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CHAPTER 2

State Underground Petroleum Environmental Response Bank Act

**SECTION 44‑2‑10.** Short title.

 This chapter is known and may be cited as the State Underground Petroleum Environmental Response Bank Act of 1988.

HISTORY: 1988 Act No. 486, Section 2.

**SECTION 44‑2‑20.** Definitions.

 When used in this chapter, the listed terms have the following meanings unless the context clearly requires otherwise:

 (1) “Affiliate” means persons who are affiliates to 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, debarment, or exclusion of a person, under applicable regulation, where the person has the same or similar management, ownership, or principal employees as the suspended, debarred, or excluded person.

 (2) “Bodily injury” means actual medically documented costs and medically documentable future costs of adverse health effects that have resulted from exposure to a release of petroleum or petroleum products from an underground storage tank. Bodily injury does not mean pain and suffering.

 (3) “Committed funds” means that portion of the Superb Account reserved as a result of action by the Department of Health and Environmental Control to approve costs for planned site rehabilitation activities.

 (4) “Compensation” means billing the Superb Account for costs associated with site rehabilitation after receiving prior approval from the department and in accordance with regulations promulgated pursuant to this chapter and criteria established by the department as authorized by this chapter. All compensation is considered committed funds.

 (5) “Department” means the Department of Health and Environmental Control.

 (6) “Familial relationship” means 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 fiancee.

 (7) “Financial relationship” means a connection or association through a material interest or sources of income which exceed five percent of annual gross income from a business entity.

 (8) “Fund” means the funds provided for under this chapter and deposited in the Superb Account or the Superb Financial Responsibility Fund hereinafter created.

 (9) “Occurrence” means an accident, including continuous or repeated exposure to conditions which results in a release from an underground storage tank.

 (10) “Operator” means any person in control of, or having responsibility for the daily operation of an underground storage tank.

 (11) “Orphan site” means a site where there has been a release from an underground storage tank but responsible party issues have not been resolved, and site rehabilitation has not been undertaken.

 (12) “Owner” means:

 (a) in the case of an underground storage tank system in use on November 8, 1984, or brought into use after that date, a person who owns an underground storage tank system used for storage, use, or dispensing of regulated substances;

 (b) in the case of any underground storage tank system in use before November 8, 1984, but no longer in use on that date, a person who owned such an underground storage tank immediately before the discontinuation of its use; or

 (c) a person who has assumed legal ownership of the underground storage tank through the provisions of a contract of sale or other legally binding transfer of ownership.

 (13) “Person” means any individual, partner, corporation organized or united for a business purpose, or a governmental agency.

 (14) “Petroleum” and “petroleum product” means crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds for each square inch absolute), including any such liquid which consists of a blend of petroleum and alcohol and which is intended for use as a motor fuel. The terms “petroleum” and “petroleum product” do not include any:

 (a) hazardous substance as defined in Section 101(14) of the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA);

 (b) substance, other than used oils, regulated as a hazardous waste under Subtitle C of Title II of the Federal Resource Conservation and Recovery Act of 1976 (RCRA); or

 (c) mixture of petroleum or a petroleum product containing any such hazardous substance or hazardous waste in greater than de minimis quantities.

 (15) “Property damage” means a documented adverse physical impact to structures or property as a result of a release of petroleum or petroleum products from an underground storage tank. The total damage is limited to the difference between the original fair market value of the property or structure and the residual value or the depreciated replacement cost of the property or structure, whichever is less. The documented presence of petroleum or petroleum products at levels not posing an unacceptable risk to human health or environment shall not be grounds for a claim or suit.

 (16) “Punitive damages” means damages awarded by a court to an injured party to punish the defendant for a serious wrong. This award only is in addition to actual damages awarded for bodily injury or property damage.

 (17) “Regulated substance” means:

 (a) a substance defined in Section 101(14) of CERCLA, but not including any substance regulated as a hazardous waste under Subtitle C of RCRA; and

 (b) petroleum and petroleum products. The term “regulated substance” includes, but is not limited to, petroleum and petroleum‑based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

 (18) “Related interest” means 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.

 (19) “Release” means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an underground storage tank into subsurface soils, groundwater, or surface water.

 (20) “Site rehabilitation” means cleanup actions taken in response to a release from an underground, storage tank which includes, but is not limited to, investigation, evaluation, planning, design, engineering, construction, or other services put forth to investigate or clean up affected subsurface soils, groundwater, or surface water.

 (21) “Site rehabilitation contractor” means any person who carries out site rehabilitation actions, including persons retained or hired by these persons to provide services related to site rehabilitation.

 (22) “Substantial compliance” means that an underground storage tank owner or operator has demonstrated a good faith effort to comply with regulations necessary and essential in preventing releases, in facilitating their early detection, and in mitigating their impact on public health and the environment.

 (23) “Third party claim” means a civil action brought or asserted by an injured party against an owner or operator of an underground storage tank for bodily injury or property damages resulting from a release of petroleum or petroleum products from an underground storage tank. The underground storage tank owner or operator, the owner of the property where the underground storage tank is located, a person to whom properties are transferred in anticipation of damage due to a release, employees or agents of an owner or operator, or employees or agents of the property owner must not be considered a third party.

 (24) “Underground storage tank” means any one or combination of tanks, including underground pipes connected to it, which is used to contain an accumulation of regulated substance, and the volume of which is ten percent or more beneath the surface of the ground. The term does not include any:

 (a) farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes;

 (b) tank used for storing heating oil for consumptive use on the premises where stored;

 (c) septic tank;

 (d) pipeline facility, including gathering line, regulated under the Federal Natural Gas Pipeline Safety Act of 1968 or the Federal Hazardous Liquid Pipeline Safety Act of 1979, or any pipeline facility regulated under state laws comparable to the provisions of these federal provisions of law;

 (e) surface impoundment, pit, pond or lagoon;

 (f) storm water or wastewater collection system;

 (g) flow‑through process tank;

 (h) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

 (i) storage tank situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the petroleum storage tank is situated upon or above the surface of the floor;

 (j) hydraulic lift reservoirs, such as for automobile hoists and elevators, containing hydraulic oil; or

 (k) any pipes connected to any tank which is described in subitems (a) through (j).

HISTORY: 1988 Act No. 486, Section 2; 1992 Act No. 501, Part II Section 43A; 1993 Act No. 164, Part II, Section 36A; 1994 Act No. 497, Part II, Section 80C; 1995 Act No. 145, Part II, Section 2A; 1995 Act No. 146, Section 8A.

**SECTION 44‑2‑40.** Superb Account and Superb Financial Responsibility Fund created; purposes and uses.

 (A) There is created within the state treasury two separate and distinct accounts which are to be administered by the Department of Health and Environmental Control. The “Superb Account” and the “Superb Financial Responsibility Fund” are created to assist owners and operators of underground storage tanks containing petroleum and petroleum products to the extent provided for in this chapter but not to relieve the owner or operator of any liability that cannot be satisfied by the provisions of this chapter.

 The Superb Account must be used for payment of usual, customary, and reasonable costs for site rehabilitation of releases from underground storage tanks containing petroleum or petroleum products.

 The Superb Financial Responsibility Fund must be used for compensating third parties for actual costs for bodily injury and property damage caused by accidental releases from underground storage tanks containing petroleum or petroleum products. The Superb Financial Responsibility Fund must not be used for reimbursing claims for punitive damages.

 Except for releases reported before July 1, 1994, sites where the underground storage tank, at the time of discovery and reporting of the release to the department, is not in substantial compliance with regulations promulgated pursuant to Section 44‑2‑50(A), are not eligible for compensation from the Superb Account, and no third party claims resulting from that release may be paid from the Superb Financial Responsibility Fund.

 (B) The Superb Account is established to ensure the availability of funds for the rehabilitation of releases at sites contaminated with petroleum or petroleum products released from an underground storage tank and for administration of the underground storage tank regulatory program established in this chapter. The department shall use the fund to pay the usual, customary, and reasonable costs of site rehabilitation up to a maximum of one million dollars per occurrence as a result of a release from an underground storage tank containing petroleum or petroleum products for releases that were reported to the department before July 1, 1993, and in excess of twenty‑five thousand dollars and up to a maximum of one million dollars per occurrence for site rehabilitation for releases reported to the department on or after July 1, 1993. The department shall use the fund to pay these costs of site rehabilitation by owners or operators who qualify for compensation. The department may use the fund to clean up a release at a site where the underground storage tank owner or operator does not qualify for compensation or a site which does qualify but the owner or operator is unwilling or unable to undertake site rehabilitation, and the department shall diligently pursue the recovery of any sum so incurred from the owner or operator responsible or from the United States government under any applicable federal law, unless the department finds the amount involved too small or the likelihood of success too uncertain. The fund must be further used for the payment of costs incurred by the department in providing field and laboratory services and other assistance by the department in the investigation of alleged contamination. This fund must not be used for the cleanup of any other pollutant. Funds in the Superb Account also may not be used to pay any liability claims against the owners or operators of underground storage tanks. The Superb Account must be credited with all fees, charges, commitments, and judgments allowable under this chapter. Charges against the Superb Account only may be made in accordance with the provisions of this chapter. Beginning November 1, 1994, the department shall transfer on a monthly basis one hundred thousand dollars of the funds generated by the environmental impact fee from the Superb Account to the Superb Financial Responsibility Fund until the balance of the Superb Financial Responsibility Fund reaches two million dollars. Subsequently, monthly transfers of one hundred thousand dollars from the Superb Account to the Superb Financial Responsibility Fund shall only occur when the balance of the Superb Financial Responsibility Fund becomes less than one million dollars, and the monthly transfers shall continue until the balance of the Superb Financial Responsibility Fund reaches two million dollars. Committed funds for site rehabilitation activity revert to uncommitted status after four months of initiation of commitment if no invoices for that commitment have been received by the department.

 (C) The Superb Financial Responsibility Fund must be used to reimburse owners or operators who compensate third parties or compensate third parties directly, only for bodily injury and property damages caused by releases from underground storage tanks containing petroleum or petroleum products, exclusive of any legal costs of the parties, and only when there are judgments, settlements, alternative dispute resolution outcomes, or consent orders for damages for bodily injury or property damage, or both, that are approved by a court of competent jurisdiction within the State of South Carolina. To seek payment from the Superb Financial Responsibility Fund, the owner or operator must notify the department in writing by registered mail within sixty days of receipt of the third party claim or suit and must defend in good faith against the claim or suit. At its discretion, the department may intervene in the claim or suit to protect the Superb Financial Responsibility Fund. Intervention includes, but is not limited to, defending the claim, approving the claim, or participating in the settlement of the claim.

 The costs of claim or suit intervention by the department must be recoverable from the Superb Financial Responsibility Fund. These intervention costs must not affect the per occurrence assurance amounts provided by the Superb Account or the Superb Financial Responsibility Fund.

 The Superb Financial Responsibility Fund is not liable for any claims where no owner or operator exists.

 The amount of money in the Superb Financial Responsibility Fund, the method of collection, or information regarding the administration of the fund is not admissible as evidence in a trial for damages potentially payable by the Superb Financial Responsibility Fund.

 (D) The Superb Account and the Superb Financial Responsibility Fund shall provide combined coverage for site rehabilitation and third party claims, respectively, not to exceed one million dollars per occurrence. The estimated cost of site rehabilitation must be reserved from the combined coverage before payment of third party claims.

 The underground storage tank owner or operator must be responsible for the first twenty‑five thousand dollars per occurrence for releases of petroleum and petroleum products from underground storage tanks reported to the department subsequent to July 1, 1993.

 Nothing in this chapter establishes or creates any liability or responsibility on the part of the department or the State as administrators of the Superb Account and the Superb Financial Responsibility Fund to pay any costs for site rehabilitation or third party claims from any source other than the Superb Account and the Superb Financial Responsibility Fund created by this chapter, and the department and the State as administrators of the Superb Account and the Superb Financial Responsibility Fund have no liability or responsibility to make payments for cleanup costs or third party claims if the funds are insufficient. If the funds are insufficient to make the payments at the time the claim is filed, these claims must be paid in the order of filing at such time as monies accrue in each account, respectively.

 The one hundred dollar underground storage tank registration and annual renewal fee may be used by the department for the administration of the underground storage tank program established by this chapter and its activities as trustees of the Superb Account and the Superb Financial Responsibility Fund, exclusive of legal costs outlined in subsection (C).

HISTORY: 1988 Act No. 486, Section 2; 1990 Act No. 473, Section 1; 1991 Act No. 171, Part II, Section 18A; 1992 Act No. 501, Part II Section 43B; 1993 Act No. 164, Part II, Section 36B; 1994 Act No. 497, Part II, Section 80D; 1995 Act No. 145, Part II, Section 2B; 1997 Act No. 88, Section 1.

**SECTION 44‑2‑50.** Regulations to be promulgated; cost of rehabilitation.

 (A) The department shall promulgate regulations relating to permitting, release detection, prevention, and correction applicable to all owners and operators of underground storage tanks as may be necessary to protect human health and the environment. The department in these regulations may distinguish between types and classes of underground storage tanks. The regulations promulgated pursuant to this section must include the following requirements for underground storage tanks:

 (1) requirements for submitting a permit application and obtaining permits before the installation and operation of an underground storage tank;

 (2) requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;

 (3) requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing or comparable system;

 (4) requirements for reporting of releases and corrective action taken in response to a release from an underground storage tank;

 (5) requirements for taking corrective action in response to a release from an underground storage tank. The requirements mandated by this item, other than necessary abatement actions to eliminate any imminent threat to human health, safety, or the environment a release may pose, do not apply to a person who, without participating in the management of a petroleum or petroleum product underground storage tank and is otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect that person’s security interest in the tank. The indicia of ownership exemption includes persons who acquire title to the property through foreclosure or other means necessary to enforce the security interests and who, without participating in the management, are otherwise not engaged in petroleum production, refining, and marketing; and

 (6) requirements for the closure of tanks to prevent future releases of regulated substances into the environment.

 (B) The department shall keep an accurate record of costs and expenses incurred under the provisions of this chapter for the rehabilitation of sites contaminated with petroleum or petroleum products released from underground storage tanks and to make this record public on a quarterly basis, and, except as otherwise provided in Section 44‑2‑110, the department thereafter shall diligently pursue the recovery of any sum so incurred from the person responsible or from the United States government under any applicable federal law, unless the department finds the amount involved too small or the likelihood of success too uncertain. The department shall provide the forms necessary for an application for compensation of site rehabilitation costs to the Superb Account and for compensation of rehabilitation costs from the Superb Account. By March 10, 1996, the department shall submit to the General Assembly regulations addressing the following:

 (1) General procedures that response action contractors must follow during site rehabilitation.

 (2) General requirements that identify allowable costs for site rehabilitation activities, procedures for payment, provisions for auditing of claims paid, provisions for recovery of costs for ineligible or inappropriate activities, and procedures for addressing related disputes.

 (3) Prioritizing expenditures from the Superb fund for site rehabilitation activities. This system for prioritizing releases must be based on available technical information and shall consider the potential risk to human health and the environment. Releases at sites that present an imminent threat to human health and the environment shall receive first priority for receiving Superb funds to eliminate the imminent threat. All other releases at sites must be prioritized based on the available technical information so that the appropriate level of assessment is performed at the site. The assessment should adequately define the extent and severity of contamination at each site so that a determination of appropriate actions can be made. A proper assessment includes, but is not limited to, the following:

 (a) site specific geology;

 (b) distance to drinking water sources or Wellhead Protection Areas;

 (c) concentrations in soil and ground water;

 (d) depth to ground water; and

 (e) potential for an emergency situation, including fire or explosion hazard.

 (4) Develop a system to determine the appropriate actions for releases at sites based on the results of the assessment. This system also shall determine standards in the soil and ground water. The standards must be based on the potential risk to human health and the environment and take into account the current and reasonably potential use of the ground water as drinking water. The standards shall provide that no additional site rehabilitation is required if site‑specific concentrations in soil and ground water are below applicable standards.

 (5) Procedures for determining site‑specific corrective actions. If contaminant concentrations are above the standards set forth pursuant to item (4), a site‑specific evaluation must be conducted utilizing site‑specific risk assessment. The procedures to determine acceptable levels of risk must include, but not be limited to, the following:

 (a) identification and elimination of sources of soil and ground water contamination;

 (b) identification of transport mechanisms and exposure pathways;

 (c) evaluation of exposure scenarios and potential receptors;

 (d) consideration of land use and surrounding land use;

 (e) evaluation of other appropriate scientific data;

 (f) use of appropriate statistical procedures and modeling protocols;

 (g) evaluation of the use of institutional and engineering controls; and

 (h) consideration of technological limitations.

 The regulations shall further provide that determination of completion of site rehabilitation must be based on achievement of corrective action standards.

 (6) Procedures for coordinating all permits necessary to implement a corrective action plan.

 (7) An appeals process for those owners or operators who are denied access to the Superb fund because they were found not to be in substantial compliance under Section 44‑2‑40(A).

 (C) For purposes of enforcing this chapter and any regulations promulgated pursuant thereto, any representative or employee of the department is authorized:

 (1) to enter at reasonable times any establishment or other place where an underground storage tank is located;

 (2) to inspect and obtain samples of any regulated substance contained in the tank; and

 (3) to copy any records, reports, information, or test results relating to the purpose of this chapter.

HISTORY: 1988 Act No. 486, Section 2; 1994 Act No. 497, Part II, Section 80E; 1995 Act No. 145, Part II, Section 2J; 1995 Act No. 146, Section 8B; 1997 Act No. 88, Section 2.

**SECTION 44‑2‑60.** Registration of underground storage tanks; environmental impact fee.

 (A) The owner or operator of an underground storage tank which stores or is intended to store a regulated substance shall register the tank with the department. The owner or operator of the tank shall display a registration certificate listing all registered tanks at a facility and in plain view in the office or the kiosk of the facility where the tanks are registered. Upon application for a registration certificate, the owner or operator shall pay to the department an initial registration fee of one hundred dollars a tank; however, the department may prorate the initial registration fees on a daily basis for underground storage tanks installed on or after July 1, 1997. The owner or operator shall pay to the department an annual renewal fee of one hundred dollars a tank a year. Beginning January 1, 2012, the annual renewal fee for each tank will be as follows:

 (1) 2012 ‑ two hundred dollars;

 (2) 2013 ‑ three hundred dollars;

 (3) 2014 ‑ four hundred dollars; and

 (4) 2015 ‑ five hundred dollars.

 The additional revenue generated from the tank fee increases listed above must be deposited into the Superb Account. No portion of the increases may be used by the department for administration of the program or for orphan sites as defined in Section 44‑2‑20(11).

 When the Superb Account is credited with an additional thirty‑six million dollars from the increase in tank fees, general appropriations, settlements, or other sources of funds including federal funds designated for cleanup, or declared insolvent, the tank registration fee shall revert to one hundred dollars annually for each tank beginning January first of the next year.

 (B) No person may place a regulated substance and no owner or operator may cause a regulated substance to be placed into an underground storage tank for which the owner or operator does not hold a currently valid registration. The department may not issue a registration certificate until all past and present fees and penalties owed on a tank are paid. The department may not issue a registration certificate to any owner or operator who has not complied with all terms of a consent or final administrative order issued under Section 44‑2‑140.

 (1) All fees are due to the department within thirty days of billing. The department shall issue a late notice, with no penalty due, to an underground storage tank owner or operator who has unpaid fees thirty days after billing. An owner or operator who fails to pay the fees within sixty days of the initial billing must pay a ten percent penalty in addition to the ten percent penalty for any fees remaining unpaid ninety days after the initial billing. An owner or operator with unpaid fees ninety days after the initial billing is subject to additional enforcement action as provided for in Section 44‑2‑140.

 (2) The department may not disburse Superb Account or Superb Financial Fund monies to any person or persons for the rehabilitation of a petroleum or petroleum product release from any underground storage tank or underground storage tank system where all past and present fees and penalties owed on the applicable tank have not been paid.

 (3) The funds generated by the registration and late penalty fees may be used by the department for administration of the provisions of this chapter and for administration of the underground storage tank regulatory program established by this chapter. The amount used for administration may not exceed the amount collected from funds received from federal grants specifically designated for administrative use, interest, the first one hundred dollars for tank registration and late penalty fees.

 (C) In addition to the inspection fee of one‑fourth cent a gallon imposed pursuant to Section 39‑41‑120, an environmental impact fee of one‑half cent a gallon is imposed which must be used by the department for the purposes of carrying out the provisions of this chapter. This one‑half cent a gallon environmental impact fee must be paid and collected in the same manner that the one‑fourth cent a gallon inspection fee is paid and collected except that the monies generated from these environmental impact fees must be transmitted by the Department of Agriculture to the Department of Health and Environmental Control which shall deposit the fees as provided for in Section 44‑2‑40.

HISTORY: 1988 Act No. 486, Section 2; 1989 Act No. 189, Part II, Section 40B; 1990 Act No. 473, Section 2; 1992 Act No 501, Part II Section 43C; 1995 Act No 145, Part II, Section 2K; 1997 Act No. 88, Section 3; 2010 Act No. 177, Section 1, eff May 19, 2010.

Effect of Amendment

The 2010 amendment rewrote the section.

**SECTION 44‑2‑70.** Financial responsibility of underground storage tank owners and operators.

 (A) At the time the federal government mandates financial responsibility for underground storage tank owners or operators, the owner or operator of an underground storage tank containing petroleum or petroleum products shall maintain financial responsibility in the lesser amount of that required by the federal government or in the amount of twenty‑five thousand dollars for site rehabilitation and for compensating third parties for property damage and bodily injury arising from the operation of petroleum underground storage tanks per occurrence with an annual aggregate of twenty‑five thousand dollars. Financial responsibility requirements may be maintained through insurance, guarantee, surety bond, letter of credit, self‑insurance, risk retention group, or any other method satisfactory to the department. No insurance policy, guarantee, surety bond, or any other financial responsibility mechanism which is executed to provide this or additional amounts of coverage shall contain any terms, endorsements, conditions, provisions, or other language that requires expenditures of funds from the Superb Account or the Superb Financial Responsibility Fund prior to or in lieu of payment by the mechanism, and no such financial responsibility mechanism which has previously been executed shall operate so as to require the expenditure of funds from the Superb Account or Superb Financial Responsibility Fund until funds provided by the financial responsibility mechanisms have been exhausted. The owner or operator shall demonstrate evidence of financial responsibility to the department.

 (B) The department shall promulgate regulations specifying requirements for maintaining evidence of financial responsibility, consistent with the provisions of this chapter, for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from operating an underground storage tank. The funds established in Section 44‑2‑40, for the purposes of these regulations, are acceptable mechanisms for maintaining this financial responsibility by owners and operators of underground storage tanks above twenty‑five thousand dollars.

 (C) The funds established in Section 44‑2‑40, combined with the financial responsibility required by this section, may be used by owners and operators of underground storage tanks to demonstrate their compliance with any financial responsibility requirements promulgated under federal regulation.

HISTORY: 1988 Act No. 486, Section 2; 1990 Act No. 473, Section 3; 1992 Act No. 501, Part II Section 43D; 1995 Act No. 145, Part II, Section 2C.

**SECTION 44‑2‑75.** Insurance pools.

 (A) Any person who owns an underground storage tank containing petroleum or petroleum products who is unable to demonstrate financial responsibility in the minimum amounts specified in Section 44‑2‑70(A) may establish an insurance pool in order to demonstrate this financial responsibility. The pool may purchase insurance or reinsurance on a group or individual basis, self‑insure its members, or form, or join a purchasing group as defined in Section 38‑87‑20(10). Any contract establishing an insurance pool shall provide for:

 (1) the election by pool members of a governing authority for the pool, which may be a board of directors, a majority of whom must be elected or appointed officials of pool members;

 (2) a financial plan setting forth in general terms:

 (a) the insurance coverages to be offered by the insurance pool, applicable deductible levels, and the maximum levels of claims which the pool will self‑insure;

 (b) the amount of cash reserves to be set aside for the payment of claims;

 (c) the amount of insurance to be purchased by the pool to provide coverage over and above the claims which are not to be satisfied directly from the pool’s resources; and

 (d) the amount, if any, of aggregate excess insurance coverage to be purchased and maintained in the event that the insurance pool’s resources are exhausted in a given fiscal period;

 (3) a plan of management which provides for the following:

 (a) the means of establishing the governing authority of the pool;

 (b) the responsibility of the governing authority for fixing contributions to the pool, maintaining reserves, levying and collecting assessments for deficiencies, disposing of surpluses, and administration of the pool in the event of termination or insolvency;

 (c) the basis upon which new members may be admitted to, and existing members may leave, the pool;

 (d) the identification of funds and reserves by exposure areas; and

 (e) those other provisions as are necessary or desirable for the operation of the pool.

 (B) The formation and operation of an insurance pool under this section is subject to approval by the Director of the Department of Insurance who may, after notice and hearing, establish reasonable requirements by regulation for the approval and monitoring of these pools, including prior approval of pool administrators and provisions for periodic examinations of financial condition.

 (C) The Department of Insurance may disapprove an application for the formation of an insurance pool and may suspend or withdraw approval whenever he finds that the applicant or pool:

 (1) has refused to submit its books, papers, accounts, or affairs to the reasonable inspection of the Director of the Department of Insurance or his representative;

 (2) has refused, or its officers or agents have refused, to furnish satisfactory evidence of its financial and business standing or solvency;

 (3) is insolvent or is in such condition that its further transaction of business in this State is hazardous to its members and creditors in this State, and to the public;

 (4) has refused or neglected to pay a valid final judgment against it within sixty days after its rendition;

 (5) has violated any law of this State or has violated or exceeded the powers granted by its members;

 (6) has failed to pay any fees, taxes, or charges imposed in this State within sixty days after they are due and payable, or within sixty days after final disposition or any legal contest with respect to liability therefor; or

 (7) has been found insolvent by a court of any other state, or by the insurance commissioner or other proper officer or agency of any other state, and has been prohibited from doing business in that state.

HISTORY: 1988 Act No. 486, Section 2; 1993 Act No. 181, Sections 1034, 1035; 1995 Act No. 145, Part II, Section 2D.

**SECTION 44‑2‑80.** Release of regulated substance; containment, removal, and abatement.

 (A) Any person who releases a regulated substance from an underground storage tank immediately shall undertake to contain, remove, and abate the release to the satisfaction of the department. However, the undertaking to contain, remove, or abate a release must not be considered an admission of responsibility for the release by the person taking the action. Notwithstanding this requirement, the department may undertake abatement measures and other site rehabilitation actions in response to a release and may contract and retain agents who shall operate under the discretion of the department if a responsible party is unwilling or unable to conduct site rehabilitation.

 (B) The requirement to conduct site rehabilitation actions other than necessary abatement actions to eliminate any imminent threat to human health, safety, or the environment a release may pose, does not apply to a person who, without participating in the management of a petroleum or petroleum product underground storage tank and is otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect that person’s security interest in the tank. The indicia of ownership exemption includes persons who acquire title to the property through foreclosure or other means necessary to enforce the security interests and who, without participating in the management, are otherwise not engaged in petroleum production, refining, and marketing.

 (C) A person who acquires title to any property on which an underground storage tank has been removed is not responsible for site rehabilitation actions other than necessary abatement actions to eliminate any imminent threat to human health, safety, or the environment. This exemption applies to the extent the release is eligible for compensation from the Superb Account if both of the following conditions are met:

 (1) The person does not have or has not had any familial, financial, or related interest with the person who owned or operated the underground storage tanks that were previously in use at that property. The person must not be an affiliate of the owner or operator.

 (2) The person allows for reasonable access by the underground storage tank owner or operator or the department to perform site rehabilitation activities.

HISTORY: 1988 Act No. 486, Section 2; 1995 Act No. 146, Section 8C; 1997 Act No. 88, Section 4.

**SECTION 44‑2‑90.** Accrued interest; prospective abolition of environmental interest fee; use of residual funds for site rehabilitation.

 (A) Any interest accruing on the Superb Account and the Superb Financial Responsibility Fund must be credited to each respective account.

 (B) The environmental impact fee established in Section 44‑2‑60(B) is abolished on December 31, 2026, provided that the environmental impact fees due for the month of December, 2026, must be paid by the end of January, 2027. Funds remaining in the Superb Account after this date, so long as available, must be used to pay the costs of site rehabilitation by owners or operators which were incurred before December 31, 2026, and to pay for site rehabilitation at orphan sites.

HISTORY: 1988 Act No. 486, Section 2; 1990 Act No. 473, Section 4; 1991 Act No. 171, Part II, Section 18B; 1992 Act No. 501, Part II, Section 43E; 1994 Act No. 497, Part II, Section 80F.

**SECTION 44‑2‑110.** Early detection incentive program.

 All releases from underground storage tanks reported to the department any time from midnight on December 31, 1987, to midnight on June 30, 1993, regardless of whether the release occurred before or after January 1, 1988, are qualified for expenditure of funds from the Superb Account, provided that a written report is filed with respect to it. All usual, customary, and reasonable site rehabilitation costs are eligible and any funds expended must be absorbed at the expense of the Superb Account, as available, without recourse to reimbursement or recovery, subject to the following exceptions:

 (1) The provisions of this section do not apply to a release at a site where the department has initiated an administrative or civil enforcement action before December 31, 1987.

 (2) The provisions of this section do not apply to a release at a site where the department has been denied site access to implement the provisions of this chapter.

 (3) The provisions of this section must not be construed to authorize or require compensation from the Superb Account for any costs expended at a release at a site which was either reported to the department or where rehabilitation commenced before December 31, 1987.

 (4) The provisions of this section must not be construed to authorize or require compensation from the Superb Account for costs incurred at a release at a site reported to the department between January 1, 1990, and July 1, 1991, unless the costs are in excess of the minimum financial responsibility required of the owner under the applicable provision of Section 44‑2‑70(A) which was in effect at the time the release was reported.

 For all releases reported during the time period established in this section, all site rehabilitation costs must be submitted to the department on or before September 30, 1994, to be considered for payment. After September 30, 1994, no costs will be allowed unless prior approval is obtained from the department. Requests for cost approval must be in accordance with regulations promulgated pursuant to this chapter and criteria established by the department as authorized by this chapter.

HISTORY: 1988 Act No. 486, Section 2; 1990 Act No. 473, Section 6; 1991 Act No. 171, Part II, Section 18C; 1992 Act No. 501, Part II, Section 43F; 1994 Act No. 497, Part II, Section 80G; 1995 Act No. 145, Part II, Section 2E.

**SECTION 44‑2‑115.** Eligibility requirements to be applied to favor eligibility; qualified site remains qualified until correction and compensation; petition for matter to be heard as contested case; reconsideration by mediation panel.

 The department shall apply the eligibility requirements set forth in this chapter in a manner favoring eligibility. Once the department determines that a release at a site qualifies for compensation from the Superb Account, coverage for that release shall continue to be provided, notwithstanding the issuance of a no action letter, until corrective action is undertaken and the owner or operator is compensated by the Superb Account. If the department denies an owner’s or operator’s request for compensation from the Superb Account, the owner or operator may file a petition with an Administrative Law Judge for the matter to be heard as a contested case under the Administrative Procedures Act. Concurrently with the filing of a petition with the Administrative Law Judge, the owner or operator may request reconsideration of the department’s denial by a mediation panel appointed by the director of the department. The mediation panel shall meet with the owner or operator and thereafter make a recommendation for settlement to the director or the director’s designee. The mediation process must be completed within four weeks from denial of compensation. If a satisfactory settlement is not reached, the owner or operator may then proceed with the hearing before the Administrative Law Judge.

HISTORY: 1994 Act No. 497, Part II, Section 80A; 1995 Act No. 145, Part II, Section 2F.

**SECTION 44‑2‑120.** Use of contractors, subcontractors, and employees for rehabilitation or cleanup.

 (A) The department shall promulgate regulations relating to the evaluation and approval of site rehabilitation contractors to perform work pursuant to this chapter. In doing so, the department, where appropriate, may utilize or incorporate national or state licensing or certification programs that may assist in this endeavor. The department in these regulations may distinguish between different types of site rehabilitation contractors. The regulations promulgated pursuant to this section shall include the following requirements for site rehabilitation contractors:

 (1) requirements for minimum knowledge and experience relating to the performance of site rehabilitation activities;

 (2) requirements for types and minimum amounts of liability insurance to be maintained by approved contractors;

 (3) requirements for public notice of requests for approval applications, evaluation of applications, and subsequent publication of a list of approved contractors;

 (4) requirements for actions to be taken in the event that an approved contractor fails to maintain the approval;

 (5) requirements for use of an owner or operator’s personnel or equipment in performing site rehabilitation activities.

 (B) The approval of a site rehabilitation contractor pursuant to this section in no way shall 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.

 (C) Nothing in this chapter may be construed to prohibit an owner or operator of an underground storage tank from conducting site rehabilitation or cleanup through contractors, subcontractors, or qualified personnel employed by them. However, the department may prohibit from participating in site rehabilitation under this chapter any contractor or subcontractor or person who:

 (1) is not a South Carolina registered professional geologist or engineer, or is not bonded or insured for the full costs of site rehabilitation;

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

 (3) has demonstrated repeated noncompliance with requirements for compensation established by the department under Section 44‑2‑50(B);

 (4) has demonstrated repeated inability to perform site rehabilitation in accordance with accepted industry standards;

 (5) has failed to maintain the requirements necessary for approval as a site rehabilitation contractor under this section.

HISTORY: 1988 Act No. 486, Section 2; 1992 Act No. 501, Part II, Section 43G; 1995 Act No. 145, Part II, Section 2L.

**SECTION 44‑2‑130.** Compensation from Superb Account; other insurance or financial responsibility mechanism; deadline for submission; site rehabilitation not a state contract; criteria and restrictions; application, certification, approval, denial, appeal; records; rehabilitation plan; payments; federal government sites exempt.

 (A) For releases reported subsequent to June 30, 1993, and so long as funds are available in the Superb Account and except as otherwise provided in Sections 44‑2‑40 and 44‑2‑110, an owner or operator or his agent is eligible for compensation for usual, customary, and reasonable costs incurred for site rehabilitation in excess of twenty‑five thousand dollars or in excess of the amount recoverable from the financial responsibility mechanism provided for this purpose, whichever is less. If a liability insurance policy or any other financial responsibility mechanism which provides financial responsibility coverage for sudden or nonsudden release of petroleum or petroleum products from an underground storage tank has been executed for a site at which compensation from the Superb Account is sought, no funds may be expended from the Superb Account until the funds provided by the financial responsibility mechanism have been exhausted.

 (B) For all releases reported after June 30, 1993, all site rehabilitation costs must be submitted to the department on or before September 30, 1994, to be considered for payment. After September 30, 1994, no costs will be allowed unless prior approval is obtained from the department. Requests for cost approvals must be in accordance with regulations promulgated pursuant to this chapter and criteria established by the department as authorized by this chapter.

 (C)(1) No owner or operator or his agent is entitled to compensation from the Superb Account for site rehabilitation unless rehabilitation is conducted in accordance with criteria established by the department and regulations promulgated by the department pursuant to Section 44‑2‑50(B).

 (2) No owner or operator or his agent is entitled to compensation from the Superb Account for the costs of repair or replacement of any tank or equipment.

 (D) Compensation from the Superb Account by an owner or operator or his agent conducting site rehabilitation through his own personnel or through contractors or subcontractors is not considered a state contract for purposes of procurement or subject to state bid requirements.

 (E)(1) An owner or operator of an underground storage tank or his agent seeking to qualify for compensation from the Superb Account for site rehabilitation shall submit a written application to the department. The written application must be on a form specified by the department and include certification that site rehabilitation is necessary, the tanks at the site have been registered in compliance with applicable law and regulations, and all registration fees have been paid. The department shall accept certification that the release at the site is in need of rehabilitation if the certification is provided jointly by the owner or operator and a South Carolina registered professional geologist or engineer, and if the certification is supported with geotechnical data which reasonably justifies the claim. Upon final determination the department shall provide written notice to the applicant of its findings including detailed reasons for any denial. Any denial of an application must be appealable to the Board of Health and Environmental Control. The department is exempt from this time frame for applications which are received within three months of the close of the grace period allowed in Section 44‑2‑110.

 (2) The owner or operator responsible for conducting the site rehabilitation or his agents shall keep and preserve suitable records of hydrological and other site assessments, site plans, contracts, accounts, invoices, or other transactions related to the cleanup and rehabilitation and the records must be accessible to the department during regular business hours.

 (F) An owner or operator of an underground storage tank or his agent seeking compensation from the Superb Account must submit to the department a written request consisting of a plan for site rehabilitation and an associated cost proposal in accordance with regulations established by the department. The department shall make payments as expeditiously as possible for invoices submitted in accordance with regulations. However, payment for any properly justified invoice after ninety days of receipt shall include interest compounded daily for the amount of approved costs at the same legal interest rate provided by Section 34‑31‑20(A). For invoices submitted to the department after July 1, 1994, no interest may be paid pursuant to this paragraph. Interest continues to accrue and must be paid for invoices submitted to the department before July 1, 1994, which meet the requirements of this paragraph.

 (G) The provisions of this section do not apply to rehabilitation of a release at a site owned or operated by the federal government.

HISTORY: 1988 Act No. 486, Section 2; 1990 Act No. 473, Sections 5, 7‑10; 1991 Act No. 171, Part II, Section 18D; 1992 Act No. 501, Part II, Section 43H; 1995 Act No. 145, Part II, Sections 2G, 2H, 2I.

**SECTION 44‑2‑140.** Enforcement of chapter or department order; penalties for violations.

 (A) Whenever the department finds that any person is in violation of any provision of this chapter, any regulation promulgated under this chapter, or prior order of the department, the department may issue an order requiring the person to comply with the provision, regulation, or prior order, or the department may bring civil action for injunctive relief in an appropriate court of competent jurisdiction. An order issued by the department or court may include civil penalties as provided for in this chapter. The department immediately may suspend an underground storage tank permit to operate or registration certificate or may order other action as may be necessary and proper when it is determined that the operation of the underground storage tank constitutes an imminent hazard to human health or the environment. Following immediate permit or registration certificate suspension, all dispensing from the underground storage tank upon which this action was taken shall cease and the owner or operator shall properly empty the tank.

 (B) Any person who violates any provision of this chapter, any regulation promulgated hereunder, or any order of the department issued under subsection (A) is subject to a civil penalty not to exceed ten thousand dollars for each tank for each day of violation.

 (C) Any person who wilfully violates any provision of this chapter, any regulation promulgated hereunder, or any order of the department issued under subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty‑five thousand dollars per day of violation or imprisoned for not more than one year or both.

HISTORY: 1988 Act No. 486, Section 2; 1997 Act No. 88, Section 5.

**SECTION 44‑2‑150.** Superb Advisory Committee; establishment; purposes; composition; terms; officers; quorum; operating procedures; facilities; duties and responsibilities; reports.

 (A) There is established a Superb Advisory Committee to study the implementation and administration of the Superb program, including the Superb Account, the Superb Financial Responsibility Fund, and the regulatory requirements applicable to underground storage tanks; to make recommendations to the department and the General Assembly on ways to improve the efficiency of the program and to maximize available funds; and to advise the department on administration of the program.

 (B) The members of the committee must be appointed before August 1, 1994.

 (C) The committee shall consist of fourteen members, appointed by the commissioner of the department as follows:

 (1) one member representing the general public;

 (2) two members representing environmental organizations;

 (3) one member representing the South Carolina Petroleum Council;

 (4) one member representing the South Carolina Petroleum Marketers Association;

 (5) one member representing the South Carolina Service Station Dealers Association;

 (6) one member representing the South Carolina Chamber of Commerce;

 (7) one member representing the South Carolina Bankers Association;

 (8) one member representing a business that specializes in the assessment or remediation, or both, of contamination resulting from leaking underground storage tanks;

 (9) one member representing the South Carolina Department of Insurance;

 (10) one member representing the Department of Health and Environmental Control;

 (11) one member representing the State Department of Administration, Division of General Services;

 (12) one member representing the Municipal Association of South Carolina; and

 (13) one member representing the South Carolina Association of Counties.

 (D) The committee shall have the following duties and responsibilities:

 (1) to conduct an initial review of the management of the Superb Program and the Superb Financial Responsibility Fund and the availability of funds in the account and the fund and thereafter to monitor the management of the account and the fund;

 (2) to determine the success of the Superb program in achieving its statutory purpose of providing a means for the investigation and cleanup of spills, leaks, and other discharges from underground storage tanks without delay, which determination shall include a list of all sites cleaned up pursuant to the Superb program;

 (3) to review the administration of the Superb program and to determine the feasibility and desirability of maintaining or separating the function of environmental regulation from the function of administering the Superb Account and Superb Financial Responsibility Fund;

 (4) to make recommendations on the development of regulations for prioritizing sites;

 (5) to make recommendations on the development of regulations establishing reasonable site‑specific cleanup goals and utilizing risk‑based goals for corrective action;

 (6) to review the financial solvency of the Superb Account and to examine and make recommendations regarding alternative funding mechanisms;

 (7) to review the interaction between the Federal Trust Fund and the Superb Account;

 (8) to review and provide recommendations on standards and procedures to reduce time and costs to achieve site cleanup in a high quality and efficient manner;

 (9) to study and make recommendations regarding the feasibility of utilizing a competitive bidding process in any or all stages of the Superb program;

 (10) to study and make recommendations regarding the feasibility of the State’s contracting with private entities to provide services for the program, such as having private insurers process compensation applications;

 (11) to make recommendations regarding actions the department could take to facilitate commercial lending activity involving Superb‑qualified sites and;

 (12) to make recommendations regarding the development of an appeals process for those owners or operators who are denied access to the Superb fund because they were found not to be in substantial compliance under Section 44‑2‑40(B).

 (E) Members of the committee shall serve for terms of two years and until their successors are appointed and qualify. The committee shall selection a chairman and vice‑chairman. The committee shall adopt operating procedures, including attendance requirements. A majority of the members constitute a quorum to do business. The committee shall meet on the call of the chairman or of a majority of the members; however, the committee shall meet at least monthly before the date that its initial report required by subsection (F) is due. The department shall provide the necessary staff and the administrative facilities and services to the committee and shall cooperate fully with the committee, including providing information necessary for the committee to perform its functions.

 (F) Not later than December 16, 1994, the committee shall submit a report to the department and General Assembly addressing the issues identified in subsection (D) of this section. The report shall include recommendations for any statutory changes that the committee determines should be made in the Superb program and recommendations regarding regulations required to be promulgated pursuant to Section 44‑2‑50(B).

 (G) Following its initial report, the committee shall submit to the department and the General Assembly by the end of each calendar year an annual report which, at a minimum, shall address the financial status and viability of the Superb Account and the Superb Financial Responsibility Fund, the number of sites successfully remediated pursuant to the Superb program, the number of sites remaining to be remediated, and any statutory or regulatory changes that the committee recommends.

HISTORY: 1994 Act No. 497, Part II, Section 80B.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.