

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Cree, Inc.
3026 Cornwallis Road
Research Triangle Park
Durham, North Carolina 27709
EPA ID No.: **EPA NCD980559660**

Respondent.

Docket No. **RCRA-04-2020-2113(b)**

Proceeding Under Section 3008(a) of the
Resource Conservation and Recovery Act,
42 U.S.C. § 6928(a)

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is a civil administrative action for penalties and injunctive relief brought under Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a) (RCRA or the Act) and Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Chief of the Chemical Safety and Land Enforcement Branch, Enforcement and Compliance Assurance Division, United States Environmental Protection Agency Region 4, who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 3008(a) of the Act.
5. Respondent is **Cree, Inc.**, a corporation doing business in the State of North Carolina. This proceeding pertains to Respondent's facility located at 3026 Cornwallis Road, Research Triangle Park, Durham, North Carolina (Facility).

III. GOVERNING LAW

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of North Carolina (State) has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found at North Carolina Solid Waste Management Law (NCSWML), N.C.G.S. §§ 130A-17 to -28 and 130A-290 to -310.22 [Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939g], and the North Carolina Hazardous Waste Management Rules (NCHWMR), 15A NCAC 13A .0101 to .0119 [40 C.F.R. Parts 260 through 270].
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. The State has received final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State before issuance of this CAFO.
11. Section 130A-294(c) of the NCSWML, N.C.G.S. § 130A-294(c) [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)], requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found at 15 NCAC 13A .0107 [40 C.F.R. Part 262].
12. Sections 130A-294 (c) and (g) of the NCSWML, N.C.G.S. § 130A-294 (c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925], set forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at 15A NCAC 13A .0109 (permitted) and 15A NCAC 13A .0110 (interim status) [40 C.F.R. Parts 264 (permitted) and 265 (interim status)].
13. Pursuant to 15A NCAC 13A .0106 [40 C.F.R. § 261.2], a "solid waste" is any discarded material that is not otherwise excluded from the regulations. A discarded material includes any material that is abandoned by being stored in lieu of being disposed.
14. Pursuant to 15A NCAC 13A .0106 [40 C.F.R. § 261.3], a solid waste is a "hazardous waste" if it meets any of the criteria set forth in 15A NCAC 13A .0106 [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste by 15A NCAC 13A .0106 [40 C.F.R. § 261.4(b)].

15. Pursuant to 15A NCAC 13A .0106 [40 C.F.R. §§ 261.3(a)(2)(i) and 261.20], solid wastes that exhibit any of the characteristics identified in 15A NCAC 13A .0106 [40 C.F.R. §§ 261.21-24] are characteristic hazardous waste and are provided with the EPA Hazardous Waste Numbers D001 through D043.
16. Pursuant to 15A NCAC 13A .0106 [40 C.F.R. §§ 261.20 and 261.21], a solid waste that exhibits the characteristic of ignitability by having a flash point of less than 140 degrees Fahrenheit is a hazardous waste and is identified with the EPA Hazardous Waste Number D001.
17. Pursuant to 15A NCAC 13A .0102(b) [40 C.F.R. § 260.10], a “generator” is defined as any person, by site, whose act or process produces hazardous waste identified or listed in 15A NCAC 13A .0106 [40 C.F.R. Part 261], or whose act first causes a hazardous waste to become subject to regulation.
18. Pursuant to 15A NCAC 13A .0102(b) [40 C.F.R. § 260.10], a “facility” includes “all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.
19. Pursuant to Section 130A-290 of the NCSWML, N.C.G.S. § 130A-290 [40 C.F.R. § 260.10], a “person” includes a corporation.
20. Pursuant to 15A NCAC 13A .0102(b) [40 C.F.R. § 260.10], an “owner” is “the person who owns a facility or part of a facility” and an “operator” is “the person responsible for the overall operation of a facility.”
21. Pursuant to Section 130A-290 of the NCSWML, N.C.G.S. 130A-290 [40 C.F.R. § 260.10], “storage” means the containment of solid waste, either on a temporary basis or for a period of years, in a manner which does not constitute disposal.
22. Pursuant to 15A NCAC 13A .0107 [40 C.F.R. § 262.11], a person who generates a solid waste, as defined in 15A NCAC 13A .0106 [40 C.F.R. § 261.2], must determine if that waste is a hazardous waste following the methods articulated in 15A NCAC 13A .0107 [40 C.F.R. § 262.11].
23. Pursuant to 15A NCAC 13A .0107(b) [40 C.F.R. § 262.20(a)(1)], a generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, must prepare a Manifest according to the instructions included in the appendix to 15A NCAC 13A .0107 [40 C.F.R. Part 262].
24. Pursuant to 15A NCAC 13A .0107 (2016) [40 C.F.R. § 262.34(a) (2016)]¹, a generator of 1,000 kilograms or greater of hazardous waste in a calendar month is a Large Quantity Generator (LQG) and may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, as required by Sections 130A-294(c) and (g) of the NCSWML, N.C.G.S. § 130A-294(c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925], provided that the

¹ North Carolina’s newly adopted Generator Improvement Rule (GIR) regulations were effective in North Carolina as of March 1, 2018 but were not federally enforceable at the time of the EPA and State inspections at Cree, Inc. As such, this CAFO will cite to the North Carolina hazardous waste regulations that were federally enforceable at the time of the State inspection, and the corresponding federal regulations, prior to the amendments by the GIR. The requirements prior to the GIR are noted with their most recent effective date.

generator complies with the conditions listed in 15A NCAC 13A.0107 (2016) [40 C.F.R. § 262.34(a)(1)-(4) (2016)], hereinafter referred to as the “LQG Permit Exemption”.

25. Pursuant to 15A NCAC 13A .0107 (2016) [40 C.F.R. § 262.34(a)(3)], which is a condition of the LQG Permit Exemption, a generator is required to label or clearly mark each container and tank accumulating hazardous waste on-site with the words: “Hazardous Waste.”
26. Pursuant to 15A NCAC 13A .0107 (2016) [40 C.F.R. § 262.34(a)(4) (2016)], which incorporates 15A NCAC 13A .0112 [40 C.F.R. § 268.7], and is a condition of the LQG Permit Exemption, a generator is required to comply with land disposal restrictions (LDR) for hazardous waste.
27. Pursuant to 15A NCAC 13A .0112 [40 C.F.R. § 268.7(a)(2)], a generator that chooses not to make a determination whether his waste must be treated prior to sending it to a treatment or storage facility, must send a one-time written notice containing specified information to each facility receiving the waste.

IV. FINDINGS OF FACTS

28. Respondent develops, manufactures and markets semiconductor materials and electronic devices made from silicon carbide (SiC) and gallium nitride (GaN).
29. Respondent’s Facility is located at 3026 Cornwallis Road, Durham, North Carolina 27709.
30. On June 19, 2019, the EPA and the North Carolina Department of Environmental Quality (NCDEQ) conducted a Focused Compliance Inspection (FCI) at Respondent’s facility. On July 30 and 31, 2019 the EPA and NCDEQ conducted a Compliance Evaluation Inspection (CEI) at Respondent’s facility. The EPA’s findings of the FCI and CEI were documented in a report mailed to Respondent, dated October 3, 2019.
31. At the time of the July 30, 2019 FCI, the Respondent was generating an N-Methylpyrrolidone (NMP) and spent isopropyl alcohol (IPA) solvent waste mixture as a result of cleaning the surface of silicon carbide and gallium nitride wafers at its facility.
32. The spent IPA solvent has a flashpoint of less than 140 degrees Fahrenheit and is a D001 characteristic hazardous waste.
33. At the time of the June 19, 2019, FCI, the EPA inspector discussed the process at the Respondent's facility and requested additional records documenting how the resulting spent NMP and IPA solvent waste mixture was previously managed upon its generation. The Respondent submitted the additional records on July 1, 2019. The records demonstrated that the Respondent had not manifested the spent NMP and IPA solvent waste mixture as a hazardous waste for off-site treatment on multiple occasions since 2015, including 20 occasions, occurring from November 5, 2015 through October 4, 2018. In addition, the Respondent had not prepared records demonstrating that the spent IPA and NMP solvent waste mixture was a D001 characteristic hazardous waste and had not determined whether the waste met the LDR treatment standards.

34. At the time of the July 30 and 31, 2019 CEI, the EPA inspectors observed the top of a vault containing two 2,000-gallon tanks (T-100 and T-110), which are used for the management of hazardous waste solvents. Facility personnel informed the EPA inspectors at the time of the inspection that the individual tanks within the vault were not labeled with the words “Hazardous Waste” because it requires a confined space entry to do so.

V. ALLEGED VIOLATIONS

35. Respondent is a “person” as defined in Section 130A-290 of the NCSWML, N.C.G.S. §130A-290 [40 C.F.R. § 260.10].
36. Respondent is the “owner” and “operator” of a “facility” located in Durham, North Carolina as those terms are defined in 15A NCAC 13A .0102(b) [40 C.F.R. § 260.10].
37. Respondent generates “solid wastes” and “hazardous wastes” as defined in 15A NCAC 13A .0106 [40 C.F.R. § 261.2 and 261.3].
38. Respondent failed to label two tanks (T-100 and T-110) managing hazardous wastes solvents with the words “Hazardous Waste” at the time of the July 30 and 31, 2019 EPA CEI. The EPA therefore alleges Respondent violated Sections 130A-294(c) and (g) of NCSWML, N.C.G.S. § 130A-294(c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption by not complying with the labeling requirements of 15A NCAC 13A .0107 [40 C.F.R. § 262.34(a)(3)].
39. Respondent failed to make a hazardous waste determination on solid wastes generated at its facility resulting from the process of removing photo-resistive organic material from the surface of the SiC wafers using NMP and subsequently IPA. The EPA therefore alleges that Respondent violated 15A NCAC 13A .0107 [40 C.F.R. § 262.11] by failing to make a hazardous waste determination on solid waste generated at its facility.
40. Respondent offered a hazardous waste for transport offsite without a Manifest on EPA Form 8700-22. The EPA therefore alleges that Respondent violated 15A NCAC 13A .0107(b) [40 C.F.R. § 262.20(a)(1)] by failing to properly prepare a manifest for hazardous waste offered for transport.
41. Respondent offered a hazardous waste for transport offsite without making a determination of whether its waste must be treated, and without providing notice with the initial shipment of waste. The EPA therefore alleges Respondent violated Sections 130A-294(c) and (g) of the NCSWML, N.C.G.S. § 130A-294(c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 15A NCAC 13A .0107 (2016) [40 C.F.R. § 262.34(a)(4) (2016)], by not complying with the LDR requirements of 15A NCAC 13A .0117 [40 C.F.R. § 268.7].

VI. STIPULATIONS

42. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

43. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
- a. admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
 - b. neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
 - c. consents to the assessment of a civil penalty as stated below;
 - d. consents to the issuance of this compliance order;
 - e. consents to the conditions specified in this CAFO;
 - f. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
 - g. waives its rights to appeal the Final Order accompanying this CAFO.
44. For the purpose of this proceeding, Respondent:
- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
 - b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - c. 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 CAFO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706;
 - d. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
 - e. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to the EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and
 - f. agrees to comply with the terms of this CAFO.
45. Within thirty (30) calendar days of completing the work to be performed in Section VIII (Work to be Performed) of the executed copy of this CAFO, Respondent shall submit to the EPA a certification signed by a duly authorized representative stating that the Facility is in compliance with the Act and its implementing regulations and that all the violations alleged in this CAFO have been corrected. This certification shall be as follows:

“I certify under penalty of law, to the best of my knowledge and belief, that all violations alleged in this CAFO have been corrected. All work was done under my direction or supervision according to a system designed to assure that qualified personnel implemented and completed the required tasks. This certification is based on my inquiry of the person(s) who performed the tasks, or those persons directly responsible for the person(s) who performed the tasks. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

46. The certification required to be submitted under this CAFO shall be sent to:

Daryl R. Himes, Environmental Engineer
Land, Asbestos and Lead Section
Enforcement Compliance and Assurance Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

and emailed to:

himes.daryl@epa.gov

47. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the parties agree to receive service by electronic means.

VII. TERMS OF PAYMENT

48. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **ONE HUNDRED THIRTY-THREE THOUSAND DOLLARS (\$133,000.00)**, which is to be paid within thirty (30) calendar days of the Effective Date of this CAFO.
49. Payments shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check.
- a. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

- b. If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station: SL-MO-C2-GL
St. Louis, Missouri 63101
Contact Number: (314) 425-1819

- c. If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

- d. If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
Contact: Craig Steffen, (513) 487-2091
REX (Remittance Express): 1-866-234-5681

50. Respondent shall send proof of payment, within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
bullock.patricia@epa.gov

and

Daryl R. Himes, Environmental Engineer
Land, Asbestos and Lead Section
Enforcement and Compliance Assurance Division
U.S. EPA Region 4
61 Forsyth Street, S.W.

Atlanta, Georgia 30303-8960

himes.daryl@epa.gov

51. Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with the Facility name and “Docket No. **RCRA-04-2020-2113(b)**.”
52. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Accordingly, the EPA may require the Respondent to pay the following amounts on any amount overdue:
 - a. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days of the Effective Date of this CAFO, Interest is waived. However, if the civil penalty is not paid in full within 30 days, Interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued Interest are paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b)(2), and 40 C.F.R. § 13.11(a).
 - b. Non-Payment Penalty. On any portion of a civil penalty or a stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. 40 C.F.R. § 13.11(c).
 - c. Monthly Handling Charge. Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average cost incurred. 31 C.F.R. § 901.9(b)(c), and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.
53. In addition to what is stated in the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:
 - a. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13 and 13.14;
 - b. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H;

- c. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17; and/or
- d. refer the debt to the Department of Justice as provided in 40 C.F.R. § 13.33. In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.

54. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

VIII. WORK TO BE PERFORMED

- 55. Within one year after the Effective Date of this CAFO, Respondent shall label Tanks T-100 and T-110 with the words "Hazardous Waste" and an indication of the hazard within each tank.
- 56. Within one year after the Effective Date of this CAFO, Respondent shall provide the EPA with an electronic photograph of the labeling required by paragraph 55 above. The electronic photograph shall be submitted electronically to Daryl R. Himes, Environmental Engineer, at himes.daryl@epa.gov.

IX. EFFECT OF CAFO

- 57. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties and injunctive relief for the violations and facts specifically alleged above.
- 58. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).
- 59. Any violation of this CAFO may result in a civil penalty for each day of continued noncompliance with the CAFO and/or the suspension or revocation of any federal or state permit issued to the violator, as provided in Section 3008(c) of the Act, 42 U.S.C § 6928(c).
- 60. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
- 61. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
- 62. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.

63. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.
64. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
65. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
66. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
67. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
68. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
69. The EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
70. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
71. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

X. EFFECTIVE DATE

72. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

The foregoing Consent Agreement In the Matter of **Cree, Inc.**, Docket No. **RCRA-04-2020-2113(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Roy Richard McFarland 09/03/2020
Signature Date

Printed Name: Roy Richard McFarland

Title: Senior Vice President

Address: Cree, 4600 Silicon Dr Durham NC 27703

The foregoing Consent Agreement In the Matter of **Cree, Inc.**, Docket No. **RCRA-04-2020-2113(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

for Kimberly L Bingham
Chief
Chemical Safety and Land Enforcement Branch
Enforcement & Compliance Assurance Division
U.S. EPA Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Cree, Inc.
3026 Cornwallis Road
Research Triangle Park
Durham, North Carolina 27709
EPA ID No.: **EPA NCD980559660**

Respondent.

Docket No. **RCRA-04-2020-2113(b)**

Proceeding Under Section 3008(a) of the
Resource Conservation and Recovery Act,
42 U.S.C. § 6928(a)

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with 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 Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order," in the Matter of **Cree, Inc.**, Docket No. **RCRA-04-2020-2113(b)**, were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties at the following email addresses:

To Respondent: Nathan Daigle
Global Director, Environment, Health, Safety, and Sustainability
Cree, Inc.
3026 Cornwallis Road
Durham, North Carolina 27709
(919) 407-4237
ndaigle@cree.com

Steve Parascandola
Attorney
Smith Anderson
Wells Fargo Capitol Center
150 Fayetteville Street, Suite 2300
Raleigh, North Carolina 27601
(919) 821-6775
sparascandola@smithlaw.com

To EPA: Daryl Himes, Environmental Engineer
(404) 562-8614
himes.daryl@epa.gov

Ximena Vasquez, Associate Regional Counsel
(404) 562-9548
vasquez.maria-ximena@epa.gov

U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Patricia Bullock, Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

