

LAC

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DHEC's SUPERB Fund and Underground Storage Tank Program

Members of the General Assembly requested that we review the Department of Health and Environmental Control's SUPERB fund and underground storage tank (UST) program. The State Underground Petroleum Environmental Response Bank (SUPERB) Act of 1988:

- ❑ Strengthened regulatory control of underground storage tanks. USTs must meet federal tank standards by 1998.
- ❑ Established a state fund that tank owners could use to investigate leaks and clean up water and soil

contamination. A state fund is one way that owners can meet federal requirements that they have \$1 million in coverage for cleanups and damage to third parties caused by leaks from their tanks.

SUPERB has primarily been funded by a ½¢ per gallon gasoline tax. In 1992, the General Assembly created a separate fund, the SUPERB financial responsibility fund (SFRF), to provide tank owners with coverage for third-party damage claims. From 1988 through FY 94-95, expenditures from SUPERB were approximately \$55 million, and fund liability is increasing.



Policy Issues

We recommend that SUPERB compensation be discontinued for tank leaks that occur after 1998. Our findings about fund liability and policy are summarized below:

- ❑ A 1995 study conducted by the Tillinghast actuarial firm concluded that current SUPERB revenues are insufficient to pay current and future claims. The SUPERB account and the SFRF are faced with total claims of \$494 million to \$713 million for leaks reported through the year 2019. At the end of 2019, liabilities may exceed revenues by \$164 million to \$383 million.
- ❑ If SUPERB compensation were not allowed for post-1998 leaks, liabilities as of December 31, 1998, could be from \$194 million to \$292 million. Tax revenues would be sufficient to pay projected liabilities sometime between 2013 and 2021.
- ❑ If the gasoline tax were discontinued when liabilities for leaks reported through 1998 are paid, taxpayers could save between \$77 million and \$175 million.
- ❑ Private insurance was not readily available for owners when federal regulations for tanks were first issued. However, insurance is now available for tanks that meet the 1998 standards.



SUPERB Fund Administration

There have been significant changes to the SUPERB law nearly every year since its passage in 1988, and its administration has presented challenges for DHEC. DHEC has improved its administration of the fund and implemented cost control measures:

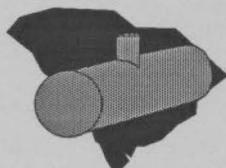
- \$ In conjunction with a 1994 statutory change, DHEC requires tank owners to obtain prior approval of costs proposed for the assessment and cleanup of tank sites.
- \$ Since 1993, DHEC has audited selected contractors who have received SUPERB payments. As of June 1995, DHEC reported that it had recovered \$64,590 in improper payments and identified \$151,478 more that was not yet recovered.
- \$ SUPERB-funded cleanups have been purchased primarily by tank owners who cannot benefit from economies of scale and have minimum incentive to control costs. In July 1995, DHEC directly procured groundwater assessment services for 50 tank sites with the option of expanding the work to 800 additional sites. Officials estimate this procurement could save the fund \$2.5 million.

We also reviewed how SUPERB expenditures have been managed to protect the environment and DHEC's use of a risk-based approach:

- ❑ Until 1993 DHEC did not have a formal priority system to ensure the most serious leaks were cleaned up first. As a result, when SUPERB funding was exhausted, some sites that threatened health and the environment were not cleaned up. The EPA expressed concern that sites requiring immediate

corrective action have not been sufficiently addressed.

- ❑ In 1995 DHEC began implementing a new priority ranking system. Each site is being ranked using a risk-based corrective action (RBCA) process. Using RBCA, DHEC will determine the cleanup needed for each site based on the risks to people and the environment. The implementation of RBCA may reduce costs for future leaks by 13% to 34%.



The Underground Storage Tank Program

Compliance with underground storage tank regulations helps ensure the prevention, detection, and cleanup of contamination caused by leaks or spills from USTs. The SUPERB law may have had a negative effect on overall program success by providing inadequate incentives for tank owners to upgrade their tanks.

- ❑ Before July 1, 1994, prior non-compliance with state UST regulations did not affect a site's eligibility for SUPERB funds. Owners could intentionally avoid compliance, for example, by not using a leak detection method or not registering their tanks, and still qualify with no penalty for SUPERB-funded cleanups.
- ❑ Since July 1, 1994, owners must be in "substantial compliance" with tank regulations in order to be eligible for SUPERB funding. However, DHEC did not conduct inspections to determine compliance for 19 of the 29 sites qualified since July 1994. No sites have been disqualified.

DHEC's enforcement of underground storage tank regulations needs improvement.

- ❑ DHEC has not adopted a formal written policy for its inspectors to follow when they identify violations of UST regulations. Policies are needed to streamline the enforcement process, ensure consistency in handling violations, and control followup actions.
- ❑ DHEC's enforcement efforts could benefit by the establishment of a system for issuing fines for minor violations found during an inspection.
- ❑ DHEC has not met its goals for performing routine inspections of tanks and attending tank installations and abandonments (closures). In 1994 inspectors, on average, performed approximately 120 inspections, 67% of the number required. The inspection process is critical to preventing leaks and minimizing their effect.

Agency comments to the audit begin on page 49.

Copies of all LAC audits are available to the public at no charge. If you have additional questions, please contact George L. Schroeder, Director.