INTERNATIONAL

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Standard Practice for Determining the Environmental Condition of Federal Property[1]

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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 for assessing the *environmental condition of property (ECP)* of federal real *property*. This practice applies to *property* under consideration for lease, excess and surplus *property* at closing and realigning military installations, claims reverting to federal ownership such as abandoned mines, and other federally-owned *property*. The steps in this practice are conducted to fulfill certain requirements of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) section 120(h), as amended by the Community Environmental Response Facilitation Act of 1992 (CERFA) and the federal real *property disposal* regulations codified in 41 CFR Subpart C (41 CFR 102-75). As such, this practice is intended to help a *user* to gather and analyze data and information in order to classify *property* into the applicable *environmental condition of property area types* (in accordance with the ASTM D5746, Standard Classification of Environmental Condition of Property Area Types, (see Appendix X1). Once documented, the *ECP report* is used to support Findings of Suitability to Transfer (FOSTs), Findings of Suitability to Lease (FOSLs), or uncontaminated *property* determinations, or a combination thereof, pursuant to the requirements of CERFA and CERCLA § 120(h). *Users* of this practice should note that it does not address (except where explicitly noted) requirements for appropriate and timely regulatory consultation or concurrence, or both, during the conduct of the *ECP* or during the identification and use of the *standard environmental condition of property area types*.

1.1.1 *Environmental Condition of Property*—In accordance with the federal landholding agency policies and General Services Administration's (GSA) federal real *property* management regulations, an *ECP* will be prepared or evaluated for its usefulness (and updated if necessary) for any federally-owned *property* to be transferred by deed or leased. The *ECP* will be based on existing environmental information related to *storage*, *release*, treatment, or *disposal* of *hazardous substances*, munitions, or petroleum products on the *property* to determine or discover the *obviousness* of the presence or likely presence of a *release* or threatened *release* of any *hazardous substance* or petroleum product. In certain cases, additional data, including sampling, if appropriate under the circumstances, may be needed in the *ECP* to support the FOST or FOSL. A previously conducted *ECP* may be updated as necessary and used for making a FOST or FOSL. An *ECP* also may help to satisfy other environmental requirements (for example, to satisfy the requirements of CERFA or to facilitate the preparation of environmental condition reports). In addition, the *ECP* provides a useful reference document and assists in compliance with hazard abatement policies related to *asbestos* and lead-based paint. The *ECP* process consists of discrete steps. This practice principally addresses *ECP*-related information gathering and analysis.

1.1.1.1 *Discussion*—Prior versions of this practice referred to environmental baseline surveys (EBS). The 2018 Department of Defense 4165.66M Base Redevelopment and Realignment Manual changed the focus to *ECP*. Appendix 3 of DODM 4165.66M provides direction on the preparation of FOST and FOSL documentation. Section C2.4.2.3 of DODM 4165.66M provides direction for Department of Defense *property* proposed for *disposal* and redevelopment.

1.1.2 *CERCLA Section 120(h) Requirements*—This practice is intended to assist with the identification of federal real *property* and DoD installation areas subject to the notification and covenant requirements of CERCLA § 120(h) relating to the deed transfer of contaminated federal real *property* (42 USC 9601 et seq.), (see Appendix X2). Examples of other federal landholding agencies that must comply with CERCLA §120(h) requirements include the Bureau of Land Management, the Federal Aviation Administration, and U.S. Forest Service.

1.1.3 *CERFA Requirements*—This practice provides information to partially fulfill the identification requirements of CERFA [Pub. L. 102-426, 106 Stat. 2174], which amended CERCLA. *Property* classified as area Type 1, in accordance with Classification D5746 is eligible for reporting as "uncontaminated" under the provisions of CERFA and the Federal

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Management Regulations, Real Property Disposal rules codified in 41 CFR 102-75. Additionally, certain *property* classified as area Type 2, where evidence indicates that *storage* occurred for less than one year, may also be identified as uncontaminated. At installations and federal *property* listed on the *National Priorities List*, Environmental Protection Agency (EPA) concurrence must be obtained for the *property* to be considered "uncontaminated" and therefore transferable under CERCLA § 120(h)(4). The EPA has stated that there may be instances in which it would be appropriate to concur with the federal landholding agency that certain *property* can be identified as uncontaminated under CERCLA § 120(h)(4) although some limited quantity of *hazardous substances* or petroleum products have been stored, *released*, or *disposed* of on the *property* (see EPA Office of Enforcement and Compliance Assurance, May 2019). If the information available indicates that the *storage*, *release*, or *disposal* was associated with activities that would not be expected to pose a threat to human health or the environment (for example, housing areas, petroleum-stained pavement areas, and areas having undergone routine application of pesticides), such *property* should be eligible for expeditious reuse.

NOTE 1—Confirmed releases of *emerging chemicals of environmental concern* may require additional consideration (see Office of the Undersecretary of Defense. Policy Memorandum for Clarifications and Upcoming Changes to Department of Defense Instruction 4715.18 in Response to Department of Defense Office of Inspector General Findings, April 2022).

1.1.4 *Petroleum Products*—Petroleum products and their derivatives are included within the scope of this practice. Areas on which petroleum products or their derivatives were stored for one year or more, known to have been *released* or *disposed* of [CERCLA§ 120(h)(4)] are not eligible to be reported as "uncontaminated *property*" under CERFA.

1.1.5 *Other Federal, State, and Local Environmental Laws*—This practice does not address requirements of any federal, state, or local laws other than the applicable provisions of CERCLA identified in 1.1.2 and 1.1.3. These *applicable or relevant and appropriate requirements (ARARs)* may have a bearing upon the ultimate disposition of the federal *property*. *Users* are cautioned that federal, state, and local laws may impose additional *ECP* or other 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 that may pose risks of civil or criminal sanctions, or both, for noncompliance.

1.1.6 *Other Federal, State, and Local Real Property and Natural and Cultural Resources Laws*—This practice does not address requirements of any federal, state or local real *property* or natural and cultural resources laws. *Users* are cautioned that numerous federal, state, and local laws may impose additional environmental and other legal requirements that must be satisfied prior to deed transfer of *property* that are beyond the scope of this practice.

NOTE 2—The General Services Administration's Excess Real Property Due Diligence Checklist for Federal Landholding Agency Customers, November 2017, provides additional detail on federal *ARARs*.

1.1.7 *Non-Federal Property*—This standard may also be used by state and local agencies to assess the environmental condition of non-federal *property*.

1.2 *Objectives*—Objectives guiding the development of this practice are *(1)* to synthesize and put in writing a *standard practice* for conducting a high quality *ECP*, *(2)* to facilitate the development of high quality, standardized *environmental condition of property maps* to be included in an *ECP* that can be used to support FOSTs, FOSLs, and other applicable environmental condition reports, *(3)* to facilitate the use of the *standard classification* of *environmental condition of property area types* (see Classification D5746), *(4)* to facilitate the development of a standard guide for preparing and updating *ECP reports*, and *(5)* comply with the Federal Real Property Disposal regulations codified in 41 CFR 102-75.

1.3 *Limitations*—*Users* of this practice should note that, while many of the elements of an *ECP* are performed in a manner consistent with other "*due diligence*" functions, an *ECP* is not prepared to satisfy a purchaser of real *property's* duty to conduct "all appropriate inquiries", as defined in 40 CFR 312, to establish an "*innocent landowner defense*" to CERCLA § 107 liability. Any such use of any *ECP* by any party is outside the control of the federal agencies and beyond the scope of any *ECP*. No warranties or representations are made by any federal agency, its employees, or contractors that any *ECP report* satisfies any such requirement for any party.

1.4 *Organization of This Practice*—This practice has 15 sections. Section 1 is the scope. Section 2 identifies referenced documents. Section 3, Terminology, includes definitions of terms not unique to this practice, descriptions of terms unique to this practice, and acronyms and abbreviations. Section 4 is the *significance* and use of this practice. Section 5 describes *user's* responsibilities. Sections 6 – 13 are the main body of the data gathering analysis steps of the *ECP* process. Section 14 briefly describes the *ECP* Step 3 classification of *environmental condition of property area types*. Section 15 contains a list of keywords. The seven appendices are non-binding and non-mandatory; they provide background, guidance, and examples.

1.5 *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, health, and environmental practices and determine the applicability of regulatory limitations prior to use.*

1.6 *This international standard was developed in accordance with internationally recognized principles on standardization established in the Decision on Principles for the Development of International Standards, Guides and Recommendations issued by the World Trade Organization Technical Barriers to Trade (TBT) Committee.*