

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2017 DEC -4 PM 3:39

**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Big Ox Energy - Siouxland, LLC,) **Docket No. CAA-07-2017-0453**
)
 Respondent.)
_____)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Big Ox Energy - Siouxland, LLC. (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding resolves administratively the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d).
2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated the General Duty Clause set forth in Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of the EPA's intent to issue an order assessing penalties for these alleged violations.

Parties

3. Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region 7, is the Director of the Air and Waste Management Division, EPA, Region 7.
4. Respondent is Big Ox Energy - Siouxland, LLC, which owns and operates a biogas production and packaging facility located at 1616 D Avenue, Dakota City, Nebraska.

Statutory and Regulatory Background

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990, which added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r). The stated objective of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), is to prevent an accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3) or any other extremely hazardous substance.

6. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), also known as the General Duty Clause, the owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3), 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty in the same manner and the same extent as the Occupational Safety and Health Act, 29 U.S.C. § 654 et. seq. to identify hazards which may result from accidental releases using appropriate hazard assessment techniques, to design and maintain a safe facility, taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

7. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and most recently by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred from January 12, 2009, through November 2, 2015, and to \$45,268 for violations that occur after November 2, 2015.

Definitions

8. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

9. Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), defines “owner or operator” as any person who owns, leases, operates, controls, or supervises a stationary source.

10. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines “stationary source” as any buildings, structures, equipment, installations or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

11. Pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), EPA promulgated a list of regulated substances found at 40 C.F.R. § 68.130, Tables 1, 2, 3 and 4.

12. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), defines “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

General Factual Allegations and Conclusions of Law

13. Respondent is, and at all times referred to herein was, a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

14. Respondent is the owner or operator of a facility, located at 1616 D Avenue, Dakota City, Nebraska (the Facility).

15. The Facility is a “stationary source” as defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

16. Biogas, methane, and hydrogen sulfide are regulated substances and extremely hazardous substances pursuant to Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B).

17. Respondent operates enclosed, anaerobic biodigester systems that process food processing, biomass waste streams to produce a biogas intermediate that contains methane. This biogas is further processed (in an enclosed system) to produce a final compressed natural gas that is sold as a transportation fuel. Gaseous hydrogen sulfide has on occasion been released in small concentrations when sulfur containing waste streams mixed with non-compliant acidic wastewaters. As a result, Respondent produces, processes, handles or stores biogas, methane, and hydrogen sulfide at the Facility.

18. On or about December 14, 2016, at 19:03, an employee drilled a hole into an anaerobic digester, which was producing, processing, handling, and/or storing biogas, methane, and/or hydrogen sulfide, to install a pipe. When the employee’s drilling pierced the anaerobic digester, biogas, methane, and/or hydrogen sulfide were released. The employee was injured as a result of the release, and transported to a local hospital for medical treatment.

19. On February 13 through 15, 2017, EPA Region 7 and the Nebraska Department of Environmental Quality (“DEQ”) inspected Respondent’s facility. EPA Region 7 focused its shared portion of this coordinated inspection on Respondent’s compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68. Pursuant to its delegated authority under the federal Clean Air Act and Clean Water Act, DEQ entered an administrative consent order in June 2017 that addressed Respondent’s compliance with water and air permits issued under the Nebraska Environmental Protection Act. Information collected as a result of the inspection revealed that at the time of the inspection, and at all times relevant to this Consent Agreement and Final Order, Respondent produced, processed, handled or stored biogas, methane and hydrogen sulfide in its processes at the Facility.

20. On December 22, 2016, EPA transmitted a request for information to Respondent pursuant to Section 114 of the CAA. On January 31, 2017, February 8, 2017, March 22, 2017, March 24, 2017, and in numerous meetings and conference calls in April and May 2017, Respondent provided information related to its compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68. Through these exchanges of information, Respondent documented that the quantity of regulated substances produced, processed, handled or stored at the facility (including methane, biogas and hydrogen sulfide) are below the threshold quantities set forth in Tables 1-4 of 40 C.F.R. Section 68.130. Accordingly, Respondent is not subject to Risk Management Plan (“RMP”) standards pursuant to the requirements at 40 C.F.R. Subpart G.

21. EPA alleges that at the time of the EPA inspection and information request, Respondent had not completed an adequate or sufficient hazard assessment to identify hazards which may result from releases of biogas, methane, or hydrogen sulfide.

22. To come into compliance with the GDC, Respondent developed, with concurrent review and comment by EPA, a tailored GDC Plan. BOE’s current GDC Plan includes a formal process hazard analysis that identifies, evaluates, and develops additional controls to address potential risks including chemical releases.

23. Respondent is subject to the requirements of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), because it is the owner and operator of a stationary source that is producing, processing, handling or storing substances listed pursuant to Section 112(r)(3), 42 U.S.C. § 7412(r)(3) and/or extremely hazardous substances.

Allegation of Violation

24. The facts stated in Paragraphs 13 through 23 above are herein incorporated.

25. Pursuant to Section 112(r)(1) of the CAA, Respondent has a general duty in the same manner and to the same extent as 29 U.S.C. § 654, to: (a) identify hazards which may result from accidental releases of a regulated substance or other extremely hazardous substance, using appropriate hazard assessment techniques, (b) design and maintain a safe facility taking such steps as are necessary and reasonable to prevent releases, and (c) minimize the consequences of accidental releases which do occur.

26. Based on the information available to the EPA, as summarized above in Paragraphs 13 through 23, including the release of biogas, methane, and/or hydrogen sulfide on December 14, 2016, EPA alleges that Respondent failed to identify hazards which may result from releases of biogas, methane, and hydrogen sulfide using appropriate hazard assessment techniques, in violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

CONSENT AGREEMENT

27. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the facts stipulated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

28. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein and to completion of the SEP described below.

29. Respondent and the EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

30. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Ten Thousand Three Hundred Twenty Dollars, (\$10,320), as set forth below, and shall perform a Supplemental Environmental Project (SEP) as set forth in this Consent Agreement and Final Order. The projected cost of the SEP is Thirty-Nine Thousand Two Hundred Twenty-Five Dollars (\$39,225). The SEP is further described below.

31. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

32. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Erin Weekley
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

33. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%) per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Supplemental Environmental Project

34. In response to the violations of the CAA alleged in this Consent Agreement and Final Order and in settlement of this matter, although not required by the CAA or any other federal, state, or local law, Respondent shall complete the SEP described in this Consent Agreement and Final Order, which the parties agree is intended to secure significant environmental or public health protection and improvement.

35. Respondent shall complete the following SEP: donation of emergency response equipment, including an ambulance and associated necessary equipment to outfit the ambulance, as described in Appendix A, which is attached hereto. The SEP shall cost at least Thirty-Nine Thousand Two Hundred Twenty-Five Dollars (\$39,225). Respondent agrees that the SEP shall be completed within three (3) months of the Effective Date of this Consent Agreement and Final Order.

36. This SEP shall be performed in accordance with the requirements of this Consent Agreement and Final Order.

37. Within four (4) months of the Effective Date of this Consent Agreement and Final Order, Respondent shall submit a SEP Completion Report to the EPA contact identified in Paragraph 40 below. The SEP Completion Report shall contain the following information:

- (a) Detailed description of the SEP as implemented.
- (b) Description of any problems encountered in implementation of the projects and the solution thereto;
- (c) Description of the specific environmental and/or public health benefits resulting from implementation of the SEP, and, to the extent feasible, a quantification of those benefits and how those benefits were measured or estimated; and
- (d) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order.

38. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all SEP costs. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Cancelled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

39. The SEP Completion Report shall include the statement of Respondent, through an officer, signed and certifying under penalty of law the following:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

40. The SEP Completion Report shall be submitted on or before the due date specified above to:

Dave Hensley, AWMD/CORP
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

41. Any public statement, oral or written, in print, film, internet, or other media, made by Respondent making reference to the SEP under this Consent Agreement and Final Order from

the date of its execution of this Consent Agreement and Final Order shall include the following language:

This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency to enforce the Clean Air Act.

42. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

- (a) That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is \$39,225;
- (b) That, as of the date of executing this Consent Agreement and Final Order, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- (c) That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement and Final Order;
- (d) That Respondent has not received and will not receive credit for the SEP in any other enforcement action;
- (e) That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- (f) That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and
- (g) Respondent has inquired of the SEP recipient, the South Sioux City Fire Department, whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the South Sioux City Fire Department that it is not a party to such a transaction.

43. Stipulated penalties for failure to complete SEP/Failure to spend agreed-on amount.

- (a) In the event Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP, above, and/or to the extent that the actual expenditures for the SEP do not

equal or exceed the cost of the SEP described in this Consent Agreement and Final Order, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- i. If a SEP has not been completed satisfactorily and timely pursuant to this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty to the United States in the amount of \$39,225, minus any documented expenditures determined by EPA to be acceptable for the SEP.
 - ii. If the SEP is completed in accordance with this Consent Agreement and Final Order, but Respondent spent less than proposed SEP cost, Respondent shall pay a stipulated penalty to the United States which equals the difference between the proposed SEP amount as defined above and the actual cost of SEP.
 - iii. For failure to submit the SEP Completion Report, Respondent shall pay a stipulated penalty in the amount of \$250 for each day after the report was originally due until the report is submitted.
- (b) The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
- (c) Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity or other resolution under this Consent Agreement and Final Order.
- (d) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of the Penalty Payment section above. Interest and late charges shall be paid as stated in Paragraph 33 herein.
- (e) Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.
- (f) The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement and Final Order.

Effect of Settlement and Reservation of Rights

44. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of CAA or any other applicable law.

45. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

46. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of the CAA and its implementing regulations.

47. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

48. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

49. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

50. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

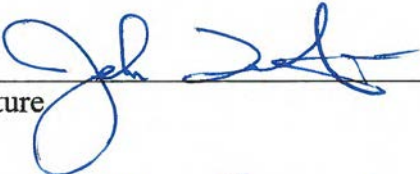
51. Respondent's signature on this Consent Agreement is not intended to be, nor shall it be deemed, an admission of liability in any proceeding or litigation brought by a person or entity that is not a party to this Consent Agreement and Final Order.

52. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

53. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent

**RESPONDENT:
BIG OX ENERGY - SIOUXLAND, LLC**

Date: 11/16/17

Signature 

Name John Foscatto

Title General Counsel

**COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date:

11/17/17



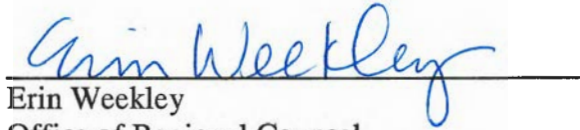
Becky Weber

Director, Air and Waste Management Division

U.S. Environmental Protection Agency, Region 7

Date:

11/17/17



Erin Weekley

Office of Regional Counsel

U.S. Environmental Protection Agency, Region 7

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo

Karina Borromeo
Regional Judicial Officer

Dec. 4, 2017

Date

CERTIFICATE OF SERVICE

I certify that on the date below, I hand delivered the original and one true copy of this Consent Agreement and Final Order to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that a true and correct copy of the foregoing order was sent this day in the following manner to the addressees:

Copy delivered to Attorney for Complainant:

Erin Weekley (e-copy)

Copy to Respondent via Certified Mail, Return Receipt Requested:

C T Corporation System
5601 S. 59th Street
Lincoln, Nebraska 68516

Copy to Respondent via electronic mail to:

William M. Guerry (e-copy)

Dated this 4th day of December, 2017.

Rabin Valluri
Name

APPENDIX A

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Docket No. CAA-07-2017-0453

Big Ox Energy - Siouxland, LLC will donate an ambulance and associated emergency response equipment necessary to outfit the ambulance to the South Sioux City Fire Department, located at 1501 1st Ave, South Sioux City, NE 68776. This emergency response equipment will assist in emergency response to chemical accidents, environmental emergencies, and other emergencies. Similar equipment was necessary and utilized during the response to the chemical release at the Big Ox facility in December 2016. The South Sioux City Fire Department has expressed an urgent need for an ambulance outfitted with both defibrillator and chest compression system. The primary impact of this project is within the same emergency planning district affected by the violations alleged in the attached Consent Agreement and Final Order.

The donation will include:

- One (1) 2006 Ford F450 Ambulance, at an estimated cost of \$7,500
 - o Will be purchased from Milton, Delaware Fire Department

- One (1) LifePak 15 Biphasic 12 lead defibrillator for the ambulance, at an estimated cost of \$19,713.62 plus tax and shipping
 - o Will be purchased from Brooke Teeselink, BoundTree Medical
 - o Product #4610-LP1512BIPSBKA

- One (1) LUCAS 3 Chest Compression System for the ambulance, at an estimated cost of \$11,000 plus tax and shipping
 - o Will be purchased from Physio Control

The total estimated cost of the ambulance and associated necessary equipment is at least \$39,225.00.

Big Ox Energy – Siouxland, LLC will purchase and donate this equipment to the South Sioux City Fire Department within three months of the effective date of the Consent Agreement and Final Order.