



2008 Annual Report

Prepared January 2009

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.

DHEC in concert with Environmental Protection Agency (EPA) Region IV, EPA Headquarters Office of Underground Storage Tanks, and the SUPERB Advisory Committee proposed in October 2007 a funding solution consisting of an additional \$8 million per year over the next five years to move the SUPERB Fund toward being a viable financial responsibility mechanism for South Carolina UST Owners. This \$40 million is in addition to the \$5 million special appropriation received in November 2007 for state FY 2008. This year, the SUPERB Fund received \$4,000,000 in addition to expected impact fee revenue. Specifically, Proviso 22.48 of the 2008 – 2009 General Appropriations - Final Budget, Part 1B section 22 J04, required DHEC to transfer \$2,000,000 from the SFRF to SUPERB. Additionally, per 90.12, G, A, (2) of Part 1B section 90 X91 - STATEWIDE REVENUE, the SUPERB Fund received a one-time transfer of \$2,000,000 from the Department of Health and Human Services. Budget challenges experienced by the State of South Carolina during 2008 required the use of \$400,000 of the funds received from the Department of Health and Human Services for DHEC. This action was authorized under the Budget Recension passed by the Legislature, whereby full funding flexibility was given to the Agencies to transfer funds from all sources to cover their budget needs for this fiscal year.

Considering the limited additional funding received during 2008 and recent budget challenges faced by South Carolina, concerns remain over the ability to realize the funding proposal to move the SUPERB account toward being a viable financial responsibility mechanism for South Carolina UST owners.

SUPERB Account information as of December 31, 2008

Impact Fee Revenue Received in Calendar Year 2008	\$ 17,699,880.52
Transfer amount above \$2M cap from SFRF to SUPERB May 13, 2008	\$ 1,138,587.33
Transfer from Department of Health and Human Services to SUPERB	\$ 2,000,000.00
Transfer from SFRF to SUPERB per Proviso 22.48	\$ 2,000,000.00
Transfer from SUPERB to DHEC general fund November 6, 2008	\$ - 400,000.00
Beginning Cash Balance January 1, 2008	\$ 26,735,454.38
Total Revenue Received in Calendar Year 2008	\$ 26,273,106.91
Total Available Calendar Year 2008	\$ 53,008,561.29
Total Payments from SUPERB in Calendar Year 2008	\$ - 24,474,706.11
Cash Balance December 31, 2008	\$ 28,533,855.18
Commitments (Current Contracts)	\$ - 25,068,141.05
*Available for Commitment	\$ 3,465,714.13
Cumulative Spent Since 1988	\$ 269,240,698.02

* This balance is currently higher than usual due to the transfer of SFRF funds above the \$2 million cap into SUPERB and the additional \$4 million supplement that was received per Proviso 22.48 and from the Department of Health and Human Services.

SUPERB Financial Responsibility Fund (SFRF)

DHEC is currently aware of 13 third party claims or suits and actively participates in their resolution as allowed for in Section 44-2-40 of the SUPERB Act. A total of \$1,011,287.42 has been spent for claims, legal fees, and appraisal activities since the creation of this fund in 1993. One claim for \$90,000 was paid in 2008. In May 2008, DHEC transferred \$1,138,587.33 from SFRF to SUPERB. This transfer reduced the SFRF balance to \$2,000,000 as defined in Section 44-2-40 and helped address the federal fund solvency concerns by making additional money available for site rehabilitation efforts. To further address SUPERB solvency, Proviso 22.48 directed DHEC to transfer \$2,000,000 from the SFRF to SUPERB account on July 1, 2008 and then repay that fund from the SUPERB Account at \$100,000 per month until the balance of the SFRF reaches \$1,000,000. As of December 31, 2008 the SFRF Balance was \$364,460.71.

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 Program database reveals that sixty-seven percent (67%) of UST facilities are covered by self insurance, twenty percent (20%) by letters of credit or surety bonds, and thirteen percent (13%) by commercial insurance.

Cleanup Progress

As of December 31, 2008, DHEC has confirmed a total of 9,197 UST releases. Of these, 6,168 or 67% have been closed. A total of 290 releases were closed in calendar year 2008; 132 without SUPERB funding, and 158 with SUPERB funds. Twenty-five 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 3,029 open releases, of which 2,970 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, 2008, 296 releases were in active cleanup, and 261 releases were being monitored as part of a formalized natural attenuation remedial plan. A total of 1,396 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.

In October 2008, DHEC reorganized the UST Program and two management positions (Division Director and Section Manager) were eliminated in the process. At year's end, fifteen (15) DHEC project managers were overseeing environmental assessment or cleanup efforts on 1,789 releases actively being worked with SUPERB funds or under the \$25,000 deductible. The agency hiring freeze in effect since October 2008 continues to put an additional strain on existing DHEC UST Program staff.

Underground Storage Tank Information

Since 1986, there have been 44,392 petroleum USTs registered with DHEC. Of those, 32,459 have been removed from the ground or properly closed in place. As of December 31, 2008, there were 11,933 operating USTs at 4,184 locations across the state.

The US Environmental Protection Agency 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 72 percent of the approximately 3,802 UST facilities inspected during 2008 met both the release prevention and release detection requirements and were in significant operational compliance. The compliance rate for the past three 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.

Leak Rate

The leak rate from active, non-operational, and orphan tanks was one percent (1%) for 2008. 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 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 2007 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 requiring UST owners and operators to maintain a minimum of \$1 million in liability coverage to pay for cleanup and damage claims.

DHEC in concert with EPA Region IV, EPA Headquarters Office of Underground Storage Tanks, and the SUPERB Advisory Committee proposed in October 2007 a funding solution consisting of an additional \$8 million per year over the next five years to move the SUPERB Fund toward being a viable financial responsibility mechanism for South Carolina UST Owners. This \$40 million is in addition to the \$5 million special appropriation received in November 2007 to be used for Class 1 and Class 2 site rehabilitation activities.

During 2008, the SUPERB Fund received \$4,000,000 in addition to expected impact fee revenue. Specifically, per Proviso 22.48 of the 2008 – 2009 General Appropriations - Final Budget, Part 1B section 22 J04, DHEC was required to transfer \$2,000,000 from the SUPERB Financial Responsibility Fund to SUPERB. Additionally, per 90.12, G, A, (2) of Part 1B section 90 X91 - STATEWIDE REVENUE, the SUPERB Fund received a one-time transfer of \$2,000,000 from the Department of Health and Human Services. Considering these transfers totaling \$4,000,000, the SUPERB funding solution as proposed in October 2007, requires an additional \$36 million (\$7,200,000 per year) over the next five years.

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.

Appendix 1

SUPERB Eligible Releases by Risk Category As of December 31, 2008

Risk Category	Open Releases
1	245
2A	133
2B	856
3A	104
3B	1,019
4A	186
4B	170
5	257
Total	2,970

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 13, 2009

County	Risk Category								Total
	1	2A	2B	3A	3B	4A	4B	5	
Abbeville	2	0	11	1	5	1	2	4	26
Aiken	3	1	12	2	7	3	3	15	46
Allendale	1	1	2	0	13	0	2	2	21
Anderson	0	4	31	5	31	6	3	5	85
Bamberg	2	1	12	0	7	1	1	0	24
Barnwell	0	4	12	2	6	1	1	3	29
Beaufort	3	3	9	5	15	1	0	0	36
Berkeley	4	2	20	2	24	0	2	6	60
Calhoun	0	0	0	0	4	0	1	0	5
Charleston	1	3	25	5	120	0	6	5	165
Cherokee	2	2	8	0	11	2	2	2	29
Chester	9	5	10	1	8	2	4	6	45
Chesterfield	1	2	10	1	8	0	1	2	25
Clarendon	11	7	26	2	21	0	4	6	77
Colleton	6	5	11	1	11	1	0	0	35
Darlington	2	2	28	1	17	1	5	3	59
Dillon	10	2	12	1	14	0	4	2	45
Dorchester	7	0	17	0	27	1	6	3	61
Edgefield	0	0	3	2	3	0	2	5	15
Fairfield	5	1	10	0	1	0	1	0	18
Florence	11	8	59	5	69	2	19	3	176
Georgetown	6	3	13	6	23	0	1	5	57
Greenville	12	6	49	8	56	38	22	43	234
Greenwood	2	2	16	2	7	12	11	4	56
Hampton	1	2	13	0	10	0	4	4	34
Horry	10	10	51	17	92	0	3	9	192
Jasper	5	3	22	1	9	0	0	2	42
Kershaw	5	3	8	1	10	3	1	5	36
Lancaster	7	2	21	3	13	7	9	9	71
Laurens	1	0	19	0	19	11	0	4	54
Lee	2	3	7	0	2	1	0	4	19
Lexington	9	0	38	3	48	6	8	19	131
Marion	4	0	29	1	31	0	1	0	66
Marlboro	2	1	19	0	11	1	1	4	39
McCormick	0	0	7	0	6	0	0	3	16
Newberry	8	1	15	1	13	2	4	2	46
Oconee	4	0	5	0	4	4	1	0	18
Orangeburg	15	3	37	0	33	4	3	6	101
Pickens	1	0	6	1	7	6	1	2	24
Richland	24	11	32	1	52	13	3	0	136
Saluda	6	2	1	0	7	1	2	3	22
Spartanburg	7	2	43	11	59	43	14	15	194
Sumter	12	9	23	6	29	1	3	5	88
Union	0	4	1	1	3	0	1	2	12
Williamsburg	5	8	22	1	16	0	2	5	59
York	21	5	37	3	36	11	6	12	131

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, 2008

Risk Category	Work Currently Ongoing With SUPERB Funds or Under the \$25,000 Deductible	Not Currently Working Awaiting SUPERB Funding
1	245	0
2A	106	27
2B	549	307
3A	50	54
3B	527	492
4A	86	100
4B	84	86
5	142	115
Total	1,789	1,181

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