



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 8**

2010 APR 22 AM 10:09

**1595 WYNKOOP STREET  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>**

FILED  
EPA REGION VIII  
HEARING CLERK

**DOCKET NO.: CWA-08-2010-0012**

IN THE MATTER OF:

**ROMAN CATHOLIC BISHOP OF GREAT  
FALLS and ST. LABRE INDIAN SCHOOL  
EDUCATIONAL ASSOCIATION,  
PRETTY EAGLE SCHOOL  
ST. XAVIER, MONTANA**

**RESPONDENTS**

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**FINAL ORDER**

Pursuant to 40 C.F.R. §22.18, of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

SO ORDERED THIS 22<sup>nd</sup> DAY OF April, 2010.

\_\_\_\_\_  
Elyana R. Sutin  
Regional Judicial Officer

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

2010 APR 22 AM 10:10

In the Matter of:	)	Docket No. <del>CWA-08-2010-0017</del> VIII
	)	HEARING CLERK
Roman Catholic Bishop of Great Falls and	)	<b>COMBINED COMPLAINT</b>
St. Labre Indian School Educational Association,	)	<b>AND CONSENT AGREEMENT</b>
Pretty Eagle School, St. Xavier, Montana,	)	
	)	
Respondents.	)	

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondents Roman Catholic Bishop of Great Falls and St. Labre Indian School Educational Association (Respondents), by their undersigned representatives, hereby consent and agree as follows:

**PRELIMINARY STATEMENT**

1. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22 (Consolidated Rules of Practice). This Combined Complaint and Consent Agreement (Consent Agreement) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

2. EPA has jurisdiction over this matter pursuant to § 309(g)(2)(A) of the Federal Water Pollution Control Act, commonly known as the Clean Water Act (Act), 33 U.S.C. § 1319(g)(2)(A). Section 1319(g)(2)(A) of the Act authorizes the Administrator of the EPA to assess a Class I administrative civil penalty against any person who violates §§ 1311, 1312, 1316,

1317, 1318, 1328, or 1345 of the Act, or any permit condition or limitation implementing these sections issued by the Administrator.

3. Respondents admit the allegations contained in this Consent Agreement.

4. Respondents waive their right to a hearing before any tribunal, to contest any issue of law or fact set forth in this Consent Agreement.

5. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon EPA and Respondents and Respondents' successors or assigns. Any change in ownership or corporate status of either Respondent including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondents' responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

#### **GENERAL ALLEGATIONS**

The following general allegations apply to each count of this Consent Agreement.

6. Respondent Roman Catholic Bishop of Great Falls is a corporation, and is therefore a "person" as that term is defined in § 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2, for purposes of federal enforcement.

7. Respondent St. Labre Indian School Educational Association is an association, and is therefore a "person" as that term is defined in § 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2, for purposes of federal enforcement.

8. The Respondents own and/or operate the Pretty Eagle School in St. Xavier, Montana, within the exterior boundaries of the Crow Indian Reservation.

9. In order to restore and maintain the integrity of the nation's water, § 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into navigable waters, unless authorized by certain other provisions of the Act, including § 402 of the Act, 33 U.S.C. § 1342.

10. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which the EPA may issue permits authorizing discharges into navigable waters, subject to specific terms and conditions.

11. Effective August 16, 2004, EPA issued a NPDES General Permit No. MTG589XXX (Permit), for wastewater lagoons located in Indian country including, but not limited to, lagoons located on the Crow Indian Reservation.

12. Effective November 29, 2004 EPA issued NPDES Discharge Authorization Number MTG589002, authorizing the Respondents to discharge treated effluent from the Pretty Eagle School wastewater lagoon facility (facility) to Rotten Grass Creek, a tributary of the Bighorn River, in accordance with the conditions set forth in the Permit.

13. The Respondents are not required to obtain permission prior to discharging because the Permit is a Category 1 permit.

14. Rotten Grass Creek and the Bighorn River are each a "navigable water" and part of the "waters of the United States," as those terms are defined in § 502(7) of the Act, U.S.C. § 1362(7), and 40 C.F.R. § 122.2, respectively.

15. The Respondents are subject to the requirements of the Act, the Permit, and EPA's regulations implementing the Act.

16. Section 3.2 of the Permit, "Self-Monitoring Requirements," requires the Respondents to monitor constituents at the frequency and with the type of measurement indicated; samples or measurements shall be representative of the volume and nature of the monitored discharge. If no discharge occurs during the entire monitoring period, it shall be stated on the Discharge Monitoring Report (DMR) that no discharge or overflow occurred.

17. Section 3.3 of the Permit, "Inspection Requirements," requires the Respondents to inspect the facility at least weekly for discharges, leaks, animal burrows, excessive erosion, rooted plants, vegetation growth, and proper operation and maintenance. Section 3.3.2 of the Permit requires the Respondents to record the inspection information in a bound notebook. Section 3.3.2.8 of the Permit further requires the Respondents to make the notebook available for inspection upon request by EPA or the applicable tribe.

18. Section 6.4.1 of the Permit, "Reporting Effluent Monitoring Results for Category 1 Facilities," requires the Respondents to summarize and report on a DMR to the EPA Montana Office and the applicable tribe effluent monitoring results obtained during the previous month, postmarked no later than the 28<sup>th</sup> day of the month following the completed reporting period. If no discharge occurs during the reporting period, "no discharge" shall be reported.

19. By letter dated November 29, 2004, EPA transmitted the Permit to the Respondents with a summary of the discharge limits and self-monitoring requirements. The letter states that the DMR should be signed and submitted to EPA in accordance with the Permit requirements in the event of no discharge from the facility, and that the Respondents are required to mark the "No Discharge" box in the upper right corner of the DMR if there is no discharge.

20. By letter dated February 2, 2005, EPA transmitted blank DMRs for the facility to the Respondents.

21. EPA issued a Permit violation letter on February 20, 2007, wherein EPA reminded the Respondents of the requirement to submit DMRs by the 28<sup>th</sup> day of the month following the reporting period. The letter states that EPA did not receive DMRs for the facility for the years 2005 and 2006.

22. By letter dated February 28, 2007, EPA transmitted blank DMRs for the first six months of 2007 and a copy of the Permit to the Respondents. The letter states the requirement that the Respondents mark the “No Discharge” box at the top of the DMR and sign and date the DMR at the bottom in the event of no discharge for a given month. In addition, the letter reiterates that DMRs are due by the 28<sup>th</sup> of the month following the reporting period.

23. The blank DMRs enclosed with the February 28, 2007 letter were replaced by forms provided by EPA on March 8, 2007.

24. EPA issued a Permit violation letter on April 11, 2007, notifying the Respondents that DMRs had not been submitted for the facility for January and February 2007. The letter reminded the Respondents that DMRs must be submitted by the 28<sup>th</sup> day of the month following the reporting period.

25. EPA issued a Permit violation letter on May 27, 2008, notifying the Respondents that DMRs had not been submitted for the facility for the months of June, September, October and December 2007; and February and March 2008. The letter states the self-monitoring and reporting requirements set forth in the Permit. EPA enclosed a copy of the Permit with the letter.

26. EPA issued a Permit violation letter on October 17, 2008, notifying the Respondents that DMRs had not been submitted for the facility for the months of 2008 with the exception of January. The letter re-states that DMRs are required even if there is no discharge.

27. EPA inspected the facility for compliance with the Permit and the Act on January 13, 2009.

28. By letter dated January 22, 2009, EPA transmitted a copy of the Permit to the Respondents.

## **VIOLATIONS**

### **Count I Failure to Submit Timely DMRs**

29. The January 2007 DMR, postmark due February 28, 2007, was received on March 2, 2007.

30. The June 2007 DMR, postmark due July 28, 2007, was received on August 10, 2007.

31. The September 2007 DMR, postmark due October 28, 2007, was received on December 21, 2007.

32. The October 2007 DMR, postmark due November 28, 2007, was received on December 21, 2007.

33. The December 2007 DMR, postmark due January 28, 2008, was received on February 19, 2008.

34. The February 2008 DMR, postmark due March 28, 2008, was received on January 23, 2009.

35. The March 2008 DMR, postmark due April 28, 2008, was received on January 23, 2009.
36. The April 2008 DMR, postmark due May 28, 2008, was received on January 23, 2009.
37. The May 2008 DMR, postmark due June 28, 2008, was received on January 23, 2009.
38. The June 2008 DMR, postmark due July 28, 2008, was received on January 23, 2009.
39. The July 2008 DMR, postmark due August 28, 2008, was received on January 23, 2009.
40. The August 2008 DMR, postmark due September 28, 2008, was received on January 23, 2009.
41. The October 2008 DMR, postmark due November 28, 2008, was received on January 23, 2009.
42. The November 2008 DMR, postmark due December 28, 2008, was received on January 23, 2009.
43. The January 2009 DMR, postmark due February 28, 2009, has not been submitted.
44. The Respondents' failure to submit DMRs by the 28<sup>th</sup> day of the following month for January, June, September, October and December 2007; January, February, March, April, May, June, July, August, October, and November 2008; and January 2009, constitutes a violation of Sections 3.2 and 6.4.1 the Permit.



**Count II**  
**Failure to Conduct and/or Maintain Inspection Records**

45. At the time of the inspection, the Respondents were unable to produce any inspection records for the facility as required under Section 3.3 of the Permit.

46. Respondents' failure to conduct and/or document inspections constitutes a violation of Section 3.3 of the Permit.

**TERMS AND CONDITIONS**

47. Respondents consent and agree to pay a civil penalty in the amount of Twelve Thousand Five Hundred Ninety Five Dollars (\$12,595), in the manner described below in this paragraph:

- a. Payment is due within thirty (30) calendar days from the date written on the final order, issued by the Regional Judicial Officer that adopts this Consent Agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by Mellon Bank described below. Payments received by 11:00 AM EST are processed on the same day, those received after 11:00 AM are processed on the next business day.
- b. The payment shall be made by remitting a cashier's or certified check, referencing the name and docket number of this case, for this amount, payable to "**Environmental Protection Agency**," to:

**US checks by regular  
US postal service mail:**

US EPA Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

**Federal Express, Airborne,  
or other commercial carrier:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

**Wire transfers:**

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 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 "

**On Line Payment:**

WWW.PAY.GOV  
Enter sfo 1.1 in the search field

Open form and complete required  
fields.

A copy of the check shall be sent simultaneously to:

David Rise  
Montana Office (8MO)  
U.S. EPA Region 8  
Federal Building, 10 W. 15<sup>th</sup> Street, Suite 3200  
Helena, MT 59626

Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
1595 Wynkoop  
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the payment due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until the payment is received in full (i.e., on the 1<sup>st</sup> late day, 30 days of interest accrues).
- d. In addition, a handling charge of fifteen dollars (\$15.00) shall be assessed on the 31<sup>st</sup> day from the date of the final order, and each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within ninety (90) days of the due date (i.e., the 121<sup>st</sup> day from the date the final order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.

- e. Respondents agree that the penalty shall never be claimed as a federal or other tax deduction or credit.

48. Nothing in this Consent Agreement shall relieve Respondents of their obligation to comply with the Act, its implementing regulations, or the Permit.

49. Failure by Respondents to comply with any of the terms of this Consent Agreement shall constitute a breach of the Consent Agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

50. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondents' failure to perform pursuant to the terms of this Consent Agreement.

51. The undersigned representatives of the Respondents certify that they are fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the Respondents to the terms and conditions of this Consent Agreement.

52. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

53. Each party shall bear its own costs and attorney fees in connection with this matter.

54. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in this Consent Agreement.

U.S. ENVIRONMENTAL  
PROTECTION AGENCY,  
REGION 8,  
Complainant.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Julie DalSoglio, Acting Director  
Montana Office

Date: April 19, 2010

By: David Rochlin  
David Rochlin, Supervisory Attorney  
Legal Enforcement Program,  
Office of Enforcement, Compliance and  
Environmental Justice

ROMAN CATHOLIC BISHOP OF GREAT  
FALLS,  
Respondent.

Date: April 13, 2010

By: Michael W. Wolf

ST. LABRE INDIAN EDUCATION  
ASSOCIATION,  
Respondent.

Date: \_\_\_\_\_

By: \_\_\_\_\_

U.S. ENVIRONMENTAL  
PROTECTION AGENCY,  
REGION 8.  
Complainant.

Date: April 21, 2010 By: Julie DalSoglio FOR  
Julie DalSoglio, Acting Director  
Montana Office

Date: April 19, 2010 By: David Rochlin  
David Rochlin, Supervisory Attorney  
Legal Enforcement Program,  
Office of Enforcement, Compliance and  
Environmental Justice

ROMAN CATHOLIC BISHOP OF GREAT  
FALLS,  
Respondent.

Date: April 13, 2010 By: Michael W. Wurfel

ST. LABRE INDIAN EDUCATION  
ASSOCIATION,  
Respondent.

Date: \_\_\_\_\_ By: \_\_\_\_\_

U.S. ENVIRONMENTAL  
PROTECTION AGENCY,  
REGION 8,  
Complainant.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Julie DalSoglio, Director  
Montana Office

Date: \_\_\_\_\_

By: \_\_\_\_\_  
David Rochlin, Supervisory Attorney  
Legal Enforcement Program,  
Office of Enforcement, Compliance and  
Environmental Justice

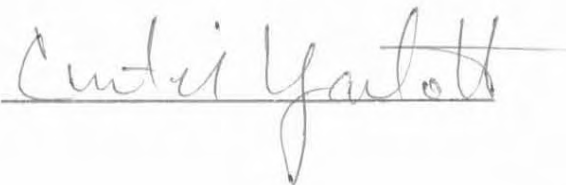
ROMAN CATHOLIC BISHOP OF GREAT  
FALLS,  
Respondent.

Date: \_\_\_\_\_

By: \_\_\_\_\_

ST. LABRE INDIAN SCHOOL EDUCATIONAL  
ASSOCIATION,  
Respondent.

Date: 02/25/2010

By: 

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **ROMAN CATHOLIC BISHOP OF GREAT FALLS and ST. LABRE INDIAN SCHOOL EDUCATIONAL ASSOCIATION, PRETTY EAGLE SCHOOL, ST. XAVIER, MT.;** **DOCKET NO.: CWA-08-2010-0012** was filed with the Regional Hearing Clerk on April 22, 2010.

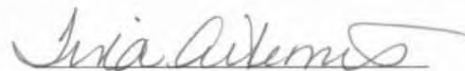
Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Amy Swanson, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on April 22, 2010, to:

Joseph Loncki, Business Manager  
Roman Catholic Bishop of Great Falls, Montana  
P.O. Box 1399  
Great Falls, MT 59405

And

Elizabeth Whitsel  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

April 22, 2010



Tina Artemis  
Paralegal/Regional Hearing Clerk

