

Sound Battery Company  
ES 1247

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:                    )  
Sound Battery Company                                    )  
2310 East 11th Street                                    )  
Tacoma, WA 9842    )

ENFORCEMENT ORDER  
NO. DE 97TC-S137

TO:    Sound Battery Company  
       2310 East 11th Street  
       Tacoma, WA 98421

I.

JURISDICTION

This Enforcement Order (Order) is issued pursuant to the authority of Revised Code of Washington (RCW) 70.105D.050(1).

II.

STATEMENT OF FACT

The Department of Ecology (Ecology) makes the following Findings of Fact, without admission of such facts by Sound Battery Company:

1.       The Sound Battery Company (Sound Battery) is located on a 1/10 acre 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.

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 on 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 several 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 Washington Administrative Code (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.

5. In January 1991, Ecology issued an enforcement order requiring a preliminary site assessment. The assessment focused on analyzing both on-site and off-site soils for lead contamination. Most samples analyzed for lead exceeded the cleanup level for industrial soil.

6. A May 1991 "Preliminary Site Evaluation Report for Sound Battery Tacoma, Washington" was submitted to Ecology. This report documents that total lead concentrations in most soil samples exceed the MTCA cleanup standards for industrial soils (1000 ppm).

7. On April 25, 1995, Sound Battery submitted the "Report on Site Assessment Work to Determine the Extent of Soil Lead Contamination Beneath the New Asphalt Area Covering the East Corner of Sound Battery Company (SBC), Tacoma, Washington." This report documents both on-site and off-site soils to be contaminated with lead concentrations above the MTCA Method A cleanup standard for industrial soils (1000 ppm). Soil lead concentrations exceed 1,000 ppm up to and across the southeast property boundary and onto Collins Transport parking property. In general, lead contamination above 1000 ppm exists between the ground surface to two feet in depth.

III.

ECOLOGY DETERMINATIONS

1. The Sound Battery Company is an "owner or operator" as defined at RCW 70.105D.020(11) of a "facility" as defined in RCW 70.105D 020(4).
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 in RCW 70.105D 020(7).
4. Based on the presence of these hazardous substances at the facility and all factors known to Ecology, there is a release or threatened release of hazardous substances from the facility, as defined at RCW 70.105D.020(19).
5. By a November 21, 1990, letter, Ecology notified Sound Battery of its status as a "potential 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. On January 5, 1991, Ecology issued Enforcement Order No. DE 90-S315 requiring Sound Battery to perform interim remedial actions and to thoroughly characterize the Site soils. The results were to be used to determine whether or not further characterization of the Site would be necessary.
8. The results of the work that was performed under Agreed Order No. DE 90-S315 indicate that lead contaminates the soil, on-and off-site at concentrations exceeding the MTCA Method A Industrial soil levels of 1000 mg/kg.

9. 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 Company take the following remedial actions and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein.

1. Within sixty (60) days of the effective date of this order, submit to Ecology, for review and approval, a draft remedial investigation (RI) work plan for determining the nature and extent of groundwater contamination and providing steps to initiate interim actions as provided in WAC 173-340-430. Ecology's comments on the draft work plan shall be incorporated into the final work plan, which shall be submitted to Ecology within thirty (30) days of receipt of such comments. The implementation of the final RI work plan shall be in accordance with the schedule approved in the Final RI Work Plan or as modified, in writing, with the agreement of all parties.

2. The work plan shall provide a process to determine the nature and extent of contamination in the upper and lower aquifers both on-site and off-site. The work plan shall include steps to assess seasonal variation in the groundwater contamination levels, groundwater flow direction, and tidal influence. This shall include monthly measurements of water levels in both aquifers for a minimum of one year. Ecology may review the frequency of water level measurements at its discretion or at the request of Sound Battery.

If groundwater contamination is detected, the work plan shall focus and schedule the site investigation work such that interim measures can be designed and implemented to stop, as soon as possible, the migration of contaminated groundwater off-site. The work plan shall provide for other interim actions which can correct problems which may become substantially worse or cost substantially

more if action is delayed. An example of such an interim action would be removal of contaminated soils before they contaminate larger areas, as provided in WAC 173-340-430. The work plan shall include a schedule for all activities and for submittal of a final remedial investigation report.

3. The RI work plan shall describe analytical methods, parameters and detection limits, in addition to all quality assurance/quality control details needed as described in the publication *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW-846)*.

4. Within ninety (90) days of receiving all analytical data, submit to Ecology for review a draft remedial investigation report. Ecology's comment on the draft report shall be incorporated into a Final Remedial Investigation Report within thirty (30) days of the comments

5. Within 60 days of the approval of the remedial investigation report, Sound Battery will be required to submit a work plan for a feasibility study (FS), per the requirements of Chapter 173-340 WAC. Upon approval by Ecology of the feasibility study work plan, the feasibility study shall be performed and a feasibility study report will be submitted for Ecology's review and approval. Ecology's comment on the draft FS report shall be incorporated into a Final FS Report within thirty (30) days of the comments.

6. Sixty (60) days after completion and approval of the FS, Sound Battery shall draft a Cleanup Action Plan (CAP) to satisfy the requirements of WAC 173-340-400.

7. After public review and comment, the draft CAP will be finalized by Ecology. Sound Battery will be required to design, construct, operate, and monitor the selected cleanup via a Consent Decree or Agreed Order as determined by the parties hereto or an Enforcement Order as pertained by Ecology.

8. In accordance with WAC 173-340-840(5), environmental sampling data shall be submitted on paper within ten (10) working days of receipt from the laboratory.

9 Once approved, or modified and approved in writing by Ecology, all Ecology-approved submittals are incorporated by reference and become enforceable parts of this Order as if fully set forth herein.

10. Sound Battery shall provide a bi-monthly (every two months) progress report which will include the following:

- activities that happened in the past two months;
- activities planned for the next two months;
- a written summary of all lab data required by this order; and
- all lab data required by this order or requested by Ecology shall be provided in an Ecology-approved electronic format.

This progress report frequency may be revised by Ecology if adequate justification is provided by Sound Battery or if Ecology provides justification for a change.

V.

TERMS AND CONDITIONS OF ORDER

1. Definitions:

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

2. Public Notices:

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 Company 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 and support costs of direct activities as defined in WAC 173-340-550(2). Sound Battery Company shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges.

4. Designated Project Coordinators:

The project coordinator for Ecology is:

Name: Robert Warren  
Address: Department of Ecology  
Southwest Regional Office  
PO Box 47775  
Olympia, Washington 98504-7775  
Telephone: (360) 407-6361  
FAX: (360) 407-6305  
E-Mail: rwar461@ecy.wa.gov

The project coordinator for Sound Battery Company is:

Name: Marvin Dykman  
Address: Sound Battery Company  
2310 East 11th Street  
Tacoma, Washington 98421  
Telephone: (253) 627-5050

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 Company 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). If Ecology or Sound Battery Company should change project coordinator(s), written notification shall be provided to the other party 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 about 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. Sound Battery Company shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order and shall ensure that all work undertaken by such agents, contractors, and subcontractors will be in compliance with this Order.

Except where necessary to abate an emergency situation, Sound Battery shall not perform any remedial actions at Sound Battery beyond that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

WAC 173-340-400(7)(b)(i) requires that "construction" performed on the site must be under the supervision of a professional engineer registered in Washington. Sound Battery shall provide seven days notice to Ecology's site manager prior to conducting work activities.

6. Access:

Ecology or any Ecology-authorized representative shall have the authority to enter and freely move about 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. By signing this Order, Sound Battery agrees that this Order constitutes reasonable notice of access, and agrees to allow access to the site at all reasonable times for purposes of overseeing work performed under this Order. Ecology shall allow split or replicate samples to be taken by Sound Battery



during an inspection unless doing so interferes with Ecology's sampling. Sound Battery shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before conducting any activity relative to this order.

7. Public Participation:

Sound Battery shall help 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 of the work performed pursuant to this Order, all records, reports, documents, and underlying data in its possession relevant to this Order. If any portion of the work performed hereunder is undertaken by contractors or agents of Sound Battery, then Sound Battery agrees to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution:

Sound Battery may request Ecology to resolve disputes which may arise during the implementation of this Order. Such request shall be in writing and directed to the signatory, or his/her successor(s), to 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.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the releases or threatened releases of hazardous substances from Sound Battery located at 2310 East 11th Street, Tacoma.

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 Applicable Laws:

A. All actions carried out by Sound Battery Company pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in paragraph B of this section.

B. Pursuant to RCW 70.105D.090(1), the substantive requirements of Chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits

or approvals for the remedial action under this Order are binding and enforceable requirements of the Order.

Sound Battery has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event Sound Battery determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify Ecology of this determination. Ecology shall determine whether Ecology or Sound Battery shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Sound Battery shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by Sound Battery and on how Sound Battery must meet those requirements. Ecology shall inform Sound Battery in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Sound Battery shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the state to administer any federal law, the exemption shall not apply and Sound Battery shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

VI.

SATISFACTION OF THIS ORDER

The provisions of this Order shall be deemed satisfied upon Sound Battery Company's receipt of written notification from Ecology that Sound Battery Company has completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Order has 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

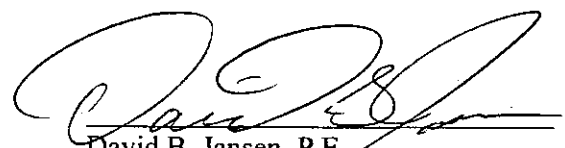
C. In the event Sound Battery refuses, without sufficient cause, to comply with any term of this Order, Sound Battery will be liable for:

(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 Section 6 of Chapter 70.105D RCW.

Effective date of this Order: 6/11/97

  
David B. Jansen, P.E.  
Southwest Region Section Manager  
Toxics Cleanup Program