

1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
2 REGION IX

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3 U.S. EPA. REGION IX
REGIONAL HEARING CLERK

4 IN THE MATTER OF:)

DOCKET NO. UIC-09-2007-0002

5 PTP Inc.)

6 Pineview Estates, Nevada)

7 Respondent.)

**FINDINGS AND PROPOSED
ADMINISTRATIVE ORDER WITH
ADMINISTRATIVE CIVIL PENALTY**

8 Proceedings under Section 1423(c) of the Safe)
9 Drinking Water Act, 42 U.S.C. § 300h-2(c))

10
11 **I. PRELIMINARY STATEMENT**

12 The following findings are made and Order issued under the authority vested in the
13 Administrator of the United States Environmental Protection Agency (“EPA” or “Complainant”)
14 by Section 1423(c) of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300h-2(c). The
15 Administrator has delegated these authorities to the Regional Administrator of EPA Region IX.
16 The Regional Administrator in turn has delegated these authorities to the Director of the Water
17 Division for EPA Region IX. This Order is issued in accordance with the “Consolidated Rules
18 of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or
19 Suspension of Permits,” 40 C.F.R. Part 22 (“Part 22”) (**Attachment 1**).

20 **II. STATUTORY AND REGULATORY BACKGROUND**

21 1. Pursuant to Part C of the SDWA, 42 U.S.C. §§ 300h-300h-8, EPA has promulgated
22 regulations establishing minimum requirements for Underground Injection Control (“UIC”)
23 programs, to prevent underground injection which endangers underground sources of drinking
24 water (“USDW”). This UIC program consists of the program requirements of 40 C.F.R. Parts
25 124, 144, 146, 147 (Subpart DD), and 148.

3 3. Pursuant to 40 C.F.R. § 144.3, “Indian lands” are defined to include Indian allotments.

4 4. Pursuant to SDWA § 1421(d)(1), 42 U.S.C. § 300h(d)(1), and 40 C.F.R. § 144.3,
5 “underground injection” means the subsurface emplacement of fluids by well injection.

6 5. 40 C.F.R. § 144.3 defines a “well” as “a subsurface fluid distribution system” and “well
7 injection” as “the subsurface emplacement of fluids through a well.

8 6. Pursuant to 40 C.F.R. § 141.11, any underground injection, except into a well authorized
9 by rule or except as authorized by permit issued under the UIC program, is prohibited.

10 7. 40 C.F.R. § 144.51(a) provides that UIC permittees have a duty to comply with all permit
11 conditions.

12 8. Pursuant to 40 C.F.R. § 144.80(e), Class V wells are defined as shallow wells used to
13 place a variety of fluids directly below the land surface.

14 9. Pursuant to 40 C.F.R. § 144.81(9), Class V wells include “septic system wells used to
15 inject the waste or effluent from a multiple dwelling, business establishment, community or
16 regional business establishment septic tank.”

17 **III. FACTUAL BACKGROUND**

18 10. At all time relevant to this action, PTP Inc. (“Respondent”) was incorporated in the State
19 of Nevada (Nevada corporate number C10014-1997).

20 11. At all times relevant to this action, Respondent was developing an approximately 240
21 single-family home subdivision by the name of “Pineview Estates” (the “Site”) that is currently
22 in its sixth and final phase of construction.

23 12. The Site is located on 63 acres of individually-owned Indian trust allotment land located
24 six miles south of Gardnerville, Douglas County, Nevada.

1 13. At all times relevant to this action, Respondent owned and operated two drainfields that
2 it used to inject waste or effluent from septic tanks at Pineview Estates.

3 **IV. FINDINGS OF VIOLATIONS**

4 14. Paragraphs 1 through 13 are realleged and incorporated herein by reference.

5 15. Respondent is a corporation and therefore a “person” within the meaning of SDWA §
6 1401(12), 42 U.S.C. § 300f(12).

7 16. The Site is located on “Indian Lands” as that term is defined at 40 C.F.R. § 144.3.

8 17. At all times relevant to this action, Respondent owned and operated two “septic system
9 wells” at the Site that inject waste or effluent from multiple dwelling septic tanks and are
10 therefore Class V injection wells within the meaning of 40 C.F.R. §§ 144.3, 144.80(e), and
11 144.81(9).

12 18. On September 7, 2004, EPA issued a Class V UIC Permit (No. NV504000001) (the
13 “Permit”) to Respondent authorizing the operation of the two Class V injection wells described
14 in paragraph 17 above and hereinafter referred to as Drainfield A (“DFA”) and Drainfield B
15 (“DFB”) (“the Facilities”) contingent upon meeting the conditions of the Permit. See Part I of
16 the Permit (p.1).

17 19. The Permit, Part II.D.2.a (pgs. 7-8), provides, in relevant part:

18 “All of the following conditions constitute a failure to comply with this permit:

- 19 (ii) Failure of samples taken [at the Facilities] to meet the following effluent
20 concentration limits for [TSS, BOD, and nitrate-nitrogen]:
21 -25 milligrams per liter (mgL^{-1}) for [TSS],
-25 mgL^{-1} for [BOD], and
22 - 15 mgL^{-1} for nitrate-nitrogen.”

23 20. The Permit, Part II.F.4 (p. 11), requires Respondent to conduct immediate resampling
24 (confirmation sampling) if monitoring results demonstrate a failure to meet the effluent
25 concentration limits provided in Part II.F.2.a of the Permit.

2 activity” upon failure to comply with the Permit’s conditions at Part II.D.2.a, which requires
3 Respondent to operate and maintain the Facilities to meet specified effluent concentration limits
4 for TSS, BOD, and nitrate-nitrogen.

5 22. The Permit, Part II.E.2 (pg. 9), requires Respondent to have the Facilities inspected by a
6 qualified wastewater operator at the end of the first, third, and fifth years of the period during
7 which the Permit is effective. The Permit was effective immediately upon issuance on
8 September 7, 2004, and the end of the first year of the period during which the Permit was
9 effective was September 7, 2005.

10 23. The Permit, Part II.G.1.a (pg. 12), requires Respondent to submit to EPA on a monthly
11 basis: (a) a record of all maintenance activity outlined in Respondent’s Maintenance Plan for the
12 Facilities as required under Part II.E.1 of the Permit (see Part II.G.1.a.i); (b) injection well
13 monitoring results as required under Part II.F.2.a of the Permit (see Part II.G.1.a.ii); (c) a
14 calculation of the total volume of injectate flows to the Facilities as required under Part II.F.2.b
15 of the Permit (see Part II.G.1.a.ii); (d) ground water monitoring reports for fecal coliform,
16 nitrate-nitrogen, and coliphage, as required under Part II.F.3 of the Permit (see Part II.G.1.a.iii);
17 (e) and clear and specific reports of the sampling activities and results for effluent concentration
18 levels of TSS, BOD, and nitrate-nitrogen to EPA that are required under Part II.F.4 of the Permit
19 (see Part II.G.1.a.iii).

20 24. Respondent failed to comply with the requirements of the Permit as follows:

21 **Failure to meet effluent concentration limits.**

22 25. On May 25, 2005, Respondent initiated injection activity at DFA.

23 26. On June 6, 2005, Respondent initiated injection activity at DFB.

24 27. On July 27, 2006, EPA found that Respondent failed to, among other things, meet the
25 effluent concentration limits specified in the Permit for TSS, BOD, and/or nitrate-nitrogen at

1 DFA from August 2005 through May 2006, and at DFB from June 2005 to February 2006, and
2 in May 2006, in violation of Part II.D.2.a of the Permit. EPA's finding of violation was set forth
3 in a letter from EPA to Respondent, attached hereto and incorporated by reference as though
4 fully set forth herein (**Attachment 2**).

5 28. Respondent's failure to meet the effluent concentration limits specified in the Permit for
6 TSS, BOD, and/or nitrate-nitrogen violated the Permit at Part II.D.2.a.

7 **Failure to resample**

8 29. Respondent's failure to conduct resampling after the analytical results of monthly
9 injection well monitoring at DFA and DFB showed levels of TSS, BOD, and/or nitrate-nitrogen
10 at the levels above those specified in the Permit, Part II.D.2.a, as alleged above in paragraphs 25
11 through 28, violated the Permit, Part II.F.4.

12 **Failure to cease all injection activity at DFA and DFB after failing to comply with Permit**
13 **conditions regarding effluent concentration limits.**

14 30. Respondent's failure to cease operation of DFA and DFB after the analytical results of
15 monthly injection well monitoring at DFA and DFB showed levels of TSS, BOD, and/or nitrate-
16 nitrogen at the levels above those specified in the Permit, Part II.D.2.a, as alleged in paragraphs
17 25 through 28 above, violated the Permit, Part II.D.2.b.

18 **Failure to conduct first year inspection of the Facilities.**

19 31. On July 27, 2006, EPA found that Respondent had failed to have the Facilities inspected
20 by a qualified wastewater operator by September 7, 2005, which was the end of the first year of
21 the period during which the Permit was effective.

22 32. Respondent's failure to have the Facilities inspected by a qualified wastewater operator
23 by September 7, 2005, the end of the first year of the period during which the Permit was
24 effective, violated the Permit, Part II.E.2.

2 33. From July to December 2005, Respondent submitted ground water and injection well
3 monitoring reports to EPA on a monthly basis, as required by the Permit, Parts II.G.1.a.ii and iii.

4 34. On July 13, 2006, EPA received five monthly ground water and injection well
5 monitoring reports for the months of January 2006 to May 2006.

6 35. On July 27, 2006, EPA found that Respondent had violated Part II.G.1.a of the Permit by
7 failing to provide any maintenance reports since November 2005, and by failing to provide
8 monthly sampling reports, from January 2006 to May 2006 until July 13, 2006. (See Attachment
9 2.)

10 36. On or around November 30, 2006, Respondent began to provide ground water and
11 injection well monitoring reports to EPA on a monthly basis, as required by the Permit, Parts
12 II.G.1.a.ii and iii.

13 37. As of the date of this action, Respondent has failed to provide maintenance reports to
14 EPA on a monthly basis, as required by the Permit, Part II.G.1.a.i.

15 38. Respondent's failure to provide maintenance reports on a monthly basis to EPA from
16 May 25, 2005, when injection activity commenced at DFA, to the date of this action, violated the
17 Permit, Part II.G.1.a.i.

18 39. Respondent's failure to provide ground water and injection well monitoring reports to
19 EPA on a monthly basis from May 25, 2005, when injection activity commenced at DFA until on
20 or around November 30, 2006, with the exception of its submission of monitoring reports on a
21 monthly basis from July to December 2005, violated the Permit, Parts II.G.1.a.ii and iii.

22 **Violations of the Permit are violations of 40 C.F.R. 141.51(a)**

23 40. Each of the violations described above in paragraphs 25 through 39 are violations of
24 Respondent's duty to comply with all Permit conditions pursuant to 40 C.F.R. § 141.51(a).

1 41. These violations are subject to enforcement action under Section 1423 of the SDWA, 42
2 U.S.C. § 300h-2. Section 1423 of the SDWA authorizes EPA to initiate civil and/or criminal
3 enforcement actions in court, as well as to issue administrative orders that mandate compliance
4 with the SDWA and its regulations and/or assess civil penalties for violations.

5 **V. PROPOSED ADMINISTRATIVE ORDER**
6 **WITH ADMINISTRATIVE CIVIL PENALTY**

7 **Order for Compliance**

8 42. Pursuant to EPA's authority under Section 1423(c) of the SDWA, 42 U.S.C. § 300h-
9 2(c), Respondent shall submit a Plan to EPA within thirty (30) days of the effective date of a
10 Final Order in this matter, which: 1) proposes to properly abandon septic tanks, distribution
11 boxes, pipes, and leach lines associated with the two drainfields replaced by DFA and DFB
12 which are not currently functioning as part of the sanitary wastewater disposal system authorized
13 by EPA via UIC Class V Permit (No. NV504000001), and 2) specifies how and when
14 Respondent will comply with Parts II.E.3 and II.G.1(a) and (b) of the subject Permit, related to
15 annual inspections, monitoring, and reporting of the authorized wastewater disposal system.

16 43. Respondent shall submit the Plan referred to in paragraph 42 above, to:

17 Aaron Setran
18 Ground Water Office
19 U.S. Environmental Protection Agency Region IX
20 75 Hawthorne Street (WTR-9)
21 San Francisco, CA 94105

22 44. Respondent shall also comply and maintain compliance with all other requirements of its
23 Class V UIC Permit, and maintain compliance with its Class V UIC Permit with regard to
24 injection activity at DFA and DFB and injection activity at any new Class V UIC wells that
25 Respondent constructs at the Site pursuant to that Permit.

3 allegations, EPA proposes that the Presiding Officer issue a decision assessing administrative
4 penalties against Respondent for its failure to comply with the UIC regulations at 40 C.F.R. Part
5 144, and Respondent's UIC Permit, as alleged in paragraphs 1 through 41 above.

6 45. EPA proposes this penalty amount in consideration of the appropriate factors
7 listed at SDWA § 1423(c)(4), which include: (a) the seriousness of the violation; (b) the
8 economic benefit resulting from the violation; (c) any history of such violations; (d) any good-
9 faith efforts to comply with the applicable requirements; (e) the economic impact of the penalty
10 on the violator; and (f) such other matters as justice may require. Accordingly, EPA requests
11 that after consideration of these statutory assessment factors, the Administrator assess against
12 Respondent a civil administrative penalty of up to \$157,500 for the violations of the SDWA's
13 UIC Program and UIC Permit alleged above.

14 46. Within thirty (30) days of the effective date of a Final Order, Respondent shall make
15 payment of \$157,500, or such other amount as determined by the Presiding Officer, in
16 accordance with any acceptable method of payment listed in **Exhibit A** "EPA Region 9
17 Collection Information," which is incorporated by reference as part of this Complaint.

18 47. Concurrent with payment of any penalty made pursuant to paragraph 47 above,
19 Respondent shall provide written notice of payment, referencing the title and docket number of
20 this case, via certified mail to each of the following:

21	Aaron Setran		Danielle Carr
22	Ground Water Office		Regional Hearing Clerk
23	U.S. EPA, Region IX	and	U.S. EPA, Region IX
24	75 Hawthorne Street (WTR-9)		75 Hawthorne Street (ORC-1)
25	San Francisco, CA 94105		San Francisco, CA 94105

48. Neither assessment nor payment of a civil administrative penalty pursuant to this section
of the SDWA shall affect Respondent's continuing obligation to comply with the SDWA's UIC

1 Program, and with any separate compliance Order issued under Section 1423(c) of the SDWA,
2 42 U.S.C. § 300h-2(c), for the violations alleged herein.

3 **VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

4 50. As provided in SDWA § 1423(c)(3)(A), 42 U.S.C. § 300h-2(c)(3)(A), before issuing a
5 Final Order in this matter, EPA gives the Respondent to whom it is directed written notice of
6 EPA's proposal to issue its Final Order and the opportunity to request, within thirty (30) days of
7 the date the notice is received by such person, a hearing on the Proposed Order. Such hearing
8 shall not be subject to section 554 or 556 of the Administrative Procedures Act, 5 U.S.C. § 554,
9 556, but shall provide a reasonable opportunity to be heard and to present evidence. If a hearing
10 is requested, Subpart I of the Consolidated Rules of Practice, 40 C.F.R. Part 22, governs and sets
11 forth the procedures for such hearing.

12 51. Respondent must send any request for a hearing made pursuant to SDWA §
13 1423(c)(3)(A), 42 U.S.C. § 300h-2(c)(3)(A), to:

14 Danielle Carr, Regional Hearing Clerk
15 U.S. Environmental Protection Agency, Region IX
16 75 Hawthorne Street (ORC-1)
San Francisco, CA 94105

17 **VII. ANSWERING THE ORDER**

18 52. If Respondent intends to contest any material fact upon which the Proposed Order is
19 based, or to contend that the proposed penalty is inappropriate or that Respondent is entitled to
20 judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA
21 Region IX both an original and one copy of a written Answer. 40 C.F.R. § 22.15(a). Such
22 Answer must be filed within 30 days after service of this Proposed Order. 40 C.F.R. § 22.15(a).
23 The address of the Regional Hearing Clerk of EPA Region IX is:

24 Danielle Carr, Regional Hearing Clerk
25 U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street (ORC-1)
San Francisco, CA 94105

3 53. Respondent's Answer must clearly and directly admit, deny, or explain each of the
4 factual allegations contained in the Proposed Order with regard to which Respondent has any
5 knowledge. 40 C.F.R. § 22.15(b). Where Respondent has no knowledge of a particular factual
6 allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). If
7 Respondent fails in its Answer to admit, deny, or explain any material factual allegation
8 contained in the Proposed Order, such failure constitutes an admission of the allegation. 40
9 C.F.R. § 22.15(d).

10 54. The Answer must also state: (1) the circumstances or arguments that are alleged to
11 constitute the grounds of any defense, (2) the facts that Respondent disputes (and thus intends to
12 place at issue in the proceeding), (3) the basis for opposing the proposed relief, and (4) whether
13 Respondent requests a hearing. 40 C.F.R. § 22.15(b).

14 55. Respondent's failure to affirmatively raise in the Answer facts that constitute or might
15 constitute the grounds of its defense may preclude Respondent, from raising such facts and/or
16 from having such facts admitted into evidence at a hearing.

17 **VIII. FAILURE TO ANSWER**

18 56. To avoid entry of a Default Order against you pursuant to 40 C.F.R. § 22.17 for a civil
19 administrative penalty of up to \$157,500 as proposed in this Order, Respondent must file a
20 written Answer with the Regional Hearing Clerk at the address above within thirty (30) days of
21 receipt of this Order.

22 57. Any penalty assessed in the Default Order will become due and payable by Respondent
23 without further proceedings 30 days after the Default Order becomes final pursuant to 40 C.F.R.
24 § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order
25

1 of Default against Respondent, and to collect the assessed penalty amount, which may be up to
2 \$157,500, in federal court.

3 **IX. INFORMAL SETTLEMENT CONFERENCE**

4 58. Whether or not Respondent requests a formal hearing, Respondent may request an
5 informal settlement conference to discuss the facts of this case, the proposed penalty, and
6 settlement. 40 C.F.R. § 22.18(b). To request such a settlement conference, please contact:

7 Rich Campbell
8 Office of Regional Counsel
9 U.S. Environmental Protection Agency, Region IX
10 75 Hawthorne Street (ORC-2)
11 San Francisco, CA 94105
12 Phone: (415) 972-3870

13 Mr. Campbell is authorized to receive service related to this proceeding.

14 59. The parties may engage in settlement discussions regardless of whether Respondent
15 requests a hearing. 40 C.F.R. § 22.18(b)(1). A request for an informal settlement conference
16 constitutes neither an admission nor a denial of any of the matters alleged herein. EPA does not
17 deem a request for an informal settlement conference as a request for a hearing as specified in 40
18 C.F.R. § 22.15(c).

19 60. Settlement discussions do not affect Respondent's obligation to file a timely Answer to
20 the Proposed Order pursuant to 40 C.F.R. § 22.15. *See also* 40 C.F.R. § 22.18(b)(1). EPA will
21 not modify its proposed penalty simply because an informal settlement conference is held.

22 61. The terms and conditions of any settlement that may be reached as a result of a
23 settlement conference will be recorded in a written Consent Agreement signed by all parties. 40
24 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, EPA will execute a Final Order
25 ratifying the parties' Consent Agreement. 40 C.F.R. § 22.18(b)(3). In accepting the Consent
Agreement, Respondent waives any right to contest the allegations herein and waives any right
to appeal the Final Order accompanying the Consent Agreement. 40 C.F.R. § 22.18(b)(2).

5 requirements and legal orders.

4 **X. GENERAL PROVISIONS**

5 63. The provisions of this Proposed Order shall apply to and be binding upon Respondent,
6 its officers, directors, agents, successors, and assigns. Notice of this Proposed Order shall be
7 given to any successors in interest prior to transfer of Respondent's Facilities at Pineview
8 Estates. Action or inaction of any persons, firms, contractors, employees, agents, or corporations
9 acting under, through, or for Respondent shall not excuse any failure of Respondent to fully
10 perform its obligations under this Proposed Order.

11 64. This Proposed Order does not constitute a waiver, suspension, or modification of the
12 requirements of any federal, state, or local statute, regulation, or condition of any permit issued
13 thereunder, including the requirements of the SDWA and accompanying regulations. Issuance of
14 this Proposed Order is not an election by EPA to forgo any civil or any criminal action otherwise
15 authorized under the SDWA.

16 65. Notwithstanding compliance with the terms of this Proposed Order, EPA is not
17 ~~precluded from taking any action, whether civil or criminal, and/or the issuance of~~
~~additional administrative orders, and/or the initiation of judicial actions, against Respondent.~~
18 EPA expressly reserves the right to enforce this Proposed Order through appropriate
19 ~~proceedings~~

20
21 66. Violation of any term of this Order, or failure or refusal to comply with this Order, may
22 subject Respondent to additional enforcement action pursuant to SDWA § 1423(b), 42 U.S.C. §
23 300h-2(b) and/or SDWA § 1423(c)(7), 42 U.S.C. § 300h-2(c)(7).

1 **XI. EFFECTIVE DATE**

2 67. Pursuant to SDWA § 1423(c)(3)(D), 42 U.S.C. § 300h-2(c)(3)(D), a Final Order in this
3 matter will become effective thirty (30) days following its issuance unless an appeal to a United
4 States District Court is taken pursuant to SDWA § 1423(c)(6), 42 U.S.C. § 300h-2(c)(6).
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7 Date: 27 September 2007

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8 Alexis Strauss, Director
9 Water Division
10 U.S. Environmental Protection Agency, Region IX
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