STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
FAX (402) 471-3297

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

91075

STATE OF NEBRASKA
OFFICIAL
OCT 18 1991
DEPT. OF JUSTICE

DATE: October 18, 1991

SUBJECT: Finality of District Court Order

REQUESTED BY: Randolph Wood, Director, Department of Environmental Control

WRITTEN BY: Don Stenberg, Attorney General
Linda L. Willard, Assistant Attorney General

You have inquired if Judge Donald Endacott's October 4, 1991, Order issued in the case of Boyd County Local Monitoring Committee v. Dennis Grams, et al., Lancaster County District Court, No. 454-219, is a final Order. You have also made inquiries regarding any potential liability for the Department should it accept and subsequently distribute the funds which were the subject of the aforementioned litigation.

In Lake v. Piper, Jaffray & Hopwood, Inc., 212 Neb. 570, 324 N.W.2d 660 (1982), the Nebraska Supreme Court cited to Neb.Rev.Stat. § 25-1902 in holding that only final Orders may be properly appealed to the Supreme Court and that an Order in a case is final if no further action by a court is necessary to dispose of the cause pending. See also In re 1983-84 County Tax Levy, 220 Neb. 897, 374 N.W.2d 235 (1985), and Dorshort v. Dorshort, 174 Neb. 886, 120 N.W.2d 32 (1963). It is our determination that the Order issued by Judge Endacott on October 4, 1991, is a final Order for purposes of appeal.

However, Neb.Rev.Stat. § 25-1911 (Reissue 1989) provides that a judgment rendered or final order made by the district court may be reversed, vacated or modified by the Supreme Court for error appearing on the record. Any appeal from the district court to the Supreme Court must be commenced within 30 days of the rendition of such judgment Neb.Rev.Stat. § 25-1912 (Reissue 1989).

L. Jay Bartel, J. Kirk Brown, Laurie Smith Camp, Elaine A. Chapman, Delores N. Coe-Barbee, Dale A. Comer, David Edward Cygan, Mark L. Ells, James A. Elworth, Lynne R. Fritz, Royce N. Harper, William L. Howland, Marilyn B. Hutchinson, Kimberly A. Klein, Donald A. Kohtz, Sharon M. Lindgren, Charles E. Lowe, Lisa D. Martin-Price, Lynn A. Melson, Harold I. Mosher, Fredrick F. Neid, Paul N. Potadle, Marie C. Pawol, Kenneth W. Payne, LeRoy W. Sievers, James H. Spears, Mark D. Starr, John R. Thompson, Susan M. Ugai, Barry Waid, Terri M. Weeks, Alfonza Whitaker, Melanie J. Whittamore-Mantzios, Linda L. Willard

Therefore, any party to the Boyd County case referenced above could file an appeal of the district court decision to the Nebraska Supreme Court. Such appeal must be initiated within 30 days of the entry of the decision by the district court. The district court decision was entered on October 4, 1991.

The Supreme Court, on appeal, could affirm the district court decision or could reverse, remand or modify the decision. During any appeal the district court's decision would not be stayed unless the appellant executes a surety bond or deposits cash with the court for the benefit of the adverse parties. Neb.Rev.Stat. §25-1916 (Reissue 1989). The district court would determine the amount of bond or cash deposit.

Should the Department distribute the funds prior to the expiration of 30 days from the entry of the judgment, and a timely appeal be taken which ultimately results in a reversal or modification of the original order, the Department could become involved in a legal action concerning liability for funds already expended. Should such an action be brought, the Boyd County Local Monitoring Committee would undoubtedly also be included as a necessary party. Given the uncertainties inherent in predicting the nature and outcome of any such litigation at this time, we cannot say with assurance what the result might be.

It is our advise that you inform the Boyd County Local Monitoring Committee that these funds have been received from U.S. Ecology, that the Department has placed the funds in an account, and that the funds will be available for distribution to the Boyd County Local Monitoring Committee on November 5, 1991, if no appeal is filed. If the local Monitoring Committee requests distribution of funds prior to November 5, or despite an appeal, we advise that you request Boyd County Local Monitoring Committee to post bond for the benefit of the State in the amount of any requested distribution to cover any potential liability the State might incur should the district court decision be reversed or modified.

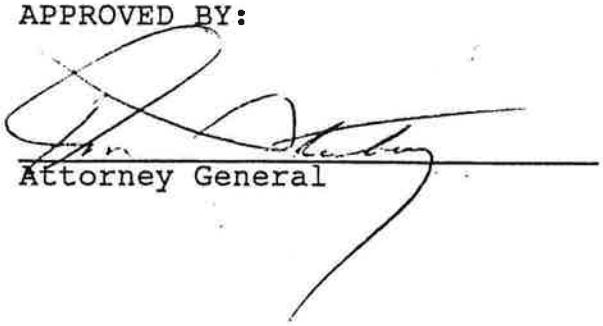
We also advise you to inform U.S. Ecology that you are in receipt of their letter and accompanying check, that their check is being deposited in the Local Monitoring Committee Cash Fund, pursuant to Judge Endacott's decision, but that this in no way implies our agreement to the terms set out in their letter.

Sincerely,

DON STENBERG
Attorney General

Linda L. Willard
Assistant Attorney General

APPROVED BY:



Attorney General

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