

TITLE 39
HEALTH AND SAFETY

CHAPTER 88
IDAHO UNDERGROUND STORAGE TANK ACT

39-8801. SHORT TITLE. This act may be known and cited as the "Idaho Underground Storage Tank Act."

[39-8801, added 2007, ch. 29, sec. 1, p. 57.]

39-8802. LEGISLATIVE FINDINGS AND INTENT. (1) The legislature of the state of Idaho finds:

(a) That the protection of the environment from leaking underground storage tanks is a matter of statewide concern;

(b) That subchapter IX of the solid waste disposal act (42 U.S.C. 6991, et seq. (2000)), as amended by the underground storage tank compliance act, public law 109-58, title XV, August 8, 2005, and regulations adopted pursuant thereto, establish federal law regulating underground storage tanks; and

(c) That 42 U.S.C. 6991c(a) and 40 CFR part 281 allow the administrator of the United States environmental protection agency to approve a state program.

(2) Therefore, it is the intent of the legislature:

(a) To establish a state underground storage tank program to comply with the requirements of the underground storage tank compliance act, public law 109-58, title XV, August 8, 2005, and the regulations adopted pursuant thereto, and 40 CFR part 280, so that the Idaho department of environmental quality may promulgate rules, through negotiated rulemaking, to implement a state underground storage tank program as provided in section 39-8805, Idaho Code;

(b) That such program not constitute a new corrective action program;

(c) That such program qualify the state for federal funding from the federal leaking underground storage tank trust fund;

(d) That such program may be funded as provided in section 39-119, Idaho Code, not to exceed one hundred dollars (\$100) per tank per year. These funds shall only be used for the underground storage tank program;

(e) A fee balance greater than thirty-five thousand dollars (\$35,000) as of December 31 of each year, excluding any early payments for the fees due January 2 of the following year, shall be used to reduce the following year's fee; and

(f) Prior to February 1 of each year, the director shall report to the governor and the legislature on the use of fees collected the previous year. At a minimum, the report shall include:

(i) A list of all tanks subject to inspection;

(ii) The type of inspection and regulatory authority or guidance used; and

(iii) A detailed accounting of how fee funds were spent.

[39-8802, added 2007, ch. 29, sec. 1, p. 57; am. 2016, ch. 52, sec. 1, p. 148.]

39-8803. DEFINITIONS. As used in this chapter:

(1) "Board" means the Idaho board of environmental quality.

(2) "Board of trustees" means the board of trustees established in section 41-4904, Idaho Code.

(3) "Department" means the Idaho department of environmental quality.

(4) "Director" means the director of the Idaho department of environmental quality.

(5) "Underground storage tank system" means underground storage tank as defined by 42 U.S.C. 6991(10).

[39-8803, added 2007, ch. 29, sec. 1, p. 58.]

39-8804. PROGRAM SCOPE. The requirements of this chapter and rules promulgated pursuant to this chapter, shall apply to underground storage tank systems in the state of Idaho, owners and operators of underground storage tank systems in the state of Idaho, persons who install or inspect installations of underground storage tank systems in the state of Idaho, persons who manufacture any regulated component of an underground storage tank system installed in the state of Idaho, and persons who deliver fuel to a regulated underground storage tank system in the state of Idaho.

[39-8804, added 2007, ch. 29, sec. 1, p. 58.]

39-8805. RULES GOVERNING UNDERGROUND STORAGE TANK SYSTEMS. (1) Pursuant to the procedures established by the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, the department shall promulgate through negotiated rulemaking, and the board shall adopt, rules as are necessary to regulate underground storage tank systems within the state. This includes, but is not limited to, rules addressing:

(a) Inspection and certification of underground storage tanks;

(b) Operator training;

(c) Release prevention, compliance and enforcement;

(d) Delivery prohibitions; and

(e) Additional measures to protect ground water.

(2) The board of trustees shall participate in any such negotiated rulemaking through designated representatives.

(3) The rules, promulgated and adopted pursuant to this chapter, and guidance or policy provisions developed in regard to rules promulgated and adopted pursuant to this chapter, shall not be broader in scope, more stringent than, or propose to regulate an activity not regulated by federal law or regulations governing underground storage tanks except as provided by section 39-107D, Idaho Code.

(4) To the degree that any rule promulgated and adopted pursuant to this chapter, or guidance or policy developed in regard to any rule promulgated and adopted pursuant to this chapter, is based upon science, the department shall use:

(a) The best available peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and

(b) Data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justifies use of the data.

[39-8805, added 2007, ch. 29, sec. 1, p. 58.]

39-8806. ADDITIONAL MEASURES TO PROTECT GROUND WATER. New and replacement underground storage tank systems and connected piping installed after the effective date of this chapter and located within one thousand (1,000)

feet of any existing community water system or any existing potable drinking water well, shall comply with the secondary containment requirements of 42 U.S.C. 6991b(i) (1).

[39-8806, added 2007, ch. 29, sec. 1, p. 59.]

39-8807. OPERATOR TRAINING. (1) The department shall adopt an operator training program to be conducted by either the department or a state of Idaho approved third party to help underground storage tank system owners and operators and their employees understand and comply with the requirements of this chapter and rules promulgated pursuant to this chapter. The training shall be consistent with 42 U.S.C. 6991i(a).

(2) Training conducted by the department shall be offered on location to owners, operators and employees of underground storage tank systems regulated under this chapter. The training shall be specific to the equipment on location.

[39-8807, added 2007, ch. 29, sec. 1, p. 59; am. 2016, ch. 52, sec. 2, p. 149.]

39-8808. INSPECTIONS. (1) Underground storage tank systems regulated under this chapter which have not been inspected by the department or the United States environmental protection agency since December 22, 1998, shall be inspected by the department in compliance with this chapter.

(2) After completion of all inspections required under subsection (1) of this section, the department or a third party inspector certified by an approved state or national program, shall conduct on-site inspections of underground storage tank systems regulated under this chapter at least once every three (3) years to determine compliance with this chapter.

(3) If the department conducts the inspection, it shall not charge an additional fee for the inspection.

[39-8808, added 2007, ch. 29, sec. 1, p. 59; am. 2016, ch. 52, sec. 3, p. 149.]

39-8809. DELIVERY PROHIBITION. (1) Effective August 8, 2007, it shall be unlawful for any person to deliver to, deposit into, or accept a regulated substance into an underground storage tank regulated under this chapter at a facility which has been identified by the department to be ineligible for such delivery, deposit, or acceptance.

(2) The department shall promulgate through negotiated rulemaking, and the board shall adopt, rules governing delivery prohibition as provided in section 39-8805, Idaho Code.

[39-8809, added 2007, ch. 29, sec. 1, p. 59.]

39-8810. UNDERGROUND STORAGE TANK DATABASE. The department shall develop and use a database, which shall be available to the public on the internet, detailing the status of all underground storage tanks in the state of Idaho which are subject to regulation, including whether they are subject to delivery prohibition. The department shall develop the database within one (1) year of the effective date of this chapter. Such database shall be accurate, updated no less than quarterly, and subject to public review and correction by petition to the department.

[39-8810, added 2007, ch. 29, sec. 1, p. 60.]

39-8811. ENFORCEMENT. Failure to comply with this chapter or rules promulgated pursuant to this chapter shall be subject to enforcement pursuant to the enforcement provisions of the Idaho environmental protection and health act contained in section 39-108, Idaho Code, provided however, that any monetary penalties for violations of the provisions of this chapter, or rules promulgated pursuant to this chapter, shall be assessed against the violator, or the violator shall be sued to recover in court, as follows:

(1) Anyone subject to the provisions of this chapter as provided in section 39-8804, Idaho Code, or rules promulgated pursuant to this chapter, who has been determined in a civil enforcement action to have failed to comply with tank notification requirements, or to have submitted false information pursuant to tank notification requirements, as provided in this chapter, any rule promulgated pursuant to this chapter or any order entered related to such violation, shall be liable for penalties of up to five thousand dollars (\$5,000) per violation.

(2) Anyone subject to the provisions of this chapter as provided in section 39-8804, Idaho Code, or rules promulgated pursuant to this chapter, who has been determined in a civil enforcement action to have failed to comply with any provisions of this chapter, any rule promulgated pursuant to this chapter or any order entered related to such violation, for existing or new tank systems, shall be liable for penalties of up to five thousand dollars (\$5,000) for each tank for each day of violation. If the violation is continuous, the violator shall be liable for penalties of up to five thousand dollars (\$5,000) for each day of violation.

[39-8811, added 2007, ch. 29, sec. 1, p. 60; am. 2011, ch. 41, sec. 1, p. 96.]

39-8812. SEVERABILITY. The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this chapter.

[39-8812, added 2007, ch. 29, sec. 1, p. 60.]

39-8813. IDAHO UNDERGROUND STORAGE TANK PROGRAM FUND. (1) All moneys received from fees collected from all regulated underground storage tanks shall be forwarded to the department and shall be paid into the Idaho underground storage tank program fund, which is hereby created in the office of the state treasurer.

(2) Such moneys and all interest earned thereon shall be kept in the Idaho underground storage tank program fund and shall be expended for compliance, training, technical, legal and administrative support necessary for implementing the program required under the Idaho underground storage tank act as provided in this chapter.

(3) Costs and expenses incurred by the department in performing the duties, and the exercise of its powers in carrying out the underground storage tank program, shall be paid out of the fund.

(4) Idle moneys in the Idaho underground storage tank program fund established in this section shall be invested by the state treasurer as provided in section 67-1210, Idaho Code. Interest earned on all such investments shall be paid into the fund. Moneys in the fund may be expended pursuant to appropriation.

[39-8813, added 2017, ch. 40, sec. 1, p. 62.]