

ONIS "TREY" GLENN, III  
DIRECTOR



Alabama Department of Environmental Management  
adem.alabama.gov

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(334) 271-7700  
FAX (334) 271-7950

BOB RILEY  
GOVERNOR

February 27, 2008

CERTIFIED MAIL #7005 1820 0003 1880 3802  
RETURN RECEIPT REQUESTED

Mr. John Hampton, President  
Sayre Sewer System, Inc.  
130 Highland Park Drive  
Birmingham, AL 35242

Re: Consent Order No. 08-108-CWP  
Sayre Sewer System, Inc.  
NPDES Permit Number AL0057690

Dear Mr. Hampton:

Please find enclosed ADEM Consent Order No. 08-108-CWP which requires you to take certain actions in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of both the Sayre Sewer System, Inc. and the Department. Please note that the assessed civil penalty is due within 45 days.

If you have any questions, please contact Mr. James W. Grassiano at (334) 271-7801.

Sincerely,

A handwritten signature in black ink that reads "James E. McIndoe".

James E. McIndoe, Chief  
Water Division

Enclosure

cc: Olivia Rowell, Office of General Counsel  
Glenda Dean, ADEM Water Division  
ADEM – Public Affairs Office  
Cesar Zapata, EPA Region IV

Birmingham Branch  
110 Vulcan Road  
Birmingham, AL 35209-4702  
(205) 942-6168  
(205) 941-1603 (Fax)

Decatur Branch  
2715 Sandlin Road, S. W.  
Decatur, AL 35603-1333  
(256) 353-1713  
(256) 340-9359 (Fax)



Mobile Branch  
2204 Perimeter Road  
Mobile, AL 36615-1131  
(251) 450-3400  
(251) 479-2593 (Fax)

Mobile - Coastal  
4171 Commanders Drive  
Mobile, AL 36615-1421  
(251) 432-6533  
(251) 432-6598 (Fax)

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF: )

Sayre Sewer System, Inc. )

Sayre Sewer System, Inc.  
Sayre (Jefferson County), AL )

NPDES Permit No. AL0057690 )

CONSENT ORDER NO. 08-108-CWP

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Sayre Sewer System, Inc. (hereinafter the "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.), the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342.

***STIPULATIONS***

1. The Permittee operates a wastewater treatment facility known as the Sayre Sewer System, Inc. located in Sayre, Jefferson County, Alabama. The wastewater treatment facility discharges pollutants from a point source into Locust Fork, a water of the state. Several segments of Locust Fork are impaired for nutrients, siltation, and other habitat alterations. However, this treatment facility discharges into a segment of Locust Fork that is not believed to be impaired.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.).

4. On January 3, 2001, the Department issued National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit Number AL0057690 (hereinafter "the Permit") to the Permittee, establishing limitations on the discharge of pollutants from a point source, designated therein as outfall number 001, into Locust Fork. The Permit was reissued on October 31, 2006, with an effective date of November 1, 2006. The Permit requires that the Permittee monitor its discharges and submit periodic Discharge Monitoring Reports (hereinafter "DMRs") to the Department describing the results of the monitoring. The Permit also requires that the Permittee maintain in good working order all systems used by the Permittee to achieve compliance with the terms and conditions of the Permit.

5. The DMRs submitted to the Department by the Permittee indicate that the Permittee has discharged pollutants from outfall 001 into the aforementioned Locust Fork in violation of the limitations established in the Permit. The months the violations occurred along with the parameters violated are listed in Attachment 1.

6. In addition, the Permittee violated Part I.C.1 of the Permit because it failed to submit the DMRs by the required dates listed in Attachment 2.

7. The Permittee failed to properly report results for Fecal Coliform

(hereinafter "FC") for the months of January 2006 through June 2007. In particular, the Permittee did not perform the analytical tests with a dilution appropriate for reporting purposes.

8. The Permittee failed to provide daily minimum and maximum pH values for the month of March 2006. The Permittee also failed to provide influent and effluent "Quantity or Loading" values for Five Day Carbonaceous Biochemical Oxygen Demand (hereinafter "CBOD5") for the month of April 2007.

9. The Permittee failed to monitor the Total Kjeldahl Nitrogen (hereinafter "TKN"), Total Nitrite plus Nitrate (hereinafter "NO<sub>2</sub>+NO<sub>3</sub>-N"), and Total Phosphorus (hereinafter "TP") parameters for the quarter of January through March 2007.

10. The Permittee failed to monitor all required parameters for the month of June 2007.

11. The Department issued a Warning Letter to the Permittee in March 2007, addressing an effluent limit violation for percent removal of Total Suspended Solids (hereinafter "TSS"). The violation occurred during the month of December 2006.

12. The Department issued a Notice of Violation (hereinafter "NOV") to the Permittee in August 2007, addressing effluent limit violations specifically for the Five Day Biochemical Oxygen Demand (hereinafter "BOD5"), CBOD5, FC, TSS Percent Removal, BOD5 Percent Removal, and CBOD5 Percent Removal parameters. The violations occurred during the months of February 2006, March 2006, April 2006, December 2006, January 2007, February 2007, March 2007, and May 2007.

13. On June 26, 2007, the Department conducted a Compliance Evaluation Inspection of the wastewater treatment facility. During this inspection, the wastewater treatment facility was noted to have vegetation growing in the clarifier and also debris floating in the clarifier.

14. The Permittee consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed herein.

15. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

### ***CONTENTIONS***

The Permittee neither admits nor denies the Department's allegations, but rather contends that it has implemented measures to ensure monitoring and reporting is now conducted in accordance with the Permit requirements. The Permittee further provides that for the past two years the operation of the WWTP has not been economically viable, and that its ability to continue operating the WWTP is questionable without additional financial resources.

The Department neither admits nor denies the Permittee's contentions. Pursuant to Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by the Permittee; the economic benefit which delayed compliance may confer upon the Permittee; the nature, extent and degree of success of the Permittee's efforts to minimize or mitigate the effects of such violation upon the environment; the Permittee's history of previous violations; and the ability of the Permittee to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed

\$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** The violations consisted of exceeding the weekly average and monthly average Permit limits for BOD5 and CBOD5, the monthly average Permit limits for FC, BOD5 Percent Removal, CBOD5 Percent Removal, and TSS Percent Removal. In addition, improper maintenance and operation of the wastewater treatment facility has been noted by the evidence of vegetation and debris in the clarifier. Violations also included improper reporting of FC analytical tests and non-reporting of certain monthly DMRs. The Department has no evidence of irreparable harm to the environment or any threat to the health and safety of the public as a result of these violations.

B. **THE STANDARD OF CARE:** The Permittee failed to properly maintain its wastewater treatment system to ensure compliance with Permit limitations and failed to have an adequate system in place to monitor and report in accordance with Permit requirements.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has been unable to ascertain if there has been a significant economic benefit conferred by the delay of compliance with Permit limitations. However, the Permittee incurred an economic benefit by not monitoring according to the requirements of the Permit

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** There are no known environmental effects as a result of the violations addressed by this Order.

E. **HISTORY OF PREVIOUS VIOLATIONS:** The Permittee has a history of prior violations for improperly reporting FC results in the period prior to the period

addressed by this Order. The Department issued a Warning Letter to the Permittee in March 2007, and a NOV in August 2007.

F. THE ABILITY TO PAY: Based on information available to the Department, the Department believes that the Permittee has an inability to pay a civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and in the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

### ***ORDER***

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations cited herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee agrees to prepare and submit an Engineering Report to the Department, not later than ninety days after the effective date of this Consent Order. The Engineering Report must include a schedule for implementation of corrective actions (i.e., a Compliance Plan) that identifies the potential causes of noncompliance, including Infiltration and Inflow in the collection system, and that summarizes the Permittee's investigation of the changes necessary for the Permittee to implement to achieve compliance with NPDES Permit Number AL0057690. At a minimum, the Permittee must consider each of the following in making its determination: the need for changes in

maintenance and operating procedures, the need for modification of existing treatment system and collection works, and the need for new or additional facilities and collection works. The Compliance Plan presented in the Engineering Report must include a milestone completion date for each phase of corrective actions necessary to accomplish compliance with Permit limitations. The Engineering Report shall be prepared by a professional engineer licensed to practice in the State of Alabama. If the Department determines through its review of the submitted Engineering Report that the submittal is not sufficient to accomplish compliance with the NPDES permit, then the Permittee shall modify the Engineering Report so that it does accomplish compliance. Modifications to the Engineering Report, if required, shall be submitted to the Department no later than thirty days after receipt of the Department's comments. The Permittee agrees to complete implementation of the recommendations provided in the Engineering Report in accordance with the accepted schedule presented in the Compliance Plan and as required by this Order.

B. The Permittee contends above that it may not be able to continue operating the WWTP. If the Permittee elects to close the WWTP and terminate its current Permit, then in lieu of the requirement to submit the aforementioned Engineering Report in Paragraph A., the Permittee must submit a plan for the decommissioning of the WWTP and Closure of the WWTP facility not later than ninety days after the effective date of this Consent Order. This alternative submittal is to be entitled "Closure Plan for the Sayre WWTP". The Closure Plan must include a schedule for implementation of decommissioning activities and closure of the WWTP. Modifications to the Closure Report, if required, shall be submitted to the Department no later than thirty days after receipt of the Department's comments. The Permittee agrees to complete implementation



of the recommendations provided in the Closure Plan in accordance with the accepted schedule presented in the Closure Plan and as required by this Order.

C. The Permittee agrees to prepare and submit Semi-Annual Progress Reports to the Department describing in detail the Permittee's progress towards achieving compliance with items identified in the Compliance Plan. Semi-Annual Progress Reports are to be submitted to the Department every six months of each year that the Permittee's performance of the obligations under this Consent Order remain incomplete. In addition, not later than fourteen days following each applicable due date contained in this Consent Order, the Permittee shall submit a written notice of compliance with the requirements of that paragraph. If the Permittee is unable to submit a notice of compliance, the Permittee shall, instead, submit a notice of noncompliance, stating the cause of noncompliance, the corrective action taken, and the Permittee's ability to comply with any remaining requirements of this Consent Order. If a Closure Plan is submitted in place of the Engineering Report referenced in Paragraph C, then the Progress Reports described in this paragraph will not be required; however, certification of final closure shall be provided within fifteen days of completion.

D. The Permittee agrees to comply with the CBOD5, FC, TSS Percent Removal, and CBOD5 Percent Removal permit limitations of the Permit no later than the dates specified in the accepted Engineering Report, and it shall continue to do so each and every day thereafter during the life of the Permit. The Permittee further agrees to comply with all other terms, conditions, and limitations of its Permit immediately upon the effective date of this Consent Order.

E. The Permittee agrees that, after the effective date of this Consent Order, it shall pay stipulated penalties for each day it fails to meet any of the milestone dates and for each day it fails to satisfy any of the requirements set forth in or established by

paragraphs A, B, C, and D contained herein. The stipulated civil penalties for failure to meet each milestone or any requirement date, except for *Force Majeure* acts as hereinafter defined as acts that occur beyond the Permittee's control, shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
1st to 30th day	\$ 100.00
31st to 60th day	\$ 200.00
After 60 days	\$ 300.00

If the Permittee fails to meet any milestone or any assigned date ninety days after the required dates found in paragraphs A, B, C, and D, then the Department reserves the right to file a new enforcement action against the Permittee.

F. The parties agree that the cumulative stipulated penalties described in paragraphs E above shall under no circumstances exceed \$18,000.00. Once stipulated penalties of \$18,000.00 are due to the Department and violations continue to occur, or, should violations continue to occur after the final compliance date presented in the accepted Engineering Report, then the Department shall be free to issue additional orders or to file suit against the Permittee in the Circuit Court of Montgomery County or in another court of competent jurisdiction to enforce compliance of this Consent Order.

G. The Permittee agrees that payment of stipulated penalties due for violations of effluent limitations under this Consent Order shall be due not later than the 28<sup>th</sup> day of the month following the monitoring period in which there were violations. Notification to the Permittee by the Department of the assessment of any stipulated penalty is not required.

H. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by

the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

I. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations cited in this Consent Order.

J. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

K. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and that are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes that could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original

anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

L. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

M. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

N. The Department and the Permittee agree that this Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

O. The Department and the Permittee agree that final approval and entry into this Consent Order are subject to the requirements that the Department give notice of

proposed Orders to the public, and that the public have at least thirty days within which to comment on the Consent Order.

P. The Department and the Permittee agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

Q. The Department and the Permittee agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

R. The Department and the Permittee agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

SAYRE SEWER SYSTEM, INC.

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

By: John B. Bennett JR

By: Mandy Elliott

Its: President

Its: Deputy Director

Date: 2/8/08

Date: February 27, 2008

**CERTIFICATE OF SERVICE**

I, Carolyn K Overman, hereby certify that I  
have this date served the foregoing Administrative Order on  
Mr. John Hampton by regular United States Mail, properly addressed  
and postage prepaid to:

**Mr. John Hampton, President  
Sayre Sewer System, Inc.  
130 Highland Park Drive  
Birmingham, AL 35242**

Done this 27<sup>th</sup> day of February, 2008.

Carolyn K Overman  
Name

# Attachment 1

AL0057690 Sayre WWTP

DMR Value	Limit	Units	Averaging Time
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Outfall ID: 0011

February, 2006

SOLIDS SUSP PERCENT REMOV

1	54.9	85	Percent	Monthly Average
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March, 2006

SOLIDS SUSP PERCENT REMOV

2	55	85	Percent	Monthly Average
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April, 2006

BOD 5 Day Percent Removal

3	82.2	85	Percent	Monthly Average
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SOLIDS SUSP PERCENT REMOV

4	40.7	85	Percent	Monthly Average
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December, 2006

BOD 5DAY 20C

5	30.02	8.75	lbs/day	Monthly Average
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6	30.02	13.1	lbs/day	Weekly Average
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7	120	30	mg/l	Monthly Average
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8	120	45	mg/l	Weekly Average
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FECAL COLIFORM

9	TNTC	1000	#/100 ml	Monthly Geo Mean
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10	TNTC	2000	#/100 ml	Daily Maximum
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BOD 5 Day Percent Removal

11	61.5	85	Percent	Monthly Average
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SOLIDS SUSP PERCENT REMOV

12	25	85	Percent	Monthly Average
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January, 2007

BOD 5DAY 20C

13	32	30	mg/l	Monthly Average
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BOD 5 Day Percent Removal

14	76.9	85	Percent	Monthly Average
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SOLIDS SUSP PERCENT REMOV

15	67.2	85	Percent	Monthly Average
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February, 2007

SOLIDS SUSP PERCENT REMOV

16	77.5	85	Percent	Monthly Average
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March, 2007

BOD CARBONACEOUS 5DAY 20C

17	8.34	7.3	lbs/day	Monthly Average
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18	69	25	mg/l	Monthly Average
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19	69	37.5	mg/l	Weekly Average
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CBOD 5 Day Percent Removal

20	81.4	85	Percent	Monthly Average
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FECAL COLIFORM

21	2000	1000	#/100 ml	Monthly Geo Mean
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SOLIDS SUSP PERCENT REMOV

22	40.9	85	Percent	Monthly Average
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May, 2007

CBOD 5 Day Percent Removal

23	77.3	85	Percent	Monthly Average
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SOLIDS SUSP PERCENT REMOV

24	54.2	85	Percent	Monthly Average
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July, 2007

CBOD 5 Day Percent Removal

25	80.5	85	Percent	Monthly Average
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## Attachment 2

<u>DMR Date</u>	<u>Date Due</u>	<u>Date Received</u>
January 2006	February 28, 2006	March 30, 2006
February 2006	March 28, 2006	March 30, 2006
March 2006	April 28, 2006	May 10, 2006
April 2006	May 28, 2006	June 26, 2006
May 2006	June 28, 2006	Not Submitted
June 2006	July 28, 2006	Not Submitted
July 2006	August 28, 2006	Not Submitted
August 2006	September 28, 2006	Not Submitted
September 2006	October 28, 2006	Not Submitted
October 2006	November 28, 2006	Not Submitted
November 2006	December 28, 2006	Not Submitted
December 2006	January 28, 2007	February 8, 2007
January 2007	February 28, 2007	March 29, 2007
February 2007	March 28, 2007	April 5, 2007
March 2007	April 28, 2007	May 8, 2007
April 2007	May 28, 2007	June 25, 2007
May 2007	June 28, 2007	July 13, 2007
June 2007	July 28, 2007	August 15, 2007