

Sound Battery
FS 1247

MTCA

ENFORCEMENT ORDER

In the Matter of Remedial)	Enforcement Order
Action by:)	
)	
Sound Battery Company)	No. DE 90-S315
2310 E. 11th Street		
Tacoma, Washington 98421		

To: Sound Battery Company

I.

Jurisdiction

This Enforcement Order ("Order") has been issued pursuant to the authority of RCW 70.105D.050(1).

II.

Statement of Facts

The Department of Ecology ("Ecology") has made the following Findings of Fact:

1. The Sound Battery Company ("Sound Battery") is located on property owned by Marvin and Glee Dykman at 2310 East 11th Street, Tacoma, Washington ("Site").

2. The Site has operated as a manufacturing facility for lead-acid storage batteries since 1946. Marvin and Glee Dykman have owned and operated the business since 1978 and the property since 1986. The property is leased to Sound Battery by the Dykmans

3. Materials used in the battery manufacturing operation include sulfuric acid, lead, lead oxide, and epoxy. Solid wastes produced during the manufacturing process (lead oxide sludge, scrap, and dross) are transported off site to a smelter for recycling, lead oxide wash water from the plating

machine is recycled on-site, and used batteries received as trade-ins are sent to a recycler.

4. Laboratory results from soil and water sampling, conducted by Ecology on the Site November 21, 1989, indicate significant lead contamination. One surface water sample, collected from a puddle near the end of the roof drain, contained 23,600 ppb total lead. This figure is over a thousand times greater than the chronic ambient water quality criteria for marine (5.6 ppb) and fresh (3.2 ppb) water, as specified by Chapter 173-201 WAC. Two soil samples analyzed for lead by the extraction procedure toxicity (EP TOX) method produced results of 22 and 471 ppm. These figures exceed the EP TOX maximum contaminant level for lead (5.0 ppm), as established under Chapter 173-303-090 WAC, thereby classifying the soil samples as dangerous waste.

III.

Ecology Determinations

1. Sound Battery is an "owner and operator" as defined in RCW 70.105D.020(6) of a "facility" as defined in RCW 70.105D.020(3).
2. The facility is known as the Sound Battery Company and is located at 2310 East 11th Street in Tacoma, Washington.
3. The substances found at the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(5).
4. Based on the presence of these hazardous substances at the facility and all factors known to Ecology, there has been a release of hazardous substances from the facility, as defined at RCW 70.105D.020(10).
5. By a letter dated November 21, 1990, Ecology notified Sound Battery of its status as a "potentially liable person" under RCW 70.105D.040,

after notice and opportunity for comment.

6. Pursuant to RCW 70.105D.030(1) and 70.105D.050, Ecology may require potentially liable persons to investigate or conduct other remedial actions with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.

7. Based on the foregoing facts, Ecology believes the remedial action required by this Order is in the public interest.

IV.

Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that Sound Battery perform the interim remedial actions described in the attached scope of work and schedule (Exhibit A), which is hereby incorporated by reference into this Order.

A thorough characterization of the Site soils shall result from completion of the tasks described in Exhibit A. The results shall be used to determine whether or not further characterization of the Site will be deemed necessary.

V.

Terms and Conditions of Order

1. Definitions

Unless otherwise specified, the definitions set forth in ch. 70.105D RCW and ch. 173-340 WAC shall control the meanings of the terms used in this Order.

2. Public Notice

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

3. Remedial Action Costs.

Sound Battery shall pay to Ecology costs incurred by Ecology pursuant to this Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and Order preparation, oversight and administration. Ecology costs shall include costs of direct activities; e.g., employee salary, laboratory costs, travel costs, contractor fees, and employee benefit packages; and agency indirect costs of direct activities.

Sound Battery shall pay the required amount within 90 days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, a general description of work performed, an identification of involved staff, and the amount of time spent by involved staff members on the project. Failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs may result in interest charges.

4. Designated Project Coordinators.

The project coordinator for Ecology is:

Christine Neumiller
Mail Stop LU-11
7272 Cleanwater Lane
Olympia, Washington 98504-6811

The project coordinator for Sound Battery is:

Marvin Dykman
Sound Battery Company
2310 East 11th Street
Tacoma, Washington 98421

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Sound Battery, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinator(s). Should Ecology or Sound Battery change project coordinator(s), written notification shall be provided to Ecology or Sound Battery at least ten (10) calendar days prior to the change.

5 Performance

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience and expertise in hazardous waste site investigation and cleanup. Sound Battery shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

6. Access

Ecology or any Ecology authorized representative shall have the authority to enter and freely move about all property at the Site at all

reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Sound Battery. Ecology shall provide reasonable notice before entering property unless an emergency prevents notice. Ecology shall allow split or replicate samples to be taken by Sound Battery during an inspection unless doing so would interfere with Ecology's sampling. Sound Battery shall allow split or replicate samples to be taken by Ecology and shall provide Ecology seven (7) days notice before any sampling activity.

7. Public Participation

Sound Battery shall prepare and/or update a public participation plan for the Site. Ecology shall maintain the responsibility for public participation at the Site. Sound Battery shall help coordinate and implement public participation for the Site.

8. Retention of Records

Sound Battery shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion compliance monitoring, all records, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of Sound Battery, a record retention requirement meeting the terms of this paragraph shall be required of such contractors and/or agents.

9. Dispute Resolution

Sound Battery may request Ecology to resolve factual or technical disputes which may arise during the implementation of this Order. Such request shall be in writing and directed to the signatory of this Order. Ecology resolution of the dispute shall be binding and final. Sound Battery is not relieved of any requirement of this Order during the pendency of the dispute and remains responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

10. Reservation of Rights

Ecology reserves all rights to issue additional orders or take any action authorized by law in the event or upon the discovery of a release or threatened release of hazardous substances not addressed by this Order, upon discovery of any factors not known at the time of issuance of this Order, in order to abate an emergency, or under any other circumstances deemed appropriate by Ecology.

In the event Ecology determines that conditions at the Site are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology may order Sound Battery to stop further implementation of this Order for such period of time as needed to abate the danger.

11. Transference of Property

No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by Sound Battery without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to transfer of any legal or equitable interest, Sound Battery may have in the Site or any portions thereof, Sound Battery shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, Sound Battery shall notify Ecology of the contemplated transfer.

12. Compliance With Other Applicable Laws

All actions carried out by Sound Battery pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements.

VI.

Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon Sound Battery's receipt of written notice from Ecology that Sound Battery has completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Agreed Order have been complied with.

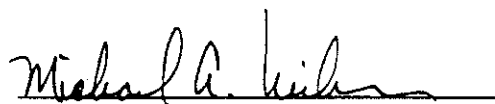
VII.

Enforcement

1. Pursuant to RCW 70.105D.050, this Order may be enforced as follows:
 - A. The Attorney General may bring an action to enforce this Order in a state or federal court.
 - B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
 - C. In the event Sound Battery refuses, without sufficient cause, to comply with any term of this Order, Sound Battery will be liable for:
 - (1) up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply;
and
 - (2) civil penalties of up to \$25,000 per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: JANUARY 5, 1991


Michael A. Wilson, Supervisor
Southwest Region
Toxic Cleanup Program

**EXHIBIT A
SCOPE OF WORK AND SCHEDULE**

All work performed at and around the Site pursuant to this Enforcement Order shall be accomplished in accordance with Chapter 173-340 WAC.

TASK 1 - DRAFT WORK PLAN PACKAGE

The draft Work Plan package shall be prepared by Sound Battery and submitted to Ecology for review and approval. The main portion of the Work Plan package will present (1) an overview of the project, (2) a brief background of the Site, (3) proposed work to be performed on the Site, and (4) a schedule of deliverables.

The following sub-tasks shall be completed and submitted to Ecology as additional elements of the total Work Plan package.

Schedule: Within two (2) weeks after the effective date of this Enforcement Order.

SUB-TASK 1.1 - HEALTH AND SAFETY PLAN

All work, including field sampling, shall be performed under an appropriate Health and Safety Plan for the protection of workers and the surrounding community in accordance with Ecology and the Washington Industrial Safety and Health Act (WISHA) requirements. Sound Battery shall submit this plan to Ecology prior to commencing any action on this Site. Sound Battery shall be solely responsible for ensuring that the Plan satisfies applicable laws and regulations.

At a minimum, this plan shall include: (1) a site description that includes (a) the proposed work activities, (b) a brief site background, and (c) available utilities; (2) a site hazard evaluation, including (a) a physical hazard evaluation and (b) information on (i) the toxicity of lead, (ii) the potential routes for exposure, and (iii) risk of exposure; (3) protection measures to be utilized, including (a) safety training requirements, (b) medical surveillance requirements, (c) personal protective equipment, and (d) the locations of overhead, surface and underground utilities; (4) decontamination procedures for equipment and personnel, and method(s) for disposal of contaminated material(s) and; (5) emergency procedures, including (a) emergency telephone numbers and (b) route to the hospital map.

Schedule: Within two (2) weeks after the effective date of this Enforcement Order, as part of the Work Plan package.

SUB-TASK 1.2 - DRAFT SAMPLING AND ANALYSIS PLAN

The Sampling and Analysis Plan shall provide a detailed description of the soil sampling to be conducted on the Site. Sampling of the soils on the Sound Battery site for total lead and TCLP/lead is required to determine the extent and magnitude of lead contamination.

Samples shall be taken in a quantity sufficient to adequately characterize the soils on the Site. For the size of the Site, roughly 20 total lead and 10 TCLP/lead should suffice. A triangular sampling grid shall be developed. Samples shall be collected within the Site confines and within an area extending roughly 2 feet immediately outside of the Site perimeter. Also, one background surface sample (not included in the sampling grid) shall be collected for total lead and TCLP/lead from an appropriate location within the general vicinity of the Site.

The horizontal distance between sampling stations shall be 15-20 feet. At each station, a surface sample (from 0-1 inch) shall be collected. At roughly 75% of the stations, a subsurface sample (from approximately 2 feet) shall be collected. All sampling stations shall be adequately marked, and the locations shall be accurately plotted on a site map.

A description of the sampling equipment, sampling procedures, and equipment decontamination procedures shall be provided. Sampling protocol, which includes field documentation and chain of custody requirements, will also be described.

Finally, the analytical procedures to be used in the soil analyses shall be described.

Schedule: Within two (2) weeks after the effective date of this Enforcement Order, as part of the Work Plan package.

SUB-TASK 1.3 - DRAFT QUALITY ASSURANCE PLAN

Quality assurance and quality control (QA/QC) procedures are necessary to ensure the precision, accuracy, completeness, comparability, scientific defensibility, and representativeness of data collected and analyzed as part of a site characterization. A Quality Assurance Plan shall be prepared for the activities conducted under the work plan.