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February 5, 1991

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The Honorable Atwell Parry
Idaho State Senate
STATEHOUSE MAIL

The Honorable Kathleen Gurnsey
Idaho State House of Representatives
STATEHOUSE MAIL

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Appropriation of Clean Water Trust Funds

Dear Co-Chairmen Parry and Gurnsey:

This is in response to your question whether the underground storage tank program requires an annual appropriation. You have pointed out that Idaho Code § 41-4904(5) provides in pertinent part:

The personnel costs, operating expenditures and capital outlay budget of the trust fund shall be subject to review and approval in the appropriation of the state insurance fund. . . .

However, Idaho Code § 41-4914 provides:

All moneys which may come into the Idaho petroleum clean water trust fund are hereby perpetually appropriated to the manager of the state insurance fund as trustee to be expended by him for the purposes of this chapter.

The Honorable Atwell Parry
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The effect of the two statutes is as follows. If there is no annual appropriation from the Idaho petroleum clean water trust fund, all money which may come into the fund may be expended by the manager of the state insurance fund for purposes of the chapter pursuant to the continuing appropriation. However, if the legislature enacts an annual appropriation from the Idaho petroleum clean water trust fund, the manager of the state insurance fund may not expend money in the Idaho petroleum clean water trust fund beyond the amount of the annual appropriation.

An annual appropriation would have the effect of suspending the operation of the continuous appropriation during the period of the annual appropriation.

Attorney General Opinion 82-8 includes an extensive legal analysis of this type of situation. I have enclosed a copy of that opinion for your convenience.

If you have any questions regarding this letter, please contact me.

Sincerely,



DAVID G. HIGH
Deputy Attorney General
Chief, Business Regulation
and State Finance Division

DGH/mkf

Enclosure