

IDAHO PETROLEUM CLEAN WATER TRUST FUND PETROLEUM STORAGE TANK INSURANCE POLICY

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties, and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us," "Fund," and "our" refer to the Idaho Petroleum Clean Water Trust Fund providing this insurance through the Petroleum Storage Tank Fund Bureau of the Idaho State Insurance Fund.

The word "insured" means any person or organization qualifying as an insured under section II -- WHO IS AN INSURED.

Other words and phrases that have special meaning are defined in SECTION V -- DEFINITIONS.

SECTION I -- COVERAGES

1. Insuring Agreement -- Coverage A: Corrective Action
 - a. We will pay those sums the insured becomes legally obligated to pay for corrective action costs because of an accidental release from a petroleum storage tank to which this insurance applies. This insurance applies only to corrective action required by an accidental release which commences during the policy period. We will defend any suit seeking the payment of corrective action costs or to require the insured to undertake corrective action. But:
 - (1) The amount we will pay for corrective action costs is limited as described in SECTION III -- LIMITS OF INSURANCE;
 - (2) We may investigate and, at our discretion, settle any claim or suit; and

- (3) Our right and duty to defend end when we have used up the applicable limits of insurance in the payment or reimbursement of corrective action costs, judgments or settlements under Coverages A or B.

2. Insuring Agreement -- Coverage B: Bodily Injury and Property Damage

- a. We will pay those sums the insured becomes legally obligated to pay as compensatory damages because of bodily injury or property damage to which this insurance applies. This insurance applies only if: (1) the bodily injury or property damage is caused by an accidental release which commences during the policy period and (2) the insured's responsibility to pay damages because of bodily injury or property damage is determined in a suit on the merits or in a settlement we agree to. We will defend any suit seeking to require the insured to pay compensatory damages because of bodily injury or property damages. But:
 - (1) The amount we will pay for such damages is limited as described in SECTION III -- LIMITS OF INSURANCE;
 - (2) We may investigate and, at our discretion, settle any claim or suit; and
 - (3) Our right and duty to defend end when we have used up to the applicable limit of insurance in the payment or reimbursement of corrective actions costs, judgments or settlements under Coverages A or B.

3. Exclusions

This insurance does not apply to:

- a. Bodily injury or property damage expected or intended from the standpoint of the insured.
- b. Bodily injury or property damage for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.
- c. Any obligation of the insured under a worker's compensation, disability benefits or unemployment compensation law or any similar law.

d. Bodily injury to:

- (1) an employee of the insured arising out of and in the course of employment by the insured; or
- (2) the spouse, child, parent, brother or sister of that employee as a consequence of (1) above.

This exclusion applies:

- (a) whether the insured may be liable as an employer or in any other capacity; and
- (b) to any obligation to share damages with or repay someone else who must pay damages because of the injury.

e. Property damage to:

- (1) property you own, rent or occupy;
- (2) property owned, rented, or occupied by a joint venture, partnership, or corporation of which you are a co-venturer, partner, or controlling shareholder;
- (3) premises you sell, give away or abandon, if the property damage arises out of any part of those premises;
- (4) property loaned to you; or
- (5) personal property in the care, custody or control of the insured.

f. Corrective action costs or any other expenses:

- (1) resulting from any release from a petroleum storage tank which is intended from the standpoint of the insured;
- (2) resulting from actions taken to report, investigate or confirm a release;
- (3) resulting from the installation or removal of any petroleum storage tank, except that this exclusion of subparagraph f(3) does not apply to the cost of removing a covered petroleum storage tank from which a release has occurred when the release cannot be corrected without removing the tank;

- (4) to repair, replace or upgrade any petroleum storage tank;
 - (5) which are fines or penalties imposed by a federal, state or local governmental authority;
 - (6) to replace the contents of a petroleum storage tank;
 - (7) which are part of your restoration, enhancement, or routine maintenance of any petroleum storage tank or of the site where any petroleum storage tank is located; or
 - (8) which arise from any business interruption or other curtailment of your operations caused by any release reporting, investigation, confirmation or corrective action activities.
- g. Bodily injury, property damage or corrective action costs arising out of contamination present at a petroleum storage tank site prior to the issuance of this policy, including, but not limited to, the prior contamination described in any endorsement to this policy.
- h. Bodily injury, property damage or corrective action costs arising out of an accidental release from a petroleum storage tank which results from or is directly or indirectly attributable to failure to comply with any applicable statute, regulation, ordinance, directive or order promulgated by any governmental body and relating to the protection of the environment or to petroleum storage tank operation or management, provided that failure to comply is a willful or deliberate act or omission of:
- (1) the insured; or
 - (2) you or any of your members, partners, or executive officers.
- i. Bodily injury, property damage, or corrective action costs arising out of any fire or explosion at a petroleum storage tank site.

4. No Other Obligation or Liability

No other obligation or liability to pay sums or to perform acts or services on our part exists unless explicitly provided for in this policy.

We owe no duty to any party other than the insured under this policy.

SECTION II -- WHO IS AN INSURED

1. If you are designated in the declarations of this policy as:
 - a. an individual, you and your spouse are insureds, but only with respect to the conduct of your business.
 - b. a partnership or joint venture, you are an insured. Your members, your partners and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. an organization other than a partnership or joint venture, you are an insured. Your executive officers and directors are insureds, but only with respect to their duties as your officers or director. Your stockholders are also insured, but only with respect to their liability as stockholders.

2. Each of the following is also an insured:
 - a. Your employees, other than your executive officers, but only for acts within the scope of their employment by you. However, no employee is insured for:
 - (1) bodily injury to you or a co-employee while in the course of his or her employment, or the spouse, child, parent, brother or sister of that co-employee as a consequence of such bodily injury, or for any obligation to share damages with or repay someone else who must pay damages because of the injury; or
 - (2) property damage to property owned or occupied by or rented or loaned to that employee, any of your other employees, or any of your partners or members (if you are a partnership or joint venture).
 - b. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) with respect to liability arising out of the maintenance or use of that property; and
 - (2) until your legal representative has been appointed.
 - c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this policy.

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a named insured in the declarations of this policy.

SECTION III -- LIMITS OF INSURANCE

1. The limits of insurance shown in the declarations of this policy and the rules below fix the most we will pay regardless of the number of:
 - a. insureds;
 - b. accidental releases;
 - c. persons or organizations making claims or bringing suits;
 - d. claims made or suits brought; or
 - e. requests or demands made by federal, state or local agencies seeking corrective action costs or requiring action by you.

2. The aggregate limit is the most we will pay for the sum of:
 - a. all damages because of all bodily injury and property damage; and
 - b. all corrective action costs.

3. Subject to the aggregate limit above, the most we will pay for the sum of:
 - a. all damages because of all bodily injury and property damages; and
 - b. all corrective action costsarising out of any one accidental release will be the lesser of:
 - (1) the accidental release limit; or
 - (2) the sum of those damages and corrective action costs.

If more than one type of petroleum storage tank is listed as a covered petroleum storage tank in the declarations of this policy, then the accidental release and aggregate limits applicable to the type of petroleum storage tank from which an accidental release occurred shall apply. The limits of liability listed on the

declarations page for different types of petroleum storage tanks shall not be combined. In no event will any insured be entitled to more than the highest limit of liability listed on the declarations page for any one category of petroleum storage tanks.

Our liability is limited to the one policy in effect during the policy period when an accidental release commences, regardless of the number of policies issued to you for other policy periods.

Each payment we make for damages or for corrective action costs reduces both the accidental release limit and the aggregate limit.

The limits of this policy apply separately to each consecutive annual period and to any remaining period of less than twelve (12) months, starting with the beginning of the policy period shown on the declarations, unless the policy period is extended after issuance for an additional period of less than twelve (12) months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the limits of insurance.

4. Payments made under Coverages A or B will not be contingent on your prior payment of the deductible amount. However, you must promptly reimburse us for all sums we expend under Coverages A or B, except for legal defense costs, up to but not exceeding the following deductible amounts:
 - a. With respect to an accidental release from a heating tank, one hundred dollars (\$100) per policy period;
 - b. With respect to an accidental release from a farm tank or residential tank, two thousand dollars (\$2,000) per policy period;
 - c. With respect to an accidental release from an above ground storage tank or an underground storage tank, ten thousand dollars (\$10,000) per policy period.

Upon notice of our payment of a deductible amount, you shall promptly reimburse us for the part of the deductible amount we paid. Any deductible amount that remains unpaid thirty (30) days or more after we have notified you of the amount we paid will commence to accrue interest at the maximum amount permitted by law.

SECTION IV -- CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this policy.

2. Duties in the Event of a Petroleum Storage Tank Release or Suspected Release

a. You must see to it that we are notified promptly of a petroleum storage tank release or suspected release. Notice should include:

- (1) how, when and where the petroleum storage tank release or suspected release took place, including the circumstances giving rise to a suspected release, such as the presence of released petroleum at a site, unusual petroleum storage tank operating conditions, or monitoring results from a release detection or inventory control method;
- (2) the names and addresses of any injured persons and witnesses; and
- (3) the nature and location of any injury, damage or release.

The notice you must provide us under this condition is in addition to any notice you are required to give to federal, state or local authorities to inform them of a suspected release or a confirmed release from a petroleum storage tank.

Notifying us under this condition does not relieve you of your responsibility to notify the appropriate federal, state, or local authorities in the event of a release, nor does it relieve you of your responsibility to comply with the requirements of applicable federal, state, and local laws and regulations in the event of a release or suspected release.

b. If a claim is made or suit is brought against any insured, or if a request or demand is received from a federal, state or local agency requiring action by you, because of a petroleum storage tank release, you must see to it that we receive prompt written notice of any such claim, suit, request or demand.

c. In connection with a petroleum storage tank release, you and any other involved insured must:

- (1) immediately send us copies of any request, demand, notice, summons or legal papers received;

- (2) authorize us to obtain records and other information;
 - (3) cooperate with us in the investigation, settlement or defense of the claim, suit, request or demand; and
 - (4) assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. With respect to Coverage A, no insured will, except at the insured's own cost, voluntarily make arrangements for corrective action, assume any obligation to perform corrective action, or incur any corrective action costs, other than for immediate action to prevent a further release or mitigate a safety hazard, without our consent.
 - e. With respect to Coverage B, no insured will, except at the insured's own cost, voluntarily make any payment, assume any obligation or incur any expense, other than for first aid, without our consent.

3. Notification of Changes to a Covered Petroleum Storage Tank

- a. You must see to it that we are notified promptly of any changes to a covered petroleum storage tank, including:
 - (1) repairs;
 - (2) a change in use or type of substance stored;
 - (3) upgrading through the installation of corrosion protection, leak detection, spill or overfill prevention, or similar features or equipment;
 - (4) temporary or permanent closure; or
 - (5) installation or removal of any petroleum storage tank at a petroleum storage tank site listed on the declarations page.
- b. The notice you must provide us under this condition is in addition to any notice you are required to give to federal, state, or local authorities to inform them of the installation, upgrading, or closure of a petroleum storage tank.

Notifying us under this condition does not relieve you of your responsibility to notify the appropriate federal, state, or local authorities of the

installation, upgrading, or closure of a petroleum storage tank, nor does it relieve you of your responsibility to comply with the requirements of applicable federal, state, and local laws and regulations for petroleum storage tank operations and management.

4. Entire Agreement

This policy constitutes the entire agreement between you and the Fund.

5. Legal Action Against Us

No person or organization has a right under this policy:

- a. To join us as a party or otherwise bring us into a suit against an insured; or
- b. To sue us under this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial, but we will not be liable for damages or for corrective action costs that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

6. Other Insurance

If other valid collectable insurance is available to the insured for a loss we cover under this policy, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary and our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all the other valid and collectible primary insurance by the method described in b. below.

b. Method of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under the equal shares approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

7. Representations

By accepting this policy, you agree:

- a. The statements in the declarations of this policy are accurate and complete;
- b. Those statements are based upon representations you made to us;
- c. The representations and information you provided in the application for insurance and any accompanying or supplemental materials are accurate and complete; and
- d. We have issued this policy in reliance upon your representations.

8. Separation of Insureds

Except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, this insurance applies:

- a. As if each named insured were the only named insured; and
- b. Separately to each insured against whom claim is made or suit is brought.

9. Transfer of Rights of Recovery Against Others to Us

If the insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring suit or transfer those rights to us and help us enforce them.

10. Cancellation

- a. You may cancel this insurance by returning this policy to us for cancellation. The effective date of the cancellation will be the date we receive the policy or notice from you requesting us to cancel this insurance.

- b. We may cancel this policy by sending to you by certified mail, or delivering to you, a written notice, at your last mailing address known to us.
 - (1) If we cancel this policy because of non-payment of application fees or any misrepresentation by you, the cancellation will be effective ten (10) days after you receive our written notice of cancellation.
 - (2) If we cancel this policy for any other reason, the cancellation will be effective sixty (60) days after you receive our written notice of cancellation, unless we specify a later date in our notice as the effective date of cancellation.
- c. If this policy is cancelled, there will be no refund of any application fees paid to us.

11. Renewal

- a. Issuance of this policy does not obligate us to renew this policy at the end of the policy period.
- b. To be considered for renewal at the end of the policy period, you must submit to us additional annual application fees for each covered petroleum storage tank and demonstrate that the petroleum storage tanks continue to meet the Fund eligibility criteria (Idaho Code §§ 41-4911, 41-4911A) and underwriting requirements.
- c. If we decide not to renew this policy, we will send written notice of non-renewal to you at least sixty (60) days before the end of the policy period. We will send our non-renewal notice by certified mail to you, or deliver it to you, at your last mailing address known to us.

12. Examination of Your Books and Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

13. Inspections and Surveys

- a. We have the right but are not obligated to:
 - (1) make inspections and surveys at any time;
 - (2) give you reports on the conditions we find; and

- (3) recommend changes and other actions.
- b. Any inspections, surveys, reports or recommendations relate only to insurability. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers, the public or the environment. We do not warrant that conditions:
 - (1) are safe or healthful; or
 - (2) comply with laws, regulations, codes or standards.
- c. This condition applies not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports, or recommendations.

14. If You are Permitted to Obtain Defense Counsel

If by mutual agreement or court order the insured is given the right to retain defense counsel and the applicable limit of insurance has not been used up, the following provisions apply:

- a. We retain the right, at our discretion to:
 - (1) settle, approve or disapprove the settlement of any claim or suit; and
 - (2) appeal any judgment, award or ruling at our expense.
- b. You and any other involved insured must:
 - (1) continue to comply with the duties in the event of a petroleum storage tank release condition (paragraph 2. of this section) as well as the other provisions of this policy; and
 - (2) direct defense counsel of the insured to:
 - (a) furnish us with the information we may request to evaluate suits and coverage under this policy for those suits; and
 - (b) cooperate with any counsel we may select to monitor or associate in the defense of those suits.

15. Changes and Endorsements

The terms and conditions of this policy shall not be waived or changed, except by written endorsement or rider signed and issued by us to form a part of this policy.

16. Assignment of Interest

The assignment of any insured's interest under this policy shall not bind us unless we consent and our written consent is endorsed as part of this policy.

SECTION V -- DEFINITIONS

1. "Above ground storage tank" means any one (1) or a combination of tanks, including pipes connected thereto, that is used to contain an accumulation 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 the capacity of one hundred ten (110) gallons or less.

2. "Accidental release" means any release of petroleum from a covered petroleum storage tank that is neither expected nor intended from the standpoint of the insured and that results in a need for corrective action and/or compensation for bodily injury or property damage.

The entirety of non-sudden or repeated releases from the same covered petroleum storage tank shall be deemed to be one accidental release.

The entirety of simultaneous or concurrent sudden, non-sudden or repeated releases from more than one covered petroleum storage tank at any one site listed on the declarations page shall be deemed to be one accidental release.

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death, resulting from any of these at any time.

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

5. "Corrective action" means those actions as are reasonably necessary under the circumstances to reasonably satisfy applicable federal and state standards in the event of a release.

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.

Corrective action does not include actions beyond those actually required by federal and state regulatory agencies under the circumstances of the release.

6. "Corrective action costs" means reasonable and necessary expenses incurred for corrective action.
7. "Covered petroleum storage tank" means a petroleum storage tank that you own or operate, that is listed in the declarations of this policy, and that is located at the site listed for that storage tank in the declarations. "Covered petroleum storage tank" does not include any replacement storage tank for a storage tank listed in the declarations, and it does not include any storage tanks you sell, give away or abandon.
8. "Farm tank" means any tank with the 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, range land and nurseries with growing operations.
9. "Heating tank" means any tank with the capacity of more than one hundred ten (110) gallons situated above ground or under ground which is used for storing heating oil for consumptive use on the premises where stored.
10. "Legal defense costs" means payments allocated to a specific claim or suit we investigate, settle or defend, for its investigation, settlement or defense, including:
 - a. Fees and salaries of attorneys and paralegals we retain, including attorneys and paralegals who are our employees.
 - b. Fees of attorneys the insured retains when by mutual agreement or court order the insured is given the right to retain defense counsel to defend a suit.
 - c. All other litigation expenses.

d. Reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or suit, including actual loss of earnings up to \$100 a day because of time off from work.

e. Costs taxed against the insured in the suit.

"Legal defense costs" does not include salaries and expenses of our employees or the insured's employees (other than those described in a. and d. above) and does not include fees and expenses of independent adjusters or investigators we hire.

11. "Nonmarketer" means an underground or above ground petroleum storage tank owner or operator who consumes an average of ten thousand (10,000) gallons or less of petroleum products each month based on annual throughput for the previous calendar year.

12. "Petroleum" or "petroleum products" means 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 fuels, heating oil and aviation fuel.

13. "Petroleum storage tank" or "storage tank" means an above ground storage, underground storage tank, heating tank, farm tank or residential tank as defined in this section.

14. "Property damage" means:

a. Physical injury to, destruction of or contamination of tangible property, including all resulting loss of use of that property; or

b. Loss of use of tangible property that is not physically injured, destroyed or contaminated but has been evacuated, withdrawn from use or rendered inaccessible because of an accidental release.

15. "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.

16. "Residential tank" means any tank with the 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.

17. "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.
18. "Suit" means:
 - a. A civil proceeding in which damages because of bodily injury or property damage to which this insurance applies are alleged, including:
 - (1) an arbitration proceeding in which such damages are claims and to which you must submit or do submit with our consent;
 - (2) any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.
 - b. A civil or administrative proceeding in which payment of corrective action costs is sought or in which an order to perform corrective action measures is sought or issued.
19. "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, residential, or heating tank;
 - b. Septic tank;
 - c. Pipeline facility including gathering lines regulated under:
 - (1) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. §§ 1671-1687); or
 - (2) the Hazardous Liquid Pipeline Act of 1979 (49 U.S.C. App. §§ 2001-2015); or
 - (3) state laws comparable to the provisions of the law referred to in paragraph c.(1) or c.(2) of this subsection as an intrastate pipeline facility;
 - d. Surface impoundment, pit, pond or lagoon;

- e. Storm water or waste water collection system;
- f. Flow-through process tank;
- g. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;
- h. Storage tanks 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;
- i. Tanks with the 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.