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Standard Guide for Disclosure of Environmental Liabilities¹

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1. Scope

1.1 *Purpose*—The purpose of this guide is to provide a series of options or instructions consistent with good commercial and customary practice in the United States for environmental liability disclosures accompanying audited and unaudited financial statements. This guide is intended to supplement and be consistent with Generally Accepted Accounting Principles (GAAP).²

1.2 *Objectives*—The objectives of this guide are to determine the conditions warranting disclosure and the content of appropriate disclosure.

2. Referenced Documents

2.1 ASTM Standards:

- D 5746 Classification of Environmental Condition of Property Area Types for Defense Base Closure and Realignment Facilities³
- E 1527 Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process³
- E 1739 Guide for Risk Based Corrective Action Applied at Petroleum Release Sites³
- E 2137 Guide for Estimating Monetary Costs and Liabilities for Environmental Matters³

2.2 EPA Directives:⁴

- United States Environmental Protection Agency, OSWER Directive 9610.17: Use of Risk-Based Decision-Making in UST Corrective Action Programs

3. Terminology

3.1 Definitions of Terms Specific to This Standard:

3.1.1 *CERCLA*—Comprehensive Environmental Response, Compensation and Liability Act of 1980 (as amended, 42 USC Section 9601 *et seq.*).

3.1.2 *CERCLIS*—Comprehensive Environmental Response, Compensation and Liability Information System, the list of sites compiled by the EPA that the EPA has investigated or is currently investigating for potential hazardous substance contamination for possible inclusion on the National Priorities List.

3.1.3 *CFR*—Code of Federal Regulations.

3.1.4 *claim*—a demand for payment.

3.1.5 *environmental liabilities*—accrued liabilities and loss contingencies associated with conditions that present an unacceptable risk of harm to public health or the environment and that would be the subject of an enforcement action or other legal action.

3.1.6 *EPA*—United States Environmental Protection Agency.

3.1.7 *Federal Register, (FR)*—publication of the United States government published daily (except for federal holidays and weekends) containing all proposed and final regulations and some other activities of the federal government. When regulations become final, they are included in the Code of Federal Regulations (CFR), as well as published in the Federal Register.

3.1.8 *financial statements*—include, but are not limited to, statements associated with shareholder reporting, loans, mergers, acquisitions, or divestitures.

3.1.9 *materiality*—the significance of an item to users of a financial statement that considers all relevant and surrounding circumstances. A material item is one that its omission or misstatement is of such a magnitude in the surrounding circumstances that either the judgment of a reasonable person relying on the financial statement would have been changed or influenced by its inclusion or correction, or there is a substantial likelihood that the item, after assessing the inferences, and their significance, drawn from the given set of facts associated with the financial statement, would be viewed as significantly altering the information made available to the investor or shareholder. Relevant sources of information and references are included in Appendix X2.

3.1.10 *National Priorities List (NPL)*—a list compiled by the EPA pursuant to CERCLA 42 USC § 9605(a)(8)(B) of properties with the highest priority for cleanup pursuant to the EPA's Hazard Ranking System. See 40 CFR Part 300.

¹ This guide is under the jurisdiction of ASTM Committee E50 on Environmental Assessment and is the direct responsibility of Subcommittee E50.05 on Wetland Ecosystems.

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² This guide alone does not satisfy or include all disclosure requirements under GAAP, SEC, or any other agency or regulatory body. Appendix X1 provides some examples of where such requirements are contained.

³ *Annual Book of ASTM Standards*, Vol 11.04.

⁴ Available from the United States Environmental Protection Agency (U.S. EPA), Ariel Rios Building, 1200 Pennsylvania Ave., N.W., Washington, DC 20460.

3.1.11 *Potentially Responsible Party (PRP)*—any individual, legal entity, or government—including owners, operators, transporters, or generators—potentially responsible for, or contributing to, conditions that present an unacceptable risk of harm to human health or the environment and that would be the subject of an enforcement action or other legal action.

3.1.12 *RCRA*—Resource Conservation and Recovery Act (as amended, 42 USC § 6901 *et seq.*).

3.1.13 *reasonably possible*—the likelihood, or probability, associated with a given event occurring that lies in the range between remote and probable. The probability values assigned to remote and probable will depend on the industry, the aggregate number of sites, observations, and possible outcomes, and the uncertainty associated with estimating probabilities.

3.1.14 *release*—any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

3.1.15 *remedial or corrective action*—all environmental response activities to an environmental liability.

3.1.16 *reporting entity*—any business or public agency preparing a financial statement.

3.1.17 *site*—real property affected by an environmental liability.

4. Significance and Use

4.1 *Uses*—This guide is intended for use on a voluntary basis by a reporting entity that provides disclosure in their financial statements regarding environmental liabilities. The degree and type of disclosure depends on the scope and objective of the financial statements.

4.2 *Principles*:

4.2.1 The following principles are an integral part of this guide and are intended to be referred to in resolving any ambiguity or dispute regarding the interpretation of disclosures regarding environmental liabilities.

4.2.1.1 *Uncertainty Not Eliminated*—Although a reporting entity, as of the time when its financial statements are prepared, may hold a certain position with regard to the existence and extent of its environmental liabilities, there remains uncertainty with regard to the final resolution of factual, technological, regulatory, legislative, and judicial matters, which could affect its environmental liabilities.

4.2.1.2 *Disclosure Dependent on Circumstances*—Not every environmental liability warrants the same level of detail in its disclosure. Disclosure will be guided by the scope and objective of the financial statement, and accordingly, by the materiality of the environmental liability and the level of information available.

4.2.1.3 *Comparison with Subsequent Disclosures*—Subsequent disclosures that convey different information regarding the extent or magnitude of the reporting entity's exposures should not be construed as indicating the initial disclosures were inappropriate. Disclosures shall be evaluated on the reasonableness of judgments and inquiries made at the time and under the circumstances in which they were made. Subsequent disclosures should not be considered valid standards to judge the appropriateness of any prior disclosure based on hindsight, new information, use of developing analytical

techniques, or other factors. However, information on trends may be of value to a user of financial statements.

4.2.1.4 *Not Exhaustive*—Appropriate disclosure does not necessarily mean an exhaustive disclosure of the reporting entity's environmental liabilities. There is a point at which the cost of obtaining information or the time required to gather it outweighs the usefulness of the information and, in fact, may be a material detriment to the orderly preparation of financial statements and the ability of readers to understand the information contained therein. However, all relevant and reasonably ascertainable information should be used to determine the content of appropriate disclosure for environmental liabilities.

4.2.1.5 *Assessment of Risk*—As the reporting entity becomes aware of an environmental liability or an environmental compliance issue, the condition or issue should be evaluated to assess the actual or potential risk to human health and environment. This process may be dependent on the regulatory environment, an understanding of the specifics of the condition or issue, and potential future uses. For example, guidance on petroleum release sites is provided in Guide E 1739 and additional guidance is provided in EPA OSWER Directive 9610.17. The degree of risk suggests the appropriate response actions and should be a factor in the level of effort devoted to developing the cost and liability estimates associated with the environmental condition or the compliance issue.

5. Determining Whether a Disclosure is Warranted

5.1 *Circumstances Associated with Environmental Liabilities*:

5.1.1 Following are the major circumstances that might give rise to environmental liabilities:

5.1.1.1 Enforcement of environmental laws or regulations regarding investigation, clean-up, maintenance, and other costs. Such circumstance arises if the EPA, a state agency, or a local government has named the reporting entity a PRP on a site, or a reporting entity is required to perform corrective action under RCRA, or is required to remediate a contaminated property under any other environmental law.

5.1.1.2 Contractual assumptions of risk or risk transfer agreements. The most familiar forms of risk transfer agreements are insurance contracts, hold harmless agreements, indemnity agreements, and similar terms within contracts for the transfer of property.

5.1.1.3 Commencement of litigation or assertion of a claim or assessment by a party alleging legal liability on the part of the reporting entity.

5.1.1.4 Information is known by the reporting entity that indicates an environmental liability has been incurred.

5.2 *Sources of Information*—This guide identifies standard sources that should be reviewed by a reporting entity to properly determine if conditions warrant disclosure. Such sources may include but are not limited to:

5.2.1 Published List of PRP's,

5.2.2 Federal National Priorities List (NPL) site list,

5.2.3 CERCLIS list,

5.2.4 Published list of sites and identified responsible parties under state environmental laws,

5.2.5 Environmental suits involving the reporting entity,

5.2.6 Lists of leaking underground storage tanks (LUSTs),