

ILLINOIS POLLUTION CONTROL BOARD
March 14, 1991

A.K.A. LAND, INC.,)
)
 Petitioner,)
)
 v.) PCB 90-177
) (UST Reimbursement)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

SUPPLEMENTAL STATEMENT (by R.C. Flemal):

The fundamental issue raised in this matter is whether Petitioner, and other persons similarly situated, are subject to the provisions of the State and federal UST regulations. Clearly they must be. Otherwise major portions of both UST programs would be rendered meaningless.

The immediate difficulty is how to reconcile this conclusion with the unfortunately foggy definitions of "owner" and "operator" found in the two programs.

I believe that today's majority Opinion correctly articulates why a person such as Petitioner is an operator for the purposes of the UST regulations. However, I do not believe that it sufficiently explores why Petitioner is also (or alternatively) an owner for UST purposes.

The fact that ownership is transferable has not been addressed in the Opinion. As the Illinois Environmental Protection Agency ("Agency") states in its "Memoranda in Response to an Interim Order" filed February 19, 1991:

The Agency maintains that USTs are fixtures. When land is purchased and title passes to the new owner, the fixtures associated with the land are also purchased and their title also passes, unless there is clear proof to the contrary.

Agency Memoranda at 1.

Certainly an argument can be made that the USTs are articles which are in the nature of personalty that have been so annexed to the realty that they are regarded as part of the land. (See Leawood National Bank of Kansas City v. City National Bank & Trust Company of Kansas City, (Mo. App.) 474 S.W. 2d 641 (1971), on fixtures; and Atlantic Refining Co. v. Feinberg, 112 A. 685 (1920), where gasoline pump and tanks were held to be fixtures).

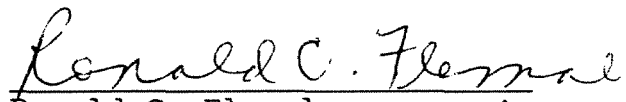
The fact that USTs are transferable with real property has also been recognized by the Illinois legislature in the Responsible Property Transfer Act (Ill. Rev. Stat. 1989 ch. 30, par. 901 et seq.). That Act defines real property thusly:

"Real Property" means any specific and identifiable parcel of land, including improvements thereon, located within the State of Illinois * * * which:

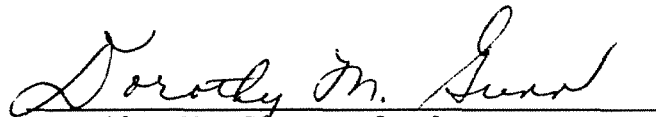
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(2) has underground storage tanks which require registration with the State Fire Marshall.

If USTs were not meant to be considered transferable with a parcel of land, then why did the legislature include USTs in this definition in an Act which specifically covers notice requirements for transferability of real property? I believe the majority Opinion misses the aspect of ownership of USTs as transferable, and would have addressed this issue before making any determination that AKA was not an owner of the tanks in question. Whether the legislature intended to so restrict the basic principles of transfer of ownership when including the Resource Conservation and Recovery Act definition of owner (42 U.S.C. 6991) at Section 22.18 of the Environmental Protection Act remains an open question.


Ronald C. Flemal
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Supplemental Statement was submitted on the 22nd day of March, 1991.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board