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FILED

NOV 25 2013

Department of Insurance
State of Idaho

Attorneys for Department of Insurance

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE
OF THE STATE OF IDAHO**

In the Matter of:

IDAHO PETROLEUM CLEAN WATER
TRUST FUND

Registration No. 2436
NAIC No. 14430

Docket No. 18-2903-13

**ORDER ADOPTING REPORT
OF LIMITED MARKET CONDUCT
EXAMINATION AS OF
DECEMBER 31, 2011**

The State of Idaho, Department of Insurance (Department), having conducted a limited market conduct examination of the affairs, transactions, accounts, and records of the Idaho Petroleum Clean Water Trust Fund (the Tank Fund), pursuant to Idaho Code §§ 41-4932 and 41-219(1), hereby alleges the following facts that constitute a basis for issuance of an order, pursuant to Idaho Code §§ 41-4932(3) and 41-227(5)(a), adopting the Report of Limited Market Conduct Examination of the Idaho Petroleum Clean Water Trust Fund as of December 31, 2011 (Report), as filed.

FINDINGS OF FACT

1. The Tank Fund is a liability insurance trust fund, created pursuant to the Petroleum Clean Water Trust Fund Act, Idaho Code § 41-4901 *et seq.*, formed and authorized to

operate in Idaho as a non-profit special purpose vehicle that issues contracts of liability insurance to governmental and private owners and operators of petroleum storage tanks. The Tank Fund operates under Registration No. 2436 issued by the Department Director (Director). Pursuant to Idaho Code § 41-4904(2), the administrator of the Tank Fund is the Idaho State Insurance Fund (State Fund).

2. The Department completed a market conduct examination of the Tank Fund pursuant to Idaho Code §§ 41-4932 and 41-219(1) on or about October 25, 2013. The Department's findings are set forth in the Report. The Report covered the time period between January 1, 2007 and December 31, 2011.

3. Pursuant to Idaho Code § 41-4932(3), a copy of the Report, verified under oath by the Department's examiner-in-charge, was filed with the Department on October 25, 2013, and a copy of such verified Report was transmitted to the State Fund, as administrator of the Tank Fund, on October 26, 2013. A copy of the Report is attached hereto as Exhibit A.

4. On November 15, 2013, the Department received a Waiver executed by the State Fund as administrator of the Tank Fund. A copy of such Waiver is attached hereto as Exhibit B. By execution of such Waiver, the Tank Fund acknowledged receipt of the Report and consented to the immediate entry of a final order by the Director adopting the Report without any modifications. Further, such Waiver included the waiver of the Tank Fund's rights to examine the Report for a period of time up to two (2) weeks; to provide a written submission regarding corrections or changes prior to the entry of a final order; to request a hearing concerning the Report; and to seek reconsideration and appeal from the Director's order adopting the report.

CONCLUSIONS OF LAW

5. Idaho Code § 41-4932(3) provides that, after the examination report contemplated by that section has been completed and properly delivered, and the examinee has had the opportunity to exercise the rights set forth in that section, or waive such rights, as in the instant case, the Director shall file the report with the Department as a document open to public inspection, and shall deliver a copy of the report to the administrator of the Tank Fund.

6. Having fully considered the Report, and the administrator of the Tank Fund having waived the rights set forth in Idaho Code § 41-4932(3), the Director concludes that the Tank Fund is in compliance with the provisions of title 41, Idaho Code, applicable to the Tank Fund's market conduct, pursuant to Idaho Code § 41-4930.

ORDER

NOW, THEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the Report of Limited Market Conduct Examination of the Idaho Petroleum Clean Water Trust Fund as of December 31, 2011, is hereby ADOPTED as filed, pursuant to Idaho Code § 41-4932(3).

IT IS FURTHER ORDERED, pursuant to Idaho Code § 41-4932(3), that the adopted Report is a public record on file with the Department.

IT IS SO ORDERED.

DATED this 25th day of November, 2013.

STATE OF IDAHO
DEPARTMENT OF INSURANCE



WILLIAM W. DEAL
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 15th day of November, 2013, I caused a true and correct copy of the foregoing ORDER ADOPTING REPORT OF LIMITED MARKET CONDUCT EXAMINATION AS OF DECEMBER 31, 2011 to be served upon the following by the designated means:

Idaho Petroleum Clean Water Trust Fund
c/o Idaho State Insurance Fund, Administrator
Attn: James M. Alcorn
1215 West State Street
Boise, ID 83720-0044
JamesM.Alcorn@idahosif.org

- first class mail
- certified mail
- hand delivery
- email

Georgia Siehl, CPA, CFE
Bureau Chief/Chief Examiner
Idaho Department of Insurance
700 W. State Street, 3rd Floor
Boise, ID 83720-0043
georgia.siehl@doi.idaho.gov

- first class mail
- certified mail
- hand delivery
- email



Teresa Jones
Assistant to the Director

DEPARTMENT OF INSURANCE

STATE OF IDAHO



REPORT OF LIMITED MARKET CONDUCT EXAMINATION

of the

IDAHO PETROLEUM CLEAN WATER TRUST FUND

(NAIC Company Code 14430)

as of

December 31, 2011

EXHIBIT

A

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State of Idaho
DEPARTMENT OF INSURANCE

C.L. "BUTCH" OTTER
Governor

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WILLIAM W. DEAL
Director

Boise, Idaho
October 25, 2013

The Honorable William W. Deal
Director of Insurance
State of Idaho
700 West State Street
P. O. Box 83720
Boise, Idaho 83720-0043

Dear Director:

Pursuant to your instructions, in compliance with Sections 41-219(1) and 41-4932, Idaho Code, and in accordance with the practices and procedures promulgated by the National Association of Insurance Commissioners (NAIC), we have conducted a limited market examination as of December 31, 2011 of:

Idaho Petroleum Clean Water Trust Fund
1215 West State Street
Boise, Idaho 83720

hereinafter referred to as "the Tank Fund" at its offices in Boise, Idaho. The following Report of Examination is respectfully submitted.

SCOPE OF EXAMINATION

This limited Market Conduct examination covered the period January 1, 2007, through December 31, 2011. The examination was conducted at the Boise, Idaho office of the Tank Fund by examiners from the State of Idaho. The examination was conducted in accordance with Sections 41-219(1) and 41-4932, Idaho Code, and the National Association of Insurance Commissioners (NAIC) *Market Regulation Handbook*.

A separate, financial conditions examination as of December 31, 2011 was conducted concurrently with the market examination by the Idaho Department of Insurance.

PRIOR EXAMINATION

The previous market examination was conducted by the Idaho Department of Insurance covering the period January 1, 2002 through December 31, 2006.

The previous examination recommended that the accountant check the loss date of all opened claims on his worksheet against the loss dates recorded at the Fund's claims system. It was also recommended that the Fund's claims department notify the accountant if there is any change on the loss date on any claims. The manager of the Tank Fund verified that they have established a procedure where any change to the date of loss is also reported to the accountant.

HISTORY AND DESCRIPTION

The Tank Fund was established by an act of the Idaho Legislature with the passage of the "Idaho Petroleum Clean Water Trust Fund Act", pursuant to the provisions of Idaho Code, Title 41, Chapter 49, which was approved on March 23, 1990. The Tank Fund received a certificate of registration to do business in Idaho on April 24, 1991.

The Tank Fund is a non-profit specialty insurance organization, which was founded for the purpose of providing affordable petroleum liability insurance coverage to pay for corrective and cleanup measures, and third-party property damage and bodily injury related to the storage of petroleum products in aboveground and belowground tank containers. Owners or operators of farm tanks or residential tanks and heating tanks may also seek insurance from the Tank Fund.

The major funding for the Tank Fund was provided by the collection of a "transfer fee" of one cent per gallon on all petroleum products delivered or stored within the State of Idaho after April 1, 1990. The "transfer fee" is a charge that is assessed against the licensed distributors, or suppliers based upon the number of gallons of petroleum that are initially delivered into the State of Idaho. The fees were the Tank Fund's primary source of income and served as an alternative to the "premiums" which would be collected in a conventional insurance operation. However, there is no correlation between the transfer fees collected and the number of policies issued or tanks insured.

Transfer fee payments must be remitted to the Idaho State Tax Commission with the distributor's monthly report. The Idaho State Tax Commission collects the transfer fees pursuant to Section 41-4909(8), Idaho Code. The Commission shall then promptly submit these fees to the Idaho State Treasurer for deposit in the Tank Fund.

Section 41-4910(5), Idaho Code provided for the transfer fees to be distributed as follows: 77 percent to the highway distribution accounts, 3 percent to the Idaho department of parks and recreation, and the remaining 20 percent to the Tank Fund. This distribution is after allowing for the actual cost of collecting, administering, and enforcing the transfer fee by the Commission and after establishing a refund account.

Subsequent to December 31, 2006 and effective July 1, 2007, Section 41-4909(10), Idaho Code was amended, to reflect that the transfer fees are to be suspended when the unencumbered surplus equals \$35,000,000 and will be reactivated when the surplus balance equals \$25,000,000. On July 26, 2007, the Director of the Department sent a certification to the Idaho State Tax Commission indicating that the unencumbered surplus as of June 30, 2007 was \$21,265,492. This reinstated the transfer fees beginning with the first day of the second month following the certification.

In 2003, a Board of Trustees was established for the Tank Fund under Section 41-4904, Idaho Code. Also in 2003, the Idaho State Insurance Fund (State Fund) was designated as the Administrator of the Tank Fund pursuant to Section 41-4904(2), Idaho Code. Prior to 2003, James M. Alcorn was trustee of the Tank Fund and an employee of the State Fund was the Administrator.

The Tank Fund also collected application fees of \$5 or \$25 for each tank for which an application for coverage was made and annually thereafter as long as the tanks continued to meet the eligibility provisions of Section 41-4911A, Idaho Code. The amount of the application fee was determined by the type of tank and the funds collected were promptly remitted to the State Treasurer for deposit into the Tank Fund.

The Tank Fund is exempt from the Idaho Insurance Guaranty Association under Section 41-3603(9), Idaho Code.

TERRITORY AND PLAN OF OPERATION

A Certificate of Registration was issued by the Idaho Department of Insurance enabling the Tank Fund to transact business in Idaho. The Tank Fund is authorized by Idaho Code to write business only in the State of Idaho. The Tank Fund's basic purpose is to provide affordable liability and cleanup insurance to qualified petroleum storage tank owners/operators in the State of Idaho in order for them to meet the financial responsibility requirements of the Environmental Protection Agency (EPA). The Tank Fund was certified by the EPA as meeting the financial responsibility requirement standards. The Tank Fund does not have any agents or utilize an agency force.

The operation of the Tank Fund is dependent on the funding provided by the transfer fees, application/renewal fees, and interest income on the Tank Fund's investments. On March 24, 1997, an amendment to Section 41-4909, Idaho Code, provided for the retention of transfer fees

and the Tank Fund would be allocated 20 percent of future transfer fee collections on a monthly basis.

As noted in the *HISTORY AND DESCRIPTION* section of this report, on July 26, 2007, the Director of the Department of Insurance sent a certification to the Idaho State Tax Commission indicating that the Tank Fund's unencumbered surplus as of June 30, 2007 was \$21,265,492. This level of surplus triggered the reinstatement of transfer fees flowing to the Tank Fund, as set forth under Section 41-4909(10), Idaho Code, effective July 1, 2007.

INSURANCE PRODUCTS AND RELATED PRACTICES

Policy Forms and Underwriting

Policy Forms

The Idaho Petroleum Clean Water Trust Fund (Tank Fund) issues insurance coverages for corrective (cleanup) action, bodily injury and property damage resulting from accidental releases, leaks, or spills from petroleum storage tanks. All of these coverages are incorporated into one standard policy form, which is designed specifically for this type of insurance. Idaho Code Section 41-4911A governs the provisions of the policy contract, and indicates that the policy must meet the statutory requirements of Idaho Code, Title 41, Chapter 49, "Idaho Petroleum Clean Water Trust Fund Act", and any other requirements imposed by federal or state law or regulation on any category of petroleum storage tank owners or operators to demonstrate financial responsibility.

The Manager of the Tank Fund confirmed there were no changes to policy forms since the last examination.

Underwriting Practices

The Tank Fund's underwriting practices and procedures are guided by Idaho Code Sections 41-4912 and 41-4912A, which outline the criteria necessary for storage tanks to be eligible for insurance. The requirements for insurance coverage are summarized as follows:

- a. The prospective insured must complete and submit the prescribed application for insurance form. The Tank Fund will review the application and determine eligibility. If eligible, the Tank Fund will bill the required application fee.
- b. The tank to be insured, if an Underground Storage Tank, (UST) must be in a condition sufficient to comply with applicable federal and state UST regulations.
- c. The tank must be used only for storage of petroleum products.
- d. The tank (if a UST) must pass a "tank tightness" test. The Applicant is responsible for hiring an independent certified Third-Party UST Inspector to provide this report to the Tank Fund.

- e. The tank, if an Aboveground Storage Tank, (AST) must be in compliance with state and federal regulations including the uniform fire code. If an AST is exempt from the regulations and the fire code because it was installed prior to the effective dates of such regulations or code, it must undergo and pass a tank tightness test.
- f. The tank, if a farm tank or residential tank, must be in compliance with any applicable state or federal regulations.
- g. Any contamination must have been cleaned up, or have a plan for cleanup or removal (approved by the Department of Environmental Quality) being implemented; provided that the Tank Fund shall not pay for any costs associated with prior contamination. Additionally, the Tank Fund can provide coverage for tanks when an applicant has certified that the tank in question is not the source of surrounding contamination.

After an application has been registered, reviewed, and prioritized, a copy is mailed to a field representative. The field representative visits each site of the applicant for a physical inspection of the facility and perform a "Level I" (above ground) site assessment in order to determine if the tank(s) are eligible for insurance coverage. The Tank Fund has specific procedures that it uses to determine if each of the criteria previously outlined have been met.

A Level I site assessment is performed by a Tank Fund Field Representative and involves a visit to the site of the prospective insured for purposes of verifying the information submitted on the application and a physical evaluation of the site for underwriting purposes. This includes an appraisal of the condition of the site and equipment as well as its surrounding area for potential exposure and contamination. A historical background check of the site is also obtained by reviewing the Risk Assessment Manual developed by the state and the records of other various local agencies and conducting interviews. These background checks provide information on the previous use of the land, characteristics and condition of the soil, groundwater, and other geological/environmental data that would be useful in making an underwriting decision.

A Level II (underground or sub-surface) site assessment is performed if the prospective insured's site did not qualify for insurance after a Level I assessment due to a history, evidence or suspicion of prior contamination on the site. The Level II site assessment is paid for by the Tank Fund but performed by a third party environmental engineering company. The Level II involves the controlled collection of subsoil and or groundwater samples to determine if there is a presence of hydrocarbons. Following established protocols, the soil and ground water samples are collected and submitted to a third party laboratory to test for hydrocarbons according to establish EPA testing procedures which determine the extent and nature of any underground contamination. The managing geologist/hydrologist, from the environmental engineering company, prepares a report to the Tank Fund on the extent of the Level II Site Assessment and the test results. The end results of the tests reveal if there is petroleum contamination, how much fuel is present in the soil or ground water and whether the spill is fresh and from the existing tanks or from an older release. More importantly, the test results indicate if the hydrocarbons present a threat to human health, safety and the environment requiring the insurance applicant to engage with Idaho Department of Environmental Quality to establish a cleanup plan prior to the issuance of an insurance policy.

In summary, if a field representative determined through a Level I site assessment, or if it is determined by a Level II site assessment that one or more tanks on a particular site were not eligible for insurance coverage, the underwriter promptly notifies the applicant by letter. The letter states the reasons why the tanks at the site do not qualify for insurance and also outlines the procedures which must be taken by the applicant to make the tanks eligible for coverage.

Policies are considered for renewal at the end of each annual policy period. The insured is required to submit an additional annual application fee (\$5 for heating oil tanks for space heating on premises; \$25 for all other covered tanks), and demonstrate that the storage tanks continue to meet the Tank Fund's eligibility criteria (per Idaho Code Sections 41-4912 and 41-4912A) and all of the underwriting requirements.

If the applicant meets the underwriting criteria, and it is determined the tanks are insurable, the Tank Fund policy provides protection as outlined below:

Coverages

Corrective action (cleanup), bodily injury, and property damage resulting from accidental leaks, releases, or spills from petroleum storage tanks, with the following limits per respective groups/classifications as noted in Idaho Code Sections 41-4906 and 41-4907:

<u>Type of Operators and Tanks</u>	<u>Deductible</u>	<u>Limits of Coverage</u>
Marketers with 100 or less UST tanks	\$10,000	\$1,000,000 per occurrence \$1,000,000 aggregate
Marketers with more than 100 UST tanks	\$10,000	\$1,000,000 per occurrence \$2,000,000 aggregate
Non-marketers with UST and AST tanks *	\$10,000	\$ 500,000 per occurrence \$1,000,000 aggregate
Owners/Operators of AST tanks	\$10,000	\$1,000,000 per occurrence \$1,000,000 aggregate
Owners/Operators of heating Tanks	\$100	\$ 100,000 per occurrence \$ 100,000 aggregate
Owners/Operators of farm or residential tanks	\$2,000	\$ 100,000 per occurrence \$ 100,000 aggregate

*Non-marketers with aboveground and underground storage tanks who consume 10,000 gallons or less per month.

Treatment of Policyholders

Claims

A claim or a potential claim may be reported through a number of sources. A claim may be a report of a petroleum release or suspected release by the insured, a field representative, or a third party. A claim may also be established through a notice by another governmental regulatory agency, or the insured's notice of a change in status of a covered tank (i.e. repairs, upgrade, change in use and/or closure).

Once a claim is established, an initial reserve is set-up within five (5) days of notification. All open claims are initially set for an automatic 30-day review for adjustment, and every 3 months thereafter, unless it is determined in the interim that an adjustment is appropriate.

The Tank Fund then arranges for a pre-screened third party contractor to investigate the release at the site. These site assessment investigations are conducted by a qualified Environmental Engineering or Service Company, and their procedures are performed to determine the severity of the release. Investigations are also directed at coverage determination and subrogation opportunities. When coverage is provided, and the investigation is completed, the environmental company submits a "Corrective Action Plan" (Plan) to the Tank Fund, which includes a comprehensive summary of recommendations and procedures needed to clean up the site along with time and cost estimates for personnel and equipment. The cost estimates contained in the Plan are the primary basis for adjusting the initial reserves, and for assessing future expenditures on the claim. Before any cleanup work commences, the Tank Fund is required to file a "Characterization Report" with the DEQ for its approval. This report is essentially based on the Plan submitted by the investigating environmental company.

The Tank Fund selects the pre-screened site assessment contractors subject to their business history, work experience and licensure. They are reevaluated on a yearly basis.

Complaints

The Tank Fund maintains a formal complaint register for the period covered by this examination. A review of the complaint register indicated that the Tank Fund has received one complaint regarding a service provider for the Tank Fund. The complaint was promptly responded to and all issues and inquiries were addressed.

Advertising and Sales

During this examination period, the Tank Fund did not advertise. The Tank Fund also maintained an internet website, which was reviewed. The review of the website did not disclose any advertising concerns or violations of Idaho Code Sections 41-1303 and 41-1304.

SUMMARY, COMMENTS AND RECOMMENDATIONS

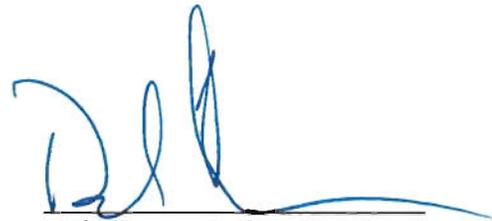
Prior year recommendations have been completed. No further recommendations were established during the current exam.

CONCLUSION

The undersigned acknowledges the assistance and cooperation of the Tank Fund's Chairman of the Board of Trustees and employees of the State Fund in conducting the examination.

In addition to the undersigned, Arlene Barrie, Market Analysis with the Idaho Department of Insurance, participated in the examination.

Respectfully submitted,



Dale Freeman, CIE
Senior Insurance Examiner
Department of Insurance
State of Idaho

State of Idaho
DEPARTMENT OF INSURANCE

C. L. "BUTCH" OTTER
Governor

700 West State Street, 3rd Floor
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WILLIAM W. DEAL
Director

AFFIDAVIT OF EXAMINER

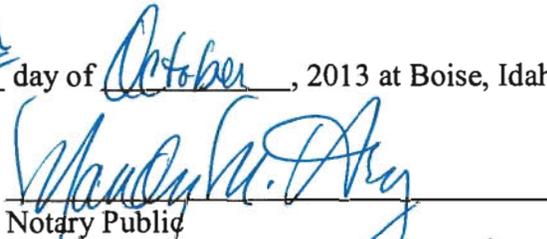
State of Idaho
County of Ada

Dale Freeman, being duly sworn, deposes and says that he is a duly appointed Examiner for the Department of Insurance of the State of Idaho, that he has made an examination of the Market Conduct of the Idaho Petroleum Clean Water Trust Fund for the period from January 1, 2007 through December 31, 2011, including subsequent events, that the information contained in the report consisting of the foregoing pages is true and correct to the best of his knowledge and belief, and that any conclusions and recommendations contained in the report are based on the facts disclosed in the examination.



Dale Freeman, CIE
Senior Insurance Examiner
Department of Insurance
State of Idaho

Subscribed and sworn to before me the 25th day of October, 2013 at Boise, Idaho


Notary Public

My commission expires: 7/24/2018

State of Idaho
DEPARTMENT OF INSURANCE

C.L. "BUTCH" OTTER
Governor

700 West State Street, 3rd Floor
P.O. Box 83720
Boise, Idaho 83720-0043
Phone (208)334-4250
FAX # (208)334-4398

WILLIAM W. DEAL
Director

WAIVER

In the matter of the Market Conduct Report of Examination as of December 31, 2011, of:

**IDAHO PETROLEUM CLEAN WATER TRUST FUND
1215 WEST STATE STREET
BOISE, IDAHO 83720**

By executing this Waiver, the Fund hereby acknowledges receipt of the above-described examination report, verified as of the 25th day of October, 2013 and by this Waiver hereby consents to the immediate entry of a final order by the Director of the Department of Insurance adopting said report without any modifications.

By executing this Waiver, the Fund also hereby waives:

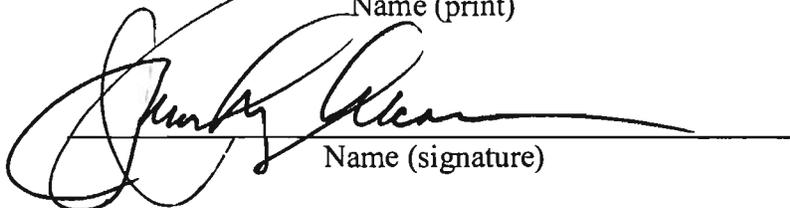
1. its right to examine the report for up to thirty (30) days as provided in Idaho Code section 41-227(4),
2. its right to make a written submission or rebuttal to the report prior to entry of a final order as provided in Idaho Code section 41-227(4) and (5),
3. any right to request a hearing under Idaho Code sections 41-227(5) and (6), 41-232(2)(b), or elsewhere in the Idaho Code, and
4. any right to seek reconsideration and appeal from the Director's order adopting the report as provided by section 41-227(6), Idaho Code, or elsewhere in the Idaho Code.

Dated this 12th day of November, 2013

IDAHO PETROLEUM CLEAN WATER TRUST FUND

James M. Alcorn

Name (print)



Name (signature)

Manager, Idaho State Insurance Fund
Administrator for the Idaho Petroleum Clean
Water Trust Fund

Title

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STATE
DEPT. OF INSURANCE