

# SUPERB ADVISORY COMMITTEE

## Annual Report March 2007

### **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.

### SUPERB Account information as of December 31, 2006:

Total Revenue in Calendar Year 2006	\$ 21,017,821.50
Total Fund Balance	\$ 24,067,349.15
Commitments (current contracts)	\$ 19,490,285.90
*Available for Commitment	\$ 4,576,963.25
Cumulative Spent Since 1988	\$223,429,314.35

\* This balance is currently higher than usual due to a one-time \$2.85 million settlement with Exxon corporation which was deposited into the SUPERB account during 2006.

### **Leak Rate**

The leak rate from active, non-operational, and orphan tanks was 1.34% for 2006. This leak rate has been relatively consistent (at or near 1%) over the past three years.

### **SUPERB Financial Responsibility Fund**

DHEC is currently aware of 14 third party claims or suits and actively participates in their resolution as allowed for in Section 44-2-40 of the SUPERB Act. As of December 31, 2006 the SFRF Balance was \$2,934,640. A total of \$921,287.42 has been spent for claims, legal fees, and appraisal activities since the creation of this fund in 1993. In 2006, no claims were paid.

### **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. The UST database reveals that sixty-three percent (63%) of UST facilities are covered by self-insurance, eighteen percent (18%) by letters of credit or surety bonds, thirteen percent (13%) by commercial insurance, and the remainder by guarantees, trust funds, and local government options.

### **Cleanup Program Progress**

As of December 31, 2006, DHEC has confirmed a total of 8,881 UST releases. Of these, 5,605, or 63%, have been closed. A total of 292 releases were closed in calendar year 2006, 125 without SUPERB funding, and 167 with SUPERB funds. Eighteen releases requiring engineered cleanup systems 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 3,276 open releases, of which 3,170 are eligible to receive SUPERB funds. Confirmed releases are ranked by DHEC for funding priority according to the risk each poses. The priority system is outlined in the SUPERB Fund Access Regulations (R.61-98). Appendix 1 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, 2006, 324 releases were in active cleanup, 255 releases were being monitored as part of a formalized natural attenuation remedial plan. A total of 1002 releases were actively being funded by the SUPERB fund. For the most part, site rehabilitation activities are funded by SUPERB or by the UST owner under the \$25,000 SUPERB deductible.

DHEC continues to report their desire to hasten the cleanup of approximately 300 releases in the highest two risk categories requiring engineered remediation systems by securing additional revenue. They estimate the cost to cleanup those releases may exceed \$40 million; however, by intensifying the cleanup rate, DHEC anticipates long term cost savings as contamination is not allowed to spread and receptors do not have to be repaired or replaced.

### **Underground Storage Tank Information**

Since 1986, 43,939 petroleum USTs have been registered with DHEC. Of those, 31,927 have been removed from the ground or properly closed in place. As of December 31, 2006, there were 12,012 operating USTs at 4,305 locations across the state.

The US Environmental Protection Agency requires DHEC to routinely report on UST compliance with release prevention and release detection, commonly referred to as substantial operational compliance. DHEC reported that 74 percent of the approximately 3,500 UST facilities inspected during 2006 were in substantial operational compliance. The compliance rate for the past two years has remained nearly constant. 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.

### **Legislative Information**

An actuarial study of the SUPERB fund was completed in March 2007. The report shows the current liabilities of the fund at \$153 million and estimated future liabilities at \$373 million. This will leave the fund with a negative balance of \$32 million at the scheduled sunset date in 2026.

In September of 2006 DHEC received 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 for UST owners and operators. Should this occur, tank owners and operators would be required to obtain coverage through other financial mechanisms, such as environmental insurance to cover the \$1 million dollar financial responsibility requirement of RCRA Subtitle I. Since September, a number of proposals to resolve the financial issue have been discussed with petroleum industry and legislative representatives. DHEC has responded to EPA indicating that it will provide support as industry pursues a resolution.

Also, The 2005 Energy Policy Act has several new requirements that will impact petroleum UST owners and operators in the near future. The new law mandates training requirements for UST operators, and either secondary containment for new UST systems that are installed within 1,000 feet of any existing community water system or any existing potable drinking water well, or financial responsibility requirements for manufacturers of tanks and piping, and UST installers. Additionally, the new law requires that states adopt a delivery prohibition for UST systems that are determined to be ineligible to receive product due to non-compliance with specific federal and state regulatory requirements. To ensure South Carolina is compliant with federal UST laws, DHEC will commence coordination with the petroleum industry, UST equipment manufactures, and UST installers, and other interested parties during 2007 so that existing state UST regulations may be amended during the 2008

legislative session. While some of the new federal requirements take affect in 2007, the EPA is aware that most states need time to affect state laws. The DHEC strategy for amending state UST regulations to incorporate the new federal requirements has been related to and accepted by EPA.

### **Recommendations**

In order to resolve the solvency problems of the SUPERB Fund, a majority on the Committee recommends that Section 44-2-60(B) of the SUPERB Act be modified to raise the environmental impact fee from ½ cent per gallon to 1 cent per gallon. Also, the current annual registration fee (44-2-60(A)) should be raised from \$100 dollars per tank per year to \$135 dollars per tank per year. The Committee believes that DHEC should be given time after any increase in fees is legislatively finalized to assess how much administrative growth is needed to successfully manage the additional funding. Once the situation stabilizes, this Committee will evaluate DHEC's administrative efficiency.

## Appendix 1

### SUPERB Eligible Releases by Risk Category As of December 31, 2006

Risk Category	Open Releases
1	242
2A	154
2B	831
3A	135
3B	1,091
4A	186
4B	213
5	318
Total	3,170

#### 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 23, 2007

County	Risk Category								Total
	1	2A	2B	3A	3B	4A	4B	5	
Abbeville	3	0	9	2	5	1	2	6	28
Aiken	3	1	12	0	6	3	3	17	45
Allendale	1	1	7	0	11	0	2	3	25
Anderson	0	5	22	8	34	18	11	10	108
Bamberg	2	1	17	0	10	1	2	0	33
Barnwell	0	5	12	2	5	1	1	1	27
Beaufort	3	4	24	10	17	0	0	0	58
Berkeley	6	2	24	2	33	0	5	4	76
Calhoun	0	1	2	0	1	1	0	0	5
Charleston	3	6	25	10	136	0	10	16	206
Cherokee	3	2	8	1	9	2	4	6	36
Chester	9	5	12	1	8	2	3	3	43
Chesterfield	1	2	10	1	9	0	1	2	26
Clarendon	11	7	25	2	21	0	3	4	73
Colleton	5	5	19	1	14	1	0	2	47
Darlington	2	2	23	1	19	1	5	4	57
Dillon	10	2	14	1	15	0	3	3	48
Dorchester	4	0	24	2	25	1	7	4	67
Edgefield	0	0	2	3	4	0	3	3	15
Fairfield	5	1	10	0	0	0	1	1	18
Florence	11	9	62	6	71	2	20	7	188
Georgetown	6	3	18	5	26	0	1	5	64
Greenville	10	7	37	7	55	30	23	62	231
Greenwood	1	2	20	3	7	11	11	9	64
Hampton	1	4	13	0	11	0	4	2	35
Horry	9	8	38	15	105	0	5	18	198
Jasper	6	5	25	1	8	0	0	1	46
Kershaw	7	5	8	0	11	2	2	5	40
Lancaster	6	3	19	3	13	5	8	9	66
Laurens	0	0	10	2	21	12	3	3	51
Lee	2	4	9	0	3	1	0	1	20
Lexington	7	3	33	5	52	7	8	16	131
Marion	3	3	20	3	34	0	3	5	71
Marlboro	2	1	19	0	9	0	1	5	37
McCormick	0	0	7	2	3	0	0	3	15
Newberry	8	1	14	1	15	2	4	6	51
Oconee	6	0	5	1	5	6	1	3	27
Orangeburg	16	4	22	0	47	1	6	7	103
Pickens	0	1	5	1	6	9	1	0	23
Richland	23	11	30	4	69	19	7	5	168
Saluda	6	2	1	0	7	1	1	1	19
Spartanburg	7	3	34	16	55	40	24	17	196
Sumter	10	7	29	8	32	1	3	7	97
Union	0	4	2	1	4	0	1	2	14
Williamsburg	6	6	23	0	15	0	2	8	60
York	22	6	37	4	37	8	7	16	137

## 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 December 31, 2006**

<b>Risk Category</b>	<b>Work Currently Ongoing With SUPERB Funds or Under the \$25,000 Deductible</b>	<b>Not Currently Working Awaiting SUPERB Funding</b>
1	242	0
2A	103	51
2B	423	408
3A	42	93
3B	344	747
4A	61	125
4B	70	143
5	175	143
<b>Total</b>	<b>1,460</b>	<b>1,710</b>

#### Risk Category Definitions:

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