

<b>In the Matter of</b>	§	
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<b>CapturePoint, LLC</b>	§	<b>Docket No. SDWA-06-2024-1114</b>
	§	
<b>Respondent.</b>	§	

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**PROPOSED ADMINISTRATIVE ORDER**

**STATUTORY AUTHORITY**

The following findings are made, and Proposed Administrative Order issued, under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 1423(c) of the Safe Drinking Water Act (the Act), 42 U.S.C. § 300h–2(c). The authority to issue this Proposed Administrative Order has been delegated by the Administrator to the Regional Administrator of EPA Region 6 who further delegated such authority to the Director of the Enforcement and Compliance Assurance Division. The EPA has primary enforcement responsibility for underground injection within the meaning of Section 1422(c) of the Act, 42 U.S.C. § 300h–1(c), to ensure that owners or operators of Class II injection wells within Osage County, Oklahoma, comply with the requirements of the Act.

**FINDINGS**

1. CapturePoint, LLC (Respondent) is a limited liability company doing business in the State of Oklahoma and, therefore, is a “person,” within the meaning of Section 1401(12) of the Act, 42 U.S.C. § 300f(12).

2. At all times relevant to the violations alleged herein, Respondent owned or operated an “injection well” which is a “Class II well” as those terms are defined at 40 C.F.R § 147.2902. The injection well is located in the SW Quarter of Section 01, Township 26 North, Range 05 East, Osage County, Oklahoma, designated as injection Well No. 100-W4 and EPA Inventory Number OS0586000 (the injection well).
3. Respondent is subject to underground injection control (UIC) program requirements set forth at 40 C.F.R. Part 147, Subpart GGG, which are authorized under Section 1421 of the Act, 42 U.S.C. § 300h.
4. Regulations at 40 C.F.R. § 147.2903(a) require that any underground injection is prohibited except as authorized by rule or authorized by a permit issued under the UIC program. The construction or operation of any injection well required to have a permit is prohibited until the permit has been issued. The term “permit” is defined at 40 C.F.R. § 147.2902.
5. Regulations at 40 C.F.R. § 147.2903(b) provide that no owner or operator shall construct, operate, maintain, convert, plug, or abandon any injection well, or conduct any other injection activity, in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause the violation of any primary drinking water regulation under 40 C.F.R. Part 142 or may otherwise adversely affect the health of persons.
6. Regulations at 40 C.F.R. § 147.2909 provide that existing injection wells (wells authorized by the Bureau of Indian Affairs and constructed or completed on or before the effective date of the Osage UIC program) are authorized by rule (ABR). Owners or operators of injection wells authorized by rule must comply with the provisions of 40 C.F.R. §§ 147.2903, 147.2905, 147.2907, and 147.2910 through 147.2915.

7. Regulations at 40 C.F.R. § 147.2912(a) require each ABR injection well to have mechanical integrity. An injection well has mechanical integrity if there are no significant leaks in the casing, tubing, or packer and there is no significant fluid movement into the “Underground Source of Drinking Water” (USDW) through vertical channels adjacent to the wellbore. The term USDW is defined at 40 C.F.R. § 147.2902.
8. The injection well is authorized by rule in accordance with 40 C.F.R. § 147.2909.
9. A review of records maintained by the EPA on this injection well showed the following:
  - a. This well failed a mechanical integrity test demonstration on September 19, 1988.  
To date, the injection well has not successfully demonstrated mechanical integrity.
  - b. An annual operation report for the reporting period of July 2022 to June 2023 signed and dated on July 19, 2023, showed the static fluid level in the well to be 62 feet below surface.
10. A static fluid level above the base of the USDW in an injection well without mechanical integrity indicates that fluids inside the injection well could move into the USDW.
11. Therefore, Respondent violated regulations set forth at 40 C.F.R. §§ 147.2903(b), 147.2909, and 147.2912(a) by maintaining the injection well in a manner that could allow the movement of fluid that contains contaminants into an USDW and by failing to successfully demonstrate mechanical integrity.

#### **SECTION 1423(c) PROPOSED COMPLIANCE ORDER**

12. Based on the foregoing findings, and pursuant to the authority of Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), EPA Region 6 hereby proposes to order Respondent to:
  - a. Cease use of the injection well for the unauthorized underground injection of fluids, and

- b. Take one of the following actions:
- i. Repair the injection well and successfully demonstrate mechanical integrity according to regulations at 40 C.F.R. § 147.2912(a) within ninety (90) days after the effective date of a Final Administrative Order; or
  - ii. Complete proper plugging and abandonment in accordance with 40 C.F.R. § 147.2905, within ninety (90) days after the effective date of a Final Administrative Order; or
  - iii. Convert the injection well to production use within ninety (90) days after the effective date of a Final Administrative Order.

13. Submit copies of completed plugging reports or completed work reports showing conversion to production and BIA Osage Agency Forms 139 within 120 days after the effective date of a Final Administrative Order to:

Matthew Rudolph  
rudolph.matthew@epa.gov  
U.S. Environmental Protection Agency  
Water Enforcement Branch (ECDWE)

**NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

14. Respondent may request a hearing to contest the issuance of the Final Administrative Order, pursuant to Section 1423(c)(3)(A) of the Act, 42 U.S.C. § 300h-2(c)(3)(A). Such hearing shall not be subject to section 554 or 556 of Title 5 but shall provide a reasonable opportunity to be heard and to present evidence.

15. A request for a hearing must be made within thirty (30) days of the date of receipt of this Proposed Administrative Order. If you would like to request a hearing on this Proposed Administrative Order, submit the hearing request to the Regional Hearing Clerk (6ORC); U.S.

Environmental Protection Agency, Region 6; 1201 Elm Street, Suite 500; Dallas, Texas 75270-2102.

16. Should a hearing be requested, members of the public who commented on the issuance of this Proposed Administrative Order during the public comment period would have a right to be heard and present evidence at a hearing under Section 1423(c)(3)(C) of the Act, 42 U.S.C. § 300h-2(c)(3)(C).

### **GENERAL PROVISIONS**

17. Issuance of the Final Administrative Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. Parts 144, 146, and 147, Subpart GGG, which remain in full force and effect.

18. Issuance of the Final Administrative Order is not an election by EPA to forego any civil or criminal action otherwise authorized under the Act.

19. Violation of the terms of the Final Administrative Order after its effective date or date of final judgment as described in Section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6), may subject Respondent to further enforcement action, including a civil action for enforcement of the Final Administrative Order under Section 1423(b) of the Act, 42 U.S.C. § 300h-2(b), and civil and criminal penalties for violations of the compliance terms of the Final Administrative Order under Section 1423(b)(1) and (2) of the Act, 42 U.S.C. § 300h-2(b)(1) and (2).

### **TAX IDENTIFICATION**

20. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of Paragraphs 12 and 13 is restitution, remediation, or required to come into compliance with the law.

### SETTLEMENT

21. EPA encourages all parties against whom an administrative order is proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations. Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Proposed Administrative Order, please contact Matthew Rudolph, of my staff, at (214) 665-6434.

22. If this action does not proceed to a formal hearing, EPA shall issue a Final Administrative Order.

### EFFECTIVE DATE

23. The Final Administrative Order becomes effective thirty (30) days after issuance unless an appeal is taken pursuant to Section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6).

April 1, 2024

Date

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Cheryl T. Seager, Director  
Enforcement and  
Compliance Assurance Division