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Standard Practice for Limited Environmental Due Diligence: Transaction Screen Process¹

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1. Scope

1.1 *Purpose*—The purpose of this practice is to define good commercial and customary practice in the United States of America for conducting a *transaction screen*² for a parcel of *commercial real estate* where the *user* wishes to conduct limited environmental *due diligence* (that is, less than a *Phase I Environmental Site Assessment*). If the driving force behind the environmental *due diligence* is a desire to qualify for one of the *Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Landowner Liability Protections (LLPs)*, this practice should not be applied. Instead, the ASTM Practice E1527 for Environmental Site Assessments: Phase I Environmental Site Assessment Process, may be used.

NOTE 1—The *user* is advised that this practice will not satisfy the practices that constitute *all appropriate inquiries* into the previous ownership and uses of the *property* consistent with good commercial or customary practice as defined in 42 U.S.C. §9601(35)(B) to establish the CERCLA LLPs.

1.2 An evaluation of business environmental risk associated with a parcel of *commercial real estate* may necessitate investigation beyond that identified in this practice. See Sections 1.4 and 11.

1.2.1 *Potential Environmental Concerns*—In defining a standard of good commercial and customary practice for conducting a *transaction screen* of a parcel of *property*, the goal of the processes established by this practice is to identify *potential environmental concerns*, as defined in 3.2.34.

1.2.2 *Other Federal, State, and Local Environmental Laws*—This practice does not address requirements of any state or local laws or of any federal laws. *Users* are cautioned that federal, state, and local laws may impose environmental assessment obligations that are beyond the scope of this practice. *Users* should also be aware that there are likely to be other legal obligations with regard to *hazardous substances* or

petroleum products discovered on *property* that are not addressed in this practice and may pose risks of civil and/or criminal sanctions for non-compliance.

1.3 *Objective*—The objective guiding the development of this practice is to facilitate standardized *transaction screens*.

1.3.1 *Note of Caution*—The *user* should be cautious in applying this practice to properties with known current or historic handling of *hazardous substances* or *petroleum products*.

1.4 *Considerations Beyond the Scope*—The use of this practice is strictly limited to the scope set forth in this section. Section 11 of this practice identifies, for informational purposes, certain environmental conditions (not an all-inclusive list) that may exist on a *property* that are beyond the scope of this practice but may warrant consideration by parties to a *commercial real estate* transaction. The need to include an investigation of any such conditions in the scope of services should be evaluated based upon, among other factors, the nature of the *property* and the reasons for performing the assessment (for example, a more comprehensive evaluation of business environmental risk) and should be agreed upon as additional services beyond the scope of this practice prior to initiation of the *Transaction Screen Process*.

1.5 *Organization of This Practice*—This practice has several parts and one appendix. Section 1 is the Scope. Section 2 refers to other ASTM standards in the Referenced Documents. Section 3, Terminology, has definitions of terms not unique to this practice, descriptions of terms unique to this practice, and acronyms. Section 4 is Significance and Use of this practice. Section 5 is the Introduction to the *Transaction Screen Questionnaire*. Section 6 sets forth the *Transaction Screen Questionnaire* itself. Sections 7-10 contain the Guide to the *Transaction Screen Questionnaire* and its various parts. Section 11 provides additional information regarding non-scope considerations. See 1.4.

1.6 *This standard does not purport to address all of the safety concerns, if any, associated with its use. It is the responsibility of the user of this standard to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to use.*

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² Whenever terms defined in 3.2 or described in 3.3 are used in this practice, they are in *italics*.

2. Referenced Documents

2.1 ASTM Standards:³

E1527 Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process

2.2 Federal Statutes:

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA” or “Superfund”), as amended by Superfund Amendments and Reauthorization Act of 1986 (“SARA”) and Small Business Liability Relief and Brownfields Revitalization Act of 2002 (“Brownfields Amendments”), 42 U.S.C. §§9601 *et seq.*

Emergency Planning and Community Right-To-Know Act of 1986 (“EPCRA”), 42 U.S.C. §§11001 *et seq.*

Freedom of Information Act, 5 U.S.C. §552, as amended by Public Law No. 104-231, 110 Stat. 3048

Resource Conservation and Recovery Act (sometimes also referred to as the Solid Waste Disposal Act), as amended (“RCRA”), 42 U.S.C §6901 *et seq.*

3. Terminology

3.1 *Scope*—This section provides definitions, descriptions of terms, and a list of acronyms for many of the words used in this practice. The terms are an integral part of this practice and are critical to an understanding of this written practice and its use.

3.2 Definitions:

3.2.1 *activity and use limitations (AULs)*—legal or physical restrictions or limitations on the use of, or access to, a site or facility: (1) to reduce or eliminate potential exposure to *hazardous substances* or *petroleum products* in the soil or ground water on the *property*, or (2) to prevent activities that could interfere with the effectiveness of a response action, in order to ensure maintenance of a condition of no significant risk to public health or the environment. These legal or physical restrictions, which may include institutional and/or *engineering controls*, are intended to prevent adverse impacts to individuals or populations that may be exposed to *hazardous substances* and *petroleum products* in the soil or ground water on the *property*.⁴

3.2.2 *actual knowledge*—the knowledge actually possessed by an individual who is a real person, rather than an entity. *Actual knowledge* is to be distinguished from constructive knowledge that is knowledge imputed to an individual or entity.

3.2.3 *adjoining properties*—any real *property* or properties the border of which is contiguous or partially contiguous with

³ For referenced ASTM standards, visit the ASTM website, www.astm.org, or contact ASTM Customer Service at service@astm.org. For *Annual Book of ASTM Standards* volume information, refer to the standard’s Document Summary page on the ASTM website.

⁴ The term AUL is taken from the ASTM Standard Guide E2091 to include both legal (that is, institutional) and physical (that is, engineering) controls within its scope. Other agencies, organizations, and jurisdictions may define or utilize these terms differently (for example, EPA and California do not include physical controls within their definitions of “institutional controls.” The Department of Defense and the International County/City Management Association use “Land Use Controls.” The term “land use restrictions” is used but not defined in the Brownfields Amendments).

that of the *property*, or that would be contiguous or partially contiguous with that of the *property* but for a street, road, or other public thoroughfare separating them.

3.2.4 *all appropriate inquiries*—that inquiry constituting “*all appropriate inquiries* into the previous ownership and uses of the *property* consistent with good commercial or customary practice” as defined in CERCLA, 42 U.S.C. §9601(35)(B), that will qualify a party to a *commercial real estate* transaction for one of the threshold criteria for satisfying the *LLPs* to CERCLA liability (42 U.S.C. §§9601(35)(A) & (B); §9607(b)(3), §9607(q), and §9607(r)), assuming compliance with other elements of the defense.

3.2.5 *approximate minimum search distance*—the area for which records must be obtained and reviewed pursuant to the *records review* section of Practice E1528, subject to the limitations provided in that section. The term *approximate minimum search distance* may include areas outside the *property* and shall be measured from the nearest *property* boundary. The term *approximate minimum search distance* is used instead of radius to include irregularly shaped properties.

3.2.6 *commercial real estate*—any real *property* except a *dwelling* or *property* with no more than four *dwelling* units exclusively for residential use (except that a *dwelling* or *property* with no more than four *dwelling* units exclusively for residential use is included in this term when it has a commercial function, as in the building of such *dwellings* for profit). This term includes but is not limited to undeveloped real *property* and real *property* used for industrial, retail, office, agricultural, other commercial, medical, or educational purposes; *property* used for residential purposes that has more than four residential *dwelling* units; and *property* with no more than four *dwelling* units for residential use when it has a commercial function, as in the building of such *dwellings* for profit.

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

3.2.8 *CORRACTS list*—a list maintained by EPA of *hazardous waste* treatment, storage, or disposal facilities and other RCRA-regulated facilities (due to past interim status or storage of *hazardous waste* beyond 90 days) that have been notified by the U.S. Environmental Protection Agency to undertake corrective action under RCRA. The *CORRACTS list* is a subset of the EPA database that manages RCRA data.

3.2.9 *demolition debris*—concrete, brick, asphalt, and other such building materials discarded in the demolition of a building or other improvement to *property*.

3.2.10 *drum*—a container (typically, but not necessarily, holding 55 gal (208 L) of liquid) that may be used to store *hazardous substances* or *petroleum products*.

3.2.11 *due diligence*—the process of inquiring into the environmental characteristics of a parcel of *commercial real estate* or other conditions, usually in connection with a *commercial real estate* transaction. The degree and kind of *due diligence* vary for different properties and differing purposes.

3.2.12 *dwelling*—structure or portion thereof used for residential habitation.

3.2.13 *engineering controls*—physical modifications to a site or facility (for example, capping, slurry walls, or point of use water treatment) to reduce or eliminate the potential for exposure to *hazardous substances* or *petroleum products* in the soil or ground water on the *property*. *Engineering controls* are a type of *activity and use limitation (AUL)*.

3.2.14 *environmental lien*—a charge, security, or encumbrance upon title to a *property* to secure the payment of a cost, damage, debt, obligation, or duty arising out of response actions, cleanup, or other remediation of *hazardous substances* or *petroleum products* upon a *property*, including (but not limited to) liens imposed pursuant to section 107(l) of CERCLA (42 U.S.C. §9607(l)) and similar state or local laws.

3.2.15 *environmental professional*—a person meeting the education, training, and experience requirements as set forth in Practice **E1527**. The person may be an independent contractor or an employee of the *user*. If an *environmental professional* is contracted to prepare a *transaction screen questionnaire*, the *environmental professional* is not required by this practice to develop opinions and conclusions regarding *potential environmental concerns*.

3.2.16 *ERNS list*—EPA’s Emergency Response Notification System list of reported CERCLA *hazardous substance* releases or spills in quantities greater than the reportable quantity, as maintained at the National Response Center. Notification requirements for such releases or spills are codified in 40 C.F.R. Parts 302 and 355.

3.2.17 *fill dirt*—dirt, soil, sand, or other earth, that is obtained off-site, that is used to fill holes or depressions, create mounds, or otherwise artificially change the grade or elevation of real *property*. It does not include material that is used in limited quantities for normal landscaping activities.

3.2.18 *fire insurance maps*—maps produced for private fire insurance map companies that indicate uses of properties at specified dates and that encompass the *property*. These maps are often available at local libraries, historical societies, private resellers, or from the map companies who produced them. See Question 22 of the questionnaire in this practice. See **10.2.3**.

3.2.19 *hazardous substance*—a substance defined as a *hazardous substance* pursuant to section 101(14) of CERCLA, (42 U.S.C. §9601(14)), as interpreted by EPA regulations (see 40 C.F.R. §302.4) and the courts: “(A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of this Act, (C) any *hazardous waste* having the characteristics identified under or listed pursuant to section 3001 of [RCRA] (but not including any waste the regulation of which under [RCRA] has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act, (E) any hazardous air pollutant listed under section 112 of the Clean Air Act, and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator [of EPA] has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum,

including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a *hazardous substance* under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).”

3.2.20 *hazardous waste*—any solid waste having the characteristics identified under or listed pursuant to section 3001 of RCRA, as amended, (42 U.S.C. §6921) (but not including any waste the regulation of which under RCRA (42 U.S.C. §6901 *et seq.*) has been suspended by Act of Congress). RCRA is sometimes also identified as the Solid Waste Disposal Act. RCRA defines a *hazardous waste*, in section 1003 (42 U.S.C. §6903), as: “a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may—(A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.”

3.2.21 *landfill*—a place, location, tract of land, area, or premises used for the disposal of solid wastes as defined by state solid waste regulations. The term is synonymous with the term *solid waste disposal site* and is also known as a garbage dump, trash dump, or similar term.

3.2.22 *Landowner Liability Protections (LLPs)*— *Landowner liability protections* under CERCLA pursuant to the Small Business Liability Relief and Brownfields Revitalization Act amendments to CERCLA (42 U.S.C. §§9601(35) & 9607(b)(3); these protections include the bona fide prospective purchaser liability protection, contiguous *propertyowner* liability protection, and innocent landowner defense from CERCLA liability.

3.2.23 *local street directories*—directories published by private (or sometimes government) sources that show ownership, occupancy, use of sites, and/or by reference to street addresses. Often local street directories are available at libraries of local governments, colleges or universities, or historical societies. See Question 22 of the questionnaire in this practice. See **10.2.3**.

3.2.24 *LUST sites*—state lists of leaking *underground storage tank* sites. Section 9003(h) of Subtitle I of RCRA gives EPA and states, under cooperative agreements with EPA, authority to clean up releases from UST systems or require *owners* and operators to do so. 42 U.S.C. §6991b(h).

3.2.25 *major occupants*—those tenants, subtenants, or other persons or entities each of which uses at least 40 % of the leasable area of the *property* or any anchor tenant when the *property* is a shopping center.

3.2.26 *National Priorities List (NPL)*—list compiled by EPA pursuant to CERCLA (42 U.S.C. §9605(a)(8)(B)) of properties with the highest priority for cleanup pursuant to EPA’s hazard ranking system. See 40 C.F.R. Part 300.

3.2.27 *obvious*—that which is plain or evident; a condition or fact which could not be ignored or overlooked by a reasonable observer while *visually or physically observing the property*.

3.2.28 *occupants*—those tenants, subtenants, or other persons or entities using the *property* or a portion of the *property*.

3.2.29 *owner*—generally the fee *owner* of record of the *property*.

3.2.30 *petroleum exclusion*—the exclusion from CERCLA liability provided in 42 U.S.C. §9601(14), as interpreted by the courts and EPA: “The term (*hazardous substance*) does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a *hazardous substance* under Subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).”

3.2.31 *petroleum products*—those substances included within the meaning of the terms within the *petroleum exclusion* to CERCLA (42 U.S.C. §9601(14)), as interpreted by the courts and EPA, that is: petroleum, including crude oil or any fraction thereof that is not otherwise specifically listed or designated as a *hazardous substance* under Subparagraphs (A) through (F) of 42 U.S.C. §9601(14), natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). (The word *fraction* refers to certain distillates of crude oil, including gasoline, kerosene, diesel oil, jet fuels, and fuel oil, pursuant to *Standard Definitions of Petroleum Statistics*.⁵)

3.2.32 *Phase I Environmental Site Assessment*—the process described in Practice [E1527](#).

3.2.33 *pits, ponds, or lagoons*—man-made or natural depressions in a ground surface that are likely to hold liquids or sludge containing *hazardous substances* or *petroleum products*. The likelihood of such liquids or sludge being present is determined by evidence of factors associated with the pit, pond, or lagoon, including, but not limited to, discolored water, distressed vegetation, or the presence of an *obvious wastewater discharge*.

3.2.34 *potential environmental concerns*—In defining a standard of good commercial and customary practice for conducting a transaction screen of a parcel of *property*, the goal of the processes established by this practice is to identify *potential environmental concerns*. The term *potential environmental concerns* means the possible presence of any *hazardous substances* or *petroleum products* on a *property* under conditions that indicate the possibility of an existing release, a past release, or a threat of a release of any *hazardous substances* or *petroleum products* into structures on the *property* or into the ground, ground water, or surface water of the *property*. The term includes *hazardous substances* or *petroleum products* even under conditions in compliance with laws. (Note that

“threat of release” is generally understood to be present when *hazardous substances* or *petroleum products* are poorly managed (for example in corroded tanks or damaged containers) but the release of the contaminants has not yet occurred, and there is an opportunity to take response action to prevent a release of the contaminants.)

3.2.35 *practically reviewable*—information that is *practically reviewable* means that the information is provided by the source in a manner and in a form that, upon examination, yields information relevant to the *property* without the need for extraordinary analysis of irrelevant data. The form of the information shall be such that the *user* can review the records for a limited geographic area. Records that cannot be feasibly retrieved by reference to the location of the *property* or a geographic area in which the *property* is located are not generally *practically reviewable*. Most databases of public records are *practically reviewable* if they can be obtained from the source agency by the county, city, zip code, or other geographic area of the facilities listed in the record system. Records that are sorted, filed, organized, or maintained by the source agency only chronologically are not generally *practically reviewable*. Listings in *publicly available* records which do not have adequate address information to be located geographically are not generally considered *practically reviewable*. For large databases with numerous facility records (such as RCRA hazardous waste generators and registered *underground storage tanks*), the records are not *practically reviewable* unless they can be obtained from the source agency in the smaller geographic area of zip codes. Even when information is provided by zip code for some large databases, it is common for an unmanageable number of sites to be identified within a given zip code. In these cases, it is not necessary to review the impact of all of the sites that are likely to be listed in any given zip code because that information would not be *practically reviewable*. In other words, when so much data is generated that it cannot be feasibly reviewed for its impact on the *property*, it is not *practically reviewable*.

3.2.36 *preparer*—the person preparing the *transaction screen questionnaire* pursuant to this practice, who may be either the *user* or the person to whom the *user* has delegated the preparation. See [4.3](#). It is not the responsibility of the *preparer* to draw conclusions regarding affirmative or unknown answers. See [5.6](#).

3.2.37 *property*—the real *property* that is the subject of the *transaction screen* described in this practice. Real *property* includes buildings and other fixtures and improvements located on the *property* and affixed to the land.

3.2.38 *publicly available*—information that is *publicly available* means that the source of the information allows access to the information by anyone upon request.

3.2.39 *RCRA generators*—those persons or entities that generate *hazardous wastes*, as defined and regulated by RCRA.

3.2.40 *RCRA generators list*—list kept by EPA of those persons or entities that generate *hazardous wastes* as defined and regulated by RCRA.

⁵ *Standard Definitions of Petroleum Statistics*, American Petroleum Institute, Fourth Edition, 1988.

3.2.41 *RCRA TSD Facilities*—those facilities on which treatment, storage, and/or disposal of *hazardous wastes* takes place, as defined and regulated by RCRA.

3.2.42 *RCRA TSD Facilities list*—list kept by EPA of those facilities on which treatment, storage, and/or disposal of *hazardous wastes* takes place, as defined and regulated by RCRA.

3.2.43 *reasonably ascertainable*—information that is (1) *publicly available*, (2) obtainable from its source within reasonable time and cost constraints, and (3) *practically reviewable*.

3.2.44 *records of emergency release notifications (EPCRA §304)*—Section 304 of EPCRA (42 U.S.C. §11004) requires operators of facilities to notify their local emergency planning committee (as defined in EPCRA) and State Emergency Response Commission (as defined in EPCRA) of any release beyond the facility’s boundary of any reportable quantity of any extremely *hazardous substance*. Often the local fire department is the local emergency planning committee. Records of such notifications are “*Records of Emergency Release Notifications*.”

3.2.45 *records review*—that part of the *transaction screen* that is contained in Section 6 of this practice and addresses which records shall or may be reviewed.

3.2.46 *solid waste disposal site*—a place, location, tract of land, area, or premises used for the *landfill* disposal of solid wastes as defined by state solid waste regulations. The term is synonymous with the term *landfill* and is also known as a garbage dump, trash dump, or similar term.

3.2.47 *solvent*—a chemical compound that is capable of dissolving another substance and may itself be a *hazardous substance* used in a number of manufacturing/industrial processes including, but not limited to, the manufacture of paints and coatings for industrial and household purposes, equipment clean-up, and surface degreasing in metal fabricating industries.

3.2.48 *site visit*—the visit to the *property* during which observations are made constituting the *site visit* requirement of this practice.

3.2.49 *standard environmental record sources*— those records specified in Section 6 of this practice of the *records review* section.

3.2.50 *standard practice*—the activities set forth in this practice for the conduct of a *transaction screen*.

3.2.51 *standard sources*—sources of environmental or historical records specified in the *records review* section (Section 6) of this practice.

3.2.52 *state registered USTs*—state lists of *underground storage tanks* required to be registered under Section 9002 of RCRA (42 U.S.C. §6991a).

3.2.53 *sump*—a pit, cistern, cesspool, or similar receptacle where liquids drain, collect, or are stored.

3.2.54 *transaction screen questionnaire*—the questionnaire set forth in Section 6 of this practice.

3.2.55 *transaction screen process (transaction screen)*—the process described in Practice E1528 whereby a person or entity seeks to determine if a particular parcel of real *property* (including improvements) is subject to *potential environmental concerns*.

3.2.56 *TSD Facility*—treatment, storage, or disposal facility (see definition of *RCRA TSD Facilities*).

3.2.57 *underground storage tank (UST)*—any tank, including underground piping connected to the tank, that is or has been used to contain *hazardous substances* or *petroleum products* and the volume of which is 10 % or more beneath the surface of the ground.

3.2.58 *user*—the party seeking to use the *transaction screen process* of this practice to conduct limited environmental *due diligence* of the *property*. A *user* may include, without limitation, a potential purchaser of *property*, a potential tenant of *property*, an *owner* of *property*, a lender, or a property manager. It is the *user’s* responsibility to draw conclusions regarding affirmative or unknown answers (see 5.6).

3.2.59 *visually and/or physically observed*—during a *site visit* pursuant to this practice, this term means observations made by vision while walking through a *property* and the structures located on it and observations made by the sense of smell, particularly observations of noxious or foul odors. The term “walking through” is not meant to imply that disabled persons who cannot physically walk may not conduct a *site visit*; they may do so by the means at their disposal for moving through the *property* and the structures located on it.

3.2.60 *wastewater*—water that (1) is or has been used in an industrial or manufacturing process, (2) conveys or has conveyed sewage, or (3) is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. *Wastewater* does not include water originating on or passing through or adjacent to a site, such as stormwater flows, that has not been used in industrial or manufacturing processes, has not been combined with sewage, or is not directly related to manufacturing, processing, or raw materials storage areas at an industrial plant.

3.3 Acronyms:

3.3.1 *AULs*—Activity and Use Limitations.

3.3.2 *CERCLA*—Comprehensive Environmental Response, Compensation and Liability of 1980 Act (as amended, 42 U.S.C. §9601 *et seq.*).

3.3.3 *CERCLIS*—Comprehensive Environmental Response, Compensation and Liability Information System (maintained by EPA).

3.3.4 *C.F.R.*—Code of Federal Regulations.

3.3.5 *CORRACTS*—facilities subject to Corrective Action under RCRA.

3.3.6 *EPA*—United States Environmental Protection Agency.

3.3.7 *EPCRA*—Emergency Planning and Community Right to Know Act (also known as SARA Title III), (42 U.S.C. §11001 *et seq.*).

3.3.8 *ERNS*—Emergency Response Notification System.

3.3.9 *FOIA*—U.S. Freedom of Information Act (5 U.S.C. §552 *et seq.*).

3.3.10 *LLP*—Landowner Liability Protections.

3.3.11 *LUST*—leaking underground storage tank.

3.3.12 *NCP*—National Contingency Plan.

3.3.13 *NFRAP*—former CERCLIS sites where no further remedial action is planned under CERCLA.

3.3.14 *NPL*—National Priorities List.

3.3.15 *PCBs*—polychlorinated biphenyls.

3.3.16 *RCRA*—Resource Conservation and Recovery Act (as amended, 42 U.S.C. §6901 *et seq.*).

3.3.17 *SARA*—Superfund Amendments and Reauthorization Act of 1986 (amendment to CERCLA; also contains new law not part of CERCLA).

3.3.18 *TSD Facility*—hazardous waste treatment, storage or disposal facility.

3.3.19 *U.S.C.*—United States Code.

3.3.20 *UST*—underground storage tank.

4. Significance and Use

4.1 *Uses*—This practice sets forth a procedure for conducting limited environmental *due diligence*. This practice is intended for use on a voluntary basis by parties who wish to assess the environmental condition of *commercial real estate* where a *Phase I Environmental Site Assessment* is, initially, deemed to be unnecessary by the *user* and the parties do not seek CERCLA *LLPs*. This practice is intended primarily as a commercially prudent or reasonable approach to conducting an inquiry designed to identify *potential environmental concerns* in connection with a *property*.

4.2 Clarifications on Use:

4.2.1 *Use Not Intended for CERCLA Liability Protection*—This document is not intended to permit a *user* to satisfy CERCLA *LLPs*, that is, the practices that constitute “*all appropriate inquiries* into the previous ownership and uses of the *property* consistent with good commercial or customary practice” as defined in 42 U.S.C. §9601(35)(B).

4.2.2 *Residential Tenants/Purchasers and Others*—Although this document is not intended for residential purposes, it may be used at the *user’s* discretion for residential tenants of multifamily residential buildings, tenants of single-family homes or other residential real estate, or purchasers of *dwellings* for residential use, to conduct a transaction screen in connection with these transactions.

4.2.3 *Site-Specific*—This practice is site-specific in that it relates to assessment of environmental conditions on a specific parcel of *commercial real estate*. Consequently, this practice does not address many additional issues raised in transactions such as purchases of business entities, or interests therein, or of their assets, that may well involve environmental liabilities pertaining to properties previously owned or operated or other off-site environmental liabilities.

4.3 *Who May Conduct*—The *transaction screen process* may be conducted by the *user*, or some other person, including environmental consultants, lenders, brokers, appraisers, corpo-

rations, lawyers, government agencies or any other party looking to screen environmental *property* risk. The *transaction screen process* can be performed by, but does not require the judgment of an *environmental professional*. If an *environmental professional* is contracted to prepare a *transaction screen questionnaire*, nothing in this practice requires the professional to develop opinions and conclusions.

4.4 *Inquiry Beyond the Transaction Screen Process*—If further inquiry is needed after performance of the *transaction screen process*, the *user* must determine, in the exercise of the *user’s* reasonable business judgment, whether further inquiry may be limited to those specific issues identified as of concern or should proceed to further inquiry (see 5.8).

4.5 No *transaction screen* can wholly eliminate uncertainty regarding the potential for environmental concern in connection with a *property*.

4.5.1 Not every *property* will warrant the use of a limited environmental assessment such as the *transaction screen*. Consistent with good commercial or customary practice, the appropriate use of the *transaction screen* will be guided by the type of *property* subject to assessment, the expertise and risk tolerance of the *user*, and the information developed in the course of the inquiry.

4.5.2 *Transaction screens* must be evaluated based on the reasonableness of judgments made at the time and under the circumstances in which they were made. Subsequent environmental site assessments or *transaction screens* should not be considered valid standards to judge the appropriateness of any prior assessment based on hindsight, new information, use of developing technology or analytical techniques, or other factors.

4.6 *Continued Viability of Transaction Screen*—A *transaction screen* meeting or exceeding this practice and completed more than 180 days previously may be used to the extent allowed by 4.6.1 and 4.6.2.

4.6.1 Subject to 4.6.2, a prior *transaction screen* or other *due diligence* may be used in its entirety or as an information source if, in the reasonable judgment of the *user*: the prior *transaction screen* or other *due diligence* meets or exceeds the requirements of this practice and the conditions at the *property* likely to affect *potential environmental concerns* in connection with the *property* are not likely to have changed materially since the last *transaction screen* or other *due diligence* was conducted. In making this judgment, the *user* should consider the type of *property* assessed and the conditions in the area surrounding the *property*.

4.6.2 If the *user*, or any other *preparer(s)* conducting a *transaction screen* has *actual knowledge* that the information being used from a prior *transaction screen* is not accurate or if it is *obvious*, based on other information obtained by means of the *transaction screen* or known to the person conducting the *transaction screen*, that the information being used is not accurate, such information from a prior *transaction screen* may not be used.

4.7 The contractual and legal obligations between prior and subsequent *users* of *transaction screens* or between those who conducted prior *transaction screens* and those who would like to use such prior *transaction screens* are beyond the scope of this practice.

4.7.1 The contractual and legal obligations between a *preparer* and a *user* (and other parties, if any) are beyond the scope of this practice.

4.8 If the *user* is aware of any specialized knowledge or experience that is material to *potential environmental concerns* in connection with the *property*, and the *preparer* is not the *user*, it is the *user's* responsibility to communicate any information based on such specialized knowledge or experience to the *preparer*. The *user* should do so before the *preparer* makes the *site visit*.

4.9 In a transaction involving the purchase of a parcel of *commercial real estate*, if a *user* has *actual knowledge* that the purchase price of the *property* is significantly less than the purchase price of comparable properties, the *user* should try to identify an explanation for the lower price and to make a written record of such explanation. Among the factors to consider will be the information that becomes known to the *user* pursuant to the *transaction screen*.

5. Introduction to Transaction Screen Questionnaire

5.1 *Process*—The *transaction screen process* consists of asking questions contained within the *transaction screen questionnaire* of *owners* and *occupants* of the *property*, observing site conditions at the *property* with direction provided by the *transaction screen questionnaire*, and, to the extent *reasonably ascertainable*, conducting limited research regarding certain government records and certain standard historical sources. The questions asked of *owners* are the same questions as those asked of *occupants*.

5.2 *Guide*—The *transaction screen questionnaire* is followed by a guide designed to assist the person completing the *transaction screen questionnaire*. The guide to the *transaction screen questionnaire* is set out in Sections 7-10 of this practice. The guide is divided into three sections: Guide for Owner/Occupant Inquiry, Guide to Site Visit, and Guide to Government Records/Historical Sources Inquiry.

5.2.1 To assist the *user*, its employee or agent, or the *preparer* in preparing a report, the guide repeats each of the questions set out in the *transaction screen questionnaire* in both the guide for *owner/occupant* inquiry and the guide to *site visit*. The questions regarding government records/historical sources inquiry are also repeated in the guide to that section.

5.2.2 The guide also describes the procedures to be followed to determine if reliance upon the information in a prior *transaction screen* is appropriate under this practice.

5.2.3 A *user*, his employee or agent, or *preparer* conducting the *transaction screen process* should not use the *transaction screen questionnaire* without reference to or without familiarity with the guide based on prior use of the guide.

5.3 The *user* may either conduct the *transaction screen process*, or delegate it to an employee or agent or may contract with a third party to prepare the questionnaire on behalf of the

user. No matter who prepares the questionnaire, the *user* remains responsible for the decision to conduct limited environmental *due diligence* and the impact of that decision on risk management.

5.4 The *preparer* conducting the *transaction screen process* should use good faith efforts in determining answers to the questions set forth in the *transaction screen questionnaire*. The *user* should take time and care to check whatever records are in the *user's* possession and forward relevant information or specialized knowledge to the *preparer*.

5.5 *Knowledge*—All answers should be given to the best of the *owner's* or *occupant's* knowledge. The most knowledgeable person available should be chosen to answer the questions.

5.5.1 While the person conducting the *transaction screen* has an obligation to ask the questions in the *transaction screen questionnaire*, others may have no obligation to answer them.

5.5.2 The *transaction screen questionnaire* and the *transaction screen* guide sometimes include the phrase “to the best of your knowledge.” This phrase does not impose a constructive knowledge standard. It is intended as an assurance to the person being questioned that he or she is not obligated to search out information he or she does not currently have in order to answer the particular question.

5.6 *Conclusions Regarding Affirmative or Unknown Answers*—Once a *transaction screen questionnaire* has been completed, it shall be presented to the *user*. Subject to 5.6 through 5.7, an affirmative, unknown, or no response is presumed to be a *potential environmental concern*. If any of the questions set forth in the *transaction screen questionnaire* are answered in the affirmative, the *preparer* must document the reason for the affirmative answer. If any of the questions are not answered or the answer is unknown, the *user* should document such nonresponse or answer of unknown and evaluate it in light of the other information obtained in the *transaction screen process*, including, in particular, the *site visit* and the government records/historical sources inquiry. If the *user* decides no further inquiry is warranted after receiving no response, an answer of unknown, or an affirmative answer, the *user* must document the reasons for any such conclusion.

5.6.1 Upon obtaining an affirmative answer, an answer of unknown or no response, the *user* should first refer to the guide. The guide may provide sufficient explanation to allow a *user* to conclude that no further inquiry is appropriate with respect to the particular question.

5.6.2 If the guide to a particular question does not, in itself, permit a *user* to conclude that no further inquiry is appropriate, then the *user* should consider other information obtained from the *transaction screen process* relating to this question. For example, while on the site performing a *site visit*, a person may find a storage tank on the *property* and therefore answer Question 10 of the *transaction screen questionnaire* in the affirmative. However, during or subsequent to the *owner/occupant* inquiry, the *owner* may establish that substances now or historically contained in the tank (for example, water) are not likely to cause contamination.

5.6.3 If either the guide to the question or other information obtained during the *transaction screen process* does not permit

a *user* to conclude no further inquiry is appropriate with respect to such question, then the *user* must determine, in the exercise of the *user's* reasonable business judgment, based upon the totality of unresolved affirmative answers or answers of unknown received during the *transaction screen process*, whether further inquiry may be limited to those specific issues identified as of concern.

5.7 *Presumption*—A presumption exists that further inquiry is necessary if an affirmative answer is given to a question or because the answer was unknown or no response was given. In rebutting this presumption, the *user* should evaluate information obtained from each component of the *transaction screen process* and consider whether sufficient information has been obtained to conclude that no further inquiry is necessary. The *user* must determine, in the exercise of the *user's* reasonable business judgment, the scope of such further inquiry.

5.8 *Further Inquiry*—Upon completing the *transaction screen questionnaire*, if the *user* concludes that further inquiry or action is needed (for example, consult with an environmental consultant, contractor, governmental authority, or perform additional governmental and/or historical records review), the *user* should proceed with such inquiry. (Note that if the *user* determines to proceed with a Phase I Environment Site Assessment, the *user* may apply the current Practice E1527 or alternatively the provisions of EPA's regulation "Standards and Practices for All Appropriate Inquiries," 40 C.F.R. Part 312.)

5.9 *Signature*—The *user* and the *preparer* of the *transaction screen questionnaire* must complete and sign the questionnaire as provided at the end of the questionnaire.

6. Transaction Screen Questionnaire

6.1 *Persons to Be Questioned*—The following questions should be asked of (1) the current *owner* of the *property*, (2) any major *occupant* of the *property* or, if the *property* does not have any *major occupants*, at least 10 % of the *occupants* of the *property*, and (3) in addition to the current *owner* and the *occupants* identified in (2), any *occupant* likely to be using, treating, generating, storing, or disposing of *hazardous substances* or *petroleum products* on or from the *property*. A major *occupant* is any *occupant* using at least 40 % of the leasable area of the *property* or any anchor tenant when the *property* is a shopping center. In a multifamily *property* containing both residential and commercial uses, the *preparer* does not need to ask questions of the residential *occupants*. The *preparer* should ask each person to answer all questions to the best of the respondent's *actual knowledge* and in good faith. When completing the *site visit* column, the *preparer* should be sure to observe the *property* and any buildings and other structures on the *property*. The guide to this *transaction screen questionnaire* (see Sections 7-10) provides further details on the appropriate use of this questionnaire. (See Note 2.)

NOTE 2—Unk = "unknown" or "no response."

Description of Site/Address:

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Question	Owner			Occupants (if applicable)			Observed During Site Visit	If yes, provide description
1a. Is the <i>property</i> used for an industrial use?	Yes	No	Unk	Yes	No	Unk	Yes	No
1b. Is any <i>adjoining property</i> used for an industrial use?	Yes	No	Unk	Yes	No	Unk	Yes	No
2a. Did you observe evidence or do you have any prior knowledge that the <i>property</i> has been used for an industrial use in the past?	Yes	No	Unk	Yes	No	Unk	Yes	No
2b. Did you observe evidence or do you have any prior knowledge that any <i>adjoining property</i> has been used for an industrial use in the past?	Yes	No	Unk	Yes	No	Unk	Yes	No
3a. Is the <i>property</i> used as a gasoline station, motor repair facility, commercial printing facility, dry cleaners, photo developing laboratory, junkyard or landfill, or as a waste treatment, storage, disposal, processing, or recycling facility (if applicable, identify which)?	Yes	No	Unk	Yes	No	Unk	Yes	No

Question	Owner			Occupants (if applicable)			Observed During Site Visit		If yes, provide description
	Yes	No	Unk	Yes	No	Unk	Yes	No	
3b. Is any <i>adjoining property</i> used as a gasoline station, motor repair facility, commercial printing facility, dry cleaners, photo developing laboratory, junkyard or landfill, or as a waste treatment, storage, disposal, processing, or recycling facility (if applicable, identify which)?	Yes	No	Unk	Yes	No	Unk	Yes	No	
4a. Did you observe evidence or do you have any prior knowledge that the <i>property</i> has been used as a gasoline station, motor repair facility, commercial printing facility, dry cleaners, photo developing laboratory, junkyard or landfill, or as a waste treatment, storage, disposal, processing, or recycling facility (if applicable, identify which)?	Yes	No	Unk	Yes	No	Unk	Yes	No	
4b. Did you observe evidence or do you have any prior knowledge that any <i>adjoining property</i> has been used as a gasoline station, motor repair facility, commercial printing facility, dry cleaners, photo developing laboratory, junkyard or landfill, or as a waste treatment, storage, disposal, processing, or recycling facility (if applicable, identify which)?	Yes	No	Unk	Yes	No	Unk	Yes	No	
5a. Are there currently any damaged or discarded automotive or industrial batteries, pesticides, paints, or other chemicals in individual containers of >5 gal (19 L) in volume or 50 gal (190 L) in the aggregate, stored on or used at the <i>property</i> or at the facility?	Yes	No	Unk	Yes	No	Unk	Yes	No	
5b. Did you observe evidence or do you have any prior knowledge that there have been previously any damaged or discarded automotive or industrial batteries, or pesticides, paints, or other chemicals in individual containers of >5 gal (19 L) in volume or 50 gal (190 L) in the aggregate, stored on or used at the <i>property</i> or at the facility?	Yes	No	Unk	Yes	No	Unk	Yes	No	
6a. Are there currently any industrial <i>drums</i> (typically 55 gal (208 L)) or sacks of chemicals located on the <i>property</i> or at the facility?	Yes	No	Unk	Yes	No	Unk	Yes	No	
6b. Did you observe evidence or do you have any prior knowledge that there have been previously any industrial <i>drums</i> (typically 55 gal (208 L)) or sacks of chemicals located on the <i>property</i> or at the facility?	Yes	No	Unk	Yes	No	Unk	Yes	No	
7a. Did you observe evidence or do you have any prior knowledge that <i>fill dirt</i> has been brought onto the <i>property</i> that originated from a contaminated site?	Yes	No	Unk	Yes	No	Unk	Yes	No	
7b. Did you observe evidence or do you have any prior knowledge that <i>fill dirt</i> has been brought onto the <i>property</i> that is of an unknown origin?	Yes	No	Unk	Yes	No	Unk	Yes	No	

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Question	Owner			Occupants (if applicable)			Observed During Site Visit		If yes, provide description
	Yes	No	Unk	Yes	No	Unk	Yes	No	
8a. Are there currently any <i>pits</i> , <i>ponds</i> , or <i>lagoons</i> located on the <i>property</i> in connection with waste treatment or waste disposal?	Yes	No	Unk	Yes	No	Unk	Yes	No	
8b. Did you observe evidence or do you have any prior knowledge that there have been previously, any <i>pits</i> , <i>ponds</i> , or <i>lagoons</i> located on the <i>property</i> in connection with waste treatment or waste disposal?	Yes	No	Unk	Yes	No	Unk	Yes	No	
9a. Is there currently any stained soil on the <i>property</i> ?	Yes	No	Unk	Yes	No	Unk	Yes	No	
9b. Did you observe evidence or do you have any prior knowledge that there has been previously, any stained soil on the <i>property</i> ?	Yes	No	Unk	Yes	No	Unk	Yes	No	
10a. Are there currently any registered or unregistered storage tanks (above or underground) located on the <i>property</i> ?	Yes	No	Unk	Yes	No	Unk	Yes	No	
10b. Did you observe evidence or do you have any prior knowledge that there have been previously, any registered or unregistered storage tanks (above or underground) located on the <i>property</i> ?	Yes	No	Unk	Yes	No	Unk	Yes	No	
11a. Are there currently any vent pipes, fill pipes, or access ways indicating a fill pipe protruding from the ground on the <i>property</i> or adjacent to any structure located on the <i>property</i> ?	Yes	No	Unk	Yes	No	Unk	Yes	No	
11b. Did you observe evidence or do you have any prior knowledge that there have been previously, any vent pipes, fill pipes, or access ways indicating a fill pipe protruding from the ground on the <i>property</i> or adjacent to any structure located on the <i>property</i> ?	Yes	No	Unk	Yes	No	Unk	Yes	No	
12a. Is there currently evidence of leaks, spills or staining by substances other than water, or foul odors, associated with any flooring, drains, walls, ceilings, or exposed grounds on the <i>property</i> ?	Yes	No	Unk	Yes	No	Unk	Yes	No	
12b. Did you observe evidence or do you have any prior knowledge that there have been previously any leaks, spills, or staining by substances other than water, or foul odors, associated with any flooring drains, walls, ceilings or exposed grounds on the <i>property</i> ?	Yes	No	Unk	Yes	No	Unk	Yes	No	
13a. If the <i>property</i> is served by a private well or non-public water system, is there evidence or do you have prior knowledge that contaminants have been identified in the well or system that exceed guidelines applicable to the water system?	Yes	No	Unk	Yes	No	Unk	Yes	No	

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