

LANCE R. LEFLEUR  
DIRECTOR



ROBERT J. BENTLEY  
GOVERNOR

Alabama Department of Environmental Management  
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463  
Montgomery, Alabama 36130-1463  
(334) 271-7700 ■ FAX (334) 271-7950

FEB -7 2013

**CERTIFIED MAIL 91 7199 9991 7030 3430 4013**  
**RETURN RECEIPT REQUESTED**

Billy Joe Driver, Mayor  
City of Clanton  
Walnut Creek WWTP  
Post Office Box 580  
Clanton, Alabama 35045

RE: Consent Order No. 13-052-CWP  
NPDES Permit AL0054631  
Walnut Creek WWTP  
Chilton County (021)

Dear Mayor Driver:

Please find the enclosed ADEM Consent Order No. 13-052-CWP which requires you to take certain actions at the Walnut Creek WWTP in Clanton, AL in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of the City of Clanton/Walnut Creek WWTP.

Sincerely,

*Glenda L. Dean*

Glenda L. Dean, Chief  
Water Division

GLD/sl

File: ECO/13-052-CWP

Enclosure

cc: Tom Johnston/ADEM, Office of General Counsel  
Laura Eubank/ADEM, Office of General Counsel  
Daphne Smart/ADEM, Industrial Municipal Branch/Water Division  
Emily Anderson/ADEM, Industrial Municipal Branch/Water Division  
Sandra Lee/ADEM, Industrial Municipal Branch/Water Division

**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: )

**City of Clanton** )

**Walnut Creek WWTP** )

Clanton, Chilton County, AL )

**NPDES Permit No. AL0054631** )

Consent Order No. 13-052-CWP

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and City of Clanton (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 (hereinafter "AWPCA"), 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 plant (hereinafter "WWTP") known as the Walnut Creek WWTP located at 1574 Chilton County Road 51, in Clanton, Chilton County, Alabama. The Walnut Creek WWTP discharges pollutants from a point source into Walnut Creek, a water of the State.
2. The Department is a duly constituted department of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code (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 AWPCA, §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.).

4. On February 19, 2009, the Department reissued the Permittee's NPDES Permit Number AL0054631 (hereinafter "the Permit"), in accordance with ADEM Admin. Code r. 335-6-6, establishing limitations on the discharge of pollutants from such point source, designated therein as outfall number 001-1, into Walnut Creek. 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 shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of the permit.

5. Permit condition I.A of the Permit requires that discharges be limited and monitored as specified in the Permit. The DMRs submitted to the Department by the Permittee indicate that the Permittee has discharged pollutants from such point source into the aforementioned Walnut Creek in violation of the limitations established in Part I.A of the Permit. The months the violations occurred along with the parameters violated are listed in Attachment I.

6. Permit condition I.B.7 requires flow measurement devices be calibrated, at a minimum, of once every twelve months. During a compliance evaluation inspection performed on September 27, 2011, the Department noted that the facility's flow meter calibration was not current and was last calibrated on April 1, 2010.

7. During a compliance evaluation inspection performed on May 15, 2012, the Department noted that the facility was analyzing Total Ammonia as Nitrogen using method 8155, which is not an approved method in 40 CFR Part 136. Additionally, there was algae and debris on the teeth of the clarifier.

8. The Department issued a Warning Letter to the Permittee on June 25, 2012, addressing permit limitation exceedences of Total Recoverable Nickel and Total Recoverable Copper. The Permittee responded to the Department on July 12, 2012. Per the Warning Letter response and Noncompliance Notification Reports submitted to the Department, the Permittee is working with local industries and the laboratory to comply with Total Recoverable Nickel and Total Recoverable Copper permit limitations.

9. The Permittee consents to abide by the terms of the following Consent Order and to pay any stipulated penalty assessed herein.

10. 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 above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

### **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, 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 CONSENT ORDER with the following terms and conditions:

A. The Permittee agrees to prepare and submit to the Department, an Engineering Report that addresses the need for changes in maintenance and operating procedures, the need for modification of existing treatment works, and the need for new or additional treatment and collection system works. The Engineering Report must include a schedule for implementation (i.e., a Compliance Plan) and the cost of equipment and/or repairs needed to achieve compliance, if known. The Engineering Report must be prepared by a professional engineer licensed to practice in the State of Alabama. The Department must receive the Engineering Report no later than 90 days after the date of issuance of this Consent Order. If the Department determines through its review of the submitted Engineering Report that the submittal is not sufficient, then the Permittee must modify the Engineering Report. The Department should receive modifications to the Engineering Report, if required, 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 not later than 365 days after the date of issuance of this Consent Order.

B. The Permittee agrees to prepare and submit Semi-Annual progress reports to the Department describing in detail the Permittee's progress towards completing the items presented in the Compliance Plan, including the cost of equipment and/or repairs needed to achieve compliance. Such reports shall be submitted beginning six months after the effective date of this Consent Order and shall continue to be submitted every six months thereafter 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 noncompliance with the requirements of that paragraph, if applicable. Notices of noncompliance shall state the cause of noncompliance, the corrective action taken, and shall describe the Permittee's ability to comply with any remaining requirements of this Consent Order.

C. If not already enrolled in the Department's Electronic Environmental DMR Reporting System Program (hereinafter "E2 Program"), the Permittee agrees to prepare and submit to the Department a complete application for enrollment in the Department's E2 Program for all of its permitted facilities, so that it is received by the Department not later than thirty days after the effective date of this Consent Order. If the Department determines through its review of the submitted application that the submittal is not sufficient for the Permittee to participate in the E2 Program, then the Permittee must modify the application so that it is sufficient. The Permittee shall submit modifications to the application, if required, so that they are received by the Department no later than fourteen days after receipt of the Department's comments. Upon acceptance by the Department into the E2 Program, the Permittee agrees to begin the electronic submittals of DMRs through the E2 Program no later than the 28th day of the month following the first complete monitoring period. The Permittee agrees to fully implement all aspects of the E2 Program including the cessation of federal paper DMR submittals, if applicable, no later than 180 days after acceptance into the E2 Program, unless an extension is granted in writing by the Department. The Permittee further agrees to abide by all terms, conditions, and limitations of the E2 Program immediately upon acceptance into the E2 Program.

D. No later than 365 days after the effective date of this Consent Order, the Permittee

agrees to comply with the Total Recoverable Copper and Total Recoverable Nickel limitations of Permit. The Permittee further agrees to comply with all other terms, conditions, and limitations of the Permit immediately upon the effective date of this Consent Order.

E. The Permittee agrees to submit a certification to the Department, signed by a professional engineer licensed to practice in the State of Alabama, indicating whether or not the Permittee is in compliance with all requirements of this Consent Order. The Department must receive the certification no later than 395 days after the effective date of this Consent Order.

F. 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 or satisfy any of the requirements set forth in or established by paragraphs A, B, C, and E contained herein. The stipulated civil penalties for failure to meet each milestone or any requirement date, except for *Force Majeure* acts as hereinafter defined, shall be as follows:

Period of Noncompliance	Penalty per Day per Violation
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 E then the Department reserves the right to file a new action against the Permittee.

G. The Department and the Permittee (hereinafter collectively the "Parties") agree that the cumulative stipulated penalties described in paragraph F 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 365 days after the effective date of this Consent Order, then the Department shall be free to issue additional Orders or file suit against the Permittee in the Circuit Court of Montgomery County or other court of competent jurisdiction to enforce compliance of this Consent Order.

H. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

I. The Permittee agrees that payment of stipulated penalties due for violations of milestone dates under this Consent Order shall be due not later than the 28<sup>th</sup> day of the month following the milestone date and each and every month thereafter until the milestone is completed or until the final compliance date of this Consent Order. The Department is not required to notify the Permittee of the assessment of any stipulated penalty.

J. 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.

K. 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 which are cited in this Consent Order.

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

M. 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, that 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.

N. The Parties 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 that would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed by other Orders as may be issued by the Director, by litigation initiated by the Department, or by 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.

O. The Parties 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.

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



Q. The Parties agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or by 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.

R. The Parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

S. The Parties 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.

CITY OF CLANTON

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

By: Billy Joe Driver

By: Mandy Scott

Its: Mayor

Its: Deputy Director

Date: January 30, 2013

Date: 2-7-13

# Attachment 1

## Clanton Walnut Creek WWTP

<b><u>Monitoring Period</u></b>	<b><u>Outfall</u></b>	<b><u>Parameter</u></b>	<b><u>Unit</u></b>	<b><u>Average, Max, Min</u></b>	<b><u>Limit</u></b>	<b><u>Reported Value</u></b>
February 2011	001-1	Total Recoverable Copper	mg/l	Monthly Average	0.017	0.054
February 2011	001-1	Total Recoverable Copper	mg/l	Weekly Average	0.022	0.054
February 2012	001-1	Total Recoverable Nickel	mg/l	Monthly Average	0.076	0.1
February 2012	001-1	Total Recoverable Copper	mg/l	Monthly Average	0.017	0.024
February 2012	001-1	Total Recoverable Copper	mg/l	Weekly Average	0.022	0.024
March 2012	001-1	Total Recoverable Nickel	mg/l	Monthly Average	0.076	0.2
April 2012	001-1	Total Recoverable Copper	mg/l	Monthly Average	0.017	0.021
May 2012	001-1	Total Recoverable Nickel	mg/l	Monthly Average	0.076	0.082
August 2012	001-1	Total Recoverable Copper	mg/l	Monthly Average	0.017	0.036
August 2012	001-1	Total Recoverable Copper	mg/l	Weekly Average	0.022	0.036
September 2012	001-1	Total Recoverable Nickel	mg/l	Monthly Average	0.076	0.11
October 2012	001-1	Total Recoverable Nickel	mg/l	Monthly Average	0.076	0.16



# City of Clanton

Post Office Box 580 • Clanton, Alabama 35046-0580 • Telephone (205) 755-4051

Billy Joe Driver, *Mayor*  
Debra Orange, *City Clerk*  
John Hollis Jackson, Jr., *City Attorney*

— COUNCIL —

Bobby Cook  
Jeffrey Price  
Greg DeJarnett

Mary Mell Smith, *Pro. Tem.*  
Sammy D. Wilson

January 29, 2013

Ms. Glenda Dean  
Chief, Water Division  
ADEM  
PO Box 301463  
Montgomery, AL 36130-1463

RE: Clanton, Alabama  
Chilton County  
NPDES Permit #: AL0062715  
Walnut Creek WWTP

Dear Ms. Dean:

Enclosed are two signed copies of the Consent Order issued to the City of Clanton in your letter of January 9, 2013.

Please be advised that the City asserts the following:

Item No. 6

The requirement for calibration of the plant flow meter was accomplished immediately after it was brought to the attention of the operator staff. It was calibrated in October 2011 and 2012.

Item No. 7

The City has purchased the laboratory equipment to properly perform the approved test method for Total Ammonia as Nitrogen. The correct tests have been performed since August 2012.

**RECEIVED**  
FEB - 5 2013  
**WATER DIVISION**

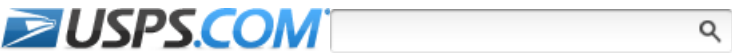
If you should have any questions, please feel free to contact me at (205) 755-4051.

Very truly yours,

A handwritten signature in black ink that reads "Billy Joe Driver". The script is cursive and fluid, with the first name "Billy" and last name "Driver" being clearly legible.

Billy Joe Driver  
Mayor, City of Clanton

Enclosure




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Business Solutions

# Track & Confirm

YOUR LABEL NUMBER	SERVICE	STATUS OF YOUR ITEM	DATE & TIME	LOCATION	FEATURES
9171999991703034304013		Delivered	February 14, 2013, 10:06 am	CLANTON, AL 35045	Certified Mail™ Return Receipt Electronic
		Notice Left	February 14, 2013, 8:41 am	CLANTON, AL 35045	
		Arrival at Unit	February 14, 2013, 8:38 am	CLANTON, AL 35045	
		Depart USPS Sort Facility	February 14, 2013	BIRMINGHAM, AL 35222	
		Processed through USPS Sort Facility	February 14, 2013, 1:05 am	BIRMINGHAM, AL 35222	

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