

# STATE OF NEBRASKA



Mike Johanns  
Governor

DEPARTMENT OF ENVIRONMENTAL QUALITY  
Michael J. Linder  
Director  
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P.O. Box 98922  
Lincoln, Nebraska 68509-8922  
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October 3, 2001

U. Gale Hutton, Director  
Water, Wetlands & Pesticide Division  
U.S. Environmental Protection Agency  
Region VII  
901 N. 5<sup>th</sup> St.  
Kansas City, KS 66101

Dear Mr. Hutton:

This letter is written in follow up to Director Michael Linder's previous letter to you dated April 23, 2001, and in response to your letter to Mr. Linder dated June 15, 2001.

The Nebraska Attorney General has advised this office that the Attorney General's statement of Nebraska authority for delegation of the federal National Pollutant Discharge Elimination System (NPDES) permit program, dated September 19, 1973, did not address the State's authority to regulate non-Indians on non-Indian owned land within an Indian reservation. The reason for this, in his view, is that at the time neither the Environmental Protection Agency nor the Attorney General's office believed such a jurisdictional question needed to be addressed. The Attorney General has further advised, however, that his office cannot supplement the previous Attorney General's statement of authority because it appears that the Department does not have the authority to exercise authority under the federal NPDES program within the exterior boundaries of tribal reservations.

Therefore, the Department will not be pursuing NPDES delegation for these areas of the state. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Annette Kovar".

Annette Kovar  
Legal Counsel

xc: Pat Rice

