

**EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

This form was originated by: Magda Rodriguez-Hunt 3/15/2011  
*Name of Contact person* *Date*

in the PAPB/LCD at 215.814.2128  
*Office* *Phone number*

Non-SF Jud. Order/Consent Decree. DOJ COLLECTS  \* Administrative Order/Consent Agreement  
FMD COLLECTS PAYMENT

SF Jud. Order/Consent Decree. FMD COLLECTS

This is an original debt  This is a modification

Name of Company making payment: Allegany County Public Schools

The Total Dollar Amount of Receivable: \$2,893

(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number TSCA-03-2011-0074

The Site-Specific Superfund Acct. Number \_\_\_\_\_

The Designated Regional/HQ Program Office Magda Rodriguez-Hunt

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

The IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_

*Name of Contact* *Date*

in the Financial Management Office, phone number: \_\_\_\_\_

**JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:**

1. Rosemarie Pacheco  
Environmental Enforcement Section  
Lands Division, Room 130044  
1425 New York Avenue, N.W.  
Washington, D.C. 20005
2. Originating Office (ORC)
3. Designated Program Office

**ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:**

1. Originating Office
2. Designated Program Office
3. Regional Hearing Clerk



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT**

MAR 31 2011

Dr. David A. Cox, Superintendent  
Allegheny County Public Schools  
211 Market St.  
Cumberland, MD 21502

Re: **Allegheny High, Mount Savage Middle and**  
**Cresaptown Elementary Schools**  
**Docket No. TSCA-03-2011-0074**

Dear Dr. Cox:

Enclosed, please find a copy of the final Consent Agreement ("CA") and Final Order (collectively "CAFO") resolving Docket # TSCA-03-2011-0074.

The CAFO was signed by the Regional Judicial Officer on March 31, 2011 and filed with the Regional File Clerk on March 31, 2011. Allegheny County Public Schools is required, within thirty (30) days of receipt of the final CAFO, to pay the cash component of the civil penalty in the amount of TWO THOUSAND EIGHT HUNDRED NINETY THREE (\$2,983) dollars.

Thank you for your cooperation and in particular, the responsiveness to which Mr. Jay Marley attended to this matter. If you have any questions, I can be reached at (215) 814-2128.

Sincerely,

A handwritten signature in black ink that reads "Magda Rodriguez-Hunt".

Magda Rodriguez-Hunt  
Enforcement Officer

Enclosures

cc: Jay Marley, Supervisor  
Maintenance and Construction  
Allegheny County Public Schools



BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

IN RE:

Allegany County Public Schools  
211 Market St.  
Cumberland, MD 21502

**Respondent**

DOCKET NO: TSCA-03-2011-0074

CONSENT AGREEMENT

Cresaptown Elementary School  
13202 Sixth Ave.  
Cresaptown, MD 21502

Mount Savage Middle School  
13201 New School Road, N.W.  
Mt. Savage, MD 21545

Allegany High School  
616 Sedgwick St.  
Cumberland, MD 21502

**Facilities**

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MAY 11 2011 PM 1:07  
OFFICE OF COMPLAINTS

**CONSENT AGREEMENT**

**I. Preliminary Statement**

This Consent Agreement ("CA"), issued under the authority set forth in Sections 16 and 207 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2615 and 2647, is entered into, through delegation, by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("EPA" or "Complainant") and Allegany County Public Schools. This CA includes the assessment of a civil penalty against Allegany County Public Schools ("Respondent"), because it is a local education agency liable for violations which occurred at Cresaptown Elementary School, 13202 Sixth Ave., Cresaptown, MD 21502, Mount Savage

Middle School, 13201 New School Road, N.W., Mount Savage, MD 21545, and Allegany High School, 616 Sedgwick St., Cumberland, MD 21502 (the "Facility"), pursuant to TSCA Subchapter II, known as the Asbestos Hazard Emergency Response Act ("AHERA"), 15 U.S.C. §§ 2641 to 2656 ("TSCA AHERA"). This action is brought in accordance with TSCA AHERA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R Part 22, with specific reference to the provisions set forth at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

This Consent Agreement and the accompanying Final Order (collectively referred to herein as the "CAFO") address violations by Respondent of TSCA AHERA and the federal regulations implementing TSCA AHERA as set forth at 40 C.F.R. Part 763 Subpart E, and resolve Complainant's civil claims against Respondent arising from the violations of TSCA AHERA alleged herein.

## **II. General Provisions**

1. For the purpose of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.
3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the accompanying Final Order, or the enforcement of the CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to

- a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying Final Order.
5. Respondent shall not deduct for civil taxation purposes the civil penalty specified in this CAFO.
  6. Section 22.13(b) of the Consolidated Rules of Practice provides that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a consent agreement and final order.
  7. By signing this CA, Respondent certifies to EPA that, upon investigation and to the best of its knowledge, the Facility is in compliance with the provisions of TSCA AHERA and regulations promulgated thereunder at 40 C.F.R. Part 763 Subpart E.
  8. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
  9. Respondent shall bear its own costs and attorney's fees.
  10. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.
  11. By signing and executing this CA, Respondent certifies that it has already spent at least Four Thousand Eight Hundred Twenty Five Dollars (\$ 4,825) since the Maryland Department of the Environment's ("MDE") inspections conducted on July 23, 2008, July 24, 2008, and July 29, 2008 for purposes of complying with TSCA AHERA and the regulations promulgated thereunder, in accordance with Section 207(a) of TSCA AHERA, 15 U.S.C. § 2647(a), and that Respondent has provided Complainant with all

supporting cost documentation and information.

12. This CAFO shall apply to and be binding upon the EPA, Respondent, and the officers, directors, successors, and assigns of Respondent.

**III. EPA's Findings of Fact and Conclusions of Law**

13. Complainant has determined that Respondent has violated requirements of TSCA AHERA and the federal regulations implementing TSCA AHERA set forth at 40 C.F.R. Part 763 Subpart E. In accordance with the Consolidated Rules of Practice as set forth at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law.
14. Respondent, Allegany County Public Schools, is the "Local Education Agency" ("LEA") as that term is defined under Section 202(7) of TSCA AHERA, 15 U.S.C. § 2642(7) and 40 C.F.R. § 763.83, because it is a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools, including the Facility, in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools, including the Facility, and as such, is responsible for ensuring that the Facility is in compliance with the requirements of TSCA AHERA.
15. The Facilities, Cresaptown Elementary, Mount Savage Middle and Allegany High schools, located at 13202 Sixth Ave, Cresaptown, MD 21502, 13201 New School Rd.,

N.W., Mt. Savage, MD 21545 and 616 Sedgwick St., Cumberland, MD 215502, respectively, are each a "school" as that term is defined at Section 202(12) of TSCA AHERA, 15 U.S.C. § 2642(12) and 40 C.F.R. § 763.83.

16. The Facility is a "school building" as that term is defined at Section 202(13) of TSCA AHERA, 15 U.S.C. § 2642(13) and 40 C.F.R. § 763.83.

COUNT I

17. The allegations contained in Paragraphs 1 through 16 are incorporated herein by reference.

18. With exceptions not relevant to these proceedings, 40 C.F.R § 763.86(a)(3) requires that when sampling surfacing material...an accredited inspector shall collect, in a statistically random manner that is representative of the homogenous area, bulk samples from each homogenous area of friable surfacing material that is not assumed to be ACM, an shall collect the samples as follows:

(3) At least seven bulk samples shall be collected from each homogenous area that is greater than 5,000 ft<sup>2</sup>.

19. On July 23, 2008, July, 24, 2008 and July 29, 2008 the MDE conducted a TSCA AHERA inspection at each of the above referenced school buildings. As a result of the inspections, the MDE obtained documents establishing that each school building contained greater than 5,000 ft<sup>2</sup> of surfacing material, however, less than seven bulk samples was collected at each school as required by 40 C.F.R. § 763.86(a)(3).
20. By failing to collect the required number of bulk samples established for a homogenous

area comprised of surfacing material, Respondent violated the requirements of 40 C.F.R. § 763.86(a)(3) and Section 207(a)(1) of TSCA AHERA, 15 U.S.C. § 2647(a)(1) at each facility.

#### **IV. Settlement Recitation**

21. Based on the above Findings of Fact and Conclusions of Law, EPA concludes that Respondent is liable for a civil penalty pursuant to Section 207(a) of TSCA AHERA, 15 U.S.C. § 2647(a), for Respondent's TSCA AHERA violations. In full settlement of the violations alleged in this Consent Agreement, in consideration of each provision of this Consent Agreement and the accompanying Final Order, and pursuant to Sections 207(a) and (c) of TSCA AHERA, 15 U.S.C. §§ 2647(a) and (c), and other relevant factors, Complainant and Respondent have determined that a civil penalty of Seven Thousand Seven Hundred Eighteen Dollars (\$ 7,718) is appropriate.
22. The aforesaid assessed penalty is based upon EPA's consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 207(c) of TSCA AHERA, 15 U.S.C. § 2647(c), *i.e.*, the significance of the violation, the culpability of the violator, and the ability of the violator to continue to provide educational services to the community. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act ("ERP")*, dated January 31, 1989, adjusted for inflation pursuant to 40 C.F.R. Part 19.
23. Respondent certifies that it has spent Four Thousand Eight Hundred Twenty Five Dollars



(\$ 4,825) since the MDE's inspections of July 23, 2008, July, 24, 2008 and July 29, 2008 to comply with TSCA AHERA. Therefore, pursuant to Section 16(a)(2)(C) of TSCA and Section 207(a) of TSCA AHERA, 15 U.S.C. §§ 2615(a)(2)(C) and 2647(a), EPA agrees to the remittance of Four Thousand Eight Hundred Twenty Five Dollars (\$ 4,825) of the civil penalty assessed against the Respondent.

24. Respondent consents to the assessment of a Seven Thousand Seven Hundred Eighteen Dollar (\$ 7,718) civil penalty with a cash component of Two Thousand Eight Hundred Ninety Three Dollars (\$ 2,893).
25. Within thirty (30) calendar days after the effective date of this CAFO, Respondent shall pay the cash component of the civil penalty by cashier's or certified check, electronic wire transfer, Automated Clearinghouse, or online. All checks shall be made payable to "United States Treasury" and shall be mailed to the attention of US Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, PO Box 979077, St. Louis, MO 63197-9000. (Fedex and other non-U.S. Postal Service express mail deliveries 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, MO 63101.) All payments made by check shall reference the above case caption and docket number, TSCA-03-2011-0074. Questions regarding payments made by check should be directed to Eric Volck (513)487-2105. All electronic wire transfer payments shall be directed to the Federal Reserve Bank of New York, ABA No. 021030004, Account No. 68010727, SWIFT address FRNYUS33, 33 Liberty Street, New York, NY 10045 (Field Tag 4200 of

the Fedwire message should read "D 68010727 Environmental Protection Agency"). All Automated Clearinghouse or REX payments shall be directed to US Treasury REX/Cashlink ACH Receiver, ABA No. 051036706, Account No. 310006, Environmental Protection Agency, CTX Format Transaction Code 22 – Checking, 5700 Rivertech Court, Riverdale, MD 20737. Questions regarding payments made through the Automated Clearinghouse should be directed to John Schmid 202-874-7026 or REX, 1-866-234-5681. The online payment option can be accessed at [WWW.PAY.GOV](http://WWW.PAY.GOV) and by entering "sfo 1.1" in the search field. At the same time that any payment is made, copies of any corresponding check, or written notification confirming any electronic wire transfer, Automated Clearinghouse, or online payment shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Magda Rodriguez-Hunt (3LC62), Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

26. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts. Interest on the civil penalty assessed in this CAFO will begin to accrue

on the date that a copy of this CAFO is mailed or hand-delivered to Respondent.

However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

#### **V. Reservation of Rights**

27. This CAFO resolves only the civil claims for the specific violations alleged in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of

resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under TSCA AHERA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

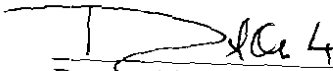
**VI. Effective Date**

28. The effective date of this CAFO is the date on which the Final Order is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to this Consent Agreement.

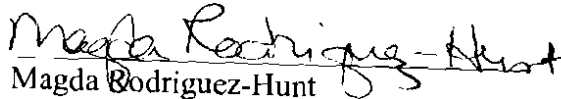
**For Respondent:**

3/2/2011  
Date

  
Dr. David A. Cox, Superintendent  
Allegany County Public Schools

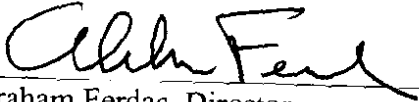
**For Complainant:**

3/4/2011  
Date

  
Magda Rodriguez-Hunt  
Enforcement Officer  
Land and Chemicals Division

Accordingly I hereby recommend that the Regional Administrator or his designee issue the Final Order attached hereto.

3/22/11  
Date

  
Abraham Ferdas, Director  
Land and Chemicals Division



BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

IN RE: :

Allegany County Public Schools :  
211 Market St. :  
Cumberland, MD 21502 :

DOCKET NO: TSCA-03-2011-0074

**Respondent** :

FINAL ORDER

Cresaptown Elementary School :  
13202 Sixth Ave. :  
Cresaptown, MD 21502 :

Mount Savage Middle School :  
13201 New School Road, M.W. :  
Mt. Savage, MD 21545 :

Allegany High School :  
616 Sedgwick St. :  
Cumberland, MD 21502 :

**Facility** :

**FINAL ORDER**

The undersigned accepts and incorporates into this Final Order by reference all provisions set forth in the foregoing Consent Agreement.

NOW, **THEREFORE, IT IS HEREBY ORDERED THAT**, pursuant to Section 16 of TSCA and Section 207 of TSCA AHERA, 15 U.S.C. §§ 2615 and 2647, and 40 C.F.R. § 22.18(b)(3) of the Consolidated Rules of Practice, and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section 207(c) of TSCA AHERA, 15 U.S.C. § 2647(c), Respondent is assessed a civil penalty of Seven Thousand Seven Hundred Eighteen Dollars (\$ 7,718), but that the cash component of that civil penalty will be Two Thousand Eight Hundred Ninety Three Dollars (\$ 2,893).

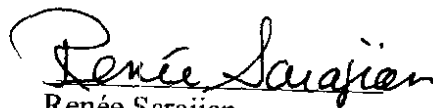
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In accordance with Section 207(a) of TSCA, 15 U.S.C. § 2647(a), Four Thousand Eight Hundred Twenty Five Dollars (\$ 4,825) of the civil penalty assessed against the Respondent is hereby remitted.

The effective date of this Final Order is the date that it is filed with the Regional Hearing Clerk.

3/31/11  
Date



Renée Sarajian  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region III



BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103

In the Matter of:

**Allegany County Public Schools**  
211 Market Street  
Cumberland, MD 21502

**Respondent**

**Cresaptown Elementary School**  
13202 Sixth Ave.  
Cresaptown, MD 21502

**Mount Savage Middle School**  
13201 New School Road, N.W.  
Mt. Savage, MD 21545

**Allegany High School**  
616 Sedgwick St.  
Cumberland, MD 21502

**Facilities**

**CONSENT AGREEMENT  
AND FINAL ORDER**

**Docket No. TSCA-3-2011-0074**

2011 MAR 31 PM 1:07  
MAIL ROOM

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that, on March 31, 2011, the original and one true and correct copy of this Consent Agreement/Final Order and enclosures (Docket No. TSCA-03-2011-0074) was hand-delivered to and filed with the Regional Hearing Clerk (3RC30), U.S.EPA - Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029. On March 31, 2011, a true and correct copy of the Consent Agreement/Final Order and enclosures (Docket No. TSCA-03-2011-0074) was sent by Certified Mail, Return Receipt Requested, to the addressees listed below.

**Dr. David A. Cox, Superintendent**  
Allegany County Public Schools  
211 Market Street  
Cumberland, MD 21502

**Jay Marley, Supervisor**  
Maintenance and Construction  
211 Market Street  
Cumberland, MD 21502

Date: 3/31/11

*Magda Rodriguez-Hunt*  
Magda Rodriguez-Hunt  
Enforcement Officer  
U.S. EPA - Region III