

# SUPERB ADVISORY COMMITTEE

## Annual Report January 2008

### Purpose

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

### The SUPERB Accounts

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

A ½ cent environmental impact fee imposed on each gallon of petroleum entering the state funds the SUPERB Accounts. The Department of Revenue collects the fee under the authority of Section 12-28-2355.

### SUPERB Account information as of December 31, 2007:

|  |                  |
|--|------------------|
| Revenue Received in Calendar Year 2007         | \$ 17,955,807.75 |
| State Appropriation Received November 28, 2007 | \$ 5,000,000.00  |
| Total Revenue Received in Calendar year 2007   | \$ 22,955,807.75 |
| Total Fund Balance                             | \$ 25,905,651.14 |
| Commitments (current contracts)                | \$ 21,516,707.00 |
| *Available for Commitment                      | \$ 5,981,417.72  |
| Cumulative Spent Since 1988                    | \$244,765,991.91 |

\* This balance is currently higher than usual due to a one-time \$5 million supplement that was received in November 2007 as a State Appropriation. These monies are to be used only for Class 1 and Class 2 site rehabilitation activities.

### Leak Rate

The leak rate from active, non-operational, and orphan tanks was 1.4% for 2007. This leak rate has been relatively consistent (at or near 1%) over the past four years.

### **SUPERB Financial Responsibility Fund**

DHEC is currently aware of 14 third party claims or suits and actively participates in their resolution as allowed for in Section 44-2-40 of the SUPERB Act. As of December 31, 2007 the SFRF Balance was \$3,099,175. A total of \$921,287.42 has been spent for claims, legal fees, and appraisal activities since the creation of this fund in 1993. In 2007, no claims were paid.

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

The SUPERB Act requires that UST owners and operators demonstrate financial responsibility (FR) for \$25,000 per UST leak occurrence as the SUPERB Accounts provide the remaining required coverage. Allowable FR options include: self insurance, commercial insurance, insurance pool (risk retention group), guarantee, surety bond, letter of credit, trust fund, standby trust fund, and several local government options. The UST database reveals that sixty-eight percent (68%) of UST facilities are covered by self-insurance, nineteen percent (19%) by letters of credit or surety bonds, twelve percent (12%) by commercial insurance, and the remainder by guarantees, trust funds, and local government options.

### **Cleanup Program Progress**

As of December 31, 2007, DHEC has confirmed a total of 9,050 UST releases. Of these, 5,878, or 65%, have been closed. A total of 283 releases were closed in calendar year 2007, 122 without SUPERB funding, and 161 with SUPERB funds. Twenty-three 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 3,172 open releases, of which 3,089 are eligible to receive SUPERB funds. Confirmed releases are ranked by DHEC for funding priority according to the risk each poses. The priority system is outlined in the SUPERB Fund Access Regulations (R.61-98). Appendix 1 depicts the total number of SUPERB eligible releases by their risk category and Appendix 2 depicts this number by county. Appendix 3 depicts the number of cases, by risk category, where rehabilitation activity is being funded and the number where no funding is provided.

As of December 31, 2007, 327 releases were in active cleanup, 259 releases were being monitored as part of a formalized natural attenuation remedial plan. A total of 1056 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.

### **Underground Storage Tank Information**

Since 1986, there have been 44,141 petroleum USTs registered with DHEC. Of those, 32,180 have been removed from the ground or properly closed in place. As of December 31, 2007, there

were 11,961 operating USTs at 4,186 locations across the state.

The US Environmental Protection Agency requires DHEC to report on a quarterly basis the UST compliance rate for release prevention and release detection, commonly referred to as substantial operational compliance. DHEC reported that 74 percent of the approximately 3,831 UST facilities inspected during 2007 were in substantial 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.

### **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 for UST owners and operators. The Department proposed to EPA in October 2007 a long-term funding solution to the SUPERB Fund. The EPA responded in late October with a letter of support for the DHEC proposed plan. Specifically, the EPA supported the Department's plan to fund all high priority sites by the end of a five-year period, beginning in the State's fiscal year 2009; fund all lower priority sites by the end of an eleven year period, beginning in the State's fiscal year 2009; complete the work at individual sites in an average period of three to four years from the time funding begins; and reduce the liabilities against the fund by the end of year eleven so that the total liabilities are approximately equal to the annual fund revenue.

In late November 2007, a one-time supplement of \$5,000,000 was received from the State Legislature as an appropriation to be spent by July 2008. These monies will be used for Class 1 and Class 2 site rehabilitation activities.

During 2007, DHEC staff drafted changes to the state's UST Control Regulations (R.61-92) to incorporate new federal requirements. These changes, mandated by the 2005 Energy Policy Act, are intended to place greater focus on leak prevention, early detection, and minimize environmental impact from petroleum releases. The new law requires owners to have trained operators for their UST systems, and requires secondary containment for new UST systems that are installed within 1,000 feet of any existing community water system or any existing potable drinking water well. Additionally, the new law requires that states adopt a delivery prohibition for UST systems that are

determined to be ineligible to receive product due to non-compliance with specific federal and state regulatory requirements. The proposed changes to the UST Control Regulations were approved by the DHEC Board in December 2007 and were submitted to the General Assembly for review and approval during the 2008 session.

**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, 2007

| Risk Category | Open Releases |
|---------------|---------------|
| 1             | 244           |
| 2A            | 142           |
| 2B            | 869           |
| 3A            | 114           |
| 3B            | 1,065         |
| 4A            | 199           |
| 4B            | 182           |
| 5             | 274           |
| Total         | 3,089         |

#### 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 24 2008

| County       | Risk Category |    |    |    |     |    |    |    | Total |
|--------------|---------------|----|----|----|-----|----|----|----|-------|
|              | 1             | 2A | 2B | 3A | 3B  | 4A | 4B | 5  |       |
| Abbeville    | 2             | 0  | 12 | 1  | 6   | 1  | 1  | 4  | 27    |
| Aiken        | 3             | 1  | 13 | 0  | 6   | 3  | 3  | 19 | 48    |
| Allendale    | 1             | 1  | 5  | 0  | 12  | 0  | 2  | 2  | 23    |
| Anderson     | 0             | 4  | 28 | 6  | 39  | 10 | 6  | 2  | 95    |
| Bamberg      | 2             | 1  | 15 | 0  | 9   | 1  | 1  | 0  | 29    |
| Barnwell     | 0             | 4  | 12 | 2  | 5   | 1  | 1  | 1  | 26    |
| Beaufort     | 3             | 4  | 20 | 9  | 14  | 0  | 0  | 1  | 51    |
| Berkeley     | 5             | 2  | 20 | 2  | 33  | 0  | 2  | 4  | 68    |
| Calhoun      | 0             | 0  | 0  | 0  | 1   | 3  | 1  | 0  | 5     |
| Charleston   | 2             | 5  | 26 | 7  | 132 | 0  | 8  | 9  | 189   |
| Cherokee     | 2             | 2  | 11 | 0  | 10  | 3  | 4  | 3  | 35    |
| Chester      | 9             | 5  | 10 | 1  | 8   | 2  | 3  | 3  | 41    |
| Chesterfield | 1             | 2  | 10 | 1  | 8   | 0  | 1  | 2  | 25    |
| Clarendon    | 11            | 7  | 26 | 2  | 21  | 0  | 3  | 6  | 76    |
| Colleton     | 7             | 6  | 16 | 2  | 12  | 1  | 0  | 0  | 44    |
| Darlington   | 2             | 2  | 29 | 1  | 17  | 1  | 5  | 2  | 59    |
| Dillon       | 10            | 2  | 12 | 1  | 15  | 0  | 4  | 2  | 46    |
| Dorchester   | 6             | 0  | 22 | 2  | 28  | 1  | 4  | 6  | 69    |
| Edgefield    | 0             | 0  | 2  | 2  | 3   | 0  | 3  | 5  | 15    |
| Fairfield    | 5             | 1  | 10 | 0  | 1   | 0  | 1  | 0  | 18    |
| Florence     | 11            | 8  | 65 | 5  | 69  | 2  | 18 | 3  | 181   |
| Georgetown   | 6             | 3  | 16 | 5  | 22  | 0  | 1  | 9  | 62    |
| Greenville   | 12            | 7  | 41 | 7  | 61  | 43 | 24 | 41 | 236   |
| Greenwood    | 2             | 3  | 21 | 2  | 7   | 11 | 11 | 5  | 62    |
| Hampton      | 1             | 4  | 13 | 0  | 11  | 0  | 4  | 3  | 36    |
| Horry        | 9             | 9  | 47 | 18 | 104 | 0  | 4  | 8  | 199   |
| Jasper       | 5             | 4  | 25 | 1  | 8   | 0  | 0  | 3  | 46    |
| Kershaw      | 6             | 3  | 9  | 0  | 11  | 2  | 2  | 5  | 38    |
| Lancaster    | 6             | 3  | 23 | 3  | 13  | 6  | 9  | 7  | 70    |
| Laurens      | 0             | 0  | 18 | 0  | 14  | 11 | 3  | 6  | 52    |
| Lee          | 2             | 3  | 8  | 0  | 2   | 1  | 0  | 2  | 18    |
| Lexington    | 9             | 0  | 34 | 4  | 52  | 6  | 9  | 17 | 131   |
| Marion       | 3             | 2  | 22 | 1  | 37  | 0  | 1  | 1  | 67    |
| Marlboro     | 2             | 1  | 20 | 0  | 10  | 1  | 1  | 3  | 38    |
| McCormick    | 0             | 0  | 8  | 1  | 4   | 0  | 0  | 3  | 16    |
| Newberry     | 8             | 1  | 16 | 1  | 13  | 2  | 3  | 5  | 49    |
| Oconee       | 4             | 1  | 4  | 1  | 5   | 6  | 0  | 2  | 23    |
| Orangeburg   | 14            | 3  | 32 | 0  | 39  | 1  | 3  | 11 | 103   |
| Pickens      | 1             | 0  | 5  | 1  | 6   | 10 | 1  | 1  | 25    |
| Richland     | 24            | 10 | 31 | 2  | 50  | 20 | 3  | 4  | 144   |
| Saluda       | 6             | 2  | 1  | 0  | 7   | 1  | 1  | 3  | 21    |
| Spartanburg  | 7             | 2  | 41 | 11 | 58  | 40 | 18 | 14 | 191   |
| Sumter       | 11            | 9  | 26 | 7  | 32  | 1  | 2  | 4  | 92    |
| Union        | 0             | 4  | 1  | 1  | 4   | 0  | 1  | 3  | 14    |
| Williamsburg | 6             | 7  | 22 | 0  | 15  | 0  | 2  | 7  | 59    |
| York         | 20            | 5  | 35 | 3  | 34  | 8  | 6  | 18 | 129   |

**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, 2007**

| <b>Risk Category</b> | <b>Work Currently Ongoing<br/>With SUPERB Funds or<br/>Under the \$25,000<br/>Deductible</b> | <b>Not Currently Working<br/>Awaiting SUPERB<br/>Funding</b> |
|----------------------|--|--|
| 1                    | 244  | 0  |
| 2A                   | 107  | 35   |
| 2B                   | 455  | 414  |
| 3A                   | 42   | 72   |
| 3B                   | 405  | 660  |
| 4A                   | 72   | 127  |
| 4B                   | 64   | 118  |
| 5                    | 147  | 127  |
| <b>Total</b>         | <b>1,536</b>   | <b>1,553</b>   |

#### **Risk Category Definitions**

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- 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