

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

C Con Metals USA, Inc.  
121 Falls Avenue  
Granite Falls, North Carolina 28630  
EPA ID No.: NC0991302714

Respondent.

Docket No. RCRA-04-2020-2118(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 an administrative penalty assessment proceeding 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 (EPA) 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 C Con Metals USA, Inc., a corporation doing business in the State of North Carolina. This proceeding pertains to Respondent's facility located at 121 Falls Avenue, Granite Falls, North Carolina 28630 (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 the NCSWML, N.C.G.S. §§ 130A-17 to -28 and 130A-290 to -301.22 and to 15A NCAC 13A .0101 to .0119.
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 15A NCAC 13A .0107 [40 C.F.R. Part 262].
12. 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.
13. 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)].
14. 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.
15. Pursuant to 15A NCAC 13A .0106 [40 C.F.R. §§ 261.20 and 261.22], a solid waste that exhibits the characteristic of corrosivity is a hazardous waste and is identified with the EPA Hazardous Waste Number D002.

16. Pursuant to 15A NCAC 13A .0106 [40 C.F.R. §§ 261.20 and 261.24], a solid waste that exhibits the characteristic of toxicity is a hazardous waste and is identified with the EPA Hazardous Waste Number associated with the toxic contaminant causing it to be hazardous. Pursuant to 15A NCAC 13A .0106 [40 C.F.R. § 261.24], a solid waste that exhibits the characteristic of toxicity for lead is identified with the EPA Hazardous Waste Number D008.
17. Pursuant to 15A NCAC 13A .0102 [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 [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 15A NCAC 13A .0102 [40 C.F.R. § 260.10], which references N.C.G.S. § 130A-290, a “person” includes a corporation.
20. Pursuant to 15A NCAC 13A .0102 [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 15A NCAC 13A .0107(a) [40 C.F.R. § 262.10], a Large Quantity Generator (LQG) is a generator who generates greater than or equal to 1,000 kilograms (2,200 pounds) of non-acute hazardous waste in a calendar month.
22. Pursuant to 15A NCAC 13A .0107(a) [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 make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to applicable RCRA regulations. Hazardous waste determinations must be made following the methods articulated in 15A NCAC 13A .0107(a) [40 C.F.R. § 262.11]; they must be made at the point of generation, before any dilution, mixing, or other alteration of the waste occurs; and the generator must maintain records supporting its hazardous waste determinations. The records must include, but are not limited to records documenting the tests, sampling, and analytical methods used to demonstrate the validity and relevance of such tests.
23. Pursuant to 15A NCAC 13A .0107(a) [40 C.F.R. § 262.15(a)], a generator may accumulate as much as 55 gallons of nonacute hazardous waste in containers at or near the point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, 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], and without complying with 15A NCAC 13A .0107(a) [40 C.F.R. § 262.16(b) or 262.17(a)], except as required in 15A NCAC 13A .0107(a) [40 C.F.R. § 262.15(a)(7) and (8)], provided that the generator complies with the satellite accumulation area conditions listed in 15A NCAC 13A .0107(a) [40 C.F.R. § 262.15(a)] (hereinafter referred to as the “SAA Permit Exemption”).

24. Pursuant to 15A NCAC 13A .0107(a) [40 C.F.R. § 262.15(a)(5)], which is a condition of the SAA Permit Exemption, a generator is required to mark or label a container with the words “Hazardous Waste,” and with an indication of the hazards of the contents.
25. Pursuant to 15A NCAC 13A .0107(a) [40 C.F.R. § 262.17], a LQG 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 generator complies with the conditions listed in 15A NCAC 13A .0107(a) [40 C.F.R. § 262.17] (hereinafter referred to as the “LQG Permit Exemption”).
26. Pursuant to 15A NCAC 13A .0107(a) [40 C.F.R. § 262.17(a)(1)(iv)], which is a condition of the LQG Permit Exemption, a container holding hazardous waste must always be closed during accumulation, except when it is necessary to add or remove waste.
27. Pursuant to 15A NCAC 13A .0107(a) [40 C.F.R. § 262.17(a)(1)(v)], which is a condition of the LQG Permit Exemption, at least weekly, a generator must inspect central accumulation areas. The generator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.
28. Pursuant to 15A NCAC 13A .0107(a) [40 C.F.R. § 262.17(a)(5)], which is a condition of the LQG Permit Exemption, a generator is required to mark or label containers with the words “Hazardous Waste,” an indication of the hazards of the contents, and the date upon which each period of accumulation begins.
29. Pursuant to 15A NCAC 13A .0107(a) [40 C.F.R. § 262.17(a)(6)], which references 15A NCAC 13A .0107(i) [40 C.F.R. § 262.262], and is a condition of the LQG Permit Exemption, a copy of the contingency plan and all revisions to the plan must be maintained at the large quantity generator.
30. Pursuant to 15A NCAC 13A .0107(a) [40 C.F.R. § 262.17(a)(7)(iii)], which is a condition of the LQG Permit Exemption, facility personnel must take part in an annual review of the initial training required in paragraph (a)(7)(i) of NCAC 13A .0107(a) [40 C.F.R. § 262.17(a)(7)].
31. Pursuant to 15A NCAC 13A .0107(a) [40 C.F.R. § 262.17(a)(7)(iv)(D)], which is a condition of the LQG Permit Exemption, the LQG must maintain records that document that the training or job experience, required under paragraphs (a)(7)(i), (ii), and (iii) of NCAC 13A .0107(a) [40 C.F.R. § 262.17(a)(7)], has been given to, and completed by, facility personnel.
32. Pursuant to 15A NCAC 13A .0107(b) [40 C.F.R. § 262.20(a)(1)], a generator that transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, must prepare a Manifest on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A.

#### IV. FINDINGS OF FACTS

33. Respondent owns and, at all times relevant to this CAFO, operated two locations in Granite Falls, North Carolina, for refurbishing and recycling industrial batteries. Scrap industrial batteries are received at the Plant A location, located at 436 S Main Street, where they are evaluated for potential refurbishing versus recycling. Batteries that are suitable for refurbishing

remain at Plant A, where they are repaired, rebuilt, and sold for reuse. Batteries that are not suitable for refurbishing are moved to the Plant B location, located at 121 Falls Avenue, Granite Falls, North Carolina 28630 (Facility).

34. Respondent receives scrap batteries at the Facility that are not suitable for refurbishing and prepares them for further processing and metals recovery at a lead smelter facility. Respondent shreds dry cell batteries and manually separates visible plastics from the shredded material. Respondent manually disassembles large spent lead-acid batteries. Visible plastics generated from the shredding process and plastic battery casings generated from the disassembly process are typically shipped off-site for recycling. Non-plastic shredded material is packaged together with floor sweepings, personal protective equipment (PPE), absorbent material, micron filter bags, battery sludge, neutralization pit solids and sludge, bag filters, lead plates and lead oxide and shipped off-site for metals recovery. Steel battery casings are shipped off-site for metals recovery. Battery acid is treated on-site before it is shipped for disposal as non-hazardous waste.
35. On January 9, 2017, Respondent notified the North Carolina Department of Environmental Quality (NCDEQ) as an LQG. Respondent identified hazardous wastes with the EPA Hazardous Waste Numbers D002 and D008 as regulated hazardous wastes handled at the Facility.
36. On January 29, 2018, Respondent submitted the 2017 biennial report for the Facility. In it, Respondent reported that 8,189 tons of D008 hazardous waste was shipped offsite for metals recovery, 137 tons of D002 hazardous waste was shipped offsite for deep well or underground injection, and 127 tons of D002 hazardous waste was neutralized on-site during calendar year 2017.
37. On July 2, 2019, the EPA and NCDEQ conducted a compliance evaluation inspection (CEI) at Respondent's Facility. EPA's findings of the CEI were documented in a report mailed to the Respondent, dated September 18, 2019.
38. At the time of the CEI, Respondent had determined that spent battery acid generated at the Facility exhibits the hazardous waste characteristic of corrosivity and is identified with the EPA Hazardous Waste Number D002, because it has a pH of less than 2.
39. At the time of the CEI, Respondent provided analytical results to demonstrate that the used PPE generated at the Facility exhibits the hazardous waste characteristic of toxicity for lead and is identified with the EPA Hazardous Waste Number D008, because it has a TCLP concentration of 15 mg/L lead.
40. At the time of the CEI, Respondent provided analytical results to demonstrate that spent bag filters generated at the Facility exhibits the hazardous waste characteristic of toxicity for lead and is identified with the EPA Hazardous Waste Number D008, because it has a TCLP concentration of 42 mg/L lead.
41. At the time of the CEI, Respondent provided analytical results to demonstrate that certain plastics generated at the Facility have a TCLP concentration of 0.77 mg/L lead. However, the Respondent did not provide a description of the sampling methods to demonstrate the validity and relevance of the analytical test results in order to support a hazardous waste determination. Specifically, the report did not clarify if the sample contained polypropylene plastic or acrylonitrile butadiene styrene (ABS) plastic, nor did it describe the sampling methods.

42. At the time of the CEI, Respondent provided analytical results to demonstrate that battery acid generated at the Facility has a TCLP concentration of 0.7 mg/L lead, and that treated water has a TCLP concentration of 2.0 mg/L lead. However, the Respondent did not provide a description of the sampling methods to demonstrate the validity and relevance of the analytical test results in order to support a hazardous waste determination. Specifically, it was not clear at what points in the process the samples were taken.
43. At the time of the CEI, Respondent did not provide a determination as to whether shredded battery materials, floor sweepings, used absorbent materials, used micron filter bags, battery sludge, or lead oxide material generated at the Facility are hazardous wastes.
44. At the time of the CEI, the inspectors observed that the Respondent had failed to mark a SAA storage trash can of hazardous waste PPE in the reception area with the words "Hazardous Waste" or with an indication of the hazards of the PPE.
45. At the time of the CEI, the inspectors observed that the shrink wrapping on full cubic yard boxes containing hazardous waste did not cover the entire box, which left the boxes open as the contents, such as shredded batteries, floor sweepings, PPE, absorbent material, micron filter bags, battery sludge, neutralization pit solids and sludge, bag filters, lead plates and lead oxide, were accessible through a hole in the top of the shrink wrap.
46. At the time of the CEI, Respondent was not conducting weekly inspections of hazardous waste container storage areas.
47. At the time of the CEI, the inspectors observed that the Respondent had failed to mark cubic yard boxes containing hazardous waste with the words "Hazardous Waste," with an indication of the hazards, or with accumulation start dates. The boxes contained materials such as shredded batteries, floor sweepings, PPE, absorbent material, micron filter bags, battery sludge, neutralization pit solids and sludge, bag filters, lead plates and lead oxide.
48. At the time of the CEI, Respondent's contingency plan was maintained at Plant A, and a copy of the plan was not maintained at the Facility.
49. At the time of the CEI, the inspectors observed that employee training did not include hazardous waste management topics.
50. At the time of the CEI, Respondent failed to provide records to document that hazardous waste training or job experience had been given to, and completed by, Facility personnel.
51. At the time of the CEI, Respondent was not managing or shipping cubic yard boxes containing shredded batteries, floor sweepings, PPE, absorbent material, micron filter bags, battery sludge, neutralization pit solids and sludge, bag filters, lead plates and lead oxide as containers of hazardous waste. The materials were being sent to a permitted treatment, storage and disposal facility without using a hazardous waste manifest.

## V. ALLEGED VIOLATIONS

52. Respondent is a “person” as defined in 15A NCAC 13A .0102 [40 C.F.R. § 260.10], which references N.C.G.S. § 130A-290.
53. Respondent is the “owner” and was the “operator” at all times relevant to this CAFO of a “facility” located at 121 Falls Avenue in Granite Falls, North Carolina, as those terms are defined in 15A NCAC 13A .0102 [40 C.F.R. § 260.10].
54. Respondent generates wastes that are “solid wastes” and “hazardous wastes” as defined in 15A NCAC 13A .0106 [40 C.F.R. § 261.2 and 261.3].
55. Used PPE generated at the Facility exhibits the hazardous waste characteristic of toxicity for lead and is identified with the EPA Hazardous Waste Number D008.
56. Spent bag filters generated at the Facility exhibit the hazardous waste characteristic of toxicity for lead and is identified with the EPA Hazardous Waste Number D008.
57. Respondent did not provide a description of the sampling methods to demonstrate the validity and relevance of the analytical test results in order to support the hazardous waste determination for shredded plastics, plastic battery casings, battery acids, or treated water. The EPA therefore alleges Respondent violated 15A NCAC 13A .0107(a) [40 C.F.R. § 262.11], by failing to follow the methods articulated in 15A NCAC 13A .0107(a) [40 C.F.R. § 262.11].
58. Respondent did not provide a determination as to whether shredded battery materials, floor sweepings, used absorbent materials, used micron filter bags, battery sludge, or lead oxide material are hazardous wastes. The EPA therefore alleges Respondent violated 15A NCAC 13A .0107(a) [40 C.F.R. § 262.11], by failing to follow the methods articulated in 15A NCAC 13A .0107(a) [40 C.F.R. § 262.11].
59. Respondent failed to mark a SAA trash can accumulating used PPE in the reception area with the words “Hazardous Waste” or with an indication of the hazards of the PPE. 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 comply with the marking and labeling requirements in 15A NCAC 13A .0107(a) [40 C.F.R. § 262.15(a)(5)] which is a condition of the SAA Permit Exemption.
60. Shrink wrapping on full cubic yard boxes containing hazardous waste did not cover the entire box, which left the boxes open as the contents, such as shredded batteries, floor sweepings, PPE, absorbent material, micron filter bags, battery sludge, neutralization pit solids and sludge, bag filters, lead plates and lead oxide, were accessible through a hole in the top of the shrink wrap. The EPA therefore alleges that 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 comply with the container management requirement in 15A NCAC 13A .0107(a) [40 C.F.R. § 262.17(a)(1)(iv)] which is a condition of the LQG Permit Exemption by failing to close containers holding hazardous waste.

61. Respondent was not conducting weekly inspections of containers of hazardous waste in central accumulation areas. The EPA therefore alleges that 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 comply with the container inspection requirement in 15A NCAC 13A .0107(a) [40 C.F.R. § 262.17(a)(1)(v)] which is a condition of the LQG Permit Exemption.
62. Respondent failed to mark cubic yard boxes containing hazardous waste with the words “Hazardous Waste,” with an indication of the hazards, or with accumulation start dates. The boxes contained materials such as shredded batteries, floor sweepings, PPE, absorbent material, micron filter bags, battery sludge, neutralization pit solids and sludge, bag filters, lead plates and lead oxide. The EPA therefore alleges that 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] because Respondent failed to comply with the marking and labeling requirements in 15A NCAC 13A .0107(a) [40 C.F.R. § 262.17(a)(5)(i)] which is a condition of the LQG Permit Exemption.
63. Respondent’s contingency plan was not maintained at the Facility. The EPA therefore alleges that 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(a) [40 C.F.R. § 262.17(a)(6)], which references 15A NCAC 13A .0107(i) [40 C.F.R. § 262.262] by failing to maintain a copy of the contingency plan and all revisions to the plan at the Facility.
64. Employee training did not include hazardous waste management topics. The EPA therefore alleges that 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 comply with 15A NCAC 13A .0107(a) [40 C.F.R. § 262.17(a)(7)(iii)] by not providing facility personnel with an annual review of the initial training required in paragraph (a)(7)(i) of NCAC 13A .0107(a) [40 C.F.R. § 262.17(a)(7)], which is a condition of the LQG Permit Exemption.
65. Respondent failed to provide records to document that hazardous waste training or job experience had been given to, and completed by, facility personnel. The EPA therefore alleges that 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 comply with 15A NCAC 13A .0107(a) [40 C.F.R. § 262.17(a)(7)(iv)(D)] by not maintaining records that document that the training or job experience, required under paragraphs (a)(7)(i), (ii), and (iii) of NCAC 13A .0107(a) [40 C.F.R. § 262.17(a)(7)], has been given to, and completed by, facility personnel, which is a condition of the LQG Permit Exemption.
66. Respondent was shipping cubic yard boxes containing shredded batteries, floor sweepings, PPE, absorbent material, micron filter bags, battery sludge, neutralization pit solids and sludge, bag filters, lead plates and lead oxide to a permitted treatment, storage and disposal facility without using a hazardous waste manifest. The EPA therefore alleges that Respondent violated 15A NCAC 13A .0107(b) [40 C.F.R. § 262.20(a)(1)] by offering hazardous waste for transport for



offsite treatment, storage, or disposal, without preparing a Manifest on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A.

## VI. STIPULATIONS

67. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
68. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
- a. admits that 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 conditions specified in this CAFO;
  - e. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
  - f. waives its rights to appeal the Final Order accompanying this CAFO.
69. 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 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 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.

70. By executing this CAFO, Respondent certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of the Act and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected.
71. 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

72. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **SIXTY-TWO THOUSAND THREE HUNDRED DOLLARS (\$62,300.00)**, which is to be paid within thirty (30) calendar days of the Effective Date of this CAFO.
73. Payment(s) 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

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

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
[bullock.patricia@epa.gov](mailto:bullock.patricia@epa.gov)

and

Laurie Benton DiGaetano  
Chemical Safety and Land Enforcement Branch  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
[benton-digaetano.laurie@epa.gov](mailto:benton-digaetano.laurie@epa.gov)

75. "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 EPA requirements, in the amount due, and identified with the Facility name and "Docket No. RCRA-04-2020-2118(b)."

76. 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, 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, 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.

77. 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, EPA may:

- a. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 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 EPA or engaging in programs 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.

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

### **VIII. EFFECT OF CAFO**

79. 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 for the violations and facts specifically alleged above.

80. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of 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).
81. 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).
82. 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 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.
83. Nothing herein shall be construed to limit the power of 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.
84. 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.
85. 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.
86. 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.
87. 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.
88. 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.
89. 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.
90. 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.

91. EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that 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 EPA. If such false or inaccurate material was provided, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
92. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
93. 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.

#### **IX. EFFECTIVE DATE**

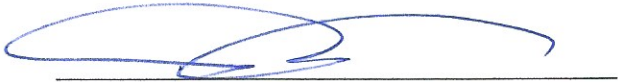
94. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

**[Remainder of Page Intentionally Left Blank**

**Complainant and Respondent will Each Sign on Separate Pages.]**

The foregoing Consent Agreement In the Matter of **C Con Metals USA, Inc.**, Docket No. **RCRA-04-2020-2118(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:



8.20.20

Signature

Date

Printed Name: Joseph Pugh

Title: President

Address: 436 South Main St Granite Falls NC 28630

The foregoing Consent Agreement In the Matter of **C Con Metals USA, Inc.**, Docket No. **RCRA-04-2020-2118(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

\_\_\_\_\_

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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

C Con Metals USA, Inc.  
121 Falls Avenue  
Granite Falls, North Carolina 28630  
EPA ID No.: NC0991302714

Respondent.

Docket No. RCRA-04-2020-2118(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.**

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Tanya Floyd  
Regional Judicial Officer

## CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order," in the Matter of **C Con Metals USA, Inc., Docket No. RCRA-04-2020-2118(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:**

Mr. Joseph Pugh, President  
C Con Metals USA, Inc.  
P.O. Box 1111  
Granite Falls, North Carolina 28630  
(828) 313-2266  
[joseph@cconmetals.com](mailto:joseph@cconmetals.com)

**To EPA:**

Laurie Benton DiGaetano, Environmental Engineer  
(404) 562-8948  
[benton-digaetano.laurie@epa.gov](mailto:benton-digaetano.laurie@epa.gov)

F. Marshall Binford, Associate Regional Counsel  
(404) 562-9543  
[binford.marshall@epa.gov](mailto:binford.marshall@epa.gov)

Quantindra Smith, Environmental Protection Specialist  
(404) 562-8564  
[smith.quantindra@epa.gov](mailto:smith.quantindra@epa.gov)

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

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