

ILLINOIS POLLUTION CONTROL BOARD
February 7, 1991

A.K.A. LAND, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 90-177
)	(Underground Storage Tank)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

INTERIM ORDER OF THE BOARD (by B. Forcade):

In this proceeding the arguments received have all started with the presumption that AKA is an "owner" or "operator" as those terms are defined in Subtitle I of RCRA, and then proceed to debate eligibility for certain deductible amounts. Subtitle I of RCRA appears to imply that those who owned a facility upon statutory adoption or those who operate such facility after adoption would be owners or operators. If one were to interpret the RCRA definitions of owner or operator to exclude those, such as AKA, who innocently acquire the property after statutory adoption and never operate it as a petroleum dispensing facility, what would the impact be on the USEPA approved Illinois program for UST control or on the likelihood of clean-up of unused underground storage tanks. If one were to interpret the RCRA definitions to include some category of innocent purchaser who never operated the facility would unanticipated RCRA regulatory compliance burdens be placed on this category of purchaser? Would UST program approval be jeopardized if those who never contributed to the fund were allowed to withdraw from it?

The Board requests additional information from the parties as to when and by what specific action AKA became an owner or operator as those terms are defined in Subtitle I of RCRA (was it by the act of purchasing the property, by the act of removing the storage tanks, etc.), and the implications of such a determination. Therefore, the Board orders the parties (and invites the Petroleum Marketer's Association) to file memoranda responsive to the following questions:

1. When and by what action did AKA become an owner or operator as those terms are defined in Subtitle I of RCRA?
2. Will a Board determination finding owner or operator status have an impact on AKA, and others similarly situated, regarding compliance with the RCRA Subtitle I regulatory program? Will it have an impact on program approval?

3. Will a Board Determination denying owner or operator status have any adverse impact on the ability of Illinois or USEPA to demand clean-up of underground storage tanks on the property of innocent purchasers containing such tanks? How would such clean-ups take place? How quickly?

Because of the extremely short time frames involved, the Board will require these memoranda to be filed not later than 4:30 P.M., Wednesday, February 13, 1991. The Board authorizes filing of one copy by facsimile machine at 312-814-3669, with an original and nine copies to follow by first class mail.


IT IS SO ORDERED.

Board member Jacob D. Dumelle was not present.

Chairman John C. Marlin and Board members J. Theodore Meyer and Joan G. Anderson concurred.

Board member Michael L. Nardulli dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 7th day of February, 1991, by a vote of 5-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board