

## Regulation 61-98

# State Underground Petroleum Environmental Response Bank (SUPERB) Site Rehabilitation and Fund Access Regulation

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S.C. Department of Health and  
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## **SECTION I. Scope and Definitions.**

**A. Scope.** This regulation, promulgated pursuant to the State Underground Petroleum Environmental Response Bank Act (SUPERB), sets forth certain requirements for site rehabilitation for releases from underground storage tanks (USTs) governed under the SUPERB Act and Regulation 61-92; accessing the SUPERB account; certification of site rehabilitation contractors and suspension and decertification of site rehabilitation contractors by the Department of Health and Environmental Control (the Department).

### **B. Definitions.**

1. **Active Remediation.** Physical actions taken to reduce the concentrations of chemicals of concern.
2. **Affiliate.** Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third person controls or has the power to control both. Indicia of control include, but are not limited, to: interlocking management or ownership, identity of interest among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership or principal employees as the suspended, debarred, or voluntarily excluded person.
3. **Attenuation.** The reduction in concentrations of chemicals of concern in the environment with distance and time due to processes that include, but are not limited to, diffusion, dispersion, and absorption.
4. **Carcinogen.** Substances which have been classified for human carcinogenic risk by the U.S. Environmental Protection Agency.
5. **Certification.** An action taken by the Department in accordance with this regulation to authorize a contractor to perform site rehabilitation under the SUPERB Act.
6. **Chemicals of Concern.** Specific constituents that are identified for evaluation in the risk assessment process.
7. **Civil Judgment.** The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise.
8. **Corrective Action.** A subset of site rehabilitation activities conducted to protect human health, safety, and the environment. These activities include recovery of free-product, evaluating risks, evaluating and implementing intrinsic remediation, making no further action decisions, implementing institutional controls, active remediation, designing and operating cleanup systems and equipment, and monitoring of progress.
9. **Corrective Action Plan.** A document outlining proposed corrective actions.
10. **Direct Exposure Pathway.** An exposure pathway where the point of exposure is at the source without a release to any other medium (for example, inhalation of vapors or dermal contact with free-product).
11. **Engineering Controls.** Modifications to a site, such as capping or water treatment at the point of use, to reduce or eliminate the potential for exposure to chemicals of concern.
12. **Engineering Report.** A document outlining the proposed technical equipment specifications of a corrective action system.

13. Exposure. Contact of a receptor(s) with chemicals of concern. Exposure is quantified as the amount of the chemical of concern available at the exchange boundaries, such as skin or lungs, and available for absorption by the human body.

14. Exposure Assessment. The determination or estimation, qualitative or quantitative, of the magnitude, frequency, duration, and route of exposure.

15. Exposure Factor. An intake variable value, either established by the Environmental Protection Agency or based on site-specific data, used to estimate an exposure concentration.

16. Exposure Pathway. The course chemicals of concern take from the source area(s) to an exposed organism. An exposure pathway describes a unique mechanism by which a receptor(s) is exposed to chemicals of concern. A complete exposure pathway includes a source or release from a source, an exposure point, and an exposure route. If the exposure point differs from the source, a transport/exposure media (e.g., ground water) is included.

17. Exposure Point. The point at which it is assumed that a receptor, either potential or actual, can come into contact, either now or in the future, with the chemicals of concern. Maximum contaminant levels or other existing water quality standards must be met at the exposure point.

18. Exposure Route. The manner in which chemicals of concern come in contact with an organism (i.e., ingestion, inhalation, dermal contact).

19. Familial Relationship. A connection or association by family or relatives, in which a family member or relative has a material interest. Family or relatives include: father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, or fiancée.

20. Financial Relationship. A connection or association through a material interest of sources of income which exceed five percent of annual gross income from a business entity.

21. Hazard Index. The sum of two or more hazard quotients for multiple regulated substances and/or multiple exposure pathways which impact the same target organ or act by the same method of toxicity.

22. Hazard Quotient. The ratio of a single substance exposure level over a specific time period to a reference dose for that substance derived from a similar exposure period.

23. Indirect Exposure Pathways. An exposure pathway with at least one intermediate release to any media between the source and the point of exposure (for example, leaching of chemicals of concern from soils to ground water).

24. Institutional Controls. The restriction on use of or access to a site to eliminate or minimize potential exposure to chemicals of concern.

25. Intrinsic Remediation. The verifiable reduction of concentrations of chemicals of concern through naturally occurring microbial activity or attenuation mechanisms.

26. Legal Proceedings. Any criminal proceedings or any civil judicial proceedings to which the Federal, State, or Local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

27. Maximum Contaminant Level. A standard for drinking water established by U.S. Environmental Protection Agency under the Safe Drinking Water Act which is the maximum permissible level of chemicals of concern in water which is used as a drinking water supply.

28. Non-Carcinogen. Substances shown either through epidemiological studies or through laboratory studies to cause adverse health effects other than cancer.

29. Notice. A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered in effect five days after being properly sent to the last address known by the Department.

30. Person. An individual, partnership, corporation, or other legal entity organized or united for a business purpose, or a governmental agency.

31. Point(s) of Compliance. A location(s) selected between the source area and the exposure point(s) where chemicals of concern must be at or below the determined target levels in specific media (e.g., soil, ground water, air).

32. Proposal. A plan, request, invitation to consider or similar communication outlining cost, labor, or equipment estimates by or on behalf of a person seeking to directly or indirectly participate or to receive a benefit, directly or indirectly, from site rehabilitation.

33. Reasonably Anticipated Future Use. Future land use which can be predicted given current use, local government planning, and zoning.

34. Reasonable Maximum Exposure. Combination of upper-bound and mid-range exposure factors to be used in dose estimation equations to provide a result which represents an exposure scenario that is both protective and reasonable; not the worst case.

35. Receptors. Persons, structures, utilities, surface water, sensitive habitats, water supply wells, or other living organisms that are, or may be, affected by a release.

36. Related Interest. Affiliated companies, principal owners of the client company, or any other party with which the client deals where one of the parties can influence the management or operation policies of the other.

37. Release. Means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an underground storage tank into subsurface soils, ground water, or surface water.

38. Risk. The probability that a chemical of concern, when released into the environment, will cause an adverse effect in exposed humans or other living organisms.

39. Risk Assessment. An analysis of the potential for adverse health effects caused by chemicals of concern to determine the need for corrective action. Also used to develop target levels where remedial action is required.

40. Risk Reduction. The lowering or elimination of the level of risk posed to human health or the environment through initial response action, corrective action, or institutional or engineering controls.

41. Risk-Based Screening Levels. Risk based, non site-specific, corrective action target levels for chemicals of concern.

42. Sensitive Habitat. Fresh and salt water fisheries, fish habitats including shellfish areas, coastal and inland wetlands, and habitats of threatened or endangered species.

43. Site. Includes all land, regardless of ownership considerations or property boundaries, which is directly affected by the chemicals of concern.

44. Site Classification. A qualitative evaluation of a site based on known or readily available information.

45. Site Conceptual Exposure Model. An analysis of the current and reasonably potential future pathways based on reasonably anticipated receptors and current and reasonably anticipated future use to identify complete exposure pathways. The analysis should be documented in a flow chart or diagram, or other appropriate format, to depict the complete exposure pathways. The site conceptual exposure model should be updated as additional information is obtained for the site.

46. Site Rehabilitation. Cleanup actions taken in response to a release from a UST which includes, but is not limited to, assessment, investigation, evaluation, planning, design, engineering, construction, or other services put forth to investigate or cleanup affected subsurface soils, ground water or surface water.

47. Site Rehabilitation Contractor. An individual or corporation, other than the owner/operator, who performs site rehabilitation under the SUPERB Act and this regulation.

48. Site-Specific Target Level. Risk-based corrective action target levels for chemicals of concern developed for a particular site under the Tier 2 and Tier 3 evaluations.

49. Source Area. Either the location of free-phase hydrocarbons or the location of highest soil and ground-water concentration of the chemicals of concern.

50. Tier 1 Evaluation. A risk-based analysis where non-site-specific values based on conservative exposure factors (i.e., risk-based screening levels), potential exposure pathways, and land use are evaluated to determine appropriate actions.

51. Tier 2 Evaluation. A risk-based analysis applying the risk-based screening levels at the exposure point, development of site-specific target levels for potential indirect exposure pathways based on site-specific conditions, and establishment of points of compliance.

52. Tier 3 Evaluation. A risk-based analysis to develop values for potential direct and indirect exposure pathways at the exposure point based on site-specific conditions.

53. UST. Underground Storage Tank, as defined in Regulation 61-92.280.12.

54. Wellhead Protection Area. A Department approved area surrounding public water supply wells that is designed to protect the wells from threats by: 1) direct introduction of chemicals of concern in the immediate well area, 2) microbial contaminant, and 3) chemicals of concern.

## **SECTION II. Site Rehabilitation Risk-Based Corrective Action Procedures.**

Risk-Based corrective action procedures outlined in this Section shall apply to all petroleum and petroleum product releases from underground storage tanks.

### **A. General Site Rehabilitation Requirements.**

1. UST owners or operators shall implement site rehabilitation activities based on this regulation and on performance standards and criteria developed by the Department. Alternate approaches that accomplish the same goals as the performance standards will also be approvable. The UST owner or operator shall, upon Department approval, begin site rehabilitation activity and monitor, evaluate, and report the results of the activity in accordance with a schedule and in a format approved by the Department.

2. The current use and reasonably anticipated future use of sites shall be considered in making risk-based decisions including, but not limited to, the development of site conceptual exposure models, establishment of exposure points, and corrective actions. The reasonably anticipated future use of sites shall be determined based on factors such as: the current use of the site; zoning laws; comprehensive community master plans; population growth patterns and projections; accessibility of the site to existing infrastructure such as transportation and public utilities; site location in relation to urban, residential, commercial, industrial, agricultural, and recreational areas; Federal/State land use designation; historical or recent development patterns; and location of Wellhead Protection Areas.

3. UST owners or operators must take actions to prevent further releases, control fire and explosion hazards, and remove free product pursuant to the UST Control Regulations, R.61-92, Section 280.

### **B. Site Priority System, Risk Evaluation, and Corrective Action for Releases of Petroleum and Petroleum Products.**

1. UST releases, regardless of its time of occurrence, shall be classified using this priority system.

a. Releases are placed in Classification 1 if any one of the following conditions exists:

(1) an emergency situation;

(2) a fire or explosion hazard;

(3) vapors or free product in a structure or utility;

(4) concentrations of chemicals of concern have been detected in a potable water supply or surface water supply intake;

(5) free product exists on surface water;

(6) chemicals of concern exist in surface water.

b. Releases are placed in Classification 2a if any one of the following conditions exists:

(1) a significant near term (zero to one year) threat to human health, safety, or sensitive environmental receptors;

(2) potable supply wells or surface water supply intakes are located less than one year ground-water travel distance downgradient of the source area.

c. Releases are placed in Classification 2b if any one of the following conditions exists:

(1) free product in a monitoring well measured at greater than one foot thickness;

(2) potable supply wells or surface water supply intakes are located less than 1000 feet downgradient of the source area (where ground-water velocity data is not available).

d. Releases are placed in Classification 3a if any one of the following conditions exists:

(1) a short term (one to two years) threat to human health, safety, or sensitive environmental receptors;

(2) potable supply wells or surface water supply intakes are located greater than one year and less than two years ground-water travel distance downgradient of the source area;

(3) sensitive habitats or surface water exist less than one year ground-water travel distance downgradient of the source area and the ground water discharges to the sensitive habitat or surface water.

e. Releases are placed in Classification 3b if any one of the following conditions exists:

(1) free product in a monitoring well measured at greater than 0.01 foot thickness and less than one foot thickness;

(2) concentrations of chemicals of concern above the risk-based screening levels have been detected in a non-potable water supply well;

(3) concentrations of chemicals of concern in surface soil (less than three feet below grade) in areas that are not paved;

(4) sensitive habitats or surface water used for contact recreation are less than 500 feet downgradient of the source area (where ground-water velocity and discharge location data are not available);

(5) the site is located in a sensitive hydrogeologic setting, determined based on the presence of fractured or carbonate bedrock hydraulically connected to the impacted aquifer;

(6) ground water is encountered less than 15 feet below grade and the site geology is predominantly sand or gravel.

f. Releases are placed in Classification 4a if any one of the following conditions exists:

(1) a long term (greater than two years) threat to human health, safety, or sensitive environmental receptors;

(2) potable supply wells or surface water supply intakes are located greater than two years and less than five years ground-water travel distance downgradient of the source area;



(3) non-potable supply wells are located less than one year ground water travel distance downgradient of the source area.

g. Releases are placed in Classification 4b if any one of the following conditions exists:

(1) free product exists as a sheen in any monitoring wells;

(2) non-potable supply wells are located less than 1000 feet downgradient of the source area (where ground-water velocity data is not available);

(3) the ground water is encountered less than 15 feet and the site geology is predominantly silt or clay.

h. Releases are placed in Classification 5 if any one of the following conditions exists:

(1) there is no demonstrable threat, but additional data are needed to show that there are no unacceptable risks posed by the site;

(2) assessment data for the site indicate concentrations of chemicals of concern are above the risk-based screening levels or site-specific target levels, as appropriate, and further assessment is needed;

(3) assessment data for the site indicate concentrations of chemicals of concern are below the risk-based screening levels or site-specific target levels, as appropriate, but the samples are determined to not be representative; therefore, further assessment is needed.

i. The Department or owner or operator may re-evaluate the priority of a release upon receipt of additional information. However, the Department shall make the final decision as to priority classification.

2. The following risk-based corrective action procedures shall be used for releases from USTs upon Department approval. Risk evaluations shall be performed in accordance with this regulation and applicable Department performance standards and criteria.

a. The information necessary for a Tier 1 evaluation includes, but is not limited to, the following:

(1) A review of historical records of site activities and past releases;

(2) Quantification of the concentrations of the chemicals of concern;

(3) Parameters necessary to utilize soil leachability models, if appropriate;

(4) Location of source(s) of chemicals of concern;

(5) Location of maximum concentrations of chemicals of concern in soil and ground water;

(6) Determination of regional or site-specific hydrogeologic conditions such as depth to ground water, ground-water flow direction, hydraulic gradient, ground-water flow velocity;

(7) Determination if the chemicals of concern in the soil will leach to ground water in excess of risk-based screening levels;

(8) Location of current and reasonable future receptors;

(9) Identification of potential significant transport and exposure pathways.

(10) Determination of current and reasonably anticipated future use of the property, ground water, surface water, and sensitive habitats where the release has occurred and the surrounding property.

(11) If an exposure is identified, concentrations of chemicals of concern measured at point(s) of exposure.

b. The UST owner or operator shall use the data collected as described in (a) to evaluate the risk presented by the release using the following Tier 1 evaluation method:

(1) Develop a site conceptual exposure model to identify all exposure pathways.

(a) Information about the facilities operations, the source of chemicals of concern, current and expected site conditions and/or land use, proximity to receptors, current and expected use of ground water, and human receptors is necessary to develop the model.

(b) Potential exposure pathways to be considered for evaluation based on the site conceptual model shall include: air inhalation, ground water ingestion, surficial soil ingestion, dermal contact, and subsurface soil leaching to ground water.

(c) A summary of all complete exposure pathways at a site shall be completed for current conditions and for reasonably anticipated future use if different from the current use.

(2) Use the site conceptual exposure model developed in (1) to identify the data required to quantify the exposure by estimating the dose for all complete pathways. In Tier 1, risk-based screening levels for dermal contact, soil ingestion, and vapor inhalation pathways are based on a Carcinogenic Risk Limit of  $10^6$  and a Hazard Index of  $\geq 1$  for non-carcinogens unless a different risk level for a specific chemical of concern has been established by the Department. Risk-based screening levels for the soil leaching to ground water pathway shall be based on leaching models approved by the Department. Risk-based screening levels for ground water ingestion shall be based on maximum contaminant levels or other health based criteria for chemicals of concern without established maximum contaminant levels. For complete pathways other than the soil leaching to ground water and ground-water ingestion, risk-based screening levels shall be calculated based on the carcinogenic risk limit and the hazard quotient values stated in (2) above, published toxicity data and published reasonable maximum exposure values. The exposure factors used in the calculations shall be based on reasonable maximum exposure.

(3) Calculate the exposure for all identified complete pathways. The risk-based screening levels established by the Department for the chemicals of concern must be met at the exposure point(s). In Tier 1, the exposure point(s) and point(s) of compliance shall be located within the source area of the release or the area containing the highest concentrations of the chemicals of concern.

c. Representative concentrations of chemicals of concern in affected media are determined by the following:

(1) For ground water: the maximum concentrations of chemical of concerns obtained from last sampling event.

(2) For soil: the maximum concentrations of chemicals of concern obtained in the last sampling event for the ingestion, inhalation, and dermal contact pathway; and the average chemical of concern

concentrations in the source area for the soil leaching to ground water pathway. To determine representative chemical of concern concentrations in the soil to be used in a leachability model, for each chemical of concern, the three soil samples with the highest non-zero concentration of chemicals of concern shall be averaged.

(3) For vapor: the maximum concentrations of chemicals of concern obtained in last sampling event.

d. If the concentrations of the chemical of concern at representative sample locations are below the Risk-Based Screening Levels, further assessment or cleanup may not be necessary, upon Department approval.

e. If the representative concentrations of chemical(s) of concern in the affected media are above the risk-based screening levels, the UST owner or operator shall conduct one or more of the following: interim remedial action; remedial action using the risk-based screening levels as target levels, as approved by the Department; other Department approved actions necessary to reduce risk; or further Tier evaluation. Further tier evaluation is warranted if: the site-specific target levels developed under further tier evaluation will be significantly different than the Tier 1 risk-based screening levels, the cost of remedial action to risk-based screening levels will likely be greater than further tier evaluation and subsequent remedial action, or the approach or assumptions, used to derive the current tier's goals are not appropriate for conditions at the site.

f. If a Tier 2 assessment is warranted, the UST owner or operator shall perform a Tier 2 assessment in accordance with this regulation and applicable Department criteria. Additional site assessment for a Tier 2 evaluation may include, but is not limited to: determination of site-specific hydrogeologic conditions; determination of horizontal and vertical extent of chemicals of concern relative to the Risk-Based Screening Levels, as appropriate; determination of changes in concentrations of chemicals of concern over time; determination of concentrations of chemicals of concern measured at exposure points; and, fate and transport evaluation to predict the attenuation of the chemicals of concern away from the source area.

g. The UST owner or operator shall use the data collected as described in (f) to evaluate the risk presented by the release using the following Tier 2 evaluation:

(1) Establish the exposure point. The most likely point of exposure closest to the source area shall be established as the exposure point for each complete pathway identified.

(2) For the ground-water ingestion pathway, the exposure point shall be established based on the current and reasonably anticipated future use of the ground water.

(a) If the ground water at a site is a current source of drinking water, or is reasonably anticipated to be utilized, the exposure point shall be established in the source area of the release or the area with the highest concentrations of chemicals of concern.

(b) If the ground water at a site is not currently used as a source of drinking water, or is not reasonably anticipated to be utilized, the exposure point shall be located hydraulically upgradient of the nearest receptor or the first ground water hydraulically downgradient of the site reasonably anticipated to be utilized.

(c) If the site is located within a designated Wellhead Protection Area, the exposure point(s) shall be established to prevent concentrations of chemical(s) of concern from exceeding maximum contaminant levels in the drinking water well.

(3) Establish a site-specific target level for each chemical of concern identified at the site which exceeds its risk-based screening level. A site-specific target level shall be established for each complete pathway identified that calculates an acceptable source area concentration so that risk-based screening levels are not exceeded at the point(s) of exposure.

(a) For the ground-water exposure pathway, the reduction of chemicals of concern in the saturated zone shall be estimated using either empirical data or models approved by the Department and implemented with site-specific data. Empirical data can be used to estimate the overall concentration reduction factor of the chemicals of concern in the relevant media from the source to the exposure point. Models can also be used to estimate the fate and transport of the chemicals of concern away from the source area.

(b) For the soil leaching to ground water pathway, the site-specific target level for each chemical of concern in soil shall be calculated using leachability models approved by the Department.

(c) Site-specific target levels for the dermal contact, soil ingestion, and vapor inhalation pathways shall be based on a Carcinogenic Risk Limit of  $10^6$  and a Hazard Index of  $\geq 1$  for non-carcinogens to be applied at the exposure point unless a different risk level for a specific chemical of concern has been established by the Department. Department approved less conservative exposure factors may be used in the calculations for commercial and industrial scenarios. Site-specific exposure factors or most likely or average exposure factors may be used, as appropriate.

(4) Establish the point(s) of compliance. The point(s) of compliance shall be established hydraulically downgradient of the source area and hydraulically upgradient of an exposure point. At least one point of compliance must be located directly downgradient of the source area between the source area and the exposure point for each complete pathway. A minimum of one year travel time for the chemicals of concern from the point of compliance to the exposure point shall be established where possible. Additional point(s) of compliance are necessary where complex hydrogeologic conditions exist that may control chemical of concern migration.

h. If the concentrations of the chemicals of concern are below their site-specific target levels, the UST owner or operator shall submit a corrective action plan proposing a monitoring program to verify intrinsic remediation.

i. If representative concentrations of chemical(s) of concern in the affected media are above the site-specific target levels, the UST owner or operator shall conduct one or more of the following: interim remedial action; remedial action using the site-specific target levels, as approved by the Department; other Department approved actions necessary to reduce risk; or further Tier evaluation. Further tier evaluation is warranted if: the site-specific target levels developed under further tier evaluation will be significantly different than the Tier 2 site-specific target levels; the cost of remedial action to site-specific target levels will likely be greater than further tier evaluation and subsequent remedial action; or the approach or assumptions, used to derive the current tier's goals are not appropriate for conditions at the site.

j. If further Tier evaluation is warranted, the UST owner or operator shall perform a Tier 3 assessment to collect additional appropriate site-specific data to evaluate the risk presented by the release for a Tier 3 evaluation.

k. Based on the results of the Tier 3 evaluation, the owner or operator shall perform the appropriate action as approved by the Department based on the following:

(1) If the concentrations of the chemicals of concern are below the site-specific target levels, the UST owner or operator shall develop a corrective action plan proposing a monitoring program to verify intrinsic remediation.

(2) If the concentrations of the chemicals of concern are above the site-specific target levels, the UST owner or operator shall develop a corrective action plan which shall include active cleanup which may include intrinsic remediation as a component.

### 3. Corrective Action.

a. The UST owner or operator shall develop and implement a Department approved corrective action plan for each release to achieve risk-based screening levels or site-specific target levels established under the risk-based corrective action procedures. The corrective action plan shall include a schedule for implementation and for achieving risk-based screening levels or site-specific target levels. The corrective action plan must be developed and implemented in accordance with R.61-92 including procedures for Department approval and public notice. Any selected corrective action alternative funded by the SUPERB Account shall be a reasonable, cost-effective response for soil and/or ground-water contamination. In evaluating the cost effectiveness of proposed action, the UST owner or operator shall take into account the total short and long-term costs of such action, including the costs of operation and maintenance for the entire period during which such activities will be required.

b. The UST owner or operator and the Department shall encourage the use of innovative treatment technologies, where appropriate.

c. The Department shall require monitoring, evaluation, and reporting of corrective actions to evaluate whether the corrective action is efficient and cost effective.

d. UST owners or operators shall implement modifications to the corrective action, as required by the Department, to increase efficiency and cost effectiveness.

e. Once the Department agrees that monitoring data supports the conclusion that: the risk-based screening levels or site-specific target levels have been met; the chemicals of concern have reached equilibrium or are not moving at a significant rate; concentrations of chemicals of concern are not increasing, no unacceptable risk to human health, safety, or the environment exists, and that concentrations of chemicals of concern will not exceed risk-based screening levels at the exposure point or receptor, the Department may issue a decision that further site rehabilitation is not necessary. These shall be conditional no further action decisions based on site-specific conditions and the current or reasonably anticipated future use of the site. The assumptions and conditions shall be outlined in writing. The Department shall maintain a registry of releases having conditional no further action decisions.

f. The Department approval of a corrective action plan or issuance of a conditional decision that further site rehabilitation is not necessary shall be considered an order of the Department enforceable pursuant to the 1976 Code Section 44-2-140. The UST owner or operator shall not undertake any actions that result in an increase in risk of exposure to the chemicals of concern including modification of the current or reasonably anticipated future use of the site without Department approval. The SUPERB Account shall not be responsible for funding further site rehabilitation as a result of an increase in risk under these conditions unless a variance to this provision is granted by the Department.

g. The Underground Storage Tank Program shall coordinate, on behalf of the owner or operator, all Department permits associated with implementation of a corrective action plan.

4. Variances. The Department may issue a variance to this Section, when, in its opinion, the UST owner or operator has demonstrated that an equivalent degree of protection will be provided to human health and the environment. Any variance granted or denied by the Department shall be in writing and shall contain a brief statement of the reasons for the approval or denial.

### **SECTION III. SUPERB Fund Requirements.**

#### 1. Site Rehabilitation Application.

a. A UST owner or operator requesting monies from the SUPERB Fund shall submit to the Department a written application on a form provided by the Department. The written application shall include certification that:

(1) The chemicals of concern resulted from a release from a UST, including supporting documentation.

(2) Site rehabilitation is necessary.

(3) The USTs at the site have been registered in compliance with applicable UST laws and regulations.

(4) The UST registration fees have been paid.

b. The Department shall accept certification that the site is in need of rehabilitation if the certification is provided jointly by the UST owner or operator and a South Carolina registered professional geologist or engineer, and if reasonably supported by geotechnical data and information documenting the site investigation and assessment activities performed.

c. The application shall also include:

(1) a description of all abatement actions taken in response to the release pursuant to Regulation 61-92, and

(2) a notarized statement confirming the existence or absence of environmental liability insurance for the site that covers site rehabilitation activities in response to a UST release.

d. For denied applications, the Department shall provide written notice of its findings to the applicant, including detailed reasons for denial. The Department shall deny application for reasons including, but not limited to, the following:

(1) where the application is incomplete;

(2) where, in the opinion of the Department, the application is not reasonably supported by geotechnical data;

(3) where, in the opinion of the Department, the available information documents that site rehabilitation is not appropriate.

e. For approved applications, the Department shall respond in writing confirming the relative priority of the site as described in this section and provide general directives.

2. The Department shall provide access to the SUPERB Fund shall based on the priority classification system.

3. General Requirements.

a. UST owners or operators or site rehabilitation contractors may not propose or invoice costs to the SUPERB fund above reasonable, usual and customary costs.

b. Reimbursement for site rehabilitation activities shall in no event exceed the actual costs incurred by the UST owner or operator.

c. The Department shall not process incomplete invoices or invoices which are not supported by site rehabilitation reports and/or technical data.

d. The Department may withhold taking action on an application for monies during pendency of an enforcement action by the state or federal government related to the UST or a release from the UST.

e. The Department may deny or reduce payment for reported costs for failure by the UST owner or operator or site rehabilitation contractor to substantially comply with applicable statutory or regulatory requirements, including the provisions of this regulation, the SUPERB Act, or the Underground Storage Tank Control Regulations.

f. The Department may conduct an audit to assure compliance with this regulation. Audits will include, but not be limited to, determining that:

(1) funds were expended in a manner consistent with that reported to the Department;

(2) all necessary information needed to determine that costs represented were actually incurred.

g. Any funds paid to UST owner or operator or site rehabilitation contractor which are disallowed in accordance with this regulation shall be considered a debt to the fund. In addition to requiring repayment, the Department shall have the authority to offset any incorrect payment against other invoices for that or other releases for the same person. If no ability to offset exists and a debt is not paid within ninety (90) days after demand, the State may take other actions permitted by law and this regulation.

h. Any proceeds gained from the sale or salvage of site rehabilitation equipment purchased with SUPERB funds shall be returned to the SUPERB fund.

i. The Department reserves the right to arrange to have any equipment appraised for determination of fair market or salvage value. The cost of the appraisal shall be paid from the SUPERB Account.

j. The Department shall develop criteria for the following:

(1) the minimum supporting technical and financial documentation for proposed or performed site rehabilitation activities;

(2) a maximum frequency of billing;

(3) a minimum invoice amount unless it is the final invoice for an approved site rehabilitation activity;

- (4) retainer amounts;
- (5) requirements for processing final invoices; and
- (6) procedures for processing technical and financial changes associated with administration of the fund.

k. In developing and periodically updating the performance standards and criteria, the department shall make public notice and receive and consider public comments.

l. A UST owner or operator or site rehabilitation contractor shall provide proposed costs and documentation of incurred costs for site rehabilitation activities in accordance with applicable Department performance standards and criteria and on forms provided by the Department.

#### 4. Site Rehabilitation Payments.

a. The Department shall establish and periodically update reasonable, usual and customary costs and activities based on the Department's experience and industry-typical costs after sufficient public notice and consideration of public comments. These may include, but not be limited to the following:

- (1) costs for site rehabilitation activities as authorized in this section;
- (2) personnel and equipment categories;
- (3) definitions, payment rates, and duration of activities, where appropriate, for categories that are commonly used in site rehabilitation activities; and
- (4) the requirements for competitive pricing for site rehabilitation activities and equipment, where necessary;

b. Reasonable, usual and customary costs, established in paragraph (a), above, are payable from the SUPERB fund for activities including, but not limited to, the following:

- (1) recovery, storage, sampling, treatment, and proper disposal of released petroleum, petroleum products and/or petroleum/water mixtures;
- (2) storage, sampling (to determine the method of disposal), and proper disposal of soils containing chemicals of concern;
- (3) boreholes with associated soil sampling and chemical analysis as required by the Department to assess the extent of chemicals of concern in the soil;
- (4) boreholes with associated ground-water sampling and chemical analyses, installation and sampling of temporary and permanent monitoring wells to assess the extent and severity of chemicals of concern in the ground-water;
- (5) installation and sampling of recovery wells;
- (6) hydrogeologic evaluation;



(7) preparation and submittal of assessment plans, assessment reports, corrective action plans, and mixing zone applications;

(8) routine ground-water monitoring and reporting as approved by the Department;

(9) construction, operation, and maintenance of a treatment system specifically constructed for site rehabilitation, or;

(10) treatment, associated sampling, and proper disposal of petroleum or petroleum product contaminated ground water as required;

(11) plans for termination of site rehabilitation activities.

c. Activities that are not payable from the SUPERB fund include, but are not limited to, the following:

(1) UST system replacement, UST system removal, UST system upgrade, UST system testing, UST closure and other assessments to determine if a release has occurred;

(2) actions taken to stop the UST from leaking;

(3) the investigation and cleanup of any release other than a release of petroleum or petroleum products from a UST;

(4) loss of product;

(5) payment of liability claims against the owners or operators of a UST;

(6) legal fees;

(7) loss of revenue;

(8) loss of trees, shrubs, or signs;

(9) overnight or express mail costs for plans, reports, and assorted paper documentation;

(10) costs related to unnecessary environmental permits;

(11) costs incurred to prepare and implement plans and reports that are not technically warranted or do not substantially address the Department's performance standards;

(12) costs incurred in general consultation with the Department or the UST owner or operator regarding plan or cost preparation;

(13) costs associated with the replacement of capital expense items which have been lost, stolen, or damaged by acts of vandalism and/or natural disasters;

(14) handling fees, markups, commissions, percentages or other similar considerations on any activity furnished or completed by any entity which has a familial or financial relationship and/or related interest to the property owner, UST owner or operator, or site rehabilitation contractor.

(15) costs incurred for unnecessary or inappropriate site rehabilitation activities.

5. SUPERB Eligibility Appeals. A UST owner or operator shall be granted a hearing by an independent hearing officer to appeal a denial of SUPERB eligibility, if requested in writing within 15 days of receipt of the letter denying SUPERB eligibility.

6. Invoice Review.

a. A UST owner or operator or a site rehabilitation contractor may seek a review of a staff decision by the UST Program Director regarding an invoice for which the Department denies payment. Requests for review shall be submitted to the Department within thirty (30) days of the date of receipt of Department correspondence that denies the invoice. Requests for reviews shall be in accordance with a Department established format.

b. The UST Program Director shall review all requests for review described in (a) above and provide a written determination thereto within forty-five (45) days.

7. Cost Recovery.

a. When the Department is required to perform site rehabilitation through its own personnel or contractors, the Department shall diligently seek cost recovery of any cost incurred as authorized by the SUPERB Act.

b. For sites that do not qualify for SUPERB eligibility, but for which SUPERB funds have been expended by the Department, the Department shall recover all expenditures from the owner or operator, as appropriate. This may include, but not be limited to:

(1) all materials and labor;

(2) all contractual costs; and

(3) all actual administrative costs incurred by the Department to conduct site rehabilitation activities and to secure cost recovery.

c. For sites that qualify for SUPERB monies but where the owner or operator is unable or unwilling to perform site rehabilitation, the Department may recover from the SUPERB Account. For site rehabilitation activities or costs not covered by the SUPERB Act, the Department may recover, as appropriate, from the owner or operator:

(1) all materials and labor;

(2) all contractual costs; and

(3) all actual administrative costs incurred by the Department to conduct site rehabilitation activities and to secure cost recovery.

d. Cost recovery shall be in addition to any fines imposed by the Department pursuant to the SUPERB Act.

## SECTION IV. Certification of Site Rehabilitation Contractors.

### A. Certification Requirements.

1. Applicability. This section applies to contractors or subcontractors who directly or indirectly participate in site rehabilitation whether or not SUPERB funding has been or will be sought.

2. Within 120 days of regulation promulgation, site rehabilitation contractors who perform on-site work as a primary contractor under the SUPERB Act must be certified under this regulation. The Department will certify those site rehabilitation contractors that demonstrate sufficient experience and knowledge in performing site rehabilitation activities related to releases of regulated substances from underground storage tanks. Site rehabilitation contractors must maintain certification to perform site rehabilitation actions. Contractors providing off-site support services (e.g., analytical laboratories) are not required to be certified under this regulation. Class I sub-contractors are also required to be certified under this regulation. The primary contractor maintains responsibility for the quality of work performed by individuals or companies sub-contracted to them.

3. Classes of Certification. Site rehabilitation contractors shall be certified in one or both of the following classes:

a. Class I. Contractors performing work involving the collection and interpretation of investigative data; the evaluation of risk; and/or the design and implementation of corrective action plans.

b. Class II. Contractors performing work involving routine investigative activities (e.g., soil or ground water sampling, well installation, aquifer testing) where said activities do not require interpretation of the data and are performed in accordance with established regulatory or industry standards.

4. Qualifications. An applicant, which may be an individual or a company, shall be certified as a site rehabilitation contractor upon satisfaction of the requirements in 4.a or 4.b, as appropriate. For a company to become certified, a full-time permanent employee of that company must satisfy the requirements in 4.a or 4.b, as appropriate.

a. Applicants for a Class I certification must satisfy the following:

(1) registration as a Professional Engineer or Geologist in South Carolina including three years applicable experience in performing site rehabilitation activities related to releases of regulated substances from underground storage tanks.

b. Applicants for a Class II certification must satisfy the following:

(1) a minimum of three years applicable experience in performing site rehabilitation activities related to releases of regulated substances from underground storage tanks; and,

(2) any necessary South Carolina certification and/or license (e.g., Well Driller).

c. Applicants for either class shall maintain liability insurance coverage of the types and in the amounts described in the table below and shall provide certification to the Department of such coverage upon meeting the requirements of 4.a and/or 4.b. of this Section, and yearly thereafter.

<u>Type of Policy</u>	<u>Limits of Liability</u>
General Liability	\$500,000 per occurrence

<u>Type of Policy</u>	<u>Limits of Liability</u>
	\$1,000,000 aggregate
Professional Liability	\$500,000 per occurrence \$1,000,000 aggregate
Pollution/Property Damage	\$300,000

The contractor shall be required to indemnify the property owner, underground storage tank owner/operator and the State of South Carolina from and against all claims, damages, losses and expenses arising out of or resulting from activity conducted by the contractor, its agents, employees or subcontractors.

**B. Public Notice and Certificate Issuance.**

1. For new applications, a list of those contractors requesting certification shall be placed on public notice in the State Register each month and shall be open for comment for a period of thirty (30) days.

2. The Department shall issue a Certificate to any applicant who has satisfactorily met all the requirements of these rules. Certificates shall show the full name of the contractor, the date of certification, give a certification number, and be signed by a Department representative.

3. The Department shall publish a roster showing the names and places of business of all certified site rehabilitation contractors. Copies of this roster shall be provided to the public on request.

4. Each applicant for, or holder of, a certificate shall notify the Department at its office within thirty (30) days of any changes of address or telephone number.

5. Each applicant for, or holder of, a certificate shall notify the Department at its office within thirty (30) days of any changes that may affect qualification pursuant to Section IV.A.4 of this regulation.

6. Within thirty (30) days of receipt of information that may affect certification of an applicant for, or holder of, a certificate, the Department shall evaluate the current qualifications of the applicant or holder and make a determination as to certification per the requirements of this regulation.

**C. General Requirements.**

1. All plans, reports, invoices and other documents relating to site rehabilitation activities which have been prepared or approved by a certified contractor shall be signed by the certified contractor and bear his certification number.

2. The certification of a site rehabilitation contractor shall in no way establish liability or responsibility on the part of the Department or the State of South Carolina in regards to the services provided by the contractor or circumstances which may occur as a result of such services.

3. Except as permitted by this regulation, a UST owner or operator shall not knowingly allow the initiation, implementation or completion of site rehabilitation with a decertified or suspended contractor. A UST owner or operator may rely upon the certification of a contractor that it or its affiliates are not decertified or suspended from site rehabilitation, unless it knows that the certification is erroneous.

#### **D. Use of Owner/Operator Personnel.**

1. The use of an UST owner or operator's personnel and equipment in performing site rehabilitation activities must be approved by the Department.

a. Prior to commencing any site rehabilitation activities, the owner or operator shall make a demonstration to the satisfaction of the Department with respect to the capability of the owner or operator's personnel to perform the work in a manner which shall comply with § 44-2-50 of the SUPERB Act. Particular consideration shall be given to the background and experience of the personnel who will perform the work and their knowledge of the technical considerations necessary to perform the site rehabilitation; and

b. An owner or operator or his personnel who performs site rehabilitation activities is required to comply with the provisions of Section IV.A. of this regulation.

c. An owner or operator or his personnel desiring to perform site rehabilitation activities must satisfy the liability insurance requirements of IV.A.4.c. above, including indemnification of other property owners.

2. If the Department determines that an owner or operator cannot perform site rehabilitation in compliance with Section II.A of this regulation, the Department may require the owner or operator to obtain the services of a certified site rehabilitation contractor.

#### **SECTION V. Suspension, Decertification, and Appeals.**

##### **A. Suspension and Decertification.**

1. Effect of Action. Contractors who are suspended or decertified shall be excluded from performing site rehabilitation throughout the state for the period of their suspension or decertification. No UST owner or operator shall knowingly have any suspended or decertified contractors, including affiliates, perform site rehabilitation during such period or enter any agreement that would stipulate the suspended or decertified contractor perform site rehabilitation during such periods.

2. Suspension. Summary shall be for a temporary period pending the completion of an investigation or ensuing decertification or legal proceedings. The Department may impose summary suspension in egregious cases posing imminent harm to the environment or the public.

3. Decertification.

a. The Department may decertify a contractor performing or seeking to perform site rehabilitation in South Carolina when:

(1) the contractor fails to maintain qualification pursuant to Section IV.A.4;

(2) the contractor has had administrative or civil enforcement action under the provisions of this chapter taken against him within the last three years;

(3) the contractor has demonstrated repeated noncompliance with financial criteria established by the Department, to include, but not be limited to:

(a) submitting bills to the Department that are inconsistent with regulations, established criteria and/or general accounting principles;

(b) submitting duplicate or fraudulent bills to the Department;

(c) submitting bills to the Department for work not yet performed or equipment and materials not yet delivered or received; and

(d) failure to pay cost recovery requests from the Department (including disallowed costs and overpayment), provided the debt is uncontested by the debtor or if contested provided that the debtor's legal and administrative remedies have been exhausted.

(4) where a person has demonstrated repeated inability to perform site rehabilitation in accordance with performance standards and criteria developed by the Department and accepted industry standards to include, but not be limited to:

(a) deliberate failure to perform according to the specifications or within the schedule approved by the Department;

(b) a record of failure to perform or of unsatisfactory performance according to the terms of one or more site rehabilitation work plans; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the person shall not be considered a basis for decertification;

(5) any other cause that the Department determines to be so serious and compelling as to affect the ability of a contractor or subcontractor to perform site rehabilitation activities in a satisfactory manner, including decertification or similar action by another governmental entity.

4. Investigation. Information of a cause for decertification from any source shall be promptly reported to the Department by UST owners, operators, site rehabilitation contractors, or other persons. The Department will promptly investigate, and may issue a notice of proposed decertification.

5. Notice of Proposed Decertification. A decertification notice shall be issued to the contractor advising:

a. That decertification is being considered;

b. Of the reasons for the proposed decertification in terms sufficient to put the respondent on notice of the conduct or site rehabilitation activity upon which it is based;

c. Of the potential effect of decertification.

6. Opportunity For Review of Proposed Decertification. Within fifteen (15) days after receipt of the notice of proposed decertification, the contractor may submit in writing information and argument in opposition to the proposed decertification and notify the Department if a conference is desired. If such request is made, the contractor shall be afforded an opportunity to appear with a representative, and submit documentary evidence and other appropriate information.

7. Notice of Decertification.

a. The decision shall be made within forty-five (45) days after receipt of any information and argument submitted by the respondent, unless the Department extends the period for good cause.

b. The notice of the Department's decision shall specify the reason(s) for decertification; state the period of decertification; and advise that the decertification is effective for all UST site rehabilitation activities in the State except as provided for by this section.

c. If the Department decides not to impose decertification, the contractor shall be given prompt notice of that decision. A decision not to impose decertification shall be without prejudice to a subsequent imposition of decertification by the Department.

d. When in the best interest of the State or the Department, the Department may, at any time, settle a decertification or suspension action.

#### 8. Period of Decertification.

a. Decertification shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a decertification, the suspension period shall be considered in determining the decertification period.

b. Decertification should generally not exceed three (3) years. Where circumstances warrant, a longer period of decertification may be imposed.

c. The Department may extend an existing decertification for an additional period, if the Department determines that an extension is necessary to protect the public interest. However, a decertification may not be extended solely on the basis of the facts and circumstances upon which the initial decertification action was based.

9. Reversal of Decertification. The Department may reverse a decertification decision for reasons including, but not limited to:

- a. newly discovered material evidence;
- b. reversal of the conviction or civil judgement upon which the decertification was based;
- c. bona fide change in ownership or management;
- d. elimination of other causes for which the decertification was imposed; or
- e. other reasons the Department deems appropriate.

#### 10. Exceptions.

a. The Department may grant an exception permitting a decertified or suspended contractor to participate in a particular site rehabilitation activity upon prior notice and subsequent to a written determination by the Department stating the reason(s) for deviating from the requirements of this regulation. Exceptions shall be granted on a case by case basis.

b. UST owners or operators shall not renew or extend agreements to allow decertified or suspended contractors from continuing with site rehabilitation, except as provided in (a) above.

11. Failure to Adhere to Restrictions. Except as permitted by this regulation, a UST owner or operator shall not knowingly allow the initiation, implementation or completion of site rehabilitation with a decertified or suspended contractor. A UST owner or operator may rely upon the certification of a contractor

that it or its affiliates are not decertified or suspended from site rehabilitation, unless it knows that the certification is erroneous.

**B. Appeals.**

1. Any person that has been suspended or decertified shall have the right to appeal in accordance with the Administrative Procedures Act. Appeals shall be heard by an independent hearing officer.