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State of New Mexico
ENVIRONMENT DEPARTMENT
Harold Runnels Building
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502
(505) 827-2850

JUDITH M. ESPINOSA
SECRETARY

RON CURRY
DEPUTY SECRETARY

BRUCE KING
GOVERNOR

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

August 17, 1993

Glen S. Humphrey
Registered Agent
P.O. Box 580
Flora Vista, NM 87415

RE: Compliance Order
NMD986675569

Dear Mr. Humphrey:

The Hazardous and Radioactive Materials Bureau of the New Mexico Environment Department ("NMED") issues the enclosed Compliance Order to Industrial Radiator Service Co., Inc. pursuant to the New Mexico Hazardous Waste Act, §74-4-10 NMSA 1978. The Compliance Order states that Industrial Radiator Service Co., Inc. has failed to comply with the New Mexico Hazardous Waste Management Regulations (HWMR-7). The violations are specifically set forth in the Compliance Order.

The Compliance Order sets forth a schedule of compliance required by Industrial Radiator Service Co., Inc. as well as an assessment of penalties. Industrial Radiator Service Co., Inc. may be subject to additional civil penalties of up to \$25,000 for each day of noncompliance with the Compliance Order, as set forth in §74-4-10 NMSA 1978.

Any inquiries concerning the Compliance Order should be directed to Edward Horst, RCRA Program Manager, Hazardous and Radioactive Materials Bureau, NMED at (505)827-4308.

Sincerely,

Handwritten signature of Kathleen M. Sisneros

Kathleen M. Sisneros, Director
Water and Waste Management Division

- cc: Lynn Prince, U.S. EPA Region VI (6H-HS)
- Benito Garcia, Bureau Chief, H&RMB
- Edward Horst, RCRA Program Manager, H&RMB
- Tracy Hughes, Office of General Counsel, NMED
- Garth Graves, NMED District I Office
- David Tomko, NMED Farmington Field Office

STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT

IN THE MATTER OF
INDUSTRIAL RADIATOR SERVICE CO., INC.
3689 HIGHWAY 550
FLORA VISTA, NEW MEXICO,

COMPLIANCE ORDER
NMHWA 93-07

RESPONDENT.

**ADMINISTRATIVE ORDER REQUIRING COMPLIANCE
AND PROPOSING TO ASSESS A CIVIL PENALTY**

This Administrative Order ("Order") is issued to Industrial Radiator Service Co., Inc. ("Respondent") pursuant to the New Mexico Hazardous Waste Act ("HWA"), §74-4-10 NMSA 1978. The authority to issue this Order has been delegated by the Secretary of the New Mexico Environment Department ("NMED") to the Director of the Water and Waste Management Division ("Complainant").

FINDINGS

1. Complainant is the agency within the executive branch of the New Mexico state government charged with administration and enforcement of the New Mexico Hazardous Waste Act §§74-4-1 et seq. NMSA 1978.

2. Respondent is Industrial Radiator Service Co., Inc., a company incorporated in the state of Arizona and authorized to do business in New Mexico on March 9, 1983. Respondent's parent company is Serck Services, Inc., a company incorporated in the state of Delaware, headquartered in Denver, Colorado.

3. Respondent is in the business of repairing, reconditioning, and servicing radiators.

4. Respondent notified the U. S. Environmental Protection Agency ("EPA") on September 6, 1991 that it generates hazardous waste.

5. On March 5, 1993, NMED employees Michael Le Scouarnec and Coby Muckelroy conducted a hazardous waste inspection at Industrial Radiator Services.

6. Upon information and belief, Respondent at times generates up to, but no more than, one thousand (1000) kilograms of hazardous waste per month.

7. At the time of the March 5, 1993 inspection, Respondent was storing greater than one thousand (1000) kilograms of hazardous waste.

8. At the time of the March 5, 1993 inspection, one 55 gallon drum of bead blast, five 55 gallon drums storing sump sludge, and two 55 gallon drums of filter cake were found open at Respondent's facility. Upon information and belief, these containers had been open for at least two days.

9. At the time of the March 5, 1993 inspection, five 55 gallon drums storing sump sludge were found unlabeled and unmarked. Upon information and belief, these containers had been unlabeled and unmarked for at least two days.

10. At the time of the March 5, 1993 inspection, one 55 gallon drum of bead blast and two 55 gallon drums of filter cake at the satellite accumulation points were found unmarked as to their contents. Upon information and belief, these containers had been unmarked for at least two days.

11. At the time of the March 5, 1993 inspection, the satellite accumulation area, at the filter press, which is a point of generation, exceeded 55 gallons of hazardous waste. Upon information and belief, this condition had been present for at least two days.

12. At the time of the March 5, 1993 inspection, the east sump was found unlabeled or not clearly marked with the words "Hazardous Waste". Upon information and belief, the sump had been unlabeled or not clearly marked for at least two days.

13. At the time of the March 5, 1993 inspection, the south sump was found unlabeled or not clearly marked with the words "Hazardous Waste". Upon information and belief, the sump had been unlabeled or not clearly marked for at least two days.

14. At the time of the March 5, 1993 inspection, five 55 gallon drums storing sump sludge were found unmarked as to their accumulation start date on them. Upon information and belief, these drums had been unmarked as to their accumulation start date for at least two days.

15. At the time of the March 5, 1993 inspection, the name and phone number of the emergency coordinator were not posted next to the phone. Upon information and belief, this condition had been present for at least two days.

16. At the time of the March 5, 1993 inspection, the employees were found to be unfamiliar with proper waste handling and emergency procedures. Upon information and belief, this condition had been present for at least two days.

17. At the time of the March 5, 1993 inspection, the local hospitals had not been familiarized with the properties of hazardous waste handled at the facility and the type of injuries which could result at the facility. Upon information and belief, this situation had been present for at least two days.

18. At the time of the March 5, 1993 inspection, the facility did not have an eye wash and shower device in the hazardous waste management area. Upon information and belief, this condition had been present for at least two days.

19. At the time of the March 5, 1993 inspection, the facility had not performed a hazardous waste determination on its waste oil contaminated soil, nor were any records of hazardous waste determinations for the waste oil available. Upon information and belief, this situation had been present for at least two days.

20. The Toxicity Characteristic Leaching Procedure ("TCLP") result of a sample of solid material on the ground collected at the time of the March 5, 1993 inspection approximately forty (40) feet from the south west corner of the building, in the yard, indicates a lead contamination level of 18.4 ppm. Therefore, this material exhibits a hazardous waste characteristic and is a hazardous waste. Respondent does not have a permit to dispose of hazardous waste at its facility. Upon information and belief, this condition has been present for at least two days.

21. The TCLP result of a sample of solid material on the ground collected at the time of the March 5, 1993 inspection approximately five (5) feet south of the boil out vat, in the yard, indicates a lead contamination level of 46.7 ppm. Therefore, this material exhibits a hazardous waste characteristic and is a hazardous waste. Respondent does not have a permit to dispose of hazardous waste at its facility. Upon information and belief, this condition has been present for at least two days.

22. The TCLP result of a sludge sample collected at the time of the March 5, 1993 inspection in the south sump, in the yard, indicates a lead contamination level of 78.5 ppm. Therefore, the sump sludge exhibits a hazardous waste characteristic and is a hazardous waste.

CONCLUSIONS

1. Respondent is a "person" as defined at §74-4-3.K. of HWA, and §101 of Hazardous Waste Management Regulations (HWMR-7), which incorporates federal regulation 40 CFR §260.10.

2. Respondent is a "generator" as defined at §74-4-3.F. of HWA, and §101 of HWMR-7, which incorporates federal regulation 40 CFR §260.10.

3. Respondent generates "hazardous waste" as defined at §74-4-3.I. of HWA and §101 of HWMR-7, which incorporates federal regulation 40 CFR §260.10.

4. Respondent operates a "facility" as defined at §101 of HWMR-7, which incorporates federal regulation 40 CFR §260.10.

5. Respondent engages in the "storage" of hazardous waste as defined at §74-4-3.N. of HWA, and §101 of HWMR-7, which incorporates federal regulation 40 CFR §260.10.

6. Respondent engages in the "disposal" of hazardous waste as defined at §74-4-3.C. of HWA, and §101 of HWMR-7, which incorporates federal regulation 40 CFR §260.10.

7. Respondent stores hazardous waste in "containers" and "tanks" as defined at §101 of HWMR-7, which incorporates federal regulation 40 CFR §260.10.

8. §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.10(a), makes the regulations in 40 CFR Part 262 (Standards Applicable to Generators of Hazardous Waste) applicable to Respondent, and Respondent has violated regulations in Part 262 as specified below. §901 of HWMR-7, which incorporates federal regulation 40 CFR §270.1, makes the regulations in 40 CFR Part 270 (EPA Administered Programs: The Hazardous Waste Permit Program) applicable to Respondent, and Respondent has violated regulations in Part 270 as specified below.

9. Respondent has failed to keep the following hazardous waste container closed: one 55 gallon drum of bead blast being stored in the shop, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(d)(2).

10. Respondent has failed to keep the following hazardous waste containers closed: two 55 gallon drums of filter cake being stored in the shop, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(d)(2).

11. Respondent has failed to keep the following hazardous waste containers closed: five 55 gallon drums storing sump sludge, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(d)(2).

12. Respondent has failed to label or clearly mark the 55 gallon drum of bead blast at the satellite accumulation point as to its content, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(c)(1)(ii).

13. Respondent has failed to label or clearly mark two 55 gallon drums of filter cake at the filter press satellite accumulation point as to their contents, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(c)(1)(ii).

14. Respondent has failed to label or clearly mark five 55 gallon drums of sump sludge with the words "Hazardous Waste," in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(d)(4).

15. Respondent has accumulated greater than 55 gallons of hazardous waste at the filter press satellite accumulation point, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(c)(1).

16. Respondent has failed to label or clearly mark the east sump with the words "Hazardous Waste", in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(d)(4).

17. Respondent has failed to label or clearly mark the south sump with the words "Hazardous Waste", in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(d)(4).

18. Respondent has failed to mark the accumulation start date on five 55 gallon drums of sump sludge, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(d)(4).

19. Respondent has failed to post the name and phone number of the emergency coordinator next to the phone, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(d)(5)(ii)(A).

20. Respondent has failed to ensure that all employees are thoroughly familiar with proper hazardous waste handling and emergency procedures, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(d)(5)(iii).

21. Respondent has failed to familiarize local hospitals with the properties of hazardous waste handled at the facility and the type of injuries which could occur, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(d)(4).

22. Respondent has failed to have an eye wash and shower device in the hazardous waste management areas, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.34(d)(4).

23. Respondent has failed to perform a hazardous waste determination on its waste oil contaminated soils, in violation of §301 of HWMR-7, which incorporates federal regulation 40 CFR §262.11(c).

24. Respondent has disposed of hazardous waste in the south west corner of the yard without obtaining a permit, in violation of §901 of HWMR-7, which incorporates federal regulations 40 CFR Part 270, Subpart B.

25. Respondent has disposed of hazardous waste on the south side of the boil out vat, in the yard, without obtaining a permit, in violation of §901 of HWMR-7, which incorporates federal regulations 40 CFR Part 270, Subpart B.

26. Conclusion ## 24 & 25 above also involve land disposal restriction violations for disposal of a land disposal restricted waste prior to adequate treatment, in violation of regulations in 40 CFR Part 268. The NMED has not received authorization from the EPA to enforce the regulations in 40 CFR Part 268. Therefore, these violations are being referred to the EPA for possible enforcement action. The Order does not preclude any future formal or informal enforcement action which the EPA may determine to be appropriate regarding any possible land disposal restriction deficiencies.

CIVIL PENALTY

Section 74-4-10 of HWA authorizes the assessment of a civil penalty of up to ten thousand dollars (\$10,000) per day for each violation of HWA and the regulations promulgated thereunder. Complainant hereby proposes to assess a civil penalty of Thirty Six Thousand Five Hundred Ninety Two Dollars and Fifty Cents (\$36,592.50) against Respondent. The penalty is based on the seriousness of the violations and any good faith efforts on the part of the Respondent to comply with the applicable requirements and any economic benefit accruing to the Respondent, as well as such other matters as justice may require. The individual penalty for each violation is:

<u>VIOLATION</u>	<u>AMOUNT</u>
Para. 9 Failure to keep the following hazardous waste container closed: one 55 gallon drum of bead blast stored in the shop.	\$690
Para. 10 Failure to keep the following hazardous waste containers closed: two 55 gallon drums of filter cake.	\$690
Para. 11 Failure to keep the following hazardous waste containers closed: five 55 gallon drums storing sump sludge.	\$690
Para. 12 Failure to label or clearly mark the following waste container: one 55 gallon drum of bead blast as to its content.	\$690
Para. 13 Failure to label or clearly mark the following waste containers: two 55 gallon drums of filter cake as to their contents.	\$690
Para. 14 Failure to label or clearly mark the following waste containers: five 55 gallon drums storing sump sludge.	\$690
Para. 15 Failure to comply with the accumulation limit at the satellite accumulation point at the filter press.	\$690
Para. 16 Failure to label or clearly mark the east sump with the words "Hazardous Waste".	\$690
Para. 17 Failure to label or clearly mark the south sump with the words "Hazardous Waste".	\$690
Para. 18 Failure to mark the accumulation start date on the following containers: five 55 gallon drums storing sump sluge.	\$690
Para. 19 Failure to post the name and phone number of the emergency coordinator next to the phone.	\$690

Para. 20	Failure to ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures.	\$5,750
Para. 21	Failure to familiarize local hospitals with the properties of hazardous waste handled at the facility and the type of injuries which could result at the facility.	\$690
Para. 22	Failure to have an eye wash and shower device in the hazardous waste management area.	\$5,750
Para. 23	Failure to perform a hazardous waste determination on the waste oil contaminated soil.	\$1,312.50
Para. 24	Illegal disposal of hazardous waste in the south west corner of the yard.	\$7,750.00
Para. 25	Illegal disposal of hazardous waste on the south side of the boil out vat in the yard.	\$7,750.00

COMPLIANCE ORDER

Based on the foregoing Findings and Conclusions, Respondent is hereby ordered to comply with the following schedule of compliance:

1. Within one (1) working day from the receipt of this Order, close the following hazardous waste containers: the 55 gallon drum of bead blast, two 55 gallon drums of filter cake, and five 55 gallon drums storing sump sludge being stored in the shop.

2. Within one (1) working day from the receipt of this Order, properly label the following hazardous waste containers: five 55 gallon drums storing sump sludge.

3. Within one (1) working day from the receipt of this Order, properly mark, as to their contents, the following containers at the satellite accumulation points: bead blast container, and the two 55 gallon drums of filter cake.

4. Within one (1) working day from the receipt of this Order, remove one of the two 55 gallon drums of filter cake from the satellite accumulation area at the filter press.

5. Within one (1) working day from the receipt of this Order, properly label or mark clearly the east and south sump with the words "Hazardous Waste".

6. Within one (1) working day from the receipt of this Order, mark the accumulation start date on the following hazardous waste containers: five 55 gallon drums storing sump sludge.

7. Within one (1) working day from the receipt of this Order, post the name and phone number of the emergency coordinator next to the phone.

8. Within ten (10) working days from the receipt of this Order, ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures.

9. Within ten (10) working days from the receipt of this Order, familiarize the local hospitals with the properties of hazardous waste handled at the facility and the type of injuries which could result at the facility.

10. Within thirty (30) working days from the receipt of this Order, provide the facility with an eye wash and shower device in the hazardous waste management area.

11. Within thirty (30) working days from the receipt of this Order, provide complainant with a TCLP analysis (except pesticides) of a representative sample of the waste oil contaminated soil.

12. Within thirty (30) working days from the receipt of this Order, determine the vertical & horizontal extent of contamination of the lead contaminated soil at the south west corner of the building, in the yard, and the south side of the boil out vat in the yard.

13. Within sixty (60) working days from the receipt of this Order, remediate the the lead contaminated soil located at the south west corner of the yard, and the south side of the boil out vat in the yard.

NOTICE

If you fail to take the corrective actions within the times specified in the Order, the Secretary may assess a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day of continued noncompliance with the Order, pursuant to §74-4-10.C. of HWA.

NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

Where Respondent (a) contests any material fact or legal matter upon which the Order is based; or (b) contends that Respondent is entitled to prevail as a matter of law, Respondent shall file a written request for hearing together with an answer to the Order with the hearing Clerk within thirty (30) calendar days after service of the Order. The answer must clearly and directly identify what specifically Respondent is appealing.

The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the order with regard to which Respondent has any knowledge. Where the respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. Failure of Respondent to admit, deny, or explain any material factual allegation contained in the Order constitutes an admission of the allegation.

A hearing upon the issues raised by the Order and answer shall be held upon the request of the Respondent. The Respondent shall attach to the answer a copy of the Order to which the request for hearing pertains.

The Hearing Clerk's address is:

Barbara Rivera, Acting Hearing Clerk
P.O. Box 26110
1190 St Francis Drive
Harold Runnels Building, S-4100
Santa Fe, New Mexico, 87502
(505)827-2850

FINALITY OF ORDER

The Order shall become final unless Respondent files a written request for hearing with an answer within thirty (30) calendar days from the date of service of the Order. For purposes of this action, failure by the Respondent to file an answer constitutes an admission of all facts alleged in the Order and a waiver of Respondent's right to a hearing under §74-4-10 of HWA concerning the factual allegations.

SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, Respondent may confer with Complainant concerning settlement. NMED encourages settlement consistent with the provisions and the objectives of HWA and applicable regulations. A request for a settlement conference does not extend the thirty (30) day period during which the written answer and a request for hearing must be submitted. The settlement conference may be pursued as an alternative to and simultaneously with the hearing proceedings. Respondent may appear at the settlement conference itself and/or be represented by counsel.

Any settlement reached by the parties shall be finalized by written Order by the Secretary of NMED. The issuance of such an Order shall constitute a waiver of Respondent's right to request a hearing on any such matter stipulated therein.

To explore the possibility of settlement in this matter, contact Edward Horst of the Hazardous and Radioactive Materials Bureau, Environment Department, P.O. Box 26110, 525 Camino De Los Marquez, Suite 4, Santa Fe, NM 87501, telephone number (505)827-4308.

Compliance with the requirements of the Order does not relieve Respondent of its obligation to comply with all applicable laws and regulations.

The Order shall terminate when Respondent certifies that all requirements of the Order have been completed, and NMED has approved such certification.

JUDITH M. ESPINOSA, SECRETARY

8/18/93
DATE

By: Kathleen M. Sisneros
KATHLEEN SISNEROS, Director
Water and Waste Management Division

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Order Requiring Compliance was mailed postage prepaid as follows on this 18th day of August, 1993 to the following:

Via Certified Mail, Return Receipt Requested:

Glen S. Humphrey
P. O. Box 580
Flora Vista, New Mexico 87415



ANA MARIE ORTIZ