



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JAN 31 2017

REPLY TO THE ATTENTION OF:

**VIA E-MAIL:**

Robert Luss  
Robert.Luss@allnex.com  
General Counsel Allnex USA Inc.

Robert Luss  
Allnex USA, Inc.  
2715 Miller Road  
Kalamazoo, MI 49001

Dear Mr. Hartman:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Allnex USA Inc., docket no. CAA-05-2017-0008. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on *January 31, 2017*.

Pursuant to paragraph 41 of the CAFO, must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Kasey Barton, Associate Regional Counsel at (312) 886-7163.

Sincerely,

Sarah Marshall, Chief  
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

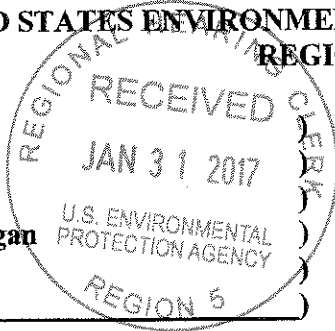
cc: Ann Coyle, Regional Judicial Officer/C-14J  
Regional Hearing Clerk/E-19J  
Kasey Barton/C-14J  
Tom Hess/[HESST@michigan.gov](mailto:HESST@michigan.gov)  
Mary Douglas/[douglasm@michigan.gov](mailto:douglasm@michigan.gov)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

Allnex USA Inc.  
Kalamazoo, Michigan

Respondent.



Docket No. CAA-05-2017-0008

Proceeding to Assess a Civil Penalty  
Under Section 113(d) of the Clean Air Act,  
42 U.S.C. § 7413(d)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) 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 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Allnex USA Inc. (Allnex), a corporation doing business in the State of Michigan.

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

5. In resolving this matter by settlement contemporaneously through this CAFO and the Administrative Consent Order issued under Sections 113(a) and 114(a) of the CAA captioned "In the Matter of Allnex USA Inc., Kalamazoo, Michigan, Respondent," Docket No. EPA-5-17-113(a)-MI-03, Respondent neither admits nor denies the factual allegations and does not admit any liability regarding the alleged violations in this matter.

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

7. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

8. Respondent admits the jurisdictional allegations in this CAFO.

9. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

#### **National Emission Standards for Hazardous Air Pollutants**

10. Under Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP): Manufacture of Amino/Phenolic Resins (NESHAP Subpart OOO) at 40 C.F.R. §§ 63.1400 through 63.1419. NESHAP Subpart OOO applies to the owner or operator of processes that produce amino/phenolic resins and that are located at a plant site that is a “major source” of hazardous air pollutants as defined in 40 C.F.R. § 63.2.

11. NESHAP Subpart OOO establishes, among other things, emission standards, requirements to demonstrate initial and continuous compliance with emission standards, leak detection and repair programs for components, operating limits, work practice standards, and recordkeeping requirements associated with amino/phenolic resin manufacturing.

12. The “affected source” to which NESHAP Subpart OOO applies is: (1) the total of all amino/phenolic resin process units (APPU); (2) the associated heat exchange systems; (3) equipment required by, or utilized as a method of compliance with, NESHAP Subpart OOO

which may include control devices and recovery devices; (4) equipment that does not contain organic hazardous air pollutants and is located within an APPU that is part of an affected source; (5) vessels and equipment storing and/or handling material that contain no organic hazardous air pollutants and/or organic hazardous air pollutants as impurities only; (6) equipment that is intended to operate in organic hazardous air pollutant service for less than 300 hours during the calendar year; (7) each waste management unit; and (8) maintenance wastewater.

13. Under Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated the NESHAP: Miscellaneous Organic Chemical Manufacturing (NESHAP Subpart FFFF) at 40 C.F.R. §§ 63.2430 through 63.2550. NESHAP Subpart FFFF applies to owners and operators of miscellaneous organic chemical manufacturing process units that are located at, or are a part of, a “major source” of hazardous air pollutant emissions as defined in Section 112(a) of the CAA.

14. NESHAP Subpart FFFF establishes, among other things, emission standards, requirements to demonstrate initial and continuous compliance with emission standards, leak detection and repair programs for components, operating limits, work practice standards, and recordkeeping requirements associated with miscellaneous organic chemical manufacturing.

15. The “affected source” to which NESHAP Subpart FFFF applies is the facility wide collection of miscellaneous organic chemical manufacturing process units and heat exchange systems, wastewater, and waste management units that are associated with manufacturing materials described in 40 C.F.R. § 63.2535(b)(1). 40 C.F.R. § 63.2440(b).

16. “Major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air

pollutant or 25 tons per year or more of any combination of hazardous air pollutants. 42 U.S.C. § 7412(a)(1) and 40 C.F.R. § 63.2.

17. Section 112(i)(3) of CAA, 42 U.S.C. § 7412(i)(3), and 40 C.F.R. § 63.4, prohibit the owner or operator of any affected source from operating such source in violation of any applicable NESHAP.

#### Michigan State Implementation Plan

18. On May 6, 1980, EPA approved R 336.1201 as part of the federally enforceable state implementation plan (SIP) for Michigan. 45 *Fed. Reg.* 29790. R 336.1201 prohibits a person from installing, constructing, reconstructing, relocating or altering any process or control equipment thereto, which may be a source of an air contaminant, until a permit to install is issued by the Michigan Department of Environmental Quality (MDEQ). The rule further requires a permit to install to cover construction, reconstruction, and alteration of equipment where such is involved.

19. Respondent's facility has operated subject to permits to install issued by MDEQ. The permits to install prohibited the permittee from operating any equipment in the resin powder production process, or "Cyrez" process, unless the associated baghouses are installed, maintained and operated in a satisfactory manner. The permits to install further required the permittee to implement and maintain a Control Device Operating, Maintenance, and Monitoring Plan (CDOMMP), which required the permittee to monitor and record daily magnehelic readings for the baghouses associated with the Cyrez process and provides for the baghouse operating range a differential pressure reading of 2 through 12 inches of water.

20. The permit to install for Respondent's facility limited individual hazardous air pollutant emissions from the facility to 9.9 tons during a 12-month rolling time period.

21. Pursuant to 40 C.F.R. § 52.23, failure to comply with any approved regulatory provision of a SIP, or with any permit condition or permit denial issued pursuant to approved or promulgated regulations for the review of new or modified stationary or indirect sources, or with any permit limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated in the SIP, shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under Section 113 of the CAA.

#### Title V Operating Permit Program

22. Pursuant to Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.1(b), it is unlawful for any person to, among other things, operate a major source subject to standards or regulations under Section 112 of the CAA except in compliance with a permit issued by a permitting authority under Title V of the CAA, 42 U.S.C. §§ 7661 – 7661f. Effective November, 30, 2001, EPA fully approved the Michigan Title V operating permit program. See 66 Fed. Reg. 62949. The Michigan regulations governing the Title V permit program, also known as the “renewable operating permit program,” are codified at R 336.1210 through R 336.1219.

23. Section 503(c) of the CAA, 42 U.S.C. § 7661b(c), and 40 C.F.R. § 70.5, require sources subject to the Title V operating permit program to submit a timely permit application to the applicable permitting authority within 12 months after the source becomes subject to the permit program.

#### Enforcement of the CAA

24. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for CAA violations that occurred after

January 12, 2009 through December 6, 2013 and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$320,000 for CAA violations that occurred after December 6, 2013 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

25. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

26. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

#### **Factual Allegations**

27. Allnex owns and operates a chemical manufacturing plant located at 2715 Miller Road in Kalamazoo, Michigan (the Facility). At the Facility, Allnex manufactures methylated resins in the "MR/Cymel process" and resin powders in the "Cyrez process". These processes emit, among other things, methanol, which is a hazardous air pollutant under Section 112(a)(6) of the CAA, 42 U.S.C. § 7412(a)(6).

28. Allnex acquired ownership of the Facility on April 4, 2013.

29. Allnex is a corporation, and is therefore a "person," as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

30. The Facility is a building, structure, facility or installation which emits or may emit any air pollutant, and is therefore a "stationary source," as defined in Section 111(a)(3) of the CAA, 42 U.S.C. § 7411(a)(3).

31. The MR/Cymel process produces “amino/phenolic resins,” as defined in 40 C.F.R. § 63.1402 and contains “amino/phenolic resin process units” (APPU) and other affected sources listed in 40 C.F.R. § 63.1400(a).

32. The Cyrez process contains “miscellaneous organic chemical manufacturing process units” (MCPU), as defined in 40 C.F.R. § 63.2435(b), and other affected sources listed in 40 C.F.R. § 63.2445(b).

### **Alleged Violations**

33. The Facility has emitted 10 tons per year or more of methanol in violation of the permit to install and Michigan SIP, and is therefore a “major source” under Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1) and 40 C.F.R. § 63.2.

34. The MR/Cymel process is subject to NESHAP Subpart OOO. Allnex has not complied with the requirements of NESHAP Subpart OOO applicable to the MR/Cymel process, in violation of Section 112(i)(3) of CAA, 42 U.S.C. § 7412(i)(3), and 40 C.F.R. § 63.4.

35. The Cyrez process is subject to NESHAP Subpart FFFF. Allnex has not complied with the requirements of NESHAP Subpart FFFF applicable to the Cyrez process, in violation of Section 112(i)(3) of CAA, 42 U.S.C. § 7412(i)(3), and 40 C.F.R. § 63.4.

36. As a “major source” subject to regulations under Section 112 of the CAA, Allnex is subject to the requirements of Title V of the CAA, 42 U.S.C. §§ 7661 – 7661f. Allnex has not submitted to the Michigan Department of Environmental Quality (MDEQ) an application for a Title V permit within 12 months after becoming subject to the Title V operating permit program and does not have a permit to operate under Title V of the CAA, in violation of Sections 502(a) and 503(c) of the CAA, 42 U.S.C. §§ 7661a(a) and 7661b(c) and 40 C.F.R. § 701.(b). See also R 336.1210, R 336.1210 and R 336.1212.



37. The baghouses associated with the Cyrez process have operated outside of the operating range provided in the CDOMMP for the permit to install for the Facility. Therefore, Respondent failed to maintain and operate the baghouses in a satisfactory manner, in violation of the permit to install for the facility and the Michigan SIP.

38. During March of 2014, Respondent installed a new baghouse to control emissions from the Cyrez process.

39. In accordance with Section 113(a) of the CAA, 42 U.S.C. § 7412(a), on September 17, 2013 EPA issued to Respondent a notice and finding of violation (NOV/FOV), for, among other things, the alleged violations described in this CAFO. EPA provided a copy of the NOV/FOV to MDEQ. On November 21, 2013, EPA and Respondent met to discuss the allegations in the NOV/FOV.

#### **Civil Penalty**

40. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and any other factor such as cooperation, prompt return to compliance, and the agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$50,000.

41. Within 30 days after the effective date of this CAFO, Respondent must pay a \$50,000 civil penalty by ACH electronic funds transfer, payable to "Treasurer, United States of America," and send it to:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, Respondent must state its name and the docket number of this CAFO.

42. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-18J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Kasey Barton (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604  
barton.kasey@epa.gov

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

43. This civil penalty is not deductible for federal tax purposes.

44. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 66, below, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

45. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly

nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

### **Supplemental Environment Project**

46. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health by reducing methanol and formaldehyde emissions from the facility through the installation and operation of one packed bed water scrubber system or through the routing of emissions to and operation of the existing water scrubber (ID 631-501) at the facility (“tie-in”) to control emissions from the MR/Cymel intermediate storage tanks in the Cyrez process. Respondent’s permit to install identifies these tanks as tank 110-002 and tank 120-004 (“intermediate tanks”).

47. On or before April 1, 2018, Respondent must begin operating a packed bed water scrubber system with a counter current flow of water, capable of maintaining an organic hazardous air pollutant removal efficiency of 90% by weight or a tie-in to the existing water scrubber, that includes, without limitation, the following components: (1) packed bed water scrubber; (2) piping; and (3) instrumentation to ensure verification of operational parameters, such parameters to include, at a minimum, the water flow rate at the inlet to the scrubber. Respondent must determine the operating parameters to achieve and maintain a 90% removal efficiency through a performance test in accordance with the requirements set forth in paragraph 49, below.

48. On or before April 1, 2018, Respondent must operate the packed bed water scrubber system to control organic hazardous air pollutant emissions from the intermediate tanks.

49. Within 180 days of installation or tie-in of the packed bed water scrubber system, Respondent must conduct a performance test, including measurements from the inlet and outlet

at the packed bed water scrubber to: quantify the combined mass emission rate of organic hazardous air pollutants in pounds per hour; determine the combined removal efficiency for organic hazardous air pollutants; and determine the associated operating parameters, including water flow rate at the scrubber inlet, to achieve and maintain a 90% or greater removal efficiency by weight. During the testing, Respondent must: (1) operate the Cyrez process at representative conditions, consistent with EPA's Clean Air Act National Stack Testing Guidance dated April 27, 2009; and (2) complete a full test (three runs, at least one-hour duration each).

50. By no later than 60 days prior to the performance test at the packed bed water scrubber system, Respondent must submit to EPA for its review and approval a proposed testing protocol that describes the methods and procedures for testing required by paragraph 49, above. Sampling and analysis procedures must follow the EPA test methods at 40 C.F.R. Part 60, Appendix A: Methods 1 through 4, and 40 C.F.R. Part 63, Appendix A: Methods 18 and 320, except to the extent that changes to the test methods or sampling times or sampling volumes are approved by EPA in accordance with 40 C.F.R. § 63.7(e)(2). The proposed testing protocol must also include the operating set points for the water flow rate at the inlet to the scrubber during the proposed testing, and a description of the conditions under which Respondent will perform the performance testing.

51. Respondent shall not conduct the performance test required by paragraph 49, above, until receiving EPA's written approval, including approval of any changes requested to the test methods or sampling times or sampling volumes are approved by EPA in accordance with 40 C.F.R. § 63.7(e)(2). EPA may approve or disapprove with comments the proposed testing protocol. Within 15 days of receipt of EPA's disapproval with comments or of notification that EPA does not approve any changes requested to the test methods or sampling

times or sampling volumes in accordance with 40 C.F.R. § 63.7(e)(2), Respondent must submit to EPA a revised testing protocol responding to and addressing EPA's comments. If EPA disapproves with comments the proposed testing protocol, or if EPA notifies Respondent that EPA does not approve any changes requested to the test methods or sampling times or sampling volumes in accordance with 40 C.F.R. § 63.7(e)(2), the performance testing deadline set forth in paragraph 49, above, shall be extended until 60 days after receipt of EPA's written approval of the revised testing protocol, including approval of any changes requested to the test methods or sampling times or sampling volumes in accordance with 40 C.F.R. § 63.7(e)(2).

52. Within 60 days of completion of the performance testing required by paragraph 49, above, Respondent must submit to EPA and MDEQ a complete report of the performance testing, including: a summary of results; description of facility operations; identification of sampling and analytical procedures; and all data from the testing. The report must include the combined emission rate for organic hazardous air pollutants in pounds per hour, combined removal efficiency for organic hazardous air pollutants, and the operating set points for water flow rate for the packed bed water scrubber system to achieve and maintain the removal efficiency established during the test, which must be at least 90 percent.

53. Within 90 days of completion of the performance test required by paragraph 49, above, Respondent must submit to MDEQ a complete application to incorporate and make permanent through inclusion in a non-expiring, non-Title V federally enforceable permit to install the following information and conditions:

1. Units: All MR/Cymel intermediate tanks in the Cyrez process, identified as tank 110-002 and tank 120-004 in Respondent's permit to install.
2. Operational limits: Determined in accordance with the requirements of paragraph 49, above.

3. Control equipment requirements: 90% or greater removal efficiency.
4. Monitoring requirements: Continuous monitoring of the parameters identified in paragraph 49 to demonstrate continuous compliance with the removal efficiency based on 24-hour block hourly averages.
5. Recordkeeping requirements: Records from continuous monitoring of the parameters identified in paragraph 49 and records of any deviations from the operating set points.
6. Reporting requirements: Report deviations from the operating set points for the identified parameters.

Respondent must submit a copy of the permit application to EPA within seven calendar days of submitting the application to MDEQ.

54. Respondent must submit a complete application to MDEQ to modify, amend, or revise the Facility's Title V permit to incorporate the components of the non-expiring, non-Title V federally enforceable permit to install identified in paragraph 53, above, into the Title V permit. The incorporation of these provisions into the Title V Permit must be done in accordance with MDEQ's Title V rules.

55. Respondent agrees to spend at least \$287,000 to implement the SEP.

56. At all times when the Cyrez process is operating, which includes the loading and/or unloading of the intermediate tanks, Respondent must continuously operate the packed bed water scrubber system in accordance with the parametric monitoring requirements and operational limits and other permit requirements to achieve and maintain 90% or greater removal efficiency following the completion of the performance test in paragraph 49, above.

57. The authorized representative of Respondent signing this CAFO certifies as follows:

- a. I certify that Allnex USA Inc. is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement or as injunctive relief as of the date

it signs this CAFO. I further certify that Allnex USA Inc. has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

- b. I certify that Allnex USA Inc. is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

58. EPA may inspect the Facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

59. Respondent must maintain copies of the underlying research and data for all reports submitted to EPA pursuant to this CAFO. Respondent must provide the documentation of any underlying data and research to EPA within seven days of EPA's request for the information.

60. Respondent must submit a SEP completion report to EPA no later than 90 days after submitting the performance test demonstrating that the packed bed water scrubber system achieves at least 90% removal of organic hazardous air pollutant emissions under paragraph 52, above. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any problems implementing the SEP and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and

- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

61. Respondent must submit all documents and reports required by this CAFO by e-mail to: [Letuchy.alexandra@epa.gov](mailto:Letuchy.alexandra@epa.gov) and [R5AirEnforcement@epa.gov](mailto:R5AirEnforcement@epa.gov).

62. Allnex must submit all documents and reports required by this CAFO to be submitted to MDEQ by mail to: District Supervisor, Air Quality Division, Michigan Department of Environmental Quality, 7953 Adobe Road, Kalamazoo, Michigan 49009.

63. In the SEP Completion Report, Respondent must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

64. Following receipt of the SEP completion report described in paragraph 60, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and that EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 66.

65. If EPA exercises option b above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete



the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 66, below.

66. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, Respondent must pay a stipulated penalty of \$287,000.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 55, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 55, Respondent must pay a stipulated penalty of \$70,000.
- d. If Respondent did not timely submit the SEP completion report required by paragraph 60, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

| <u>Penalty per violation per day</u> | <u>Period of violation</u>                    |
|--------------------------------------|---|
| \$100                                | 1 <sup>st</sup> through 14 <sup>th</sup> day  |
| \$150                                | 15 <sup>th</sup> through 30 <sup>th</sup> day |
| \$200                                | 31 <sup>st</sup> day and beyond               |

67. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

68. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 41, above, and will pay interest and nonpayment penalties on any overdue amounts.

69. Any public statement that Respondent makes referring to the SEP must include the following language: "Allnex USA Inc. undertook this project under the settlement of the

United States Environmental Protection Agency's enforcement action against Allnex USA Inc. for alleged violations of the Clean Air Act.”

70. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

71. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

#### General Provisions

72. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [barton.kasey@epa.gov](mailto:barton.kasey@epa.gov) (for Complainant); and

Robert.Luss@allnex.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

73. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO and EPA's Notice of Violation and Finding of Violation (NOV/FOV) issued to Respondent, formerly Al Chem & Cy US AcquiCo, Inc., on September 17, 2013, Docket No. EPA-5-13-MI-08. EPA's consent to this provision is based on information provided by Respondent as of the CAFO's effective date.

74. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

75. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 73, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

76. Respondent has signed the accompanying Administrative Consent Order, Docket No. EPA-5-16-113(a)-MI-06, in which Respondent has agreed to take specific actions in order to achieve and maintain compliance with the CAA and its implementing regulations.

77. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

78. The terms of this CAFO bind Respondent, its successors and assigns.

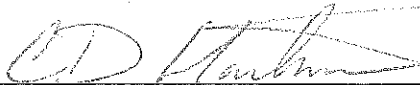
79. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

80. Each party agrees to bear its own costs and attorney fees in this action.

81. This CAFO and the referenced Administrative Consent Order constitute the entire agreement between the parties.


**Allnex USA Inc., Respondent**

1/9/2017  
Date

  
\_\_\_\_\_  
Doug Hartman  
Vice President and Secretary  
Allnex USA Inc.

**United States Environmental Protection Agency, Complainant**

1/25/17  
Date


  
\_\_\_\_\_  
Edward Nam  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order  
In the Matter of: Allnex USA Inc.  
Docket No. CAA-05-2017-0008**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

January 27, 2017  
Date

  
\_\_\_\_\_  
Ann C. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5

Consent Agreement and Final Order  
In the matter of: Allnex USA Inc.  
Docket Number: CAA-05-2017-0008

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **CAA-05-2017-0008**, which was filed on January 31, 2017, in the following manner to the following addressees:

Copy by E-mail to Respondent: Robert Luss  
Robert.Luss@allnex.com

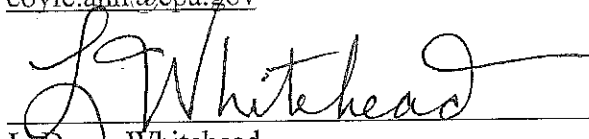
Copy by E-mail to Attorney for Complainant: Kasey Barton  
barton.kasey@epa.gov

Copy by E-mail to Attorney for Respondent: Laura K. McAfee  
LMcAfee@bdlaw.com

Copy by E-mail to Regional Judicial Officer: Ann Coyle  
coyle.ann@epa.gov

Dated:

January 31, 2017



LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5