent** CHANGING SURFACE, INC.  
**Case ID No.** 38390  
**Reg. Ent. Reference No.** RN105772735  
**Media** Industrial and Hazardous Waste  
**Violation No.** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

**Delayed Costs**

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$1,000	23-Jul-2009	23-Apr-2010	0.75	\$38	n/a	\$38
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to develop and implement procedures to ensure that all wastes generated at the Facility are shipped to an authorized facility. Date Required is the investigation date. Final Date is the estimated date of compliance.

**Avoided Costs**

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

Approx. Cost of Compliance

\$1,000

TOTAL

\$38

Screening Date 16-Sep-2009

Docket No. 2009-1522-IHW-E

PCW

Respondent CHANGING SURFACE, INC.

Policy Revision 2 (September 2002)

Case ID No. 38390

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105772735

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Rajesh Acharya

Violation Number 3

Rule Cite(s) 30 Tax. Admin. Code § 335.62 and 40 Code of Federal Regulations ("CFR") § 262.11

Violation Description Failed to conduct a hazardous waste determination for each solid waste generated. Specifically, the Respondent did not conduct a hazardous waste determination for paint and solvent wastes.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

	Major	Moderate	Minor	Percent
Falsification				0%

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2 Number of violation days 55

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
single event		

Violation Base Penalty \$5,000

Two monthly events are recommended from the July 23, 2009 investigation date to the September 16, 2009 screening date.

Good Faith Efforts to Comply

	0.0% Reduction	
	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

\$0

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$5,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$19

Violation Final Penalty Total \$5,000

This violation Final Assessed Penalty (adjusted for limits) \$5,000

## Economic Benefit Worksheet

**Respondent** CHANGING SURFACE, INC.  
**Case ID No.** 38390  
**Reg. Ent. Reference No.** RN105772735  
**Media** Industrial and Hazardous Waste  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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	\$500	23-Jul-2009	23-Apr-2010	0.75	\$19	n/a	\$19
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**  
 Estimated cost to conduct hazardous waste determinations. Date Required is the investigation date. Final Date is the estimated date of compliance.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Avoided Costs</b>							
<b>ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)</b>							
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**  
 (Empty box for notes)

**Approx. Cost of Compliance** \$500 **TOTAL** \$19

Screening Date 16-Sep-2009

Docket No. 2009-1522-IHW-E

PCW

Respondent CHANGING SURFACE, INC.

Policy Revision 2 (September 2002)

Case ID No. 38390

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105772735

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Rajesh Acharya

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code §§ 335.69(f)(2) and 335.262(c)(2)(A) and 40 CFR § 265.173(a)

Violation Description

Failed to keep a container holding paint or paint-related waste closed, except when adding or removing waste. Specifically, the investigator observed a five-gallon metal container of paint waste in a pick-up truck and the container was open.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			X

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1

Number of violation days 1

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
single event	X	

Violation Base Penalty \$500

One single event is recommended.

Good Faith Efforts to Comply

	0.0% Reduction	
	Before NOV	NOV to EDRP/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 \$0

Statutory Limit Test

Violation Final Penalty Total \$500

This violation Final Assessed Penalty (adjusted for limits) \$500

# Economic Benefit Worksheet

**Respondent** CHANGING SURFACE, INC.  
**Case ID No.** 38390  
**Reg. Ent. Reference No.** RN105772735  
**Media** Industrial and Hazardous Waste  
**Violation No.** 4

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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)	\$150	23-Jul-2009	23-Apr-2010	0.75	\$6	n/a	\$6

Notes for DELAYED costs

Estimated cost to develop and implement procedure to ensure that containers are closed after adding or removing waste. Date Required is the investigation date. Final Date is the estimated date of compliance.

**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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$150

**TOTAL**

\$6

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603512872 CHANGING SURFACE, INC. Classification: AVERAGE Rating: 3.01  
Regulated Entity: RN105772735 CHANGING SURFACE, INC. Classification: AVERAGE Site Rating: 3.01  
BY DEFAULT

ID Number(s): INDUSTRIAL AND HAZARDOUS WASTE EPA ID TXR000079855  
GENERATION  
INDUSTRIAL AND HAZARDOUS WASTE ID NUMBER F2048  
GENERATION  
Location: 9650 DATAPOINT DR., STE 104, SAN ANTONIO, TX, 78229

TCEQ Region: REGION 13 - SAN ANTONIO

Date Compliance History Prepared: September 23, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 23, 2004 to September 23, 2009

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

Name: Rajesh Acharya Phone: (512) 239-0577

## 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: 9/1/2009 Repeat Violator: NO

## 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  
ENFORCEMENT ACTION  
CONCERNING  
CHANGING SURFACE, INC.  
RN105772735

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2009-1522-IHW-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 CHANGING SURFACE, INC. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. 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 resurfacing business at 9650 Datapoint Drive, Suite 104 in San Antonio, Bexar County, Texas (the "Facility").
2. The Facility involves or involved the management of industrial hazardous waste ("IHW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
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 September 5, 2009.
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 Nine Thousand Dollars (\$9,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Seven Thousand Two Hundred Dollars (\$7,200) of the administrative penalty and One Thousand Eight Hundred Dollars (\$1,800) 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 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.
10. 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.
11. 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 Facility, the Respondent is alleged to have:

1. Failed to prevent the discharge of industrial solid waste in a manner that creates a nuisance and endangers the public health and welfare, in violation of 30 TEX. ADMIN. CODE § 335.4(3), as documented during an investigation conducted on July 23, 2009. Specifically, the investigator observed three five-gallon waste paint containers and used paper towels laden with paint and paint solvent in the trash dumpster. The investigator also detected a strong odor of solvent emanating from the dumpster.
2. Failed dispose of waste solvent, a hazardous waste, at an authorized facility, in violation of 30 TEX. ADMIN. CODE § 335.2, as documented during an investigation conducted on July 23, 2009.
3. Failed to conduct a hazardous waste determination for each solid waste generated, in violation of 30 TEX. ADMIN. CODE § 335.62 and 40 CODE OF FEDERAL REGULATIONS ("CFR") § 262.11, as documented during an investigation conducted on July 23, 2009. Specifically, the Respondent did not conduct a hazardous waste determination for paint and solvent wastes generated at the Facility.
4. Failed to keep a container holding paint or paint-related waste closed, except when adding or removing waste, in violation of 30 TEX. ADMIN. CODE §§ 335.69(f)(2), 335.262(c)(2)(A) and 40 CFR § 265.173(a), as documented during an investigation conducted on July 23, 2009. Specifically, the investigator observed a five-gallon metal container of paint waste in a pick-up truck and the container was open.

### 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: CHANGING SURFACE, INC., Docket No. 2009-1522-IHW-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. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, begin disposing of industrial solid waste in a manner that does not create a nuisance or endangers public health and welfare.
  - b. Within 30 days after the effective date of this Agreed Order:
    - i. Develop and implement procedures to properly dispose of solid waste at facilities authorized to accept the waste;
    - ii. Conduct hazardous waste determinations on all waste streams generated at the Facility, in accordance with 30 TEX. ADMIN. CODE § 335.62 and 40 CFR § 262.11; and
    - iii. Develop and implement procedures to ensure that all containers storing hazardous waste are kept closed except when adding or removing wastes, in accordance with 30 TEX. ADMIN. CODE § 335.262.
  - c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b.iii. 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 submitted to:

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

with a copy to:

Waste Section Manager  
San Antonio Regional Office  
Texas Commission on Environmental Quality  
14250 Judson Road  
San Antonio, Texas 78233-4480

3. 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 Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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.
7. 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.

8. 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 3/9/2010

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 1/14/10

Jo Ann Kazembi's  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
CHANGING SURFACE, INC.

\_\_\_\_\_  
Title President

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.