

SUZANNE ANDREWS
Acting Regional Counsel
United States Environmental Protection Agency, Region 9

BRETT MOFFATT
Assistant Regional Counsel
United States Environmental Protection Agency, Region 9

Attorneys for Complainant

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:)	DOCKET NO. UIC-09-2024-0074
)	
Sunrise Power Company, LLC)	
)	
Respondent.)	CONSENT AGREEMENT
)	AND
Proceedings under Sections 1423(c))	FINAL ORDER
of the Safe Drinking Water Act,)	
42 U.S.C. §§ 300h-2(c).)	
)	

CONSENT AGREEMENT

I. AUTHORITIES AND PARTIES

1. The United States Environmental Protection Agency, Region 9 (“EPA” or “Complainant”) and Sunrise Power Company, LLC (“Respondent”) (collectively the “Parties”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CA/FO”). This CA/FO is an administrative action commenced and concluded under Section 1423(c)(1) of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300h-2(c)(1), and Sections 22.13(b), 22.18(b)(2) and (3), and 22.45 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, as codified at 40 C.F.R. Part 22.

2. Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division of EPA, Region 9. The Administrator of EPA delegated the authority to bring and settle this action under the SDWA to the Regional Administrator of EPA Region 9. In turn, the Regional Administrator further delegated the authority to bring this action and sign a consent agreement settling this action under the SDWA to the Director of the Enforcement and Compliance Assurance Division.

3. Respondent is Sunrise Power Company, LLC, who operates the Sunrise Power Plant in the Midway Sunset Oilfield in Kern County, California.

4. Where the Parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order. *See* 40 C.F.R. § 22.13(b).

5. The Parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CA/FO, including the assessment of the civil penalty.

II. JURISDICTION AND WAIVER OF RIGHT TO JUDICIAL REVIEW AND HEARING

7. Consistent with 40 C.F.R. § 22.18(b), for purposes of the proceeding, Respondent: admits the jurisdictional allegations of the CA/FO; neither admits nor denies specific factual allegations contained in the CA/FO; consents to the assessment of any stated civil penalty, and to any conditions specified in the Consent Agreement; and waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

8. Respondent further waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to

any issue of fact or law set forth in this CA/FO including, but not limited to, its right to request a hearing under 40 C.F.R. § 22.15(c) and Section 1423(c)(3) of the SDWA, 42 U.S.C. § 300h-2(c)(3); its right to seek federal judicial review of the CA/FO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; and its right to appeal this CA/FO under Section 1423(c)(6) of the SDWA, 42 U.S.C. § 300h-2(c)(6). Respondent also consents to the issuance of this CA/FO without further adjudication.

III. STATUTORY AND REGULATORY AUTHORITY

9. Section 1421 of the SDWA, 42 U.S.C. § 300h, requires the Administrator of EPA to promulgate regulations, which shall include permitting requirements as well as inspection, monitoring, recordkeeping, and reporting requirements, for state underground injection control (“UIC”) programs to prevent underground injection from endangering drinking water sources.

10. Section 1421(d)(1) of the SDWA, 42 U.S.C. § 300h(d)(1), defines “underground injection” as the subsurface emplacement of fluids by well injection and excludes the underground injection of natural gas for purposes of storage and the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.

11. Section 1421(d)(2) of SDWA, 42 U.S.C. § 300h(d)(2), provides that underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system

not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.

12. Section 1422(c) of SDWA, 42 U.S.C. § 300h-1(c), provides that the Administrator for EPA shall prescribe UIC programs applicable to those states that have not obtained primary enforcement responsibility of their UIC programs (a concept called “primacy”) or do not have primacy for all types of wells.

13. The State of California does not have primacy for Class I wells. In accordance with Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R. § 147.251, EPA administers the UIC program for Class I wells in the State of California.

14. Pursuant to Sections 1421 and 1422 of the SDWA, 42 U.S.C. §§ 300h and 300h-1, respectively, EPA has promulgated UIC regulations at 40 C.F.R. Parts 124, 144, 146, 147 (Subpart F), and 148.

15. 40 C.F.R. § 144.1(g) provides that the UIC programs regulate underground injection by six classes of wells, and all owners or operators of these injection wells must be authorized either by permit or rule.

16. 40 C.F.R. § 144.11 prohibits any underground injection, except into a well authorized by rule or by permit issued under the UIC program.

17. 40 C.F.R. § 144.51(a) provides that any UIC permittee must comply with all conditions of its permit. Any permit noncompliance constitutes a violation of SDWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application; except that the permittee need not

comply with the provisions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit under 40 C.F.R. § 144.34.

18. Section 1401(6) of the SDWA, 42 U.S.C. § 300f(6), and 40 C.F.R. § 144.3 define “contaminant” as any physical, chemical, biological, or radiological substance or matter in water.

19. 40 C.F.R. § 144.3 defines “fluid” as any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

20. 40 C.F.R. § 144.3 defines “well” as a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or, a dug hole whose depth is greater than the largest surface dimension; or, an improved sinkhole; or, a subsurface fluid distribution system.

21. 40 C.F.R. § 144.3 defines “injection well” as a “well” into which “fluids” are being injected.

22. 40 C.F.R. § 144.3 defines “well injection” as the subsurface emplacement of fluids through a well.

23. 40 C.F.R. § 144.3 defines “permit” as an authorization, license, or equivalent control document issued by EPA or an approved State to implement the requirements of 40 C.F.R. Parts 144, 145, 146 and 124.

24. 40 C.F.R. § 144.3 defines “owner or operator” as the owner or operator of any “facility or activity” subject to regulation under the UIC program.

25. 40 C.F.R. § 144.3 defines “facility or activity” as any UIC “injection well” or another facility or activity that is subject to regulation under the UIC program.

26. Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), defines “person” as an individual, corporation, company, association, partnership, State, municipality, or Federal agency (and includes officers, employees, and agents of any corporation, company, association, State, municipality, or Federal agency). *See also* 40 C.F.R. § 144.3.

27. Section 1423(a)(2) of the SDWA, 42 U.S.C. § 300h-2(a)(2), provides that any person subject to any requirement of any applicable UIC program is violating such requirement of the program in a state that does not have primacy may be subject to an order requiring compliance, or may be assessed a civil penalty, or both, pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1).

28. Under Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. §19.4, EPA may assess a civil penalty of not more than \$27,894 for each day of violation, up to a maximum administrative penalty of \$348,671, for violations occurring after November 2, 2015, where penalties are assessed on or after December 27, 2023.

IV. FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

29. Respondent Sunrise Power Company, LLC is a limited liability company and thus qualifies as a “person” within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

30. At all times relevant to this CA/FO, Respondent operated a natural gas-fired electricity generating power plant in Kern County, California (“Facility”).

31. On August 2, 2002, EPA issued a Class I Non-Hazardous Waste Injection Well Permit, Permit No. CA1020002, (hereafter, “Permit”) which authorized the Facility to dispose of its non-hazardous wastewater through six Class I injection wells, including well WW3, in

accordance with the terms of the Permit. On April 11, 2003, EPA granted Respondent's request to increase the Maximum Surface Injection Pressure allowed under section II.C.4(a) of the Permit, from 75 psi to 180 psi.

32. Pursuant to the Permit, Respondent is authorized to inject cooling tower blowdown, plant area wash wastewater, demineralizer resins regeneration wastewater, plant and equipment drains wastewater, filter backwash wastewater, and non-oil contaminated storm runoff wastewater from the Facility into the Upper Tulare formation via the six specified injection wells, including well WW3.

33. In 2012, EPA received a timely application for renewal of a Class I UIC permit for the injection wells, including WW3. As EPA has not issued a new UIC permit to the Facility, the conditions of the expired Permit remained in effect at all times relevant to the alleged violations. See 40 C.F.R. § 144.37(a).

34. Under section II.C.2(c) ("Loss of Mechanical Integrity") of the Permit, if a loss of mechanical integrity becomes evident during operation or a significant change in the annulus or injection pressure occurs during normal operating conditions, the permittee must notify EPA and terminate injection activities immediately. Injection operations cannot be resumed until the permittee has taken necessary actions to restore mechanical integrity to the well and EPA gives approval to recommence injection.

35. Under section III.A ("Effect of Permit") of the Permit, any underground injection activity not specifically authorized in this permit is prohibited.

36. Under 40 C.F.R. § 144.51(a) and section III.E.1. of the Permit, any permit noncompliance constitutes a violation of the SDWA and is grounds for enforcement action,

permit termination, revocation and reissuance, or modification, or denial of a permit renewal application.

37. According to information submitted by Respondent to the EPA, on June 22, 2021, Respondent became aware that well WW3 had lost mechanical integrity from approximately 10:10 a.m. Pacific time, until injection was stopped at 11:05 a.m. Respondent subsequently estimated that it injected 12,667 gallons of fluids into well WW3 during this time.

38. On June 22, 2021, injectate from well WW3 was observed rising to the ground surface and pooling within 30-40 feet of the well head.

39. Respondent shut-in well WW3 on June 22, 2021. Respondent also shut-in adjacent well WW4 on September 3, 2021, and completed abandonment of wells WW3 and WW4 on November 21, 2022. To replace these wells, Respondent installed new wells WW5 (authorized to inject on May 12, 2023) and WW6 (authorized to inject on September 21, 2023).

40. EPA alleges that Respondent violated the Permit and the SDWA by failing to maintain the mechanical integrity of well WW3, and for underground injection not specifically authorized by the Permit, as described above.

V. SETTLEMENT TERMS

41. Section 1423(c)(4)(B) of the SDWA, 42 U.S.C. 300h-2(c)(4)(B), requires the Administrator to take into account the seriousness of the violation, the economic benefit (if any) resulting from the violation, any history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require, when assessing a civil penalty for violations of the SDWA.

42. Within thirty (30) days of the Effective Date of this CA/FO, Respondent must pay a **fifty-five thousand, seven hundred and eighty-eight dollars (\$55,788)** civil penalty by sending a check (mail or overnight delivery), wire transfer, automated clearing house, or online payment. Payment instructions are available at: <https://www.epa.gov/financial/makepayment>.

Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

43. After payment, Respondent shall immediately provide proof of payment via email to the Regional Hearing Clerk at the following address: r9HearingClerk@epa.gov.

Respondent shall also send notice of payment and a transmittal letter via email to the EPA Region 9 Enforcement and Compliance Assurance Division's Enforcement Officer and the EPA Region 9 Office of Regional Counsel attorney identified in Paragraph 47.

44. This civil penalty represents an administrative civil penalty and shall not be deductible for purposes of federal taxes. 26 U.S.C. § 162(f).

45. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, Respondent must pay the following on any penalty amount overdue under this CA/FO: interest accrued on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings; a

\$15 handling charge fee each month that any portion of the penalty is more than thirty (30) days past due; and 6% per year penalty on any principal amount ninety (90) days past due.

46. If Respondent does not pay timely the civil penalty due under Paragraph 42, EPA may request the United States Department of Justice bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expense for the collection action under Section 1423(c)(7) of the SDWA, 42 U.S.C. § 300h-2(c)(7). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

VI. SUBMISSIONS REQUIREMENTS

47. All reports, notifications, documentation, submissions, and other correspondence required to be submitted by this Order must be submitted to EPA electronically, to the extent possible. If electronic submittal is not possible, submissions may be made by certified mail (return receipt requested). The subject line of all email correspondence must include the facility name, docket number, and subject of the deliverable. All electronically submitted materials must be in final and searchable format, such as Portable Document Format (PDF) with Optical Character Recognition (OCR) applied. Electronic or mailed submissions shall be sent to the individuals identified below:

EPA Region 9 Enforcement and Compliance Assurance Division's Enforcement Officer:

Adam Howell
U.S. Environmental Protection Agency, ECAD-3-1
75 Hawthorne Street
San Francisco, CA 94105
howell.adam@epa.gov

and

EPA Region 9 Office of Regional Counsel Attorney:

Brett Moffatt
U.S. Environmental Protection Agency, ORC-2-4
75 Hawthorne Street
San Francisco, CA 94105
moffatt.brett@epa.gov

48. All reports, notifications, documentation, and submissions must be signed by a duly authorized representative of Respondent and shall include the following statement consistent with 40 C.F.R. § 144.32(d):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that the qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

49. If Respondent finds at any time after submitting information that any portion of that information is false or incorrect, the signee must notify EPA immediately. Knowingly submitting false information to EPA in response to this CA/FO may subject Respondent to criminal prosecution under Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b), as well as 18 U.S.C. §§ 1001 and 1341.

50. Submissions required by this CA/FO shall be deemed submitted on the date they are sent electronically or on the date postmarked if sent by U.S. mail.

51. EPA may use any information submitted in accordance with this CA/FO in support of an administrative, civil, or criminal action against Respondent.

52. The information required to be submitted pursuant to this CA/FO is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.*

VII. GENERAL PROVISIONS

53. Full payment of the penalty as described in Section V shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in Section IV of this CA/FO. Violation of this CA/FO shall be deemed a violation of the SDWA for purposes of Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b).

54. The parties consent to service of this CA/FO by e-mail at the following e-mail addresses: moffatt.brett@epa.gov (Brett Moffatt, for Complainant) and rosteen@hullstreetenergy.com (Randall Osteen, for Respondent).

55. This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire agreement between the Parties.

56. The provisions of this CA/FO shall apply to and be binding upon Respondent and its officers, directors, employees, and successors or assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO.

57. Full compliance with this CA/FO does not in any manner affect the right of EPA or the United States to pursue appropriate injunctive relief or other equitable relief or criminal sanctions for any violation of law, except with respect to the claims described in Section IV that have been specifically resolved by this CA/FO.

58. This CA/FO is not a permit or modification of a permit and does not affect Respondent's obligations to comply with all federal, state, local laws, ordinances, regulations,

permits, and orders. Issuance of, or compliance with, this CA/FO does not waive, extinguish, satisfy, or otherwise affect Respondent's obligation to comply with all applicable requirements of the SDWA, regulations promulgated thereunder, or any order or permit issued thereunder, except as specifically set forth herein.

59. EPA reserves any and all legal and equitable remedies available to enforce this CA/FO, as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in any actions against Respondent for noncompliance with this CA/FO.

60. Unless otherwise specified, the parties shall each bear its own costs and attorney fees in this action.

61. This CA/FO may be executed and transmitted by facsimile, email, or other electronic means, and in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute an instrument. If any portion of this CA/FO is determined to be unenforceable by a competent court or tribunal, the Parties agree that the remaining portions shall remain in full force and effect.

62. The undersigned representative of each party certifies that he or she is duly and fully authorized to enter into and ratify this CA/FO.

63. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including

amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN; and
- c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at sherrer.dana@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence.

VIII. EFFECTIVE DATE

64. Pursuant to 40 C.F.R. § 22.45, this CA/FO will be subject to public notice and comment at least forty (40) days prior to it becoming effective through the issuance of the final order by the Regional Judicial Officer.

65. The Parties acknowledge and agree that final approval by EPA of this CA/FO is subject to 40 C.F.R. § 22.45(c)(4), which sets forth requirements under which a person not a party to this proceeding may petition to set aside a consent agreement and final order on the basis that material evidence was not considered.

66. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the final order contained in this CA/FO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed with the Regional Hearing Clerk.

**Consent Agreement and Final Order
In the Matter of: Sunrise Power LLC
Docket No. UIC-09-2024-0074**

FOR RESPONDENT SUNRISE POWER COMPANY, LLC

Craig Herlihy "/s/"
Craig Herlihy
Chief Financial Officer

Date: June 13, 2024

In re: Sunrise Power Co., LLC
UIC-09-2024-0074

Consent Agreement and Final Order
In the Matter of: Sunrise Power LLC
Docket No. UIC-09-2024-0074

FOR COMPLAINANT UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 9

Joel Jones “/s/” Date: June 24, 2024
for/ Amy C. Miller-Bowen
Director, Enforcement and Compliance Assurance Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 9

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:)	DOCKET NO. UIC-09-2024-0074
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of the Safe Drinking Water Act,)	
42 U.S.C. §§ 300h-2(c).)	
_____)	

FINAL ORDER

The United States Environmental Protection Agency Region 9 (“EPA”) and Sunrise Power Company, LLC (“Respondent”), having entered into the foregoing Consent Agreement, and EPA having duly publicly noticed the Stipulations and Findings and Final Order regarding the matters alleged therein,

IT IS HEREBY ORDERED THAT:

1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-2024-0074) be entered;
2. Respondent pay an administrative civil penalty of \$55,788 to the Treasurer of the United States of America in accordance with the terms set forth in the Consent Agreement;
3. Respondent comply with all other requirements of the Consent Agreement.

This Consent Agreement and Final Order is effective on the date that it is filed with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. § 22.18, 22.31, and 22.45. IT IS SO ORDERED.

Beatrice Wong
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 9

Date: _____