

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Denova Environmental, Inc.
2610 North Alder Avenue
Rialto, California 92377

EPA ID. No. CAT080022148
and
Robert V. Cole.

Respondents

Docket HWCA 01/02-3010

ENFORCEMENT ORDER

Health and Safety Code
Section 25187

INTRODUCTION

1.1. Introduction: The State of California Department of Toxic Substances Control (Department) issues this Enforcement Order (Order) to Denova Environmental, Inc., and Robert V. Cole (Respondents).

1.2. Facility. Respondents manage hazardous waste at the following site: 2610 North Alder Avenue, Rialto, California 92377 (Facility).

1.3.1. Parties. The Department is the state agency with responsibility and jurisdiction to enforce the Hazardous Waste Control Law (HWCL), Health and Safety Code section 25100

et seq., and the implementing regulations in California Code of Regulations, title 22, sections 66260 et seq.

1.3.2. Respondent Denova is a California corporation. Respondent Denova is a "person" as defined in Health and Safety Code section 25118. Respondent Denova is an "owner" and/or "operator" of a hazardous waste facility, as those terms are defined in California Code of Regulations, title 22, section 66260.10.

1.3.3. Respondent Robert V. Cole (Cole) is an individual and the President of Denova. Respondent Cole has been an officer and director of Denova at all times relevant to this Order. Respondent Cole has at all times relevant to this Order exercised control over the management decisions of Denova, including but not limited to decisions regarding hazardous waste management at the Facility. Respondent Cole is a co-trustee of the Robert V. Cole Family Trust dated May 14, 1991, (Trust). At certain times relevant to this Order, the Trust had an undivided one half interest in the real property on which the Denova facility is located.

1.3.4. Respondent Cole is a "person" as defined in Health and Safety Code section 25118. Respondent Cole is an "owner" and/or "operator" of a hazardous waste facility, as those terms are defined in California Code of Regulations title 22, section 66260.10.

1.4. Permit/Interim Status. Until May 28, 2002, respondent Denova was authorized by the Department to manage hazardous waste under interim status authorization transferred to Denova on May 15, 2000. On May 28, 2002, the Department terminated Denova's interim status authorization.

1.5. Inspections. The violations cited in this Order were discovered by the Department in inspections conducted by the Department at the former Sina Environmental, Inc., yard at 10756 Calabash Avenue, Fontana, California, on January 24, 2001, and at the Facility on July 27, 2001, through August 9, 2001; September 7, 2001; September 18 through 20, 2001; and January 17 and 18, 2002.

1.6. Jurisdiction. Section 25187 of the Health and Safety Code authorizes the Department to order action necessary to correct violations and assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.7. Exhibits. All exhibits attached to this Order are incorporated herein by this reference.

DETERMINATION OF VIOLATIONS

2. The Department has determined:

2.1. False Statements: The Respondents violated Health and Safety Code section 25189 subsection(a) in that Respondents intentionally or negligently made false statements on Uniform Hazardous Waste Manifests (manifests) filed, maintained or used for purposes of compliance with the Hazardous Waste Control Law, including:

2.1.1. On or about July 23, 2001, Respondents signed and dated five manifests in a manner that signified that Denova had received at the Facility three loads of waste described on the manifests, and Respondents prepared and signed manifests that showed, or signed manifests that had been prepared to show, that Respondents had shipped the same three loads of wastes, approximately 80 drums per load, from the Respondents' hazardous waste storage facility, although the wastes had not, at all times relevant to this order, been received by, or held by, the Respondents at the Facility.

2.1.2. On or about August 6, 2001, the Department determined that, on manifests 20746440 and 20746435, Respondents falsely described three bins of RCRA wastes to be non-RCRA waste.

2.1.3. On or about January 17, 2002, the Department determined that Respondents incorrectly stated the number of containers shipped with six manifests, incorrectly stated the

quantity of the waste on one manifest, incorrectly characterized the waste on two manifests, and listed an incorrect waste handling code on one manifest.

2.1.4. On or about January 19, 2001, the Respondents replaced the original manifests for the six trailers of hazardous waste, containing approximately 80 drums each, with at least eight substitute manifests. On the substitute manifests, Respondents falsified the dates the wastes were shipped from the generator to make it appear that the wastes had been in transit, and therefore in storage, for a shorter time. Respondents made the following substitutions:

Original manifest number	Substitute manifest number
INA 1423944	99767042
INA 1423942	99767199
INA 1423946	99767193
INA 1423945	99767198
99671435	99767195
99671517	99767192 and 99767186

Additional information concerning these six trailers is contained in paragraph 2.2.1.

2.2. Storage at Unauthorized Locations: The Respondents violated Health and Safety Code section 25201 and/or paragraph III.C.3.4.5 of the September 6, 2001, Order,

in that Respondents stored hazardous waste at locations that were not authorized by the Department, including:

2.2.1. On or before January 23, 2001, the Department determined that Respondents stored at a yard at 10756 Calabash Avenue, Fontana, California, six trailers of hazardous waste, containing approximately 80 drums each. Respondents stored at least one of these trailers from on or about December 1, 2000, until January 23, 2001, a period of 54 days.

2.2.2. On or about August 6, 2001, Respondents stored approximately 60 containers of reactive hazardous waste inside intermodal trailers #4 and #10; Magazines #4, #6, and #10; and Igloo #5. Reactive hazardous waste was only authorized to be stored in Igloos #1-4 at the Facility.

2.2.3. On or about August 6, 2001, Respondents stored approximately 4,433 gallons of hazardous waste longer than 48 hours at the RCRA, non-RCRA, and QA pads. These locations were not authorized for storage longer than 48 hours.

2.2.4. On or about September 18, 2001, Respondents stored approximately 5,805 gallons of hazardous waste longer than 48 hours at the RCRA and non-RCRA pads.

2.2.5. On or about September 18, 2001, Respondents stored at least five drums of reactive hazardous wastes in

unauthorized areas of the facility, including intermodal trailers #2, #4, and #10.

2.2.6. On or about January 17, 2002, Respondents stored at least 5,000 gallons of hazardous waste at the RCRA pad longer than 48 hours.

2.3. Treatment at Unauthorized Locations: The Respondents violated Health and Safety Code section 25201, in that Respondents treated hazardous waste at locations that were not authorized by the Department, including:

2.3.1. On or about August 6, 2001, the Department determined that Respondents mixed at least 22 containers of RCRA waste with non-RCRA waste and managed, transported, and disposed of the mixture as non-RCRA waste.

2.3.2. On or before August 6, 2001, the Department determined that Respondents punctured aerosol cans, reducing their pressure and separating the remaining contents from the containers.

2.3.3. On or about January 17, 2002, Respondents mixed two drums of RCRA hazardous waste in a tanker truck with non-RCRA hazardous waste and managed the mixture as non-RCRA hazardous waste.

2.4. Diluting Restricted Wastes: The Respondents violated California Code of Regulations, title 22, section 66268.3, in that on or before June 27, 2001, Respondents

diluted restricted wastes with non-RCRA waste to circumvent a land disposal prohibition.

2.5. Storage Longer than One Year: Respondents violated Section II.1.(a) of the Interim Status Document, in that Respondents stored hazardous waste at the Facility longer than one year, including:

2.5.1. On or about August 6, 2001, and September 18, 2001, the Department determined that Respondents were storing approximately 200 containers of hazardous waste longer than one year.

2.5.2. On or about January 17, 2002, the Department determined that Respondents were storing at least 15,000 gallons of hazardous waste longer than one year.

2.6. Failure to Maintain Operating Records: Respondents violated California Code of Regulations, title 22, section 66265.73(b) and 66265.31 and/or paragraph III.C.3.4.7 of the September 6, 2001, Order, in that Respondents failed on numerous occasions to maintain the required records in the facility's operating records, such as a description and the quantity of each hazardous waste received at the Facility, the location of each hazardous waste at the Facility, and the dates of its transfer from the Facility, including:

2.6.1. On or about August 6, 2001, the Department determined that Respondents did not record in the facility's

operating record the location or disposition of non-explosive hazardous waste described on four manifests.

2.6.2. On or about August 6, 2001, the Department determined that Respondents inaccurately stated in the Facility's operating records the amount of waste at the Facility. On that date, the operating record listed 20,424 gallons, but the Department's inspectors found 26,242 gallons at the Facility.

2.6.3. On or about August 6, 2002, the Department determined that Respondents failed to include the amount of explosive hazardous waste in the Facility inventory of hazardous waste.

2.6.4. On or about August 6, 2001, Respondents' operating record did not contain records of loads that were mixed at the Facility and sent off site during June and July, 2001. Operating records could not be found for the following manifests: 20746435, 20746438, 20746446, and 20746447.

2.6.5. On or about August 6, 2001, Respondents' operating record did not document the location of hazardous waste at the Facility, including 14 containers in Igloo #4, 53 containers in Igloo #5, several containers in Magazine #4, and one drum in Magazine #10. Ten containers that were listed as being in Igloo #4 were not there.

2.6.6. On or about August 6, 2001, Respondents' operating record did not show the location of at least 26 manifested loads of explosives received at the Facility.

2.6.7. On or about August 6, 2001, Respondents' operating record did not contain any record of manifest number 98126789, for a load of hazardous waste sent from the Facility to Canada on February 3, 2000.

2.6.8. Between about August 1, 2001, and about September 18, 2001, Respondents' operating records did not contain accurate information regarding the receipt and shipment offsite of hazardous waste at the Facility, including failing to maintain an accurate capacity log.

2.6.9. On or about January 17, 2002, Respondents were unable to provide records for a roll off bin of hazardous waste consisting of contaminated soil (manifest number 2074628), and for hazardous waste received at the Facility on manifest number 2084812.

2.6.10. On or about January 17, 2002, Respondents failed to list in the Facility operating record ten 250-gallon containers of hazardous waste consisting of contaminated rainwater at the RCRA pad.

2.7. Failure to Analyze Wastes: Respondents violated California Code of Regulations, title 22, section 66265.13 and/or paragraph III.C.3.4.6 of the September 6,

2001, Order in that Respondents failed to obtain detailed chemical and physical analyses of representative samples of the hazardous waste at the Facility, including:

2.7.1. Respondents failed to analyze 81 containers of hazardous waste received on or about July 26, 2001, on manifest numbers 20958203, 20958204, and 20958211, until directed to do so by the Department on or about August 8, 2001.

2.7.2. On or before August 6, 2001, Respondents mixed unknown hazardous wastes and shipped at least four shipments of the mixed hazardous waste off site without obtaining a detailed chemical and physical analysis.

2.7.3. On or before September 18, 2001, Respondents failed to obtain detailed chemical and physical analyses of at least 100 drums of unlabeled hazardous waste stored at the Facility.

2.7.4. On or about January 17, 2002, Respondents stored numerous containers of hazardous waste without obtaining detailed chemical and physical analyses of the wastes.

2.7.5. On or about January 17, 2002, the Department determined that on or about June 12, 2001, Respondents received, stored, and shipped off site at least one roll off

bin containing hazardous waste contaminated soil without any waste analyses.

2.8. Failure to Train Employees: Respondents violated California Code of Regulations, title 22, section 66265.16, in that Respondents failed to train the Facility employees as described in the Facility training plan, including: On or about September 18, 2001, the Department determined that Respondents failed to provide all of the required training to at least five of the Facility employees.

2.9. Failure to Amend Contingency Plan: Respondents violated California Code of Regulations, title 22, section 66265.54, in that Respondents failed to amend the Facility contingency plan when the list of emergency coordinators changed, including: On or about August 6, 2001, and September 18, 2001, the Department determined that the facility contingency plan listed two persons, of the three persons listed in the plan, who were no longer employed by the Facility; the primary emergency coordinator had retired; and no alternate emergency coordinator is listed.

2.10. Containers in Poor Condition: Respondents violated California Code of Regulations, title 22, sections 66265.31, 66265.171, and/or 66265.173 and/or paragraph III.C. 3.4.11. of the September 6, 2001, Order, in that the Respondents failed to operate the facility in a manner that

minimized the possibility of releases, failed to transfer wastes to containers in good condition, and stored hazardous waste in a manner that may cause the container to rupture or leak, including:

2.10.1. On or about August 6, 2001, Respondents stored hazardous waste corrosive liquid in a bulging drum in intermodal trailer #5.

2.10.2. On or about September 7, 2001, Respondents stored hazardous waste on the QA pad in a 250 gallon tote that was leaking severely and in one drum that was bulging.

2.10.3. On or about September 18, 2001, Respondents stored hazardous waste in one container with a corroded rim, in two containers with corroded sides and/or lids, in one drum with a large dent in the bottom, and in a one cubic yard box with a hole in the bottom, through which liquid had leaked.

2.11. Failure to Establish Stand-by Trust:

Respondents violated California Code of Regulations, title 22, section 66265.143, in that on or about August 6, 2001, Respondents failed to establish a stand-by trust required to accompany a surety bond used as financial assurance for closure of the Facility.

2.12. Failure to Submit Exception Reports:

Respondents violated California Code of Regulations, title 22, section 66262.42(b) and 66265.31, in that Respondents failed

to submit an exception report to the Department for shipments of hazardous waste from the Facility for which the manifest copies were not returned.

2.12.1. On or before August 6, 2001, Respondents failed to send an exception report to the Department for one load of hazardous waste sent to Canada on February 3, 2000.

2.12.2. On or before January 17, 2002, Respondents failed to send an exception report to the Department for two manifests sent September 13, 2001, for which no copies from the receiving facilities were returned.

2.13. Failure to Separate Incompatible Hazardous Wastes: Respondents violated California Code of Regulations, title 22, section 66262.177(c) and paragraph III.C.3.4.4. of the September 6, 2001, Order, in that:

2.13.1. From on or about August 7, 2001, until about September 7, 2001, Respondents stored incompatible hazardous wastes together on the QA pad, without separation, including 66 drums of acids with 15 containers of bases and seven drums of ammonium sulfide with four drums of oxidizing acids.

2.13.2. On or about September 18, 2001, Respondents failed to separate at least 21 containers of incompatible wastes stored together in intermodal trailers #2 and #4.

2.14. Failure to Keep Containers Closed: Respondents violated California Code of Regulations, title 22, section

66265.173(a) and/or paragraph 3.4.9. of the Schedule for Immediate Compliance, section III. C., of the September 6, 2001, Order, in that:

2.14.1. On or about September 7, 2001, Respondents stored numerous 55-gallon drums of hazardous waste on the QA pad with loose bung caps which released vapors to the air.

2.14.2. On or about September 18, 2001, Respondents failed to keep containers of hazardous waste closed, including: a) nine cubic yard boxes and bins of hazardous waste without lids or covering in the RCRA and non-RCRA pads, and b) one five-gallon pail of hazardous waste without a lid in intermodal trailer #2.

2.15. Failure to Submit Manifest Copies:

Respondents violated Health and Safety Code section 25160(a) and California Code of Regulations, title 22, section 66262.23(a)(4), in that Respondents failed to submit to the Department copies of nine manifests for wastes shipped from the Facility.

2.16. Failure to Submit Manifest Copies: Respondents

violated Health and Safety Code section 25160(e)(1) and California Code of Regulations, title 22, section 66265.71(b)(5) in that Respondents failed to submit to the Department copies of two manifests for wastes received by the Facility.

2.17. Failure to Submit Reports: Respondents failed to comply with paragraph 3.4.12. of the September 6, 2001, Order, in that Respondents failed to submit to the Department any reports documenting corrective actions taken to address violations identified in the September 6, 2001, Order.

2.18. Failure to Submit Responses to Inspection Reports: On or about December 9, 2001, and on or about December 21, 2001, Respondents violated Health and Safety Code section 25185(c)(3), in that Respondents failed to submit written responses to inspection reports provided to Respondents on or about November 9, 2001, and on or about November 21, 2001.

SCHEDULE FOR COMPLIANCE

3.1. Based on the foregoing Determination Of Violations, IT IS HEREBY ORDERED THAT:

3.1.1. Compliance with September 6, 2001, Order: Effective immediately, Respondents shall comply with the Schedule for immediate compliance (section III. C.) and the Schedule for compliance (section III. D.) in the September 6, 2001, Order.

3.2. Submittals. All submittals from Respondents pursuant to this Order shall be sent simultaneously to:

Phillip Blum, P.E., Acting Chief
Task Force Support and Special Investigations Branch
Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, California 91201

3.3. Communications. All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondents in writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondents shall be construed to relieve Respondents of the obligation to obtain such formal approvals as may be required.

3.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may:

a. Modify the document as deemed necessary and approve the document as modified, or

b. Return the document to Respondents with recommended changes and a date by which Respondents must submit to the Department a revised document incorporating the recommended changes.

3.5. Compliance with Applicable Laws: Respondents shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondents to stop further implementation of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of the Stop Work Order.

3.7. Liability: Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondents. Notwithstanding compliance with the terms of this Order, Respondents may be required to take further actions as are necessary to protect public health or welfare or the environment.

3.8. Site Access: Access to the site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondents in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Respondents shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

3.9. Data and Document Availability. Respondents shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondents or on Respondents' behalf in any way pertaining to work undertaken pursuant to this Order. Respondents shall allow the Department and its authorized representatives to take duplicates of any samples

collected by Respondents pursuant to this Order. Respondents shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondents for a minimum of six years after the conclusion of all activities under this Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondents shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondents shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order.

3.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents or related parties in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by Respondents or Respondents' agents in carrying out activities pursuant to the Order.

3.11. Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval

and are submitted by Respondents pursuant to this Order are incorporated in this Order upon approval by the Department.

3.12. Extension Request: If Respondents are unable to perform any activity or submit any document within the time required under this Order, the Respondents may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.13. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

OTHER PROVISIONS

4.1. Additional Enforcement Actions: By issuance of this Order, the Department does not waive the right to take further enforcement actions.

4.2. Penalties for Noncompliance: Failure to comply with the terms of this Order may also subject Respondents to costs, penalties, and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by section 25188 and other applicable provisions of law.

4.3. Parties Bound: This Order shall apply to and be binding upon Respondents, and Respondents' officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations.

4.4. Time Periods. "Days" for purposes of this Order means calendar days.

PENALTY

5. Based on the foregoing DETERMINATION OF VIOLATIONS, the Department has determined that Respondents are

jointly and severally liable for a penalty of \$1,136,675.

Payment is due within 30 days from the effective date of the Order. Respondents' checks shall be made payable to the Department of Toxic Substances Control, and shall identify the Respondents and Docket Number, as shown in the heading of this case.

Respondents shall deliver the penalty payments to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 23rd floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the checks shall be sent to:

Phillip Blum, P.E., Acting Chief
Task Force Support and Special Investigations Branch
Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, California 91201

RIGHT TO A HEARING

6. Respondents may request a hearing to challenge the Order. Appeal procedures are described in the attached Statement to Respondent.

EFFECTIVE DATE

7. This Order is final and effective twenty days from the date of mailing, which is the date of the cover letter transmitting the Order to Respondents, unless Respondents request a hearing within the twenty-day period.

Date of Issuance 7/31/02.

(original signed by)

Phillip Blum, P.E., Acting Chief
Task Force Support and Special Investigations Branch
Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, California 91201