

SUPERB ADVISORY COMMITTEE

2009 Annual Report

Purpose

This report is submitted to the General Assembly and the Department of Health and Environmental Control (DHEC) in order to fulfill the requirements of Title 44, Chapter 2 of the 1976 South Carolina Code of Laws, as amended. Specifically, Section 44-2-150(G) of the State Underground Petroleum Environmental Response Bank (SUPERB) Act requires the SUPERB Advisory Committee (the Committee) to submit an annual report that addresses the financial status and viability of the SUPERB Account and the SUPERB Financial Responsibility Fund (SFRF), the number of sites successfully remediated, the number of sites remaining to be remediated, and any statutory or regulatory changes the Committee recommends. In addition, this report contains information regarding the current status of the underground storage tank (UST) population in South Carolina.

The SUPERB Accounts

Federal regulations (enacted in 1988) require UST owners or operators to demonstrate financial responsibility for corrective action and third party liability at \$1,000,000 per leak occurrence. The South Carolina General Assembly created the SUPERB Account in 1988 to assist UST owners and operators in meeting the corrective action portion of the federal financial responsibility requirements, and the SFRF was legislatively created in 1993 to assist owners and operators in meeting the third party liability requirement. UST owners and operators are responsible for a \$25,000 deductible per UST leak occurrence and they remain liable for costs above \$1,000,000.

A ½ cent environmental impact fee imposed on each gallon of petroleum entering the state funds the SUPERB Accounts. The Department of Revenue collects the fee under the authority of Section 12-28-2355. Impact fee revenue received during calendar year 2009 totaled \$17,156,615.15 and the total revenue received including impact fee revenue, interest, and recovered funds totaled \$19,258,056.55 (Table 1). SUPERB payments during calendar year 2009 totaled \$26,179,704.93. As of December 31, 2009, \$20,715,700.61 in SUPERB funds is committed through current contracts for site rehabilitation activities leaving an available SUPERB balance of \$896,506.19 (Table 1).

Table 1. SUPERB Account information as of December 31, 2009

Impact Fee Revenue Received in Calendar Year 2009	\$ 17,156,615.15
Beginning Cash Balance January 1, 2009	\$ 28,533,855.18
Total Revenue Received in Calendar Year 2009	\$ 19,258,056.55
Total Available Calendar Year 2009	\$ 47,791,911.73
Total Payments from SUPERB in Calendar Year 2009	\$ - 26,179,704.93
Cash Balance December 31, 2009	\$ 21,612,206.80
Commitments (Current Contracts)	\$ - 20,715,700.61
Available for Commitment	\$ 896,506.19
Cumulative Spent Since 1988	\$ 295,420,402.95

SUPERB Financial Responsibility Fund (SFRF)

DHEC is currently aware of 16 third party claims or suits and actively participates in their resolution as allowed for in Section 44-2-40 of the SUPERB Act. One claim was paid in 2009 totaling \$10,000. A total of \$1,036,030.42 has been spent for claims, legal fees, and appraisal activities since the creation of this fund in 1993. As of December 31, 2009 the SFRF Balance was \$1,003,210.78.

Financial Responsibility for the State Fund Deductible

The SUPERB Act requires that UST owners and operators demonstrate financial responsibility (FR) for \$25,000 per UST leak occurrence as the SUPERB Accounts provide the remaining required coverage. Allowable FR options include: self insurance, commercial insurance, insurance pool (risk retention group), guarantee, surety bond, letter of credit, trust fund, standby trust fund, and several local government options. Currently, sixty-seven percent (67%) of UST facilities are covered by self-insurance, nineteen percent (19%) by letters of credit or surety bonds, thirteen percent (13%) by commercial insurance, and the remaining one-percent (1%) by local government options.

Cleanup Progress

As of December 31, 2009, DHEC has confirmed a total of 9,354 UST releases. Of these, 6,431 or about 69% have been closed. A total of 263 releases were closed in calendar year 2009; of these, 128 were closed with SUPERB funds. Nineteen of the 263 total closures required engineered cleanup systems and were closed after cleanup actions were completed. Cleanups requiring engineered systems, often referred to as active cleanups, can take more than five years to complete.

At year's end, there were 2,923 open releases, of which 2,860 are eligible to receive SUPERB funds. Confirmed releases are ranked by DHEC for funding priority according to the risk each poses and the priority system is outlined in the SUPERB Fund Access Regulations (R.61-98). Appendix 1 of this report depicts the total number of SUPERB eligible releases by their risk category and Appendix 2 depicts this number by county. Appendix 3 depicts the number of cases, by risk category, where rehabilitation activity is being funded and the number where no funding is provided.

As of December 31, 2009, 240 releases were in active cleanup, 241 releases were being monitored as part of a formalized natural attenuation remedial plan, and assessment activities were being funded at another 1,100 sites. A total of 1,581 releases were actively being funded by the SUPERB fund at year's end. For the most part, site rehabilitation activities are funded by SUPERB or by the UST owner under the \$25,000 SUPERB deductible.

This year, as part of Bureau of Land and Waste Management budget reductions, one Section Manager position within the UST Program was eliminated. As a result of this change, the UST Compliance Section was merged with the UST Regulatory Section and placed under one Director in the newly formed UST Management Division. At year's end, fourteen (14) DHEC project managers

were overseeing environmental assessment or cleanup efforts on 1,624 releases actively being worked with SUPERB funds or under the \$25,000 deductible. Due to a hiring freeze, one site rehabilitation project manager position has remained vacant since July 2009 and continues to limit productivity of the DHEC UST Program.

Underground Storage Tank Information

Since 1986, there have been 45,328 petroleum USTs registered with DHEC. Of those, 32,661 have been removed from the ground or properly closed in place. As of December 31, 2009, there were 11,836 operating USTs at 4,163 locations across the state by 2,094 tank owners.

The U.S. Environmental Protection Agency (EPA) requires DHEC to report on a quarterly basis the UST compliance rate for both release prevention and release detection, commonly referred to as significant operational compliance. DHEC reported that 76 percent of the approximately 4,034 UST facilities inspected during 2009 met both the release prevention and release detection requirements and were in significant operational compliance. The overall compliance rate for 2009 has increased by four percent (4%) from the previous year's report of 72 percent (72%). The Committee encourages UST owners and operators, as well as DHEC, to provide greater emphasis on release prevention and early detection so as to minimize the number of new releases and their severity when they do occur. Prevention measures are in the best interest of owners and operators, the environment, and the SUPERB Fund.

Leak Rate

The leak rate from active, non-operational, and orphan tanks was one percent (1%) for 2009. This leak rate has been relatively consistent (at or near 1%) over the past five years.

Legislative Information

An actuarial study of the SUPERB fund, completed in March 2007, listed the current liabilities of the fund at \$153 million and estimated future liabilities at \$373 million. The fund was projected to have a negative balance of \$32 million at the scheduled sunset date in 2026. The EPA has voiced concerns about solvency of the SUPERB fund since the late 1990's in mid-year and year-end grant reviews provided to DHEC, and in September of 2007 DHEC received official notice from EPA Region IV that the SUPERB Fund is in danger of being declared insolvent. The result of insolvency would be the disapproval of the SUPERB fund as an accepted financial responsibility mechanism, requiring UST owners and operators to obtain alternate coverage for their required minimum of \$1 million in liability coverage to pay for cleanup and third party damage claims, per occurrence.

It was determined in October 2007 that an additional \$8 million per year over the next five years would be sufficient to satisfy the solvency concerns in order to maintain the SUPERB Fund as a viable financial responsibility mechanism for South Carolina UST Owners. In response, in 2008 the General Assembly appropriated an additional \$4,000,000 to SUPERB above the expected impact fee

revenue. In addition, Bill H. 3270 was introduced in January 2009 to amend Section 44-2-60 to increase the annual UST registration fee with the additional fees being deposited in the SUPERB account in order to solve the funding shortfall. If Bill H. 3270 is passed in current form, annual tank fees would increase by \$100 each year over four years, ultimately reaching \$500 per tank, and would remain at this level until an additional \$36 million is generated and deposited into the SUPERB account. When SUPERB is credited with the additional \$36 million, the annual tank fee will revert to \$100 per tank the following January. As written, no portion of the additional tank fee revenue may be used by DHEC for administration of the UST Program.

Bill H. 3270 passed the House on March 3, 2009 and was referred to the Senate Committee on Medical Affairs on March 4, 2009. At the close of the 1st regular session of the 118th South Carolina General Assembly, Bill H. 3270 remained with the Senate Committee on Medical Affairs.

Recommendations

The Committee supports any and all efforts to shore up the SUPERB Account while providing DHEC with the administrative resources necessary to administer the program. During the January 28, 2010 SUPERB Advisory Committee meeting, those members present passed a resolution urging support of Bill H. 3270 by the petroleum marketing industry.

Appendix 1

SUPERB Eligible Releases by Risk Category As of January 4, 2010

Risk Category	Open Releases
1	263
2A	122
2B	891
3A	93
3B	953
4A	198
4B	148
5	192
Total	2,860

Risk Category Definitions:

- Category 1 Emergency
- Category 2A Threat to human health or environment is predicted to be less than 1 year
- Category 2B Drinking well identified less than 1,000 feet away
- Category 3A Threat to human health or the environment is predicted to be 1 to 2 years
- Category 3B Release in shallow groundwater with migration expected
- Category 4A Threat to human health or the environment is predicted to be greater than 2 years
- Category 4B Release in shallow groundwater with minimal migration expected
- Category 5 Data currently inconclusive

Appendix 2

SUPERB Eligible Releases by Risk Category and County As of January 11, 2010

County	Risk Category								Total
	1	2A	2B	3A	3B	4A	4B	5	
Abbeville	2	0	12	1	4	1	3	2	26
Aiken	4	0	16	1	6	3	2	11	43
Allendale	1	1	3	0	10	0	2	2	19
Anderson	0	0	23	2	38	8	4	3	78
Bamberg	2	1	11	0	5	1	1	1	22
Barnwell	2	4	13	2	5	1	0	2	29
Beaufort	3	3	10	4	13	1	0	1	35
Berkeley	3	2	21	1	25	0	1	0	53
Calhoun	0	0	0	0	4	0	1	0	5
Charleston	2	3	21	2	98	0	2	4	132
Cherokee	3	1	12	0	8	2	2	1	29
Chester	9	5	13	0	8	3	3	4	45
Chesterfield	1	1	8	1	8	2	1	2	24
Clarendon	12	4	25	2	19	0	4	5	71
Colleton	6	8	12	2	8	0	0	0	36
Darlington	3	1	29	1	17	1	5	3	60
Dillon	10	1	13	1	13	0	4	2	44
Dorchester	8	2	16	1	23	3	1	4	58
Edgefield	0	0	6	1	5	0	1	4	17
Fairfield	5	1	10	0	1	0	0	0	17
Florence	11	8	60	5	69	2	18	1	174
Georgetown	6	3	13	6	19	0	0	2	49
Greenville	9	10	53	6	52	43	19	31	223
Greenwood	2	1	20	2	7	10	8	4	54
Hampton	1	3	13	0	10	0	2	5	34
Horry	10	9	55	18	82	0	3	15	192
Jasper	5	3	22	1	8	0	0	1	40
Kershaw	5	1	9	1	10	4	1	4	35
Lancaster	7	1	23	3	13	8	10	8	73
Laurens	4	2	18	0	18	11	0	3	56
Lee	2	3	6	0	2	1	0	1	15
Lexington	10	0	32	3	51	7	9	17	129
Marion	3	0	29	1	28	0	1	3	65
Marlboro	5	2	17	0	11	1	1	3	40
McCormick	1	0	8	0	6	1	0	0	16
Newberry	9	1	13	1	15	2	4	3	48
Oconee	4	0	5	0	4	5	1	0	19
Orangeburg	12	4	41	2	27	1	3	3	93
Pickens	1	0	7	0	6	8	1	0	23
Richland	26	6	33	0	53	13	4	2	137
Saluda	6	1	0	0	10	0	3	0	20
Spartanburg	8	2	39	11	62	45	15	16	198
Sumter	15	6	27	6	26	0	1	4	85
Union	1	4	3	0	1	0	1	2	12
Williamsburg	5	7	23	1	16	0	2	5	59
York	21	5	51	4	30	8	4	5	128

Risk Category Definitions:

- Category 1 Emergency
- Category 2A Threat to human health or environment is predicted to be less than 1 year
- Category 2B Drinking well identified less than 1,000 feet away
- Category 3A Threat to human health or the environment is predicted to be 1 to 2 years
- Category 3B Release in shallow groundwater with migration expected
- Category 4A Threat to human health or the environment is predicted to be greater than 2 years
- Category 4B Release in shallow groundwater with minimal migration expected
- Category 5 Data currently inconclusive

Appendix 3

SUPERB Eligible Releases by Risk Category Work Ongoing or Not Currently Working As of January 4, 2010

Risk Category	Work Currently Ongoing With SUPERB Funds or Under the \$25,000 Deductible	Not Currently Working Awaiting SUPERB Funding
1	263	0
2A	90	32
2B	563	328
3A	41	52
3B	420	533
4A	86	112
4B	52	96
5	109	83
Total	1,624	1,236

Risk Category Definitions:

Category 1 Emergency

Category 2A Threat to human health or environment is predicted to be less than 1 year

Category 2B Drinking well identified less than 1,000 feet away

Category 3A Threat to human health or the environment is predicted to be 1 to 2 years

Category 3B Release in shallow groundwater with migration expected

Category 4A Threat to human health or the environment is predicted to be greater than 2 years

Category 4B Release in shallow groundwater with minimal migration expected

Category 5 Data currently inconclusive