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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 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:³

D5746 Classification of Environmental Condition of Property Area Types for Defense Base Closure and Realignment Facilities

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

E1739 Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites

E2137 Guide for Estimating Monetary Costs and Liabilities for Environmental Matters

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:

¹ This guide is under the jurisdiction of ASTM Committee E50 on Environmental Assessment, Risk Management and Corrective Action and is the direct responsibility of Subcommittee E50.05 on Environmental Risk Management.

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

3.1.1 *activity and use limitations (AULs)*—legal or physical restrictions or limitations on the use of, or access to, a site or facility to eliminate or minimize potential exposures to chemicals of concern, or to prevent activities that could interfere with the effectiveness of a response action, to ensure maintenance of a condition of “acceptable risk” or “no significant risk” to human health and the environment. These legal or physical restrictions are intended to prevent adverse impacts to individuals or populations that may be exposed to chemicals of concern.

3.1.2 *asset retirement obligation*—legal obligations associated with the retirement of a tangible long-lived asset that result from the acquisition, construction, development, or normal operation of a tangible long-lived asset.

3.1.3 *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.

3.1.4 *claim*—a demand for payment.

3.1.5 *current government environmental record source*—any environmental record source available from a government or commercial entity, provided the record is updated in accordance with the update requirement of Practice E1527.

3.1.6 *engineering controls (EC)*—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.

3.1.7 *environmental liabilities*—asset retirement obligations, accrued liabilities, and loss contingencies associated with any natural conditions or manmade incidents, including terrorism, that pose an unacceptable risk to health, safety, property, or the environment that would be the subject of an enforcement action or other legal action.

3.1.8 *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.

3.1.9 *financial statements*—include, but are not limited to, statements associated with shareholder reporting, periodic reports, registration statements, loans, mergers, acquisitions, or divestitures. Financial statements may include statements outside of SEC filings.

3.1.10 *historical government environmental record sources*—any environmental record source available from a government or commercial entity that is older than the most recent current government environmental record source.

3.1.11 *historical use information*—those sources of information about the history of uses of a property. Historical use information is available from local libraries, historical societies, private resellers, or commercial entities. Some examples of the sources are specified and defined in Section 8.3.4 of Practice **E1527**.

3.1.12 *institutional controls*—administrative and/or legal mechanisms that minimize the potential human exposure to contamination by limiting land use or resource use.

3.1.13 *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**. Note that this definition is not intended to supersede the definition of materiality in SEC Staff Accounting Bulletin No. 99—Materiality (See **Appendix X1** and **Appendix X2**).

3.1.14 *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.

3.1.15 *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.

3.1.16 *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.

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

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

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

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

3.2 *Initialisms and Acronyms:*

3.2.1 *AICPA*—American Institute of Certified Public Accountants

3.2.2 *AULs*—activity and use limitations

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

3.2.4 *CERCLIS*—Comprehensive Environmental Response, Compensation and Liability Information System

3.2.5 *CFR*—Code of Federal Regulations

3.2.6 *EPA*—United States Environmental Protection Agency

3.2.7 *FASB*—Financial Accounting Standards Board

3.2.8 *GAAP*—Generally Accepted Accounting Principles

3.2.9 *LUSTs*—Leaking underground storage tanks

3.2.10 *NPL*—National Priorities List

3.2.11 *PRP*—potentially responsible party

3.2.12 *RCRA*—Resource Conservation and Recovery Act (as amended 42 USC Section 6901 et seq.)

3.2.13 *SEC*—Securities and Exchange Commission

3.3 *Acronyms:*

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. Note the user should be aware that there may be contractual obligations, court decisions, or regulatory directives that may affect the flexibility in use of this guide.

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, potential future uses, and asset retirement obligations. For example, guidance on petroleum release sites is provided in Guide E1739 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 The following are major circumstances that might give rise to environmental liabilities that may be subject to disclosure:

5.1.1.1 Enforcement of environmental laws or regulations regarding investigation, clean-up, maintenance of engineering controls and/or land use controls, 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 assumption 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.

5.1.1.5 Asset retirement obligations.

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. These sources should be reasonably ascertainable, which is defined as information that is (1) publicly available, (2) obtainable from its source within reasonable time and cost constraints, and (3) practically reviewable. Such sources may include but are not limited to the following categories:

5.2.1 *Current Government Environmental Record Source*—Any environmental record source available from a government or commercial entity, provided the record is updated in accordance with the update requirement of Practice E1527. These sources include, but are not limited to, the standard environmental record sources specified and defined in Practice E1527. Current government environmental record sources may identify responsible parties, environmental suits and costs, environmental claims, releases, groundwater contamination, permits, asset retirement obligations, activity and use limitations, institutional control and engineering control registries, and other environmental conditions warranting disclosure. Examples of current government environmental record sources include, but are not limited to:

5.2.1.1 Federal National Priorities List (NPL) site list,

5.2.1.2 CERCLIS list,

5.2.1.3 Published list of sites and identified responsible parties under state or local environmental laws,

5.2.1.4 Published list of PRPs, and

5.2.1.5 Lists of leaking underground storage tanks (LUSTs).

5.2.2 *Historical Government Environmental Record Sources*—Any environmental record source available from a government or commercial entity that is older than the most recent current government environmental record source. Historical government environmental record sources may identify responsible parties, historical releases, historical groundwater contamination, asset retirement obligations, and other historical environmental conditions.

5.2.3 *Historical Use Information*—Those sources of information about the history of uses of a property. Historical use information is available from local libraries, historical societies, private resellers, or commercial entities. Historical use information may identify responsible parties, historical releases, historical groundwater contamination, asset retirement obligations, and other historical environmental conditions warranting disclosure. Some examples of historical use information are specified and defined in Practice E1527.

5.2.4 *Internal Reporting Entity Records*—The reporting entity’s internal environmental records regarding environmental conditions. It is prudent for reporting companies to corroborate internal environmental records with publicly available data when available. Examples of internal reporting entity records include, but are not limited to:

5.2.4.1 Lists of PRPs and their allocated shares,

5.2.4.2 Environmental suits involving the reporting entity,

5.2.4.3 Environmental claims or demands involving the reporting entity, other than filed suits,

5.2.4.4 Lists of leaking underground storage tanks (LUSTs),