

**EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

This form was originated by: Dina A. Kasper 2/3/10  
*Name of Contact person* *Date*

in the EPA Region 3 Office of Regional Counsel at 215-814-2688  
*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: New Tilapia Company, Inc.

The Total Dollar Amount of Receivable: \$15,717.00  
(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number CEC-03-2010-0079

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

The Designated Regional/HQ Program Office \_\_\_\_\_

**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<br>Environmental Enforcement Section<br>Lands Division, Room 130044<br>1425 New York Avenue, N.W.<br>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

February 3, 2010

**HAND DELIVERY**

Lydia Guy  
Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Re: Consent Agreement and Final Order  
U.S. EPA Docket No. CERC-03-2010-0079

Dear Ms. Guy:

Enclosed for filing is a fully executed Consent Agreement and Final Order settling this matter. A courtesy copy of the Consent Agreement and Final Order is also enclosed.

Sincerely,

A handwritten signature in black ink that reads "Dina A. Kasper".

Dina A. Kasper  
Assistant Regional Counsel

cc: Martin J. Cerullo, Esq.





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

<b>In the Matter of:</b>	)	
	)	<b>EPA Docket No.: CERC-03-2010-0079</b>
<b>New Tilapia Company, Inc.</b>	)	
<b>200 Mahantongo Street</b>	)	
<b>Pottsville, Pennsylvania</b>	)	
<b>17901,</b>	)	
	)	
<b>Respondent.</b>	)	<b>CONSENT AGREEMENT AND FINAL</b>
	)	<b>ORDER</b>
	)	
<b>New Tilapia Company, L.P.</b>	)	
<b>112 Yatesville Road</b>	)	
<b>Shenandoah, Pennsylvania</b>	)	
<b>17976,</b>	)	
	)	
<b>Facility.</b>	)	

This Consent Agreement ("CA") is proposed and entered into under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"), 42 U.S.C. § 9609, and under the authority provided by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 ("Part 22"). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region III, who has in turn delegated them to the Director, Hazardous Site Cleanup Division, EPA Region III ("Complainant").

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as "CA/FO") as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.

**EPA'S FINDINGS OF FACT**

EPA makes the following findings of fact, which Respondent neither admits nor denies:

1. New Tilapia Company, Inc. ("Respondent") is a Pennsylvania corporation, with its principal place of business located at 200 Mahantongo Street in Pottsville, Pennsylvania.

2. As a corporation, Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and 40 C.F.R. § 302.3.
3. At all times relevant to this CA/FO, Respondent has been in charge of, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), the tilapia fish farming facility located at 112 Yatesville Road in Shenandoah, Pennsylvania ("Respondent's facility" or "Facility").
4. The Respondent's facility is a "facility," as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and 40 C.F.R. §§ 302.3.
5. Hazardous chemicals, including sodium hypochlorite, Chemical Abstracts Service ("CAS") No. 7681-52-9, were stored and used at the Facility at all times relevant to this Complaint.
6. On December 19, 2007, EPA forwarded a letter to Schuylkill Energy Resources, Inc., a related entity, requesting information about, among other things, a release of hazardous substances at the Facility that occurred on March 31, 2006.
7. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of the EPA to publish a list of substances designated as hazardous substances, which when released into the environment may present substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), ("Reportable Quantity" or "RQ"). The list of hazardous substances is codified at 40 C.F.R. § 302.4.
8. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility, to immediately notify the National Response Center ("NRC") established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to or greater than the RQ.
9. Sodium hypochlorite is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3, with an RQ of 100 pounds, as listed in 40 C.F.R. § 302.4.
10. Beginning on or about March 31, 2006, at or before 7:00 a.m., approximately 24,000 pounds of a fifteen percent (15%) solution of sodium hypochlorite were released from the Facility (the "Release").

11. Upon information and belief, Respondent had actual or constructive knowledge of the Release of sodium hypochlorite from the Facility, in an amount equal to or in excess of its applicable RQ, at 7:00 a.m. on March 31, 2006.

12. Respondent did not notify the NRC of the Release.

13. The Release constitutes a “release,” as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and 40 C.F.R. § 302.3, of a hazardous substance in a quantity equal to, or greater than, the RQ for that hazardous substance.

14. The Release was not a “federally permitted release” as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10), and 40 C.F.R. § 355.31(b).

15. Respondent did not immediately notify the NRC of the Release, as required by Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, as soon as the Respondent had knowledge of the Release of sodium hypochlorite in an amount equal to or in excess of its RQ.

**EPA’S CONCLUSION OF LAW RELATED TO THE  
VIOLATION OF SECTION 103 OF CERCLA**

16. Respondent’s failure to immediately notify the NRC of the Release as soon as Respondent had knowledge of the Release of sodium hypochlorite from the Facility in an amount equal to or in excess of its applicable RQ, is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and is, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

**CIVIL PENALTY**

17. For the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), set forth above, in the amount of \$15,717.00.

**PAYMENT TERMS**

18. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalty described in this CA/FO, the Respondent must pay the civil penalty no later than thirty (30) days after the effective date of the Final Order (the “final due date”), by one of the following methods:

a. Payment may be made via cashier's check, payable to "EPA – Hazardous Substances Superfund," in care of:

U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

Contact: Craig Steffen (513-487-2091)  
Eric Volck (513-487-2105)

If the cashier's check is sent via UPS, Federal Express, or overnight mail, it should be sent to:

U.S. Bank  
Government Lockbox 979076  
U.S. EPA Superfund Payments  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

Contact: Craig Steffen (513-487-2091)  
Eric Volck (513-487-2105)

The Respondent shall note on the CERCLA penalty-payment cashier's check the title and docket number of this case.

b. Payment may be made via EFT (wire transfer) to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account number: 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."

c. Payment may be made via Automated Clearinghouse (ACH) to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
5700 Rivertech Court  
Riverdale, MD 20737

Contact: John Schmid (202-874-7026)  
REX (Remittance Express) (1-866-234-5681)

d. Payment may be made by debit or credit card via Internet to:

<https://www.pay.gov/paygov/>

Enter “SFO 1.1” in the search field, then open the form and complete the required fields.

19. The Respondent shall submit a copy of the check, or verification of the wire transfer or ACH, noting the title and docket numbers of this case, to the following persons:

Lydia Guy (3RC00)  
Regional Hearing Clerk  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

and

Dina A. Kasper (3RC41)  
Assistant Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

20. The CERCLA civil penalty stated herein is based upon Complainant’s consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, and is consistent with 40 C.F.R. Part 19 and the *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (September 30, 1999)*.

21. 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 by the final due date or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

22. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO 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 final due date. 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).

23. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to 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 final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

24. A penalty charge of six percent (6%) per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days in accordance with 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, in accordance with 31 C.F.R. § 901.9(d).

25. Failure by the Respondent to pay the \$15,717.00 penalty assessed by the Final Order ("FO") in full by the final due date may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

### **GENERAL PROVISIONS**

26. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations set forth above.

27. For the purpose of this proceeding, Respondent agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of the CA/FO.

28. Except as provided in Paragraph 26 above, for the purpose of this proceeding, Respondent neither admits nor denies factual allegations and conclusions of law set forth in this CA/FO, but expressly waives its rights to contest said allegations in this proceeding.

29. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the FO under Section 109 of CERCLA, 42 U.S.C. § 9609.

30. The provisions of the CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this CA on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this CA and to legally bind Respondent to the terms and conditions of the CA and accompanying FO.

31. This CA/FO does not constitute a waiver, suspension, or modification of the requirements of Section 103 of CERCLA, 42 U.S.C. § 9603, or any regulations promulgated thereunder.

32. This CA/FO resolves only those civil claims which are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO, other statutes and regulations, or any other applicable provision of law.

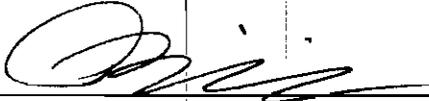
33. Each party to this action shall bear its own costs and attorney's fees.

34. By entering into this CA/FO, the Respondent does not admit any liability for the civil claims alleged herein.

In the Matter of New Tilapia Company, Inc.

EPA Docket No.: CERC-03-2010-0079

**FOR NEW TILAPIA COMPANY, INC.**



\_\_\_\_\_  
Brian R. Rich, Vice President  
New Tilapia Company, Inc.

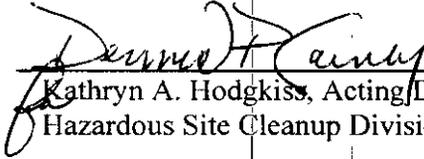
1/20/10

\_\_\_\_\_  
DATE

In the Matter of New Tilapia Company, Inc.

EPA Docket No.: CERC-03-2010-0079

**FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

  
\_\_\_\_\_  
Kathryn A. Hodgkiss, Acting Director  
Hazardous Site Cleanup Division

3/5/10  
DATE

In the Matter of: )

EPA Docket No.: CERC-03-2010-0079

New Tilapia Company, Inc. )  
200 Mahantongo Street )  
Pottsville, Pennsylvania )  
17901, )

Respondent. )

**CONSENT AGREEMENT AND FINAL ORDER**

New Tilapia Company, L.P. )  
112 Yatesville Road )  
Shenandoah, Pennsylvania )  
17976, )

Facility. )

**FINAL ORDER**

Pursuant to Sections 103 and 109 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended. ("CERCLA"), 42 U.S.C. §§ 9603 and 9609, and the delegated authority of the undersigned, and in accordance with 40 C.F.R. Part 22, and based on the representation in the Consent Agreement, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

**Effective Date**

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 3/22/10



Renée Sarajian  
Regional Judicial Officer  
EPA, Region III

