



## 2012 Annual Report

### Purpose

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

### The SUPERB Accounts

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

A ½ cent environmental impact fee imposed on each gallon of petroleum entering the state funds the SUPERB Accounts. The Department of Revenue collects the fee under the authority of Section 12-28-2355. Impact fee revenue received during calendar year 2012 totaled \$17,638,231.56, and the total revenue received including impact fee revenue, tank fees per H.3270, interest, and recovered funds totaled \$19,239,029.36 (Table 1). SUPERB payments during calendar year 2012 totaled \$18,120,993.28. As of December 31, 2012, a total of \$15,590,697.06 in SUPERB funds was committed through current contracts for site rehabilitation activities leaving an available SUPERB balance of \$3,773,150.41 (Table 1). The cumulative expenditures since 1998 total \$352,021,955.78.

**Table 1. SUPERB Account information as of December 31, 2012**

Impact Fee Revenue Received in Calendar Year 2012	\$ 17,638,231.56
Additional Tank Fee Revenue of \$100 Per Tank in 2012	\$ 1,135,120.00
Beginning Cash Balance January 1, 2012	\$ 18,245,811.39
Total Revenue Received in Calendar Year 2012	\$ 19,239,029.36
Total Available Calendar Year 2012	\$ 37,484,840.75
Total Payments from SUPERB in Calendar Year 2012	\$ -18,120,993.28
Cash Balance December 31, 2012	\$ 19,363,847.47
Commitments (Current Contracts)	\$ -15,590,697.06
Available for Commitment	\$ 3,773,150.41
Cumulative Spent Since 1988	\$ 352,021,955.78

### **SUPERB Financial Responsibility Fund (SFRF)**

DHEC is currently aware of four (4) third party claims or suits and actively participates in their resolution as allowed for in Section 44-2-40 of the SUPERB Act. Two claims were resolved through the court system without payment in 2012, and six cases were reviewed and determined to no longer be active in the court system. A total of \$1,227,017.84 has been spent for claims, legal fees, and appraisal activities since the creation of this fund in 1993. As of December 31, 2012, the SFRF Balance was \$1,017,825.07.

### **Financial Responsibility for the State Fund Deductible**

The SUPERB Act requires that UST owners and operators demonstrate financial responsibility (FR) for \$25,000 per UST leak occurrence as the SUPERB Accounts provide the remaining required coverage. Allowable FR options include: self insurance, commercial insurance, insurance pool (risk retention group), guarantee, surety bond, letter of credit, trust fund, standby trust fund, and several local government options. Currently, sixty-four percent (64%) of UST facilities are covered by self-insurance, seventeen percent (17%) by letters of credit or surety bonds, fifteen percent (15%) by commercial insurance, two percent (2%) by local government options, and the remaining two percent (2%) are exempt, in violation, or new owners.

### **Cleanup Progress**

As of December 31, 2012, DHEC has confirmed a total of 9,648 UST releases. Of these, 7,139 or about 74% have been closed. A total of 232 releases were closed in calendar year 2012; of these, 189 were closed with SUPERB funds. Ten of the 232 closures required engineered cleanup systems and were closed after cleanup actions were completed. Cleanups requiring engineered systems, often referred to as active cleanups, can take more than five years to complete.

At year's end, there were 2,509 open releases, of which 2,471 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 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, 2012, 150 releases were in active cleanup, 103 releases were in limited cleanup with free product removal activities being conducted, and 302 releases were being monitored as part of a formalized natural attenuation remedial plan. Assessment activities were being funded at another 834 sites. A total of 1,095 releases were receiving SUPERB funding at year's end. For the most part, site rehabilitation activities are funded by SUPERB or by the UST owner under the \$25,000 SUPERB deductible.

At year's end, fourteen (14) DHEC project manager positions were overseeing environmental assessment or cleanup efforts on 2,338 releases being worked with SUPERB funds or under the \$25,000 deductible. A project manager position in the Corrective Action Section was vacated in November 2012, and the Division is conducting interviews with the hope to have an offer extended prior to March 1, 2013, so that productivity is not limited. Earlier in the year, two project manager positions housed in the Assessment Section were vacated in January 2012. The Division filled both vacancies in June 2012. In order to have sufficient staff members to address the additional SUPERB monies from the increased tank fees, a new position in the Corrective Action Section was filled in June 2012. Once the existing vacancy is filled, fifteen (15) project managers will be providing oversight on the active UST releases.

### **Quality Assurance Program Plan**

On July 1, 2011 the UST Program commenced implementation of the Quality Assurance Program Plan (QAPP). The Environmental Protection Agency (EPA) approved the SC UST Program QAPP in June 2011. The purpose of the QAPP is to ensure that all data produced and reported to the Department is scientifically valid, legally defensible, and of known and acceptable precision and accuracy. Between January 1, 2012 and December 31, 2012, 1,422 reviews of QAPP Addendums were completed. The average time to complete each review was approximately ten days. Just over three percent of the 1,422 reviews exceeded the program standard of 30 days, typically due to revisions to the QAPP Addendums being necessary. Most QAPP addendums needing correction have been approved after only one rewrite. Since the implementation date, UST Program staff has worked closely with contractors to facilitate this process. Allowable rates for payment from the SUPERB Account have been adjusted where needed to allow for the additional effort and data production required. Based on experience and feedback from contractors, the QAPP was revised in late 2012 in an effort to streamline the process and improve efficiency of implementation. The QAPP was sent out to contractors and the US EPA for comment in January 2013.

### **Underground Storage Tank Information**

Since 1986, there have been 45,750 petroleum USTs registered with DHEC. Of those, 33,079 have been removed from the ground or properly closed in place. As of December 31, 2012, there were 11,792 operating USTs at 4,154 locations across the state owned by 2,108 individuals or companies.

On a quarterly basis, EPA requires reporting on the UST compliance rate for both release prevention and release detection, commonly referred to as significant operational compliance (SOC). DHEC reported that 77% of the approximately 4,033 UST facilities inspected during 2012 met both the release prevention and release detection requirements and were in significant operational compliance. The overall compliance rate for 2012 has decreased to 77% from the previous year's report of 79%.

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**

Leak rate is defined as the total number of confirmed releases from registered and permitted tanks, divided by the total number of currently in use tanks. For 2012 reporting period, 82 confirmed releases were reported from a tank population of 11,792 operating USTs, calculating a leak rate of 0.69%. This percentage is higher than the 0.59% reported for 2011, but lower than the 0.82% reported for 2010, and 0.98% reported for 2009.

### **Legislative Information**

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

DHEC consulted with South Carolina Petroleum representatives and ultimately developed a funding solution with EPA Region 4, EPA Headquarters Office of Underground Storage Tanks, and the SUPERB Advisory Committee. The solution proposed in October 2007 was to acquire an additional \$8 million per year over five years to move the SUPERB fund toward being a viable financial responsibility mechanism. This \$40 million was in addition to the \$5 million special appropriation received in November 2007 for state FY 2008. During 2008, the petroleum industry was successful in securing an additional \$4 million for the SUPERB fund above the expected impact fee revenue; therefore, the SUPERB funding solution as proposed in October 2007, required an additional \$36 million. In January 2009, Bill H. 3270 was introduced through industry-led efforts to address SUPERB solvency by amending Section 44-2-60 Code of Laws of South Carolina, relating to the registration of underground storage tanks so as to establish new annual renewal fees and to require that the additional revenue generated from the tank fee increases be deposited into the SUPERB account. Bill H.3270 was signed by the Governor and made effective on May 19, 2010.

Beginning January 1, 2012, the amended SUPERB Act increased annual tank fees by \$100 each year over four years, ultimately reaching \$500 per tank, and maintains the fee at this level until an

additional \$36 million is generated and deposited into the SUPERB account. When the SUPERB account is credited with the additional \$36 million, the annual tank fee will revert back to \$100 per tank the following January. DHEC will not be allowed to use any of the additional tank fee revenue for administration of the UST Program or for orphan sites as defined in 44-2-20(11). The additional monies will be collected following the June 1, 2012 billing cycle for tank fees. Revenues of \$1,135,120.00 were collected in the calendar year 2012 attributed to the \$100 fee per tank.

Considering the continued budget challenges faced by South Carolina, DHEC views this industry-led effort as a resolution to the long-term funding solution for the SUPERB account. In recent correspondence, the EPA fully endorsed the funding solution incorporated in the 2010 legislation to address the solvency of SUPERB.

### **Proposed Revisions to Federal Regulations**

EPA's proposed revisions to the federal UST regulations Part 280 and 281 were published in a November 8, 2011 Federal Register Notice and made available for a public comment period. The deadline to submit comments was February 16, 2012 which has been extended by 60 days until April 16, 2012. Major revisions pertain to incorporating the provisions of the Energy Policy Act of 2005, inclusion of tanks that were deferred in 1988 version and to update the regulations with new and recent information related to regulating UST systems. These revisions will help improve prevention and detection of UST releases, which are one of the leading sources of groundwater contamination. Areas where revisions are proposed include: updating codes of practice, operator training requirement, secondary containment requirements, removing deferrals, notification process, addressing compatibility issues, interstitial monitoring, upgrade requirements, state approval program requirements, etc.

### **Operator Training**

In keeping with the requirements of the Energy Policy Act of 2005 and UST Control Regulations R.61-92, Part 280.35, 492 new A/B operators were trained in South Carolina during the 2012 calendar year. An additional 455 individuals completed the online training course for use in other states (Florida, Georgia, Mississippi, Alabama, Utah, Arizona, Tennessee, Virginia, Maryland, Ohio, New Jersey, North Carolina, and Massachusetts). Retraining is another requirement for operator training. Of the 4,038 inspections performed this past year, approximately 26% involved retraining (1,049 retraining events). The majority of these took place at the time of the inspection. If the A/B operator was not present at the time of the inspection, retraining was completed using the online training program. Currently, the online training program is offline for security issues. Because of this, training for new A/B operators consists of a site visit by a staff member to administer the training. Retraining not done at the time of the inspection is being performed over the phone.

### **Secondary Containment Requirement**

In accordance with UST Control Regulation R.61-92. Part 280.25, not later than December 22, 2018, all UST systems located within 100 feet of an existing water supply well, a coastal zone critical area, or state navigable waters must be either secondarily contained or permanently closed. DHEC has determined that approximately 373 facilities (1,011 tanks and 768 piping runs) may be affected by the implementation of this regulation. Currently, the total numbers of facilities located near water supply wells is being determined. In practicality, the affected tanks will have to be permanently closed or modified to meet secondary containment requirements by December 22, 2018. DHEC will include information about the upcoming regulation on our web site and will publish several articles in the UST newsletter. Continued efforts to inform the regulated community will be made as the deadline approaches.

### **Recommendations**

Recommendations approved during the Monday, March 4, 2013 SAC meeting are:  
SCDHEC should include in their annual budget request to the SC General Assembly funding for the deficit in the SUPERB account, as identified during the fund solvency study. Specifically, the Committee recommends that the Legislature appropriate \$5 Million dollars for a one-time non-recurring expenditure to assess and remediate the high priority risk category 1 and 2 statewide tank releases.

# Appendix 1

## SUPERB Eligible Releases by Risk Category

As of December 31, 2012 as compiled on January 2, 2013

Risk Category	Open Releases			
	2012	2011	2010	2009
1	160	177	190	263
2A	114	124	128	122
2B	818	876	912	891
3A	47	50	64	93
3B	879	915	948	953
4A	182	189	188	198
4B	134	132	145	148
5	137	136	148	192
Total	2,471	2,599	2,723	2,860

### Risk Category Definitions:

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

# Appendix 2

## SUPERB Eligible Releases by Risk Category and County as of December 31, 2012 as compiled on January 2, 2013

County	Risk Category								Total
	1	2A	2B	3A	3B	4A	4B	5	
Abbeville	0	1	13	0	2	3	2	1	22
Aiken	3	0	13	1	10	3	3	8	41
Allendale	0	0	3	0	10	0	2	1	16
Anderson	1	1	17	0	41	9	0	6	75
Bamberg	0	1	10	0	5	1	1	0	18
Barnwell	0	3	13	1	6	1	0	1	25
Beaufort	2	2	11	3	9	1	0	1	29
Berkeley	2	0	11	1	21	0	2	1	38
Calhoun	0	0	1	0	4	0	2	0	7
Charleston	1	0	15	0	70	0	3	2	91
Cherokee	2	1	11	0	8	3	3	0	28
Chester	3	3	16	0	9	2	3	4	40
Chesterfield	1	2	6	1	9	1	1	3	24
Clarendon	4	0	27	2	20	0	4	5	62
Colleton	2	3	13	0	9	0	0	2	29
Darlington	1	0	24	1	17	1	6	5	55
Dillon	8	2	13	1	9	0	3	1	37
Dorchester	3	0	18	1	25	1	2	0	50
Edgefield	1	0	6	1	4	1	1	2	16
Fairfield	5	1	8	0	2	0	0	1	17
Florence	8	8	41	3	62	2	13	2	139
Georgetown	2	2	11	1	17	0	0	2	35
Greenville	7	10	53	2	56	34	16	19	197
Greenwood	4	2	15	1	7	10	4	1	44
Hampton	0	3	12	0	9	0	2	3	30
Horry	9	10	51	11	74	0	3	3	161
Jasper	1	4	19	2	8	0	0	2	36
Kershaw	0	4	12	0	8	3	1	3	31
Lancaster	4	2	24	4	14	6	10	1	65
Laurens	2	0	22	0	12	10	0	0	47
Lee	1	3	5	0	2	0	0	0	11
Lexington	6	2	30	2	45	5	7	8	105
Marion	1	0	24	1	21	0	0	1	48
Marlboro	5	2	15	0	11	1	1	1	36
McCormick	2	0	5	0	6	1	0	1	15
Newberry	3	2	15	0	15	3	5	2	45
Oconee	1	2	7	0	5	5	0	0	20
Orangeburg	8	6	29	1	25	0	3	3	75
Pickens	1	0	7	0	7	5	1	0	21
Richland	16	6	39	0	43	11	7	1	123
Saluda	3	0	3	0	8	0	1	0	15
Spartanburg	6	3	26	6	64	45	14	9	173
Sumter	7	9	35	0	18	0	2	3	74
Union	1	2	2	0	5	0	0	2	12
Williamsburg	5	6	23	0	16	0	2	4	56
York	20	5	42	0	30	13	4	4	118

### 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, 2012 as compiled on January 2, 2013

Risk Category	Work Currently Ongoing With SUPERB Funds or under the \$25,000 Deductible <sup>1</sup>	Not Currently Working Awaiting SUPERB Funding or under the \$25K deductible
1	160	0
2A	73	41 <sup>2</sup>
2B	470	348 <sup>2</sup>
3A	22	25 <sup>2</sup>
3B	474	405 <sup>3</sup>
4A	73	109 <sup>4</sup>
4B	50	84 <sup>4</sup>
5	51	69 <sup>4</sup>
Total	1373	1098

In accordance with the SUPERB Site Rehabilitation and Fund Access Regulations R.61-98, Section II.B., UST releases, regardless of its time of occurrence, shall be classified accordingly:

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

<sup>1</sup>SUPERB funds are available for the current scope of work and ongoing site rehabilitation activities (e.g., IGWA, Tier I, Tier II, AFVR, MNA, ACA) based on high priority or anticipation of a cleanup complete measure. Includes releases where the Owner/Operator is conducting activities under the deductible (subset of 222 releases where the \$25,000 deductible has not been documented).

<sup>2</sup>SUPERB funds are available for the next scope of work but currently no site rehabilitation work is funded (e.g., awaiting a decision from the owner/operator, between active scopes of work with new work pending process review and funding, ongoing enforcement actions, RP resolutions, etc.). This number may include the subset of 222 releases working strictly under the \$25,000 SUPERB deductible. However, all \$25,000 deductible sites are being actively worked or pursued to start work.

<sup>3</sup>SUPERB funds may become available for the next scope of work for some of these lower risk category releases.

<sup>4</sup>SUPERB funds are not currently available for these lowest risk category releases. No site rehabilitation activities are ongoing. Site rehabilitation will be initiated as funds become available.