

1 Robert Moyer
Acting Regional Counsel
2 United States Environmental Protection Agency, Region IX

3 Rich Campbell
Assistant Regional Counsel
4 United States Environmental Protection Agency, Region IX
75 Hawthorne Street
5 San Francisco, California 94105

6 Attorneys for Complainant

7
8 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
REGION IX

9
10 IN THE MATTER OF:) DOCKET NO. UIC-09-2013-0001
Pine View Estates Subdivision, Nevada)
11)
12 PTP Inc., a Nevada corporation,)
Leon Mark Kizer, an individual, and)
13 the Pine View Estates Homeowners)
Association, a Nevada corporation)
14)
15 Respondents.)
16 Proceedings under Section 1423(c) of the Safe)
Drinking Water Act, 42 U.S.C. § 300h-2(c))
17)

PROPOSED
ADMINISTRATIVE ORDER
FOR COMPLIANCE

18
19 **I. AUTHORITY**

20 The United States Environmental Protection Agency (EPA) issues this Compliance Order
21 pursuant to section 1423(c) of the federal Safe Drinking Water Act (Act), 42 U.S.C. § 300h-2(c),
22 which authorizes EPA to issue an administrative order against any person who violates the Act
23 or any requirement of an applicable UIC program. Based on the findings below, and pursuant to
24 EPA's authority under section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), and 40 C.F.R. §
25 144.12(c), EPA issues this ORDER.

In the Matter of: Pine View Estates
Proposed Compliance Order

1 **II. FINDINGS**

2 **A. THE RESPONDENTS**

3 1. Respondent Leon Mark Kizer (Kizer) is an individual and is therefore a “person” within
4 the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

5 2. Respondent PTP Incorporated (PTP) is an active domestic corporation, registered in the
6 State of Nevada on May 9, 1997 (corporate entity no. C10014-1997), and is therefore a “person”
7 within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

8 3. Respondent Pine View Estates Homeowners Association (HOA) is an active domestic
9 non-profit corporation, registered in the State of Nevada as a corporation on December 18, 1998
10 (corporate entity number C29599-1998), and is therefore a “person” within the meaning of section
11 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

12 **B. FEDERAL STATUTORY AND REGULATORY BACKGROUND**

13 4. Part C of the SDWA, 42 U.S.C. §§ 300h-300h-8, requires EPA to regulate underground
14 injection of fluid through wells to assure that underground sources of drinking water (USDW)
15 are not endangered.

16 5. Section 1422(e) of the Act, 42 U.S.C. §§ 300h-1(e), requires EPA to regulate the UIC
17 Program on Indian Lands, which include Indian allotment land, if there is otherwise no EPA
18 approved UIC Program. EPA Region IX directly implements the UIC Program on Indian Lands
19 in Nevada. *See* 40 C.F.R. subpart DD, § 147.1451.

20 6. 40 C.F.R. § 144.3 defines a USDW to mean an aquifer that contains less than 10,000
21 parts per million (ppm) total dissolved solids (TDS), and which contains sufficient water to
22 supply a public water system.

23 7. 40 C.F.R. § 144.12(a) provides that no owner or operator shall construct, operate,
24 maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows
25 the movement of fluid containing any contaminant into USDWs, if the presence of that

1 contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part
2 142 or may otherwise adversely affect the health of persons.

3 8. 40 C.F.R. part 142, § 142.2, defines national primary drinking water regulation to mean
4 any primary drinking water regulation contained in 40 C.F.R. part 141. The drinking water
5 regulations at 40 C.F.R. part 141 provide that the presence of nitrate in drinking water above 10
6 mg/l is a violation of the maximum contaminant level (MCL) for nitrate at 40 C.F.R. §141.62(b).
7 Any fecal coliform-positive repeat sample, or any total coliform-positive repeat sample
8 following a fecal coliform-positive routine sample, constitutes a violation of the MCL for total
9 coliform at 40 C.F.R. § 141.63(b).

10 9. 40 C.F.R. § 144.31 provides that all UIC injection activities must be authorized by rule
11 or by permit.

12 10. 40 C.F.R. § 144.37 allows for the administrative continuance of UIC permits where the
13 permittee makes a timely and complete application for renewal and EPA does not act to renew
14 the permit through no fault of the permittee.

15 11. 40 C.F.R. § 144.38 provides, *inter alia*, that a UIC permit may be transferred by the
16 permittee to a new owner or operator only if the permit has been modified or revoked and
17 reissued, or a minor modification made, to identify the new permittee and incorporate such other
18 requirements as may be necessary under the Act. *Id.* A notice of transfer must be provided to
19 EPA at least 30 days in advance of the proposed transfer date. *Id.* The notice must include, *inter*
20 *alia*, a written agreement between the existing and new permittees containing a specific date for
21 transfer of permit responsibility, coverage, and liability between them. *Id.* The notice must also
22 demonstrate that the new permittee meets UIC Program financial responsibility requirements. *Id.*

23 12. 40 C.F.R. part 144, subpart E, includes conditions applicable to all UIC permits. 40
24 C.F.R. subpart E, § 144.51(a), provides that any permit or regulatory noncompliance constitutes
25 a violation of the Act, and is grounds for an enforcement action.

1 13. 40 C.F.R. § 144.82(a) provides that the owner or operator of any Class V well cannot
2 allow the movement of fluid containing any contaminant into USDWs, if the presence of that
3 contaminant may cause a violation of the primary drinking water standards under 40 C.F.R. part
4 141, other health based standards, or may otherwise adversely affect the health of persons. This
5 prohibition applies to Class V well construction, operation, maintenance, conversion, plugging,
6 closure, or any other Class V well injection activity.

7 14. 40 C.F.R. § 144.12(c) provides that for Class V wells, if any time EPA learns that a Class
8 V well may cause a violation of primary drinking water regulations under 40 C.F.R. part 142,
9 EPA shall: (1) Require the injector to obtain an individual permit; (2) order the injector to take
10 such actions (including, where required, closure of the injection well) as may be necessary to
11 prevent the violation; or (3) take enforcement action.

12 C. GENERAL ALLEGATIONS

13 15. The United States Government holds approximately 300 parcels of Indian allotment lands
14 in Douglas County, Nevada, in trust for hundreds of individual Indian landowners. These trust
15 lands are administered by the U.S. Bureau of Indian Affairs (BIA) and are collectively known as
16 the “Pine Nut Allotments.”

17 16. Respondent Kizer is an individual Indian landowner of an approximately 63-acre parcel
18 of Pine Nut Allotment trust land (Property), known as Public Domain Allotment CC-234, and
19 located approximately five miles southeast of Gardnerville, Douglas County, Nevada, adjacent to
20 U.S. Highway 395.

21 17. On October 8, 1997, Respondent Kizer entered into a lease agreement (Lease) with
22 Respondent PTP Inc., a land developer, for the purpose of constructing a 240-home residential
23 subdivision on the Property currently known as “Pine View Estates.”¹

24 _____
25 ¹ The subdivision is also sometimes referred to as “Pineview Estates.” EPA chooses to refer to the
subdivision as “Pine View Estates,” which is consistent with its reference in the Lease, as recorded in
BIA’s Division of Land Titles and Records.

1 18. On October 8, 1997, BIA's Western Nevada Agency approved the Lease pursuant to
2 its federal Indian trust responsibilities over the Pine Nut Allotments.

3 19. On March 16, 1999, BIA made a Finding of No Significant Impact in its Environmental
4 Assessment of the Pine View Estates development, performed pursuant to the National
5 Environmental Policy Act, 42 U.S.C. 4331 *et seq.*, in which BIA found that "[p]ublic health
6 issues including ... quality of ground water and an adequate sewer system have been addressed."

7 20. In 1999, Respondent PTP completed installation of a drinking water system at Pine View
8 Estates. The Pine View Estates drinking water system's source of drinking water is groundwater.

9 21. On April 6, 2004, Respondent PTP applied for a UIC permit from EPA to authorize
10 injection of wastewater effluent generated at Pine View Estates to two drainfields classified as
11 Class V injection wells, referred as "Disposal Fields A and B."

12 22. On September 7, 2004, EPA Region IX issued Class V UIC Permit No. NV504000001
13 (UIC Permit) to Respondents Kizer and PTP which authorized injection activity associated with
14 Disposal Fields A and B, which are further identified by EPA in the UIC Permit as UIC Well
15 Nos. NV-WAS-5W32-001 and 0002, respectively.

16 23. The UIC Permit, Part II.C.2, required the installation of four groundwater monitoring
17 wells at each of Disposal Fields A and B.

18 24. The UIC Permit, Part II.F.3.a, provides that monthly groundwater samples from the
19 monitoring wells at Disposal Fields A and B must be analyzed for, among other constituents,
20 fecal coliform, nitrates, and coliphage.

21 25. The UIC Permit, Part II.D.2.a.iii, provides that detection of nitrates or coliphage from
22 groundwater monitoring well sampling at Disposal Fields A and B performed pursuant to Part
23 II.F.3 of the UIC Permit constitutes an "upset condition" and a failure to comply with the UIC
24 Permit.

1 26. The UIC Permit, Part II.D.2.b, provides that in the event of an upset condition resulting
2 from the detection of nitrates or coliphage at the groundwater monitoring wells at Disposal
3 Fields A and B, the Permittees shall immediately cease all injection activities at the failing
4 injection wells until compliance is achieved.

5 27. The UIC Permit, Part III.B.1, provides that the UIC Permit is not transferable to any
6 person except after notice is provided to EPA and the Permittees comply with the UIC permit
7 transfer requirements of 40 C.F.R. § 144.38.

8 28. Respondent PTP used the groundwater monitoring wells to conduct monitoring at
9 Disposal Fields A and B until on or about September 1, 2009. After September 1, 2009,
10 Respondent HOA assumed the UIC Permit's monitoring responsibilities, as well as operation
11 and maintenance of Disposal Fields A and B.

12 29. On or about April 29, 2009, Respondent PTP submitted a complete application to EPA to
13 renew the UIC Permit.

14 30. On September 9, 2009, the UIC Permit expired without EPA acting on the April 29, 2009
15 UIC Permit renewal application.

16 31. On or about September 1, 2009, the HOA informally assumed the UIC Permit's
17 operation, maintenance, and monitoring responsibilities. Neither UIC Permit holder (i.e., PTP or
18 Kizer) has ever filed a notice of transfer to EPA which effectively transfers the UIC Permit to the
19 HOA as required by the UIC Permit, Part III.B.1. None of the Respondents have complied with
20 the UIC permit transfer requirements of 40 C.F.R. § 144.38.

21 32. On January 5, 2011, EPA Region IX issued a Notice of Violation (2011 NOV) to
22 Respondents Kizer, PTP and the HOA putting them on notice that the analytical results of
23 groundwater well monitoring at Disposal Field A between January 19, 2010 and September 20,
24 2010 indicated the movement of fluid containing nitrate above its MCL, and fecal coliform, into
25 the USDW underlying Disposal Field A.

1 D. FINDINGS OF VIOLATIONS

2 1. Violation of Prohibition of Movement of Fluid to USDW

3 33. The analytical results of the HOA's groundwater well monitoring at Disposal Field A
4 between January 19, 2010, and December 31, 2012, indicated levels of nitrate above its 10 mg/l
5 MCL at 40 C.F.R. § 141.62(b) in every sample result reported to EPA. *See* Exhibit A (graph
6 showing nitrate MCL exceedences from January 2010 through December 2012).

7 34. The analytical results of the HOA's groundwater well monitoring at Disposal Field A
8 between January 1, 2010 and December 31, 2012 indicated the presence of fecal coliform on
9 multiple occasions. *See* Exhibit B (chart indicating instances of the presence of fecal coliform.)

10 35. Based on the results of the HOA's groundwater well monitoring at Disposal Field A
11 conducted in 2010, 2011, and 2012, Respondents have operated and maintained Disposal Field A
12 in a manner that has allowed the movement of wastewater effluent containing levels of nitrate
13 above its MCL and/or containing the presence of fecal coliform into a USDW, in violation of 40
14 C.F.R. § 144.12(a), and 40 C.F.R. § 144.82(a)(1).

15 2. Failure to Comply with UIC Permit Requirements

16 36. Respondent PTP submitted a timely and complete application to renew the UIC Permit
17 on April 29, 2009. Although EPA did not act to renew the UIC Permit prior to its expiration on
18 September 1, 2009, the UIC Permit was administratively continued pursuant to 40 C.F.R. §
19 144.37, and remains fully effective and enforceable.

20 37. The detection of nitrates in groundwater samples collected from the Disposal Field A
21 groundwater monitoring wells between January 19, 2010 and December 31, 2012, constitutes an
22 "upset condition" under Part II.F.3 of the UIC Permit. *See* Attachment A.

23 38. Respondents PTP and Kizer failed to immediately cease injection activity at Disposal
24 Field A in response to the "upset condition," as required by Part II.D.2.b of the UIC Permit.

1 39. The failure by Respondents PTP and Kizer to comply with Part II.D.2.b of the UIC
2 Permit constitutes a violation of the Act pursuant to 40 C.F.R. § 144.51(a).

3 **III. ORDER FOR COMPLIANCE**

4 40. Based on the Findings set forth above, and pursuant to EPA's authority under section
5 1423(c) of the Act, 42 U.S.C. § 300h-2(c), and 40 C.F.R. § 144.12(c), the designated Regional
6 Official for EPA Region IX hereby ORDERS:

7 41. Compliance Activities. Respondents shall perform the following compliance activities to
8 bring Disposal Field A into compliance with the Act's UIC Program requirements at 40
9 C.F.R. Part 144:

- 10 a. Submit Compliance Plan. Within 30 days of this ORDER's effective date,
11 Respondents shall submit to EPA, for its review and approval, a compliance plan
12 and schedule (Compliance Plan) that describes in detail the steps Respondents
13 will take to modify or replace UIC Injection Well No. NV-WAS-5W32-001
14 (Disposal Field A) so that it complies with the Act and its UIC Program
15 regulations. The Compliance Plan shall describe any interim disposal methods
16 that Respondents will implement until the permanent modification or replacement
17 of Disposal Field A is achieved.
- 18 b. Cease Operation of UIC Injection Well No. NV-WAS-5W32-001 (Disposal Field
19 A). Within 60 days of EPA's approval of the Compliance Plan, Respondents shall
20 cease all injection activity at Disposal Field A and implement all interim and/or
21 permanent disposal methods described in the EPA-approved Compliance Plan.
- 22 c. Monitor Pine View Estates Drinking Water for Nitrate-Nitrogen and Total Fecal
23 Coliform. Within 30 days of EPA's approval of the Compliance Plan,
24 Respondents shall initiate weekly drinking water monitoring for nitrate-nitrogen
25 and fecal coliform collected from the Pine View Estates distribution system/water

1 tank. Samples shall be collected by a certified professional, and analyses of the
2 water samples shall be conducted by a State of Nevada certified laboratory.

3 d. Report Analytical Results of Drinking Water Monitoring. Respondents shall
4 report the analytical results of the weekly drinking water monitoring for nitrate-
5 nitrogen and fecal coliform to EPA within 24 hours of completion of the
6 analytical testing for these constituents. These results shall be sent electronically,
7 by the certified professional conducting the analyses, to Mr. Aaron Setran at EPA
8 Region 9's Enforcement Division (setran.aaron@epa.gov).

9 e. Submit Final Engineering Report. Within 60 days of EPA's approval of the
10 Compliance Plan, Respondents shall provide a copy of an Engineering Report to
11 EPA that summarizes the actions taken to implement the EPA-approved
12 Compliance Plan at Disposal Field A. At a minimum, the Engineering Report
13 shall describe and document the as-built designs and engineering of the
14 modified/new wastewater treatment system that replaces Disposal Field A.

15 f. Respondents shall operate and maintain any new or modified Pine View Estates
16 wastewater treatment system in compliance with the Act's UIC Program.

17 g. Respondents shall submit all documents required by this ORDER to:

18 Aaron Setran
19 Enforcement Division (ENF-3-3)
20 U.S. Environmental Protection Agency, Region 9
21 75 Hawthorne Street
22 San Francisco, California 94105

23 h. All reports submitted to EPA Region IX pursuant to this ORDER shall be signed
24 by a duly authorized representative of Respondents, and shall include the
25 following statement:

"I certify under penalty of law that this document and all attachments were
prepared by direct supervision or in accordance with a system designed to assure

1 that qualified personnel properly gather and evaluate the information submitted.
2 Based on my inquiry of the person or persons who manage the system, or those
3 persons directly responsible for gathering the information, I certify that the
4 information submitted is, to the best of my knowledge and belief, true, accurate,
5 and complete. I am aware that there are significant penalties for submitting false
6 information, including the possibility of fine and imprisonment for knowing
7 violations.” [signature].

8 **42. General Provisions**

- 9 a. The provisions of this ORDER shall apply to and be binding upon Respondents,
10 their officers, directors, agents, successors, and assigns. Notice of this ORDER
11 shall be given to any successors in interest prior to transfer of Respondents’
12 wastewater treatment system at Pine View Estates. Action or inaction of any
13 persons, firms, contractors, employees, agents, or corporations acting under,
14 through, or for Respondents shall not excuse any failure of Respondents to fully
15 perform their obligations under this ORDER.
- 16 b. This ORDER does not constitute a waiver, suspension, or modification of the
17 requirements of any federal, state, or local statute, regulation, or condition of any
18 permit issued thereunder, including the requirements of the Act and
19 accompanying regulations at 40 C.F.R. Part 141 or 144. Issuance of this ORDER
20 is not an election by EPA to forgo any civil or any criminal action otherwise
21 authorized under the Act.
- 22 c. Notwithstanding compliance with the terms of this ORDER, EPA is not precluded
23 from taking any action authorized by law including, but not limited to, the
24 issuance of additional administrative orders, and/or the initiation of judicial
25 actions, against Respondents. EPA expressly reserves the right to enforce this
ORDER through appropriate proceedings.

1 d. Violations of the terms of the ORDER after its effective date or the date of final
2 judgment in the event of an appeal under section 1423(c)(6) of the Act, 42 U.S.C.
3 § 300h-2(c)(6), may subject the Respondents to a civil action in a United States
4 district court with penalties up to \$37,500 per day of violation as authorized in
5 section 1423(b) of the Act, 42 U.S.C. § 300h-2(b) and/or section 1423(c)(7) of the
6 Act, 42 U.S.C. § 300h-2(c)(7).

7 43. Public Notice. Pursuant to section 1423(c)(3)(B) of the Act, 42 U.S.C. § 300h-
8 2(c)(3)(B), EPA has provided public notice of, and reasonable opportunity to comment on, this
9 ORDER.

10 44. Effective Date. Pursuant to section 1423(c)(3)(D) of the Act, 42 U.S.C. § 300h-
11 2(c)(3)(D), this ORDER will become effective 30 days following its issuance, unless an appeal
12 to a United States District Court is taken pursuant to section 1423(c)(6) of the Act, 42 U.S.C. §
13 300h-2(c)(6).

14 Issued this ____ day of _____, 2013

15
16
17 _____
18 PRESIDING OFFICER
19 EPA, Region 9
20
21
22
23
24
25