

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

2008 APR 18 AM 8:43 (ema)

APR 18 2008

Ref: 8ENF-UFO

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

David A. Oberg, Registered Agent  
Colton Redi-Mix, Inc.  
109 E. 5<sup>th</sup> Street  
P.O. Box 185  
Colton, SD 57018-0185

Re: Proposed Compliance Order, Penalty Complaint,  
And Notice Of Opportunity For Hearing  
Docket No. **SDWA-08-2008-0043**

Dear Mr. Oberg:

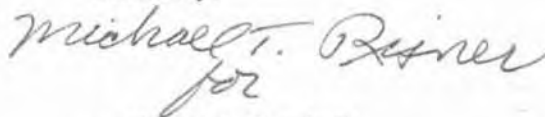
Enclosed is a Proposed Compliance Order, Penalty Complaint, And Notice Of Opportunity For Hearing (complaint) issued by the Environmental Protection Agency (EPA) under the authority of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2. The document describes how Colton Redi-Mix, Inc. has violated the SDWA and proposes both compliance requirements and the assessment of a civil penalty.

**However, if you fully comply with the compliance order requirements in a timely manner as set out in the complaint, EPA will settle this case without the assessment of a civil penalty.** Please note that there are deadlines in the complaint that must be followed. The complaint is effective upon the receipt date and you have thirty (30) calendar days to file an answer to dispute the contents of the complaint.

If you have any technical questions, contact Carol Hutchings at the above address (with the mailcode 8ENF-UFO) or by phone at (303) 312-6485. For legal questions, the attorney assigned to this matter is Jim Eppers, who can be reached at the above address (with the mailcode 8ENF-L) or by phone at (303) 312-6893.

We urge your prompt attention to this matter.

Sincerely,



Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

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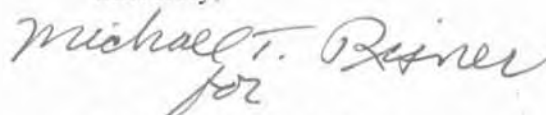
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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

Docket No. SDWA-08-2008-0043

In the Matter of:            )  
  )  
Colton Redi-Mix, Inc.        )  
a South Dakota corporation; )  
  )  
  )  
Respondent.                    )

**PROPOSED COMPLIANCE ORDER,  
PENALTY COMPLAINT, AND NOTICE OF  
OPPORTUNITY FOR HEARING**

**INTRODUCTION**

1. This Proposed Compliance Order, Penalty Complaint and Notice of Opportunity for Hearing (complaint) is authorized by Congress in section 1423 of the Public Health Service Act, commonly known as the Safe Drinking Water Act (the Act). 42 U.S.C. § 300h-2. The Environmental Protection Agency (EPA) regulations authorized by the statute are set out in part 144 of title 40 of the Code of Federal Regulations (C.F.R.), and violations of the statute, permits or EPA regulations constitute violations of the Act. The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("Rules of Practice")," 40 C.F.R. Part 22, a copy of which is enclosed.

2. The undersigned EPA official has been properly delegated the authority to issue this complaint.

3. EPA alleges that Colton Redi-Mix, Inc. (Respondent) has violated the regulations and therefore the Act, as more fully explained below.

**NOTICE OF OPPORTUNITY FOR A HEARING**

4. Respondent has the right to a public hearing before a presiding officer within the Agency to (1) disagree with any fact alleged by EPA in the complaint, (2) state the grounds for any legal defense or (3) disagree with the appropriateness of the proposed penalty.

5. To disagree with the complaint and assert Respondent's right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (1595 Wynkoop Street (8RC)); Denver, Colorado 80202) within thirty (30) calendar days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts Respondent may dispute, and Respondent's

specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in the answer. **FAILURE TO FILE AN ANSWER AND REQUEST A HEARING WITHIN THIRTY (30) CALENDAR DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF PENALTY UP TO THE MAXIMUM AUTHORIZED BY THE ACT.**

### SETTLEMENT NEGOTIATIONS

6. EPA encourages discussing whether cases can be settled through informal settlement conferences. If Respondent wants to pursue the possibility of settling this matter, or has any other questions, contact the attorney listed at the end of this complaint. **Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the thirty (30) day period for filing an answer and requesting a hearing.**

### GENERAL ALLEGATIONS

The following general allegations apply to all times relevant to this action, and to each violation alleged in this complaint:

7. Respondent, Colton Redi-Mix, Inc. is a corporation, incorporated in the State of South Dakota, and doing business in the State of South Dakota.

8. Respondent is a "person" as defined in the Act, and therefore subject to the requirements of the statute and/or regulations. 42 U.S.C. § 300f (11).

9. Respondent owns the property and operates the facility located at 109 East 5<sup>th</sup> Street, Colton, South Dakota ("facility").

10. On August 7, 1998, EPA Region 8 received a completed *Shallow Injection Well Inventory Request Form* for the facility, prepared by Warren Oberg, representing Respondent dated August 3, 1998 (Inventory Form).

11. The Inventory Form stated the facility did not have a floor drain or Class V well.

12. On May 10, 2007, an authorized EPA employee entered the facility with consent to inspect it for compliance with the law. After the Inventory Form was submitted in 1998, a new maintenance shop was constructed with a floor drain connected to a dry well.

13. As of May 10, 2007, it was determined by EPA that the floor drain identified in paragraph 12, above, which Respondent owned and was operating, was a Class V Motor Vehicle Waste Disposal Well.

14. Respondent's disposal system, as identified in the inspection above, is classified as a "Class V Injection Well" as defined by 40 C.F.R. §§144.6 and 146.5. Respondent is subject to applicable requirements of 40 C.F.R. §§124, 144 and 146.

15. Lying underneath the disposal well are underground sources of drinking water (USDWs), including but not limited to unconsolidated sand and gravel aquifers approximately 100 feet below land surface.

16. Respondent is in violation of:

- (a) 40 C.F.R. §§ 144.12(a) and 144.82(a)(1) by owning, operating or maintaining a Class V disposal well which, through injection activity, allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation or may otherwise adversely affect the health of persons; and
- (b) 40 C.F.R. § 144.88(b) for operating a motor vehicle waste disposal well after the January 1, 2007 ban of all motor vehicle waste disposal wells.

Respondent's operation of the well in violation of the EPA regulations is therefore in violation of the Act, 42 U.S.C. § 3000h-2 (c)(1).

### **PROPOSED COMPLIANCE ORDER**

17. Within thirty (30) calendar days of Respondent's receipt of this complaint, Respondent shall:

(a) submit to EPA, in writing, a schedule for permanently closing the disposal well, and a plan for alternative disposal of the waste. If the closure includes the use of a holding tank, the plan must address the specific type, specifications and size of tank to be installed. EPA will promptly review the proposed plan and either approve it or provide Respondent with written comments;

(b) permanently close the disposal well within sixty (60) calendar days of the receipt of this complaint, and

(c) provide EPA with subsequent documentation of the closure within thirty (30) calendar days of completing this work.

18. Respondent shall submit all documentation to:

Carol Hutchings (Mail Code 8ENF-UFO)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

### PROPOSED CIVIL PENALTY

19. For an administrative proceeding, the Act authorizes the assessment of a civil penalty of up to \$11,000 per day, for each violation of the Act, up to a maximum of \$157,500. 42 U.S.C. § 3000h-2 (c)(1). The Act requires EPA to take into account appropriate factors in assessing a civil penalty, including the seriousness of the violations, the economic benefit resulting from the violations, any history of such violations, and good-faith efforts to comply with the requirements, the economic impact on the violator, and such other matters as justice may require.

20. As required by the Act, prior to the assessment of a civil penalty, EPA will provide public notice of the proposed penalty, and reasonable opportunity for the people to comment on the matter, and present evidence in the event a hearing is held 42 U.S.C. § 300h-2 (c)(3)(B).

21. To discuss settlement or ask any questions you may have about this case or process, please contact Jim Eppers, Enforcement Attorney, at 303-312-6893, or the address below.

United States Environmental Protection Agency  
Region 8, Office of Enforcement, Compliance and  
Environmental Justice  
1595 Wynkoop Street (ENF-L)  
Denver, CO 80202

Date:

4/16/08

By:

Michael B. Bisher  
for Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
And Environmental Justice