

TITLE 41
INSURANCE

CHAPTER 49
PETROLEUM CLEAN WATER TRUST FUND ACT

41-4901. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Petroleum Clean Water Trust Fund Act."

[41-4901, added 1990, ch. 119, sec. 1, p. 267.]

41-4902. LEGISLATIVE FINDINGS AND INTENT. (1) The legislature finds that significant quantities of petroleum and petroleum products are being stored in tanks in Idaho to meet the needs of its citizens, foster economic growth and development and the overall quality of life in the state. While most storage tanks are being operated and managed responsibly, there are occasions when releases occur, threatening the public health and safety, and the environment. It is to the benefit of Idaho's citizens to correct any such threats to the public health and safety or environment as quickly and completely as possible. Significant financial resources must be available to investigate and remedy any release. However, reasonably affordable petroleum liability insurance coverage is unavailable to pay for such corrective and cleanup measures. Thus, creation of a fund for corrective actions for petroleum releases would be beneficial to the state and would provide a method for Idaho petroleum storage tank owners or operators to satisfy the financial responsibility requirements imposed on them by the federal environmental protection agency. Such a fund would be created by the imposition of a "transfer fee" of one cent (\$.01) per gallon on the delivery or storage of petroleum products within the state of Idaho. Such a fund would provide moneys for the immediate protection of the public health and safety and the environment, while helping avoid catastrophic losses to the owners and operators which could result in negative impacts on Idaho's economy.

(2) Therefore, it is hereby declared that the intent of the legislature in the passage of this chapter is to create and regulate in the public interest the formation and operation of a liability insurance trust fund that will make contracts of liability insurance available to owners and operators of petroleum storage tanks as defined herein through fair and equitable insurance contracts issued by a state-licensed nonprofit organization meeting reasonable standards as to its administration, reserves, financial soundness and the prompt and fair payment of claims arising out of the legal liability of the public and private entities protected and insured by these contracts, which will also provide for swift corrective action for releases of petroleum or petroleum products from leaking storage tanks. While the release of petroleum from any storage tank in the state may be a threat to public health and safety and the environment, this fund shall only be available for costs incurred as to those tanks which are covered by a contract of insurance between the owner or operator and the trust fund.

[41-4902, added 1990, ch. 119, sec. 1, p. 267; am. 1991, ch. 59, sec. 1, p. 115.]

41-4903. DEFINITIONS. For the purposes of this chapter:

(1) "Aboveground storage tank" means any one (1) or a combination of tanks, including pipes connected thereto, that is used to contain an accumu-

lation of petroleum or petroleum products, and the volume of which, including the volume of pipes connected thereto, is less than ten percent (10%) beneath the surface of the ground. This term does not include a heating tank, farm tank or residential tank or any tank with a capacity of one hundred ten (110) gallons or less.

(2) "Accidental release" means any sudden or nonsudden release of petroleum from a storage tank that results in a need for corrective action or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

(3) "Administrator" means the state insurance fund or any person employed by the board of trustees to replace the state insurance fund, employed by the board to administer the Idaho petroleum clean water trust fund.

(4) "Application fee" means the amount paid or payable by an owner or operator applying for a contract of insurance with the trust fund to offset the costs of issuing contracts of insurance and other costs of administering this fund.

(5) "Board" means the board of trustees appointed by the governor.

(6) "Bodily injury" means any bodily injury, sickness, disease or death sustained by any person and caused by an occurrence defined in subsection (19) of this section.

(7) "Contamination" means the presence of petroleum or petroleum products in surface or subsurface soil, surface water, or ground water.

(8) "Commission" means the state tax commission of the state of Idaho.

(9) "Corrective action" means those actions as are reasonably necessary to satisfy applicable federal and state standards in the event of a release into the environment from a petroleum storage tank. Corrective action includes initial corrective action response or actions consistent with a remedial action to clean up contaminated soil and ground water or address residual effects after initial corrective action is taken, as well as actions necessary to monitor, assess and evaluate a release. Corrective action also includes the cost of removing a tank which is releasing or has been releasing petroleum products and the release cannot be corrected without removing the tank; but corrective action does not include the cost of replacing this tank with another tank.

(10) "Department" means the department of insurance of the state of Idaho.

(11) "Director" means the director of the department of insurance.

(12) "Farm tank" means any tank with a capacity of more than one hundred ten (110) gallons but less than one thousand one hundred (1,100) gallons situated above ground or underground which is used for storing motor fuel for noncommercial purposes and which is located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

(13) "Free product" means petroleum or petroleum products in the non-aqueous phase, (e.g., liquid not dissolved in water).

(14) "Fund" or "trust fund" means the Idaho petroleum clean water trust fund.

(15) "Heating tank" means any tank with a capacity of more than one hundred ten (110) gallons situated above ground or underground which is used for storing heating oil for consumptive use on the premises where stored.

(16) "Legal defense costs" means any expense that an owner or operator or the trust fund incurs in defending against claims or actions brought by the federal environmental protection agency or a state agency to require corrective action or to recover the costs of corrective action; or by or on behalf of a third party for bodily injury or property damage caused by a release.

(17) "Licensed distributor" means any distributor who has obtained a license under the provisions of section [63-2427A](#), Idaho Code. If a person subject to the fee imposed by section [41-4909](#)(7), Idaho Code, is not required to obtain a distributor's license under paragraph (a) or (b) of subsection (1) of section [63-2427A](#), Idaho Code, such person shall apply to the commission for a limited license for the purpose of complying with the requirements of this chapter. Such a limited license shall not be valid for any other purpose. No bond shall be required for a limited license. A holder of a limited license is a "licensed distributor" for the purposes of filing reports, paying fees and other actions necessary to the proper administration and enforcement of this chapter.

(18) "Noncommercial purposes" means not for resale, with respect to motor fuels.

(19) "Occurrence" means an accident, including continuous or repeated exposure to conditions, which resulted in a release into the environment of petroleum products from a petroleum storage tank.

(20) "Operator" means any person in control, or having responsibility for, the daily operations of a petroleum storage tank.

(21) "Owner" means the owner of a petroleum storage tank, except that "owner" does not include any person who, without participation in the management of a petroleum storage tank, holds indicia of ownership primarily to protect the owner's security interest in the tank.

(22) "Person" means any corporation, association, partnership, one (1) or more individuals, or any governmental unit, or agency thereof, other than federal or state agencies.

(23) "Petroleum" and/or "petroleum products" mean crude oil, or any fraction thereof, which is liquid at standard conditions of temperature and pressure (i.e., at sixty (60) degrees fahrenheit and fourteen and seven-tenths (14.7) pounds per square inch absolute). The term includes motor gasoline, gasohol, other alcohol blended fuels, diesel fuel, heating oil and aviation fuel. Biodiesel and biodiesel blends, as those terms are defined in section [63-2401](#), Idaho Code, ethanol, and natural gasoline are also petroleum or petroleum products.

(24) "Property damage" means injury or destruction to tangible property caused by an occurrence.

(25) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a petroleum storage tank into ground water, surface water, or surface or subsurface soils.

(26) "Residential tank" means any tank with a capacity of more than one hundred ten (110) gallons but less than one thousand one hundred (1,100) gallons situated above ground or underground which is used for storing motor fuel for noncommercial purposes and which is located on property used primarily for dwelling purposes.

(27) "Site" means a single parcel of property where petroleum or petroleum products are stored in a petroleum storage tank and includes all contiguous land, structures, other appurtenances, surface water, ground water,

surface and subsurface soil, and subsurface strata within and beneath the property boundary.

(28) "State" means the state of Idaho or any office, department, agency, authority, commission, board, institution, hospital, college, university or other instrumentality thereof.

(29) "Tank" means a stationary device designed to contain an accumulation of petroleum or petroleum products and constructed of nonearthen materials (e.g., concrete, steel, plastic) that provide structural support.

(30) "Trustees" means the trustees of the Idaho petroleum clean water trust fund, who are appointed by the governor pursuant to this chapter.

(31) "Underground storage tank" means any one (1) or combination of tanks, including underground pipes connected thereto, that is used to contain an accumulation of petroleum or petroleum products, and the volume of which, including the volume of underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground. This term does not include any:

- (a) Farm or residential tank of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel for noncommercial purposes;
- (b) Tank used solely for storing heating oil for consumptive use on the premises where stored;
- (c) Septic tank;
- (d) Pipeline facility including gathering lines regulated under:
 - (i) The natural gas pipeline safety act of 1968 (49 U.S.C. app. 1671, et seq.); or
 - (ii) The hazardous liquid pipeline safety act of 1979 (49 U.S.C. app. 2001, et seq.); or
 - (iii) State laws comparable to the provisions of the law referred to in paragraph (d) (i) or (d) (ii) of this subsection as an intrastate pipeline facility;
- (e) Surface impoundment, pit, pond or lagoon;
- (f) Storm water or wastewater collection system;
- (g) Flow-through process tank;
- (h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;
- (i) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor;
- (j) Tanks with a capacity of one hundred ten (110) gallons or less.

The term "underground storage tank" does not include any pipes connected to any tank which is described in paragraphs (a) through (i) of this definition.

(32) "Underground storage tank regulations" means regulations for petroleum storage tanks promulgated by the United States environmental protection agency (EPA) pursuant to subtitle I of the solid waste disposal act, as amended by the resource conservation and recovery act, regulations promulgated by the state of Idaho as part of a state program for underground storage tank regulation under subtitle I, or other regulations affecting underground storage tank operations and management, including the international fire code adopted by the state of Idaho.

[41-4903, added 1990, ch. 119, sec. 1, p. 268; am. 1991, ch. 59, sec. 2, p. 116; am. 1995, ch. 132, sec. 12, p. 576; am. 1998, ch. 428, sec. 6, p. 1350; am. 2002, ch. 86, sec. 9, p. 199; am. 2003, ch. 96, sec. 2, p.

283; am. 2007, ch. 37, sec. 3, p. 92; am. 2009, ch. 21, sec. 1, p. 48; am. 2011, ch. 6, sec. 1, p. 14.]

41-4904. BOARD OF TRUSTEES OF THE FUND. (1) The governor shall appoint seven (7) persons to be the board of trustees of the Idaho petroleum clean water trust fund. One (1) member shall be a member of the state senate, one (1) member shall be a member of the state house of representatives, one (1) member shall be a representative of the financial community with expertise in the area of insurance, accounting or finance, one (1) member shall be an engineer, geologist or similarly trained scientist with experience in environmental remediation and three (3) members shall be wholesale distributors of petroleum products. The governor shall appoint a chairman from the seven (7) members. The members shall be appointed for terms of four (4) years, except that all vacancies shall be filled for the unexpired term, provided that the first two (2) appointments the governor makes after the effective date of this act shall serve a term of two (2) years and the other five (5) members shall serve a term of four (4) years. Thereafter, a member shall serve a term of four (4) years. A certificate of appointment shall be filed in the office of the secretary of state. A majority of the members shall constitute a quorum for the transaction of all business or the exercise of any power or function of the Idaho petroleum clean water trust fund. Members of the board of trustees shall receive a compensation for service as prescribed in section [59-509](#)(n), Idaho Code.

(2) The administrator of the fund shall be the state insurance fund unless replaced by the board of trustees with another person. The administrator shall serve at the pleasure of the board of trustees. The board of trustees may appoint and employ such other persons as may be required by the board and shall prescribe the duties and compensation of each such person.

(3) It shall be the duty of the board of trustees to direct the policies and operation of the fund to assure that it is run as an efficient insurance company, remains actuarially sound and maintains the public purposes for which the Idaho petroleum clean water trust fund was created.

[41-4904, added 2003, ch. 96, sec. 4, p. 289; am. 2004, ch. 175, sec. 1, p. 553; am. 2006, ch. 140, sec. 2, p. 402; am. 2018, ch. 21, sec. 1, p. 33.]

41-4905. CREATION, AUTHORIZATION AND MANAGEMENT OF THE IDAHO PETROLEUM CLEAN WATER TRUST FUND. (1) The Idaho petroleum clean water trust fund is hereby created, subject to the direction and supervision of the board, and the administrator is hereby authorized to utilize this trust fund for the purpose of insuring governmental and private entities who are owners and operators of petroleum storage tanks against the costs of corrective action and compensating third parties that are legally entitled to receive compensation for bodily injury and property damage arising out of accidental releases of petroleum from petroleum storage tanks covered by a contract of insurance between the owner or operator and the trust fund.

(2) Nothing in this chapter shall enlarge or otherwise adversely affect the legal liability of any legal entity insured by the trust fund, and any immunity or other bar to a civil lawsuit under Idaho or federal law shall remain in effect. The fact that the trust fund insures the legal liability of any legal entity and thus may relieve the entity or an employee of the entity from the payment of any judgment arising from a civil lawsuit, shall not be communicated to the trier of fact in such a lawsuit.

(3) The trust fund shall consist of all application fees and all transfer fees collected pursuant to section [41-4909](#), Idaho Code, all other moneys received and paid into the trust fund, property and securities acquired by or through the use of money belonging to the trust fund, money loaned to the trust fund under the terms and agreements of a subordinated note of indebtedness or borrowed surplus as hereinafter defined and authorized, and of interest earned on money and securities owned or in the possession of the trust fund under an agreement that such investment earnings can accrue to the benefit of the trust fund.

(4) The trust fund shall have the powers and privileges of a nonprofit corporate entity and in its name may sue and be sued in any court of competent jurisdiction, and may lease and maintain offices and space for its departmental and operational facilities, subject to the provisions of chapters 6 and 7, [title 41](#), Idaho Code.

(5) The administrator shall enter into a management and administrative contract with the trust fund to provide the following services:

(a) Administrative functions including the hiring of qualified personnel and the payment of salaries and wages earned, plus recordkeeping for the personnel hired to provide services for the trust fund.

(b) Accounting and recordkeeping of all receipts and disbursements of the trust fund.

(c) Underwriting functions of the trust fund to issue contracts of liability insurance and charge appropriate application fees under section [41-4909](#), Idaho Code, for such contracts and keep accurate statistical records.

(d) Claims handling functions of the trust fund to process and pay appropriate claims in a prompt, fair and reasonable manner.

(e) Auditing functions of the trust fund to maintain accurate records of receipts and disbursements by the trust fund and accurate reporting of statistics by owners or operators of storage tanks covered by a contract of insurance issued by the trust fund.

(f) Actuarial functions of the trust fund to maintain credible and viable statistics, sufficient operating fund balances, and appropriate loss reserves.

(g) Computer and data processing functions to assist the trust fund in maintaining complete and accurate records in a timely manner and issue loss payments and other disbursements, as well as provide individual statistics and records of storage tanks covered by a contract of insurance issued by the trust fund.

(h) Computer programming functions to maintain a proficient and current data processing system for the trust fund.

(i) Legal services for the trust fund.

(j) Any and all other functions the administrator deems prudent and reasonable to assure the successful operation of the trust fund.

(6) The Idaho petroleum clean water trust fund shall be administered without liability on the part of the state insurance fund or the state of Idaho beyond the amount of said trust fund.

(7) The administrator shall have the power to receive and account for all moneys paid into the trust fund, accept and evaluate applications for insurance coverage and issue the contracts of insurance and evaluate, investigate and adjust claims made against the trust fund and make agreements for corrective actions or compensation to third parties for bodily injury

or property damage those parties may be legally entitled to receive from the trust fund in accordance with the provisions of this chapter.

(8) The administrator shall establish underwriting procedures to issue contracts of insurance and claim procedures. The administrator shall be given notice of all applications, hearings and proceedings involving the rights of the trust fund and shall represent the trust fund in all proceedings. The administrator's decisions shall be written, and shall include all reasons for his decisions and shall be subject to judicial review in the district court of Ada county; provided, however, that the administrator and the trust fund shall not be liable for alleged bad faith or other legal theories based on any method or timing of the claims processed on his decision.

(9) The administrator may employ legal counsel or obtain legal counsel through the attorney general concerning all legal matters arising out of the existence and operation of the trust fund, including claims made against the contracts of insurance issued by the administrator of the trust fund.

(10) The administrator may also employ such employees or contract for such services as are necessary to assist in the administration of the trust fund, and all such administrative expenses incurred by the state insurance fund for the benefit of the trust fund shall be reimbursed by the trust fund.

[(41-4905) 41-4904, added 1990, ch. 119, sec. 1, p. 271; am. 1991, ch. 59, sec. 3, p. 119; am. 1998, ch. 428, sec. 7, p. 1353; am. & redesign. 2003, ch. 96, sec. 3, p. 286.]

41-4906. LIMITS OF LIABILITY FOR CONTRACTS OF INSURANCE ISSUED BY THE ADMINISTRATOR. (1) Contracts of insurance issued by the administrator shall contain the following per occurrence and annual aggregate limits of liability for paying the costs of corrective action and compensating third parties who are legally entitled to receive compensation for bodily injury and property damage arising out of accidental releases from covered petroleum storage tanks:

(a) For owners or operators of heating tanks, farm tanks or residential tanks, no more than one hundred thousand dollars (\$100,000) per occurrence and no more than one hundred thousand dollars (\$100,000) annual aggregate;

(b) For nonmarketers of petroleum products who are owners or operators of above ground and underground storage tanks and who consume ten thousand (10,000) gallons or less of petroleum products each month, no more than five hundred thousand dollars (\$500,000) per occurrence and no more than one million dollars (\$1,000,000) annual aggregate;

(c) For owners or operators of one (1) to one hundred (100) covered underground petroleum storage tanks, no more than one million dollars (\$1,000,000) per occurrence and no more than one million dollars (\$1,000,000) annual aggregate;

(d) For owners or operators of one hundred and one (101) or more covered underground petroleum storage tanks, no more than one million dollars (\$1,000,000) per occurrence and no more than two million dollars (\$2,000,000) annual aggregate; and

(e) For owners or operators of covered above ground petroleum storage tanks, no more than one million dollars (\$1,000,000) per occurrence and no more than one million dollars (\$1,000,000) annual aggregate.

(2) Legal defense costs shall be disregarded for purposes of determining whether the limits specified in subsection (1) of this section have been reached.

(3) Benefits provided by the trust fund shall be primary and shall not be construed to be excess over and above any other valid and collectible insurance.

(4) If an owner or operator owns or operates more than one (1) of the types of petroleum storage tanks listed in subsection (1) of this section, then the limit of liability applicable to the type of petroleum storage tank from which the accidental release occurred shall apply. In no event shall any of the limits of liability in subsection (1) of this section be combined to exceed the highest per occurrence and annual aggregate limits of liability for any single category in subsections (1) (a) through (1) (e) of this section applicable to an insured owner or operator.

[(41-4906) 41-4905, added 1990, ch. 119, sec. 1, p. 273; am. 1991, ch. 59, sec. 4, p. 122; am. & redesign. 2003, ch. 96, sec. 5, p. 290.]

41-4907. OWNER OR OPERATOR FINANCIAL RESPONSIBILITY. (1) The owner or operator shall reimburse the trust fund for all dollars expended, excluding legal defense costs, up to but not exceeding the following amounts:

(a) With respect to a heating tank - one hundred dollars (\$100) per annum;

(b) With respect to a farm tank or residential tank - two thousand dollars (\$2,000) per annum;

(c) With respect to an above ground storage tank or underground storage tank, as defined in section [41-4903](#), Idaho Code - ten thousand dollars (\$10,000) per annum.

(2) Payments by the trust fund shall not be made contingent on prior payment of the reimbursement herein required.

[(41-4907) 41-4906, added 1990, ch. 119, sec. 1, p. 274; am. & redesign. 2003, ch. 96, sec. 6, p. 291.]

41-4908. EXCLUSIVENESS OF REMEDY. If compensation is made from the trust fund to a third party for property damage or personal injury, then that third party shall not recover again for the damage actually compensated by the trust fund pursuant to the collateral source doctrine or any other rule of law permitting duplicate recovery.

[(41-4908) 41-4907, added 1990, ch. 119, sec. 1, p. 274; am. & redesign. 2003, ch. 96, sec. 7, p. 291.]

41-4909. SOURCE OF TRUST FUND -- APPLICATION FEES -- APPLICATION FOR ENROLLMENT -- TRANSFER FEES. (1) Every owner or operator of an underground storage tank may, if he desires to apply to the trust fund to insure the underground tank, make application for and pay into the trust fund an initial application fee set by the administrator, but not to exceed twenty-five dollars (\$25.00) for each tank for which application for coverage is made.

(2) Every owner or operator of an aboveground storage tank may, if he desires to apply to the trust fund to insure the aboveground tank, make application for and pay into the trust fund an initial application fee set by the administrator, but not to exceed twenty-five dollars (\$25.00) for each tank for which application for coverage is made.

(3) Every owner or operator of a farm tank or residential tank may, if he desires to apply to the trust fund to insure the tank, make application for and pay into the trust fund an initial application fee set by the administra-

tor, but not to exceed twenty-five dollars (\$25.00) for each tank for which application for coverage is made.

(4) Every owner or operator of a heating tank may, if he desires to apply to the trust fund to insure the tank, make application for and pay into the trust fund an initial application fee set by the administrator, but not to exceed five dollars (\$5.00) for each tank for which application for coverage is made.

(5) The application for insurance shall be made to the administrator on forms furnished and prescribed by the administrator for the purpose of eliciting reasonably available information as to the type and use of the storage tank, the type of business enterprise of the tank owner or operator, the age of the storage tank, the materials used in the construction of the tank and the inside and outside protective coatings and other corrosion protective measures, leak detection methods, spill and overflow prevention methods of the tank, the location of the tank and its proximity to roads and buildings, the foundation and type of material used as a bedding and fill for the tank, any available inspection records of the tank including the gallons of petroleum products entered into the tank and the gallon dispersements from the tank, and other information that is reasonably prudent in order to obtain a sufficient body of statistical data to determine the relative hazards of various categories of tanks, the potential that future leaks or discharges may occur, and the conditions under which cleanup costs and personal injury and property damage costs may occur and vary in the severity of the release and the resultant costs to the trust fund.

(6) The administrator shall act upon the application for insurance with all reasonable promptness, and the administrator shall make such investigations of the applicant as the administrator deems advisable to determine if the information contained in the application for insurance is accurate and complete. The administrator shall determine if the applicant's storage tanks meet all the eligibility requirements and promptly notify the applicant of the acceptance or nonacceptance of the application for insurance. The absence of unknown data requested on the application shall not preclude an applicant's acceptance for coverage by the trust fund, if the applicant is otherwise eligible for insurance under this chapter.

(7) In addition to the application fees received by the trust fund pursuant to this section, the trust fund shall receive the revenue produced by the imposition of a "transfer fee" of one cent (1¢) per gallon on the delivery or storage of all petroleum products as defined in subsection (23) of section [41-4903](#), Idaho Code, delivered or stored within the state of Idaho. This transfer fee is hereby imposed upon the first licensed distributor who receives, as receipt is determined in section [63-2403](#), Idaho Code, a petroleum product within this state for the privilege of engaging in the delivery or storage of petroleum products whose delivery or storage may present the danger of a discharge into the environment and thus create the liability to be funded. The fee imposed by this subsection shall not apply to: (a) petroleum or petroleum products which are first delivered or stored in this state in a container of fifty-five (55) gallons or less if such container is intended to be transferred to the ultimate consumer of the petroleum or petroleum products; or (b) petroleum or petroleum products delivered or stored in this state for the purpose of packaging or repackaging into containers of fifty-five (55) gallons or less if such container is intended to be transferred to the ultimate consumer of the petroleum or petroleum products.

(8) The transfer fee shall be collected by the commission on all petroleum products delivered or stored within this state after April 1, 1990. This transfer fee shall be in addition to any excise tax imposed on motor fuel or other petroleum products and shall be remitted to the commission with the distributor's monthly report as required in section [63-2406](#), Idaho Code. The distributor may deduct from his monthly report those gallons of petroleum products returned to a licensed distributor's refinery or pipeline terminal storage or exported from the state when supported by proper documents approved by the commission. For the purpose of carrying out its duties under the provisions of this chapter, the commission shall have the powers and duties provided in sections [63-3038](#), [63-3039](#), [63-3042](#) through [63-3066](#), [63-3068](#), [63-3071](#), and [63-3074](#) through [63-3078](#), Idaho Code, which sections are incorporated by reference herein as though set out verbatim.

(9) No person shall be excused from liability for any duty or fee imposed in this chapter for failure to obtain a distributor's license.

(10) The director shall certify to the commission when the unencumbered balance in the trust fund equals thirty-five million dollars (\$35,000,000). Effective the first day of the second month following the date of such certification, the imposition of the transfer fee shall be suspended. Thereafter, the director shall certify to the commission when the unencumbered balance in the trust fund equals twenty-five million dollars (\$25,000,000). Effective the first day of the second month following the date of such certification, the imposition of the transfer fee shall be reinitiated.

[(41-4909) 41-4908, added 1990, ch. 119, sec. 1, p. 274; am. 1991, ch. 59, sec. 5, p. 123; am. 1998, ch. 103, sec. 1, p. 353; am. 1998, ch. 428, sec. 8, p. 1356; am. 2000, ch. 419, sec. 1, p. 1364; am. and redesisg. 2003, ch. 96, sec. 8, p. 291; am. 2007, ch. 194, sec. 1, p. 570.]

41-4910. DISTRIBUTION OF APPLICATION FEES AND TRANSFER FEES. (1) The application fees and the transfer fees collected as provided in this chapter shall be promptly remitted to the state treasurer for deposit in the Idaho petroleum clean water trust fund. The transfer fees and accumulated interest which accrued to the fund prior to August 3, 1995, shall remain in the fund. The transfer fees and accumulated interest, which have been held in a separate suspense account since August 3, 1995, shall be distributed as provided in subsection (4) of this section. The transfer fees and accumulated interest which accrue to the Idaho petroleum clean water trust fund subsequent to April 1, 1997, shall be distributed monthly thereafter as provided in subsection (5) of this section.

(2) An amount of money equal to the actual cost of collecting, administering and enforcing the transfer fee by the commission, as determined by it, shall be retained by the commission. The amount retained by the commission shall not exceed the amount authorized to be expended by appropriation by the legislature. Any unencumbered balance in excess of the actual cost of collection, administering and enforcing the transfer fee requirements by the commission at the end of each fiscal year shall be remitted to the state treasurer for deposit into the Idaho petroleum clean water trust fund.

(3) From the receipts of the transfer fee, an amount of money shall be distributed to the state refund account established under section [63-3067](#), Idaho Code, sufficient to reimburse that account for all current refund claims under this chapter paid from that account. Any refunds due and owing from the commission under this chapter shall be paid from the state refund

account and those moneys are hereby continuously appropriated for that purpose.

(4) For the distribution on April 1, 1997, the balance of the transfer fees and accumulated interest accruing to the separate suspense account established for such fees on August 3, 1995, which remain after distributing the amounts specified in subsections (2) and (3) of this section, shall be distributed as follows:

(a) Twenty percent (20%) to the Idaho petroleum clean water trust fund established in section [41-4905](#), Idaho Code;

(b) Three percent (3%) to the Idaho department of parks and recreation in accordance with subparagraphs 1., 2., and 3. of paragraph (f), subsection (1) of section [63-2412](#), Idaho Code; and

(c) The remainder shall be distributed:

(i) Six million dollars (\$6,000,000) to the state highway account for administration by the Idaho transportation department as provided in section [41-4910A](#), Idaho Code; and

(ii) The balance remaining to the highway distribution account established in section [40-701](#), Idaho Code.

(5) For the distribution at the end of fiscal year 1997 and monthly thereafter, the balance of the transfer fees and accumulated interest accruing to the Idaho petroleum clean water trust fund which remain after distributing the amounts specified in subsections (2) and (3) of this section, shall be distributed as follows:

(a) Seventy-seven percent (77%) to the highway distribution account established in section [40-701](#), Idaho Code; and

(b) Three percent (3%) to the Idaho department of parks and recreation in accordance with subparagraphs 1., 2., and 3. of paragraph (f), subsection (1) of section [63-2412](#), Idaho Code.

[(41-4910) 41-4909, added 1990, ch. 119, sec. 1, p. 276; am. 1991, ch. 59, sec. 6, p. 125; am. 1997, ch. 398, sec. 1, p. 1260; am. 1999, ch. 320, sec. 2, p. 816; am. & redesig. 2003, ch. 96, sec. 9, p. 293; am. 2009, ch. 332, sec. 5, p. 965.]

41-4910A. APPORTIONMENT OF MONEYS TRANSFERRED TO THE STATE HIGHWAY ACCOUNT FROM THE IDAHO PETROLEUM CLEAN WATER TRUST FUND SUSPENSE ACCOUNT ON APRIL 1, 1997. Of the moneys transferred to the state highway account pursuant to the distribution in section [41-4910](#) (4) (c) (i), Idaho Code, an amount not to exceed six million dollars (\$6,000,000) shall be administered by the Idaho transportation department for use as the state and local match for federal highway administration (FHWA) and federal emergency management agency (FEMA) road and bridge projects. Such moneys shall be used exclusively for repair and restoration of local and state roads and bridges damaged by the 1996, 1997 and 1998 natural disasters in the counties of Adams, Benewah, Bingham, Boise, Bonner, Bonneville, Boundary, Butte, Clearwater, Custer, Elmore, Fremont, Gem, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis, Madison, Nez Perce, Owyhee, Payette, Shoshone, Valley and Washington. When apportionment of moneys under this section is sufficient to meet the purposes for which the moneys are designated, but not to exceed six million dollars (\$6,000,000), any remaining amounts shall be returned to the highway distribution account established in section [40-701](#), Idaho Code.

[(41-4910A) 41-4909A, added 1997, ch. 398, sec. 2, p. 1261; am. 1998, ch. 181, sec. 2, p. 669; am. 1999, ch. 195, sec. 2, p. 506; am. 1999, ch. 320, sec. 3, p. 817; am. & redesign. 2003, ch. 96, sec. 10, p. 294.]

41-4911. ISSUANCE OF CONTRACTS OF INSURANCE BY THE ADMINISTRATOR OF THE IDAHO PETROLEUM CLEAN WATER TRUST FUND -- DEFERRAL. (1) The administrator may issue a contract of insurance to an owner or operator of a petroleum storage tank that, based upon a consideration of the owner or operator's application for insurance and appropriate investigation by the administrator, meets the eligibility provisions of this chapter and the underwriting requirements established by the administrator.

(2) The administrator may defer issuing contracts of insurance to certain categories of petroleum storage tank owners or operators if necessary for the sound operation of the trust fund.

(3) The administrator shall consider the following factors in determining whether to defer the issuance of contracts of insurance to any category of petroleum storage tank owners or operators:

(a) The underwriting capacity of the trust fund;

(b) Any requirement of federal or state law or regulation imposed on any category of petroleum storage tank owners or operators to demonstrate financial responsibility for corrective action and compensation to third parties for bodily injury and property damage arising from accidental releases from petroleum storage tanks;

(c) The ability of the administrator to process insurance applications from different categories of petroleum storage tank owners or operators.

(4) Any decision by the administrator to defer issuing contracts of insurance to any category of petroleum storage tank owners or operators shall be documented in the plan of operation, or an amendment thereto, submitted to the director of the department of insurance pursuant to sections [41-4925](#) or [41-4925A](#), Idaho Code, and subject to the director's approval.

(5) The administrator may issue contracts of insurance to deferred categories of petroleum storage tank owners or operators when the need for deferral documented in subsection (4) of this section no longer exists, as demonstrated by an amendment to the plan of operation submitted to and approved by the director of the department of insurance pursuant to section [41-4925A](#), Idaho Code.

[(41-4911) 41-4910, added 1990, ch. 119, sec. 1, p. 277; am. 1991, ch. 59, sec. 7, p. 125; am. & redesign. 2003, ch. 96, sec. 11, p. 295.]

41-4911A. PROVISIONS OF CONTRACTS OF INSURANCE -- RENEWAL. (1) The contracts of insurance issued by the administrator shall meet the requirements of this chapter. To the extent consistent with this chapter, the contracts of insurance shall also satisfy the provisions of any requirement imposed by federal or state law or regulation on any category of petroleum storage tank owners or operators to demonstrate financial responsibility for corrective action and compensation to third parties for bodily injury and property damage arising from accidental releases from petroleum storage tanks.

(2) Upon receipt of an annual application fee not exceeding twenty-five dollars (\$25.00) for each aboveground tank, underground tank, farm tank or residential tank, or not to exceed five dollars (\$5.00) for each heating tank covered by a contract of insurance, and upon receipt of evidence that the petroleum storage tanks continue to meet the eligibility provisions of this

chapter and the underwriting requirements established by the administrator, the administrator shall issue an annual renewal of the contract of insurance to the owner or operator of said petroleum storage tanks.

[(41-4911A) 41-4910A, added 1991, ch. 59, sec. 8, p. 126; am. & re-desig. 2003, ch. 96, sec. 12, p. 295.]

41-4912. STORAGE TANKS ELIGIBLE FOR INSURANCE. (1) Eligible storage tanks are those tanks that meet all of the following criteria:

- (a) Appropriate fees required in section [41-4909](#), Idaho Code, or section [41-4911A](#), Idaho Code, have been paid;
- (b) The tank, if an underground storage tank, is in compliance with applicable federal and state underground storage tank rules and regulations;
- (c) The tank is used only for storage of petroleum products;
- (d) The tank, if an underground storage tank, passes a tank tightness test;
- (e) The tank, if an aboveground storage tank, is in compliance with state and federal rules and regulations including the international fire code. If an aboveground tank is exempt from state or federal rules and regulations and/or the international fire code by virtue of its being installed prior to the effective date of such rules and regulations or the international fire code, such tank is not eligible unless it passes a tank tightness test;
- (f) The tank, if a farm tank or residential tank, is in compliance with any applicable state or federal rules and regulations;
- (g) Any contamination caused by or released by or from the tank has been cleaned up, or a plan for cleanup or removal approved by the Idaho department of environmental quality, is being implemented; provided, however, that the trust fund shall not pay for any costs associated with prior contamination.

(2) Any tank which is a part of a refiner's terminal or a tank directly supplied by a pipeline shall not be eligible.

[(41-4912) 41-4911, added 1990, ch. 119, sec. 1, p. 277; am. 1991, ch. 59, sec. 9, p. 127; am. 1996, ch. 425, sec. 1, p. 1452; am. 2001, ch. 103, sec. 77, p. 317; am. 2002, ch. 86, sec. 10, p. 203; am. & redesisg. 2003, ch. 96, sec. 13, p. 296.]

41-4912A. STORAGE TANKS LOCATED ON SITES WHERE CONTAMINATION IS PRESENT. (1) Notwithstanding the provisions of section [41-4912](#)(1)(g), Idaho Code, an owner or operator of a petroleum storage tank or tanks located on a site where contamination is present may be eligible for insurance covering the petroleum storage tanks located on that site if the contamination does not pose a threat to public health, safety or the environment, or was not caused by or released by or from the tank, or if multiple tanks are present on the site, any one (1) of the tanks, for which insurance coverage is sought; provided, however, that the trust fund shall not pay for any corrective action costs or compensation to third parties for bodily injury or property damage arising from the prior contamination present at the site.

(2) Any contamination caused by or released by or from the tank or tanks which may migrate off-site; contaminate ground water; exceed federal or state standards, guidelines, criteria or contaminant levels for ground water or drinking water; or pose a fire, explosion or safety hazard may be

deemed by the administrator to present a threat to public health, safety or the environment. An owner or operator of such petroleum storage tank or tanks will not be eligible for insurance covering the petroleum storage tanks located on that site unless the contamination has been cleaned up or a plan for cleanup or removal approved pursuant to section [41-4912](#)(1)(g), Idaho Code, is being implemented.

(3) Contracts of insurance issued to an owner or operator of a petroleum storage tank located on a site where contamination is present and where the administrator has determined that the contamination does not pose a threat to public health, safety or the environment, or was not caused by or released by or from the tank or tanks shall exclude from coverage corrective action costs and compensation to third parties for bodily injury or property damage arising out of the prior contamination present at the site.

[(41-4912A) 41-4911A, added 1991, ch. 59, sec. 10, p. 127; am. 1996, ch. 425, sec. 2, p. 1453; am. & redesisg. 2003, ch. 96, sec. 14, p. 296.]

41-4913. STATE TREASURER CUSTODIAN OF TRUST FUND -- DUTIES. The state treasurer shall be the custodian of the trust fund balance.

[(41-4913) 41-4912, added 1990, ch. 119, sec. 1, p. 277; am. & redesisg. 2003, ch. 96, sec. 15, p. 297.]

41-4914. DEPOSIT AND INVESTMENT OF FUNDS -- INTEREST. The state treasurer shall deposit or, on order of the board of trustees of the trust fund, invest any portion of the Idaho petroleum clean water trust fund not needed for immediate or currently anticipated use, in the manner provided by law. Interest earned by such invested portion of the trust fund shall be collected by the state treasurer and placed to the credit of the trust fund.

[(41-4914) 41-4913, added 1990, ch. 119, sec. 1, p. 278; am. & redesisg. 2003, ch. 96, sec. 16, p. 297; am. 2007, ch. 194, sec. 2, p. 572.]

41-4915. PERPETUAL APPROPRIATION. All moneys which may come into the Idaho petroleum clean water trust fund are hereby perpetually appropriated to the trust fund for the purposes of this chapter.

[(41-4915) 41-4914, added 1990, ch. 119, sec. 1, p. 278; am. & redesisg. 2003, ch. 96, sec. 17, p. 297.]

41-4916. ENROLLED SUBSCRIBERS' LIABILITY ON JUDGMENT. (1) No action shall lie against any owner or operator of a tank insured by the Idaho petroleum clean water trust fund upon any obligation claimed against this trust fund until a final judgment has been obtained against this trust fund and remains unsatisfied for thirty (30) days.

(2) Any such judgment shall be binding upon each owner or operator only in such proportion as his interests may appear and in an amount not exceeding his contingent liability, if any, in excess of the amount of insurance provided by the trust fund.

[(41-4916) 41-4915, added 1990, ch. 119, sec. 1, p. 278; am. 1991, ch. 59, sec. 11, p. 128; am. & redesisg. 2003, ch. 96, sec. 18, p. 297.]

41-4917. ACTIONS FOR COLLECTION IN CASE OF DEFAULT -- PENALTY -- CANCELLATION OF INSURANCE CONTRACT. (1) If an insured owner or operator of a storage tank shall default in any reimbursement required to be made by the insured to the trust fund under section [41-4907](#), Idaho Code, the amount due from the insured may be collected by civil action against him in the name of the administrator, and the same, when collected by the administrator shall be paid into the trust fund, and such insured's compliance with the provisions of this chapter requiring payment to be made to the trust fund shall date from the time the money is collected by the administrator.

(2) The contract of insurance held by an insured owner or operator of a storage tank which fails to comply with section [41-4912](#), Idaho Code, or who is in default in his enrollment fees for more than thirty (30) days may be canceled at the discretion of the administrator.

[(41-4917) 41-4916, added 1990, ch. 119, sec. 1, p. 278; am. 1991, ch. 59, sec. 12, p. 128; am. & redesisg. 2003, ch. 96, sec. 19, p. 298.]

41-4918. CANCELLATION OF INSURANCE. Any insured owner or operator of a storage tank may cancel his insurance by returning his insurance contract to the administrator for cancellation. There shall be no refund of any application fees paid to the trust fund as all such fees shall be deemed fully earned when an insurance contract is issued or renewed.

[(41-4918) 41-4917, added 1990, ch. 119, sec. 1, p. 278; am. 1991, ch. 59, sec. 13, p. 129; am. & redesisg. 2003, ch. 96, sec. 20, p. 298.]

41-4919. REINSURANCE. (1) The administrator of the trust fund may reinsure any risk, or any part thereof, and may enter into agreements of reinsurance in the same way and to the same extent as other insurance carriers, the cost of which shall be paid out of the trust fund balance.

(2) Such reinsurance contracts may be on a specific excess basis for each liability loss sustained, or on a quota share basis of each liability loss sustained, or on a treaty basis wherein a line of credit is available to pay losses in excess of a given amount with the money obtained from such a loan arrangement to be paid back only from expendable surplus funds, or on a facultative basis with one (1) or more reinsurers whereby successive portions of the loss are paid on a given share basis, and/or on a net annual aggregate stop loss basis whereby the reinsurer must contribute to all losses when such losses exceed a given amount in any policy year, or any other reinsurance agreement found to be necessary, prudent and reasonable by competent actuaries.

[(41-4919) 41-4918, added 1990, ch. 119, sec. 1, p. 278; am. & redesisg. 2003, ch. 96, sec. 21, p. 298.]

41-4920. PAYMENTS FROM THE TRUST FUND BY STATE TREASURER. The administrator of the trust fund shall submit each month to the state board of examiners an estimate of the amount necessary to meet the current disbursements for liability insurance losses to be paid in behalf of insured owners or operators of the trust fund during each succeeding calendar month, and when such estimate shall be approved by the state board of examiners, the state treasurer is authorized to pay the same out of the fund upon sight drafts drawn by the administrator. At the end of each calendar month the administrator

shall account to the state board of examiners and the board for all money so received, furnishing proper vouchers therefor.

[(41-4920) 41-4919, added 1990, ch. 119, sec. 1, p. 279; am. 1991, ch. 59, sec. 14, p. 129; am. & redesign. 2003, ch. 96, sec. 22, p. 298.]

41-4921. RESERVE FUNDS. The Idaho petroleum clean water trust fund shall establish and maintain the following reserves or financial resources, which shall constitute liabilities in any determination of the financial condition of the trust fund:

(1) An amount sufficient for the payment of all claims made against the trust fund, which shall include reasonable estimates for claim adjustment expense, legal fees and other claim settlement costs, and including claims reported and not yet paid and claims incurred but not reported to the trust fund but only to the extent that a reasonable estimate can be made based on prior statistical evidence and the condition of storage tanks insured by the trust fund.

(2) An amount adequate under reasonable estimates for the payment of any unpaid contractual obligations, taxes and any other services and expenses incurred but not paid.

[(41-4921) 41-4920, added 1990, ch. 119, sec. 1, p. 279; am. & redesign. 2003, ch. 96, sec. 23, p. 299.]

41-4922. PLAN OF OPERATION. The administrator shall establish a plan of operation to be approved by the director of the department of insurance for the state of Idaho.

[(41-4922) 41-4921, added 1990, ch. 119, sec. 1, p. 279; am. 1991, ch. 59, sec. 15, p. 129; am. & redesign. 2003, ch. 96, sec. 24, p. 299.]

41-4923. REGISTRATION OF THE TRUST FUND. The trust fund established pursuant to the provisions of this chapter shall be registered with the director as set out in this chapter.

[(41-4923) 41-4922, added 1990, ch. 119, sec. 1, p. 279; am. & redesign. 2003, ch. 96, sec. 25, p. 299.]

41-4924. QUALIFICATIONS FOR REGISTRATION. The director shall not register the trust fund if it is not qualified therefor. To be qualified, the trust fund:

(1) Shall require all application fees to be paid in advance and to be deposited in and disbursed from the trust fund duly created under this chapter.

(2) Shall have, or provide for, a trustworthy and responsible administrator for competent administration of the trust fund and plan.

(3) Shall provide that the administrator furnish to each insured owner or operator a contract of insurance adequately and clearly stating all rights and obligations of the insured owner or operator, together with all applicable restrictions, limitations and exclusions, and the procedure for filing a claim.

(4) Shall be actuarially sound; that is, assets, income and other financial resources of the trust fund must be adequate under reasonable esti-

mates for payment of all claims, claims adjustment expenses, taxes, expenses and other obligations.

(5) Shall otherwise be in compliance with the provisions of this chapter.

[(41-4924) 41-4923, added 1990, ch. 119, sec. 1, p. 279; am. 1991, ch. 59, sec. 16, p. 129; am. & redesig. 2003, ch. 96, sec. 26, p. 299.]

41-4925. APPLICATION FOR REGISTRATION -- FEE. (1) Application for registration of the trust fund shall be made to the director, on forms furnished and designed by him for the purpose of eliciting information as to whether the trust fund is qualified for registration. The application shall be signed and verified by the board.

(2) The application shall be accompanied by:

(a) A copy of the bylaws of the trust fund referred to in section [41-4927](#), Idaho Code;

(b) A copy of the proposed contract of insurance;

(c) A written plan of operation that outlines the reasonably projected income and disbursements of the trust fund for the twelve (12) month period commencing with date of application and showing also the amount reserved and financial resources available as of the end of such period for claims incurred and not paid or incurred and not reported;

(d) A current certified audited financial statement;

(e) Such other relevant documentation and information as the director may reasonably require.

(3) A nonrefundable filing fee of twenty-five dollars (\$25.00) shall be paid to the director at the time the application is filed.

[(41-4925) 41-4924, added 1990, ch. 119, sec. 1, p. 280; am. 1991, ch. 59, sec. 17, p. 130; am. & redesig. 2003, ch. 96, sec. 27, p. 300.]

41-4925A. AMENDMENTS TO PLAN OF OPERATION. (1) Any amendment to the plan of operation prepared by the administrator for the purpose of deferring the issuance of contracts of insurance to any category of petroleum storage tank owners or operators or for issuing contracts of insurance to any deferred category of petroleum storage tank owners or operators shall be submitted to the director of the department of insurance.

(2) The director shall review the amendment and shall, with all reasonable promptness, approve, approve as modified, or disapprove of the amendment to the plan of operation. If the amendment is approved, the administrator may issue contracts of insurance and otherwise operate the trust fund in a manner consistent with the amended plan of operation. If the amendment is disapproved, the administrator must operate the trust fund in a manner consistent with the provisions of the plan of operation as submitted to the director in the trust fund's application for registration under section [41-4925](#), Idaho Code.

(3) The director may request such relevant documentation and information, including an actuarial analysis of the underwriting capacity of the trust fund, as is reasonably necessary to evaluate the proposed amendment to the plan of operation.

(4) All procedures and policies concerning the approval, modification or disapproval of any amendment to the plan of operation are subject to the provisions of [chapter 52, title 67](#), Idaho Code, as well as the rules of practice and procedure of the department of insurance.

[(41-4925A) 41-4924A, added 1991, ch. 59, sec. 18, p. 130; am. & re-desig. 2003, ch. 96, sec. 28, p. 300.]

41-4926. GRANT OR DENIAL OF REGISTRATION. (1) The director shall act upon an application for registration of the trust fund with all reasonable promptness. He may make such investigation of the proposal as he deems advisable. If the director finds that the application is complete and that the plan meets the qualifications stated in section [41-4924](#), Idaho Code, he shall issue and deliver a certificate of registration in appropriate form to the applicant; otherwise, the director shall refuse to register the plan and shall give written notice of such refusal to the applicant, stating the reasons therefor.

(2) All procedures and policies concerning the grant or denial of registration of the trust fund are subject to the provisions of [chapter 52, title 67](#), Idaho Code, as well as the rules of practice and procedure of the department of insurance.

[(41-4926) 41-4925, added 1990, ch. 119, sec. 1, p. 280; am. 1991, ch. 59, sec. 19, p. 131; am. & redesig. 2003, ch. 96, sec. 30, p. 301.]

41-4927. BYLAWS OF THE FUND. The board shall adopt bylaws subject to the approval of the director, who shall grant his approval only after his determination that the provisions in the bylaws are not inconsistent nor contrary to the applicable provisions of [title 41](#), Idaho Code, as amended in this chapter. These bylaws shall outline the organizational structure of the trust fund, its operational methods of complying with the provisions of this chapter, including the deposit, custody, disbursement and accounting for the moneys in the trust fund, fidelity bonds, if any, required of the administrator, the essential elements of the managerial contract with the administrator, the powers and duties of the administrator of the trust fund, the rights, privileges and responsibilities of insured owners or operators of storage tanks, the manner in which annual and special meetings of the board shall be conducted, and such other matters as may be customary, necessary or convenient for the management and operation of the trust fund.

[(41-4927) 41-4930, added 1990, ch. 119, sec. 1, p. 282; am. 1991, ch. 59, sec. 21, p. 131; am. & redesig. 2003, ch. 96, sec. 31, p. 301.]

41-4928. RECORDS AND ACCOUNTS -- ANNUAL STATEMENT. (1) The administrator shall cause full and accurate records and accounts to be entered and maintained covering all financial transactions and affairs of the trust fund.

(2) Within sixty (60) days after the close of each calendar year, the administrator shall make an annual statement in writing summarizing the financial transactions of the trust fund for such prior calendar year and its financial condition at the end of such year in accordance with this chapter and generally accepted and applicable accounting principles. The statement shall otherwise be in the form prescribed and shall provide the information required by the director of the department of insurance of the state of Idaho, and the financial information contained therein shall be certified by the accountant by whom such information was prepared and audited.

(3) On or before the expiration of such sixty (60) day period the administrator shall cause an original of the annual statement to be filed with the director, and shall pay any filing fee required by the director or any other

state agency having jurisdiction. At an appropriate time, consistent with the usual practices of the director, the director shall declare the annual statement to be open to the scrutiny of all interested parties and the public in general.

[(41-4928) 41-4931, added 1990, ch. 119, sec. 1, p. 283; am. & re-desig. 2003, ch. 96, sec. 32, p. 302.]

41-4929. MANAGEMENT CONTRACT WITH THE ADMINISTRATOR -- MANDATORY PROVISIONS. (1) The management contract entered into between the administrator and the board as required in this chapter, shall not become effective unless the contract is filed with and approved by the director. The contract shall be deemed approved unless disapproved by the director within twenty (20) days after date of filing, subject to such reasonable extension of time as the director may require by notice given within the twenty (20) day period. Any disapproval shall be delivered to the administrator in writing, stating the grounds therefor.

(2) Any such contract, or contract holder, shall provide that the administrator shall, within ninety (90) days after expiration of each calendar year, furnish the director a written statement of amounts received under or on account of the contract and amounts expended thereunder during such calendar year, including the emoluments received therefrom by the principal management personnel of the administrator involved with the affairs of the trust fund, and with such classification of items and further detail as the director may reasonably require.

(3) The director shall disapprove any such contract if he finds that it:

- (a) Subjects the trust fund to unreasonable or excessive charges; or
- (b) Does not contain fair and adequate standards of performance; or
- (c) Contains other inequitable provisions which impair the proper interests of the owners or operators insured by the trust fund.

(4) The director may, after a hearing held thereon, withdraw his approval of any such contract theretofore approved by him, if he finds that the basis of his original approval no longer exists, or that the contract has, in actual operation, shown itself to be subject to disapproval on any of the grounds referred to in subsection (3) of this section.

[(41-4929) 41-4932, added 1990, ch. 119, sec. 1, p. 283; am. 1991, ch. 59, sec. 22, p. 132; am. & redesisg. 2003, ch. 96, sec. 33, p. 302.]

41-4930. EXISTING INSURANCE LAWS TO APPLY TO THE TRUST FUND WITH CERTAIN EXCEPTIONS. The trust fund shall comply with all of the applicable provisions of [title 41](#), Idaho Code, with certain exceptions as follows:

(1) The creation of the trust fund by act of the legislature shall not be deemed to be an ownership, control or operation of an insurer by a governmental entity, as referred to in section [41-309](#), Idaho Code, and the surplus funds of the trust fund shall be considered to be dedicated and held in reserve for the purpose of providing funds for the payment of claims arising out of the discharge of petroleum products from tanks covered by a contract of insurance issued to the tank owner or operator by the trust fund as provided for in section [41-4906](#), Idaho Code. The absolute control of the trust fund shall be vested in the board.

(2) The provisions of this chapter shall be construed to be contained in the document of organization and bylaws of the trust fund for purposes of sections [41-319](#), [41-320](#) and [41-322](#), Idaho Code, and the director shall issue

a certificate of registration to and in the name of the trust fund upon his finding that it has met all other appropriate provisions of the Idaho Code, including sections [41-313](#), [41-316](#) and [41-316A](#), Idaho Code.

(3) Section [41-337](#), Idaho Code, shall not apply to contracts of insurance issued by the trust fund.

(4) Sections [41-1004](#) and [41-1022](#), Idaho Code, shall not apply to employees of the state insurance fund or the trust fund.

(5) Section [41-1103](#), Idaho Code, shall not apply to employees of the state insurance fund or the trust fund, provided the employees restrict their claims adjusting and investigation operations only to those contracts issued by the trust fund.

(6) Except as otherwise provided in this chapter, [chapter 28, title 41](#), Idaho Code, and [chapter 14, title 30](#), Idaho Code, shall not apply to the trust fund nor shall this trust fund be construed to be a domestic mutual insurer, nor a reciprocal insurer, nor any other type of insurer currently regulated by [title 41](#), Idaho Code, and the only organizational requirements of this trust fund shall be those enumerated in this chapter.

[(41-4930) 41-4933, added 1990, ch. 119, sec. 1, p. 284; am. 1991, ch. 59, sec. 23, p. 132; am. 1994, ch. 240, sec. 12, p. 759; am. 2001, ch. 296, sec. 9, p. 1068; am. & redesi. 2003, ch. 96, sec. 34, p. 303.]

41-4931. TAXES. (1) The trust fund shall not be subject to [chapter 4, title 41](#), Idaho Code, as it pertains to premium tax.

(2) The state of Idaho hereby preempts the field of imposing excise, privilege, franchise, income, license and similar taxes, licenses and fees upon the trust fund; and no county, city, municipality, district, school district, or other political subdivision or agency of Idaho shall levy upon this trust fund any such tax, license or fee.

[(41-4931) 41-4934, added 1990, ch. 119, sec. 1, p. 284; am. & redesi. 2003, ch. 96, sec. 35, p. 304.]

41-4932. EXAMINATION OF BOOKS, RECORDS AND ACCOUNTS. (1) The books, records, accounts and affairs of the trust fund shall be subject to examination by the director by competent examiners duly authorized by him in writing, at such times or intervals as the director deems advisable. The purposes of the examination shall be to determine compliance of the trust fund with applicable laws, the financial condition and actuarial adequacy of the trust fund, and other factors materially related to the trust fund's management and operation.

(2) The administrator shall make the books, records and accounts of the trust fund available to the examiner and otherwise facilitate the examination.

(3) The examiner shall conduct the examination expeditiously, make his report of the examination in writing, and deliver a copy thereof to the administrator and the director. The administrator shall have two (2) weeks after receipt of the report within which to recommend to the director such corrections or changes therein as the administrator may deem appropriate. After making such corrections or changes, if any, as he deems proper, the director shall file the report in his office as a document open to public inspection, and deliver to the administrator a copy of the report as so corrected or changed.

(4) At the direction of the director, the costs of the examination shall be borne by the trust fund in accordance with section [41-228](#), Idaho Code.

[(41-4932) 41-4935, added 1990, ch. 119, sec. 1, p. 284; am. 2001, ch. 85, sec. 13, p. 220; am. & redesign. 2003, ch. 96, sec. 36, p. 304.]

41-4933. ADMINISTRATOR -- FIDELITY BONDS. The administrator shall cause all individuals handling receipts and disbursements for the trust fund to be bonded at all times under a fidelity bond issued by a surety insurer authorized to transact such insurance in this state. The bond shall be in favor of the trust fund and for such aggregate penalty amount, not less than twenty-five thousand dollars (\$25,000), as the director may deem reasonably advisable in relation to the amount of funds to be so handled. The bond shall be noncancelable except upon not less than thirty (30) days advance notice in writing to the administrator and the director. The cost of the bond shall be borne by the trust fund.

[(41-4933) 41-4936, added 1990, ch. 119, sec. 1, p. 285; am. & redesign. 2003, ch. 96, sec. 37, p. 304.]

41-4934. PROHIBITED PECUNIARY INTERESTS IN PLAN MANAGEMENT. (1) Neither the administrator nor any other person having responsibility for the management of the trust fund or the investment or other handling of the trust fund moneys or assets shall:

(a) Receive directly or indirectly or be pecuniarily interested in any fee, commission, compensation or emolument, other than salary or other similar compensation regularly fixed and allowed for services regularly rendered to the trust fund, arising out of any transaction to which the trust fund is or is to be a party;

(b) Receive compensation as a consultant to the trust fund while also acting as a trustee or administrator, or as an employee of either;

(c) Have any direct or indirect material pecuniary interest in any loan or investment of the trust fund.

(2) The director may, after reasonable notice and a hearing, prohibit the administrator from employing or retaining or continuing to employ or retain any person in the administration of the trust fund upon finding that such employment or retention involves a conflict of interest not in the best interests of the trust fund or adversely affecting the interests of the owners or operators insured by the trust fund.

(3) Any conflict of interest or prohibited pecuniary interest involving the members of the board of trustees of the trust fund shall be governed solely by the conflict of interest provisions of the Idaho nonprofit corporation act as set forth in section [30-30-619](#), Idaho Code.

[(41-4934) 41-4937, added 1990, ch. 119, sec. 1, p. 285; am. 1991, ch. 59, sec. 24, p. 133; am. and redesign. 2003, ch. 96, sec. 38, p. 305; am. 2004, ch. 175, sec. 2, p. 554; am. 2017, ch. 58, sec. 27, p. 122.]

41-4935. POLITICAL CONTRIBUTIONS PROHIBITED. The administrator shall not make or knowingly permit the making, directly or indirectly, of any political contribution by or from the trust fund.

[(41-4935) 41-4938, added 1990, ch. 119, sec. 1, p. 286; am. & redesign. 2003, ch. 96, sec. 39, p. 305.]

41-4936. RECOVERY OF DEPLETED FUNDS. If after notice and hearing, the director finds that the trust fund has been depleted by reason of any wrongful or negligent act or omission of the board or any other person, he shall transmit a copy of his findings to the attorney general of this state, who may bring an action in the name of the people of this state, or intervene in any action brought by or on behalf of an insured owner or operator for the recovery of the amount of such depletion, for the benefit of the trust fund.

[(41-4936) 41-4939, added 1990, ch. 119, sec. 1, p. 286; am. 1991, ch. 59, sec. 25, p. 134; am. & redesig. 2003, ch. 96, sec. 40, p. 305.]

41-4937. IMPAIRED TRUST FUND. (1) If the assets of the trust fund are at any time insufficient to discharge its liabilities, and to maintain the required surplus, the administrator shall forthwith request authority from the director to make up the deficiency by borrowed surplus or other subordinated indebtedness.

(2) If the director finds that future estimated revenues from the transfer fees imposed under section [41-4909](#), Idaho Code, are not sufficient to justify any borrowed surplus funds or other subordinated indebtedness, then the director shall request the administrator to submit a plan of action whereby priority is given to the payment of cleanup costs of petroleum discharges that constitute a clear and present danger to persons or property, including discharges into underground or surface water that may seriously contaminate the water used for domestic and commercial use, agricultural products, livestock, fish, game and other wildlife. Consideration shall be given in this plan of action to establishing a claim payment priority based on the severity of the contamination, the possible endangerment of life and health including, but not limited to, possible toxic fumes, fire and explosion hazards, economic impact, population density, and the need for immediate cleanup action versus action that can be delayed with only minimal adverse effects. This plan of action shall also establish similar criteria for the prioritization of the payment of bodily injury and property damage claims.

(3) Upon receiving this plan of action, the director shall promptly hold a public hearing with appropriate notice to determine any possible adverse effects of the plan of action on the owners or operators of insured tanks, the claimants and potential claimants, and the environment. After giving due consideration to the testimony of those parties affected by the proposed plan of action, the director shall either approve or disapprove the plan in writing, stating the reasons therefor, so that a plan of action that does meet with the director's approval can be placed into effect with due diligence and dispatch.

(4) Upon receiving the director's approval of the plan of action, the administrator shall promptly commence the prioritization of claims and pay such valid and compensable claims according to this priority as funds become available from collection of the transfer fees.

[(41-4937) 41-4940, added 1990, ch. 119, sec. 1, p. 286; am. 1991, ch. 59, sec. 26, p. 134; am. & redesig. 2003, ch. 96, sec. 41, p. 305.]

41-4938. LIQUIDATION OF TRUST FUND. (1) The annual tank application fees and transfer fees are perpetually appropriated as dedicated funds for the purposes of this chapter, and the trust fund shall remain in existence as long as the need exists for the trust fund to insure the costs of corrective

actions and the need exists for the trust fund to insure the legal liability of petroleum tank owners and operators as provided in this chapter.

(2) In the event other more appropriate means come into existence to provide the insurance provided by the trust fund, then the trust fund shall be liquidated according to the provisions of this section.

(3) Liquidation shall be conducted by the board under a written plan of liquidation filed with and approved by the director. If the director finds the plan to be fair and equitable to all persons having a pecuniary interest in the trust fund, he shall approve it. Any balance remaining after payment or adequate provision for payment of all claims and charges against the trust fund has been made shall be disposed of in the manner provided for in the plan of liquidation. Unless under the plan of liquidation the liability for all unpaid claims and obligations of the trust fund has been assumed by another financially responsible person or persons, the existence of surplus funds for such disposition shall not be determined prior to the expiration of two (2) years after termination of the certificate of registration issued to the trust fund as provided in section [41-4930](#) (2), Idaho Code.

(4) After its approval by the director, the plan of liquidation for the trust fund shall be binding upon all persons pecuniarily interested in the trust fund. Pending the effectuation of the plan of liquidation the director may impose such prohibitions or restrictions upon disbursement or use of trust fund moneys as the director deems advisable for the protection of all interested persons.

(5) If the trust fund is then insolvent and a plan of liquidation thereof satisfactory to the director as being fair and equitable is not filed within sixty (60) days after the effective date of termination of the plan's registration, or if liquidation of a solvent trust fund is not being carried out in accordance with the plan of liquidation theretofore approved by the director, the director shall liquidate the trust fund under the applicable provisions of [chapter 33, title 41](#), Idaho Code, and for this purpose the trust fund shall be deemed to be an insolvent domestic insurer.

(6) If after all indebtedness and other obligations of the trust fund are discharged to the satisfaction of the director and the trust fund is dissolved, its remaining assets, if any, shall inure to the benefit of the state.

[(41-4938) 41-4941, added 1990, ch. 119, sec. 1, p. 287; am. 1991, ch. 59, sec. 27, p. 135; am. & redesign. 2003, ch. 96, sec. 42, p. 306.]

41-4939. VOUCHERS FOR EXPENDITURES. (1) The administrator of the trust fund shall not make any disbursement of twenty-five dollars (\$25.00) or more, unless evidenced by a voucher or other document correctly describing the consideration for the payment and supported by a check or receipt endorsed or signed by or on behalf of the person receiving the money.

(2) If the disbursement is for services and reimbursement, the voucher or other document, or some other writing referred to therein, shall describe the services and itemize the expenditures.

(3) If the disbursement is in connection with any matter pending before any legislature or public body or before any public official, the voucher or other document shall also correctly describe the nature of the matter and of the trust fund's interest therein.

[(41-4939) 41-4942, added 1990, ch. 119, sec. 1, p. 288; am. & redesign. 2003, ch. 96, sec. 43, p. 307.]

41-4940. BORROWED SURPLUS AND SUBORDINATED INDEBTEDNESS. (1) The trust fund may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the trust fund's surplus in excess of the amount stipulated in such agreement. The agreement may provide for interest, which interest shall or shall not constitute a liability of the insurer as to its funds other than such excess or surplus, as stipulated in the agreement. No commission or promotion expense shall be paid in connection with any such loan.

(2) Money so borrowed, together with the interest thereon, if so stipulated in the agreement, shall not form a part of the fund's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement, or be the basis of any setoff, but until repaid, financial statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with any interest thereon accrued but unpaid.

(3) Any such loan shall be subject to the approval of the director. The trust fund shall, in advance of the loan, file with the director a statement of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement shall be deemed approved unless within fifteen (15) days after the date of such filing, the trust fund is notified of the director's disapproval and the reasons therefor. The director shall disapprove any proposed loan or agreement if he finds the loan is unnecessary or excessive for the purpose intended, or that the terms of the loan agreement are not fair and equitable to the parties, and to other similar lenders, if any, to the trust fund, or that the information so filed by the trust fund is inadequate.

(4) Any such loan to the trust fund or substantial portion thereof shall be repaid by the trust fund when no longer reasonably necessary for the purpose originally intended. No repayment of such a loan shall be made by the fund unless approved in advance by the director.

(5) In the event of liquidation, repayment of the balance of the borrowed funds and any accrued interest then due and owing shall be paid only out of assets remaining after the payment of all obligations and claims of owners or operators of petroleum tanks insured by the trust fund and general creditors.

(6) The provisions of this section shall not apply to loans obtained by the trust fund in ordinary course of business from banks and other financial institutions, nor to loans secured by pledge or mortgage of assets.

[(41-4940) 41-4943, added 1990, ch. 119, sec. 1, p. 288; am. 1991, ch. 59, sec. 28, p. 136; am. & redesign. 2003, ch. 96, sec. 44, p. 307.]

41-4941. PENALTIES. (1) Any person who willfully violates or causes or induces a violation of any provision of this chapter or any lawful rule of the director issued thereunder, shall be subject to penalty as provided in subsection (4) of this section.

(2) Any person who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact in any application, examination, or statement required under this act or by lawful rule of the director thereunder, shall be subject to penalty as provided in subsection (4) of this section.

(3) Any person who makes a false entry in any book, record, statement, or report required in this chapter or lawful rule of the director thereunder to be kept by him, with intent to injure or defraud the trust fund or any

member thereof, or to deceive anyone authorized or entitled to examine the affairs of the trust fund, shall be subject to penalty as provided in subsection (4) of this section.

(4) For each such violation, act or omission referred to in this section, unless greater penalty is provided therefor under any other applicable law, the offender shall upon conviction thereof be subject to a fine of not more than one thousand dollars (\$1,000) and to imprisonment for not more than one (1) year, or to both such fine and imprisonment.

[(41-4941) 41-4944, added 1990, ch. 119, sec. 1, p. 289; am. & redesign. 2003, ch. 96, sec. 45, p. 308.]

41-4942. RULES -- DIRECTOR -- DEPARTMENT OF INSURANCE. (1) The director may make reasonable rules necessary as an aid to the effectuation of any provision of this chapter. No such rule shall extend, modify or conflict with any provision of this chapter and the reasonable implications thereof.

(2) Such rules, or any amendment thereof, shall be made by the director only after a public hearing thereon of which the director has given written notice not less than thirty (30) days in advance to the board of the trust fund then registered with him. If reasonably possible the director shall include with the notice a copy of the proposed rules or amendment, or a condensed summary of material proposed provisions.

(3) All procedures and policies concerning the promulgation of such rules, or any amendment thereof, are subject to the provisions of [chapter 52, title 67](#), Idaho Code, and the rules of practice and procedure of the department of insurance.

[(41-4942) 41-4945, added 1990, ch. 119, sec. 1, p. 289; am. & redesign. 2003, ch. 96, sec. 46, p. 309.]

41-4943. APPLICATION OF CHAPTER. All of the provisions of this chapter shall apply to and confer all rights, privileges, exemptions and immunities upon the trust fund established for the purposes contemplated in this chapter, and the administrator, insured owners or operators of petroleum tanks, beneficiaries, and participants thereof. The provisions of this chapter shall not apply to any railroad, railroad corporation, or any employee thereof when such employee is acting in the course of his employment for any such railroad or railroad corporation.

[(41-4943) 41-4946, added 1990, ch. 119, sec. 1, p. 289; am. 1991, ch. 59, sec. 29, p. 136; am. & redesign. 2003, ch. 96, sec. 47, p. 309.]

41-4944. INSURANCE. The coverage provided by the trust fund established pursuant to this chapter shall be deemed insurance for the purposes of any requirements of the Idaho department of environmental quality concerning the financial responsibility of owners or operators of petroleum storage tanks.

[(41-4944) 41-4947, added 1990, ch. 119, sec. 1, p. 290; am. 1991, ch. 59, sec. 30, p. 137; am. 2001, ch. 103, sec. 78, p. 318; am. & redesign. 2003, ch. 96, sec. 48, p. 309.]

41-4945. PERSONAL LIABILITY. The board and the administrator shall not, nor shall any person employed by them, be personally liable in a private

capacity for or on account of any act performed or contract entered into in good faith and without the intent to defraud, in connection with the administration of the fund or affairs relating thereto.

[41-4945, added 2003, ch. 96, sec. 50, p. 309; am. 2004, ch. 175, sec. 3, p. 554.]

41-4946. ACTIONS AGAINST THE FUND, THE BOARD, ITS EMPLOYEES, AND ADMINISTRATOR SUBJECT TO THE IDAHO TORT CLAIMS ACT. Any action against the fund, the board, its employees, and the administrator shall be subject in full to the Idaho tort claims act under [chapter 9, title 6](#), Idaho Code.

[41-4946, added 2003, ch. 96, sec. 51, p. 310; am. 2004, ch. 175, sec. 4, p. 554.]

CHAPTER 50

[UNDERGROUND STORAGE TANK UPGRADE ASSISTANCE PROGRAM] -- [REPEALED]