Designation: E1528 – 22

Standard Practice for Limited Environmental Due Diligence: Transaction Screen Process[1]

This standard is issued under the fixed designation E1528; the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A superscript epsilon (ε) indicates an editorial change since the last revision or reapproval.

1. Scope

1.1 *Purpose*—The purpose of this practice is to define a good practice in the United States of America for conducting a *transaction screen*[2] for a *subject property* 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 E1527: Standard Practice for Environmental Site Assessments: *Phase I Environmental Site Assessment Process* or ASTM E2247: Standard Practice for Environmental Site Assessments: *Phase I Environmental Site Assessment Process* for Forestland or Rural Property may be used.

1.1.1 This practice will not satisfy the requirement to conduct *all appropriate inquiries* into the previous ownership and uses of the *subject property* consistent with "generally accepted good commercial and customary standards and practices" as defined in 42 U.S.C. §9601(35)(B) to qualify for one of the Comprehensive Environmental Response, Compensation, and Liability Act *(CERCLA) Landowner Liability Protections (LLPs)*. *Users* who desire to conduct environmental *due diligence* to qualify for one of the *CERCLA LLPs* should conduct assessment activities in conformity with "Standards and Practices for All Appropriate Inquiries," 40 C.F.R. Part 312; ASTM E1527: Standard Practice for Environmental Site Assessments: *Phase I Environmental Site Assessment Process* or ASTM E2247: Standard Practice for Environmental Site Assessments: *Phase I Environmental Site Assessment Process* for Forestland or Rural Property.

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 9.

1.2.1 *Potential Environmental Concerns*—The goal of conducting a transaction screen is to identify *potential environmental concerns* as defined in 3.2.36.

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. In some cases, government agencies permit the use of this practice in connection with their programs but sometimes impose additional requirements going beyond this practice. *Users* should also be aware that there are likely to be other legal obligations with regard to *chemicals of concern* discovered on *property* that are not addressed in this practice and may pose risks of civil or criminal sanctions or both for noncompliance.

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 historical handling of *chemicals of concern*. See Note 1.

1.3.2 *Potentially Appropriate Uses*—This practice may be especially appropriate for properties in rural, non-industrial, or undeveloped locations or, subject to the criteria of a lending institution, in connection with a financing of *properties* that are expected to have few environmental concerns.

NOTE 1—In general, a *transaction screen* assessment is not suitable for purposes of evaluating environmental conditions of a *property* having activities that use, handle, store, or dispose of large volumes of chemicals, either currently or in the past. Such activities include, but are not limited to, manufacturing, vehicle fueling, dry cleaning, metal plating and finishing, circuit board manufacturing, junkyard, and *landfill* activities which would prompt the need for further inquiry. Refuting the presumption of a *potential environmental concern* on such *properties* normally requires the specialized knowledge and experience of an *environmental professional* completing a detailed environmental assessment such as a *Phase I Environmental Site Assessment*.

1.4 *Considerations Beyond the Scope*—The use of this practice is strictly limited to the scope set forth in this section.

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[1] This practice is under the jurisdiction of ASTM Committee E50 on Environmental Assessment, Risk Management and Corrective Action and is the direct responsibility of Subcommittee E50.02 on Real Estate Assessment and Management.

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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*.

Section 9 of this practice identifies, for informational purposes, certain environmental conditions (not an all-inclusive list) that may exist on a *subject 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 *subject 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 Process*. Section 6 sets forth the *Transaction Screen Questionnaire* itself. Sections 7 and 8 contain the Guide to the *Transaction Screen Questionnaire* and its various parts. Section 9 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, health, and environmental practices and determine the applicability of regulatory limitations prior to use.*

1.7 *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.*

2. Referenced Documents

2.1 *ASTM Standards:*[3]

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

E2091 Guide for Use of Activity and Use Limitations, Including Institutional and Engineering Controls

E2247 Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property

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”), Small Business Liability Relief and Brownfields Revitalization Act of 2002 (“Brownfields Amendments”), and the Brownfields Utilization, Investment, and Local Development (“Build”) Act of 2018, 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 (“RCRA”) (sometimes also referred to as the Solid Waste Disposal Act), as amended, 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. In determining the meaning of any term used in this practice, unless the context indicates otherwise, words referencing the singular include and apply to multiple examples of the same thing; words referencing the plural include the singular.

3.2 *Definitions:*

3.2.1 *activity and use limitations (AULs), n*—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 *chemicals of concern* in the soil or ground water on a *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 controls* or *engineering controls*, or both, are intended to prevent adverse impacts to individuals or populations that may be exposed to *chemicals of concern* in the soil, soil vapor, or groundwater on a *property*.[4]

3.2.2 *actual knowledge, n*—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, n*—any real *property* the border of which is contiguous or partially contiguous with that of the *subject property*, or that would be contiguous or partially contiguous with that of the *subject property* but for a street, road, or other public thoroughfare separating them.

3.2.4 *aerial photographs, n*—photographs taken from an aerial platform with sufficient resolution to allow identification of development and activities.

3.2.5 *all appropriate inquiries (AAI), n*—an inquiry conducted prior to the date of acquisition of the *subject property* constituting “*all appropriate inquiries* into the previous ownership and uses of the *subject property* consistent with good

[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.