



Property Solutions INC.

Environmental & Engineering Consulting

323 New Albany Road • Moorestown, New Jersey 08057 • 856-813-3000 • Fax 856-813-1068

REGULATORY DATABASE REVIEW

of

Office

2210 Enterprise Drive

Florence, Florence County, South Carolina 29501

Prepared for:

Ten-X, LLC

1 Mauchly

Irvine, California 92618

Prepared by:

Property Solutions Inc.

323 New Albany Road

Moorestown, New Jersey 08057

Final: October 12, 2018

Property Solutions Project No. 20181679



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APPENDICES

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1.0 INTRODUCTION

Property Solutions Inc. (Property Solutions) conducted a Regulatory Database Review of the Office located at 2210 Enterprise Drive in Florence, Florence County, South Carolina 29501 (subject property) at the request of Ten-X, LLC.

The work was authorized by the Notice to Proceed dated October 9, 2018.

1.1 Purpose

The purposes of the Regulatory Database Review were to review current ASTM database area listings for the subject property and area, and to focus on the subject property site listings. These were the only purposes of the review; no property visit or verification of information or property location was undertaken by Property Solutions.

1.2 Scope of Work

Obtain a regulatory database based on the provided location for the property with the search radii specified in American Society for Testing and Materials (ASTM) Standard E 1527-13 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process. The review was performed in conformance with the scope and limitations of the referenced ASTM Practice for the database section only.

This Regulatory Database Review was conducted in accordance with the following Scope of Work:

- Order a new ASTM environmental database from Environmental Data Resources, Inc. (EDR) of Shelton, Connecticut, based on the provided location and evaluate.
- Review federal and state regulatory agency database information for the subject property and neighboring properties to identify potential concerns that could adversely affect the environmental condition of the subject property or ground lease.

The scope of work did not include visiting the property or independently contacting any regulatory agencies for information or verifying exact property location.

1.3 Significant Assumptions

The following assumptions are made by Property Solutions in this report. Property Solutions relied on information derived from secondary sources including government agencies, the client, designated representatives of the client, property contact, property owner, property owner representatives, computer databases, and personal interviews. Except as set forth in this report, Property Solutions has made no independent investigation as to the accuracy and completeness of the information derived from secondary sources including government agencies, the client, designated representatives of the client, computer databases, or personal interviews and has assumed that such information is accurate and complete. Property Solutions assumes information provided

by or obtained from governmental agencies including information obtained from government websites is accurate and complete. Groundwater flow and depth to groundwater, unless otherwise specified by on-property well data, are assumed based on contours depicted on the United States Geological Survey topographic maps. Property Solutions assumes the property has been correctly and accurately identified by the client and designated representative of the client.

1.4 Limitations and Exceptions of the Assessment

The findings, observations, conclusions, and recommendations of this report are limited by the contract technical requirements and the methods used to perform the services outlined in the scope of work. These services have been performed in accordance with the described scope. In order to perform a comprehensive environmental evaluation, a Phase I Environmental Assessment, subsurface investigation and testing would be required to definitively evaluate whether contamination has affected the subject property. Therefore, the findings, conclusions, and recommendations presented herein are based solely on the scope of work previously described and information gathered. Incomplete or outstanding information identified throughout the body of this report is considered a limitation to the assessment. Property location and address information provided did not include actual maps and/or specific property locations. Addresses were also not provided in some instances.

No assessment can wholly eliminate uncertainty regarding the potential for recognized environmental conditions in connection with a property.

All findings, conclusions, and recommendations stated in this report are based upon facts, circumstances, and industry-accepted procedures for such services as they existed at the time this report was prepared (i.e., federal, state, and local laws, rules, regulations, market conditions, economic conditions, political climate, and other applicable matters.). All findings, conclusions, and recommendations stated in this report are based on the data and information provided. A change in any fact, circumstance, or industry-accepted procedure upon which this report was based may adversely affect the findings, conclusions, and recommendations expressed in this report.

This report was prepared solely to review a regulatory database for the location of the subject property as identified by the client to make a business decision and not for pre-purchase due diligence.

1.5 Special Terms and Conditions

This Regulatory Database Review was prepared in accordance with the stated and agreed upon Scope of Work. This report was specifically and only prepared for the identified specific client (user) and for their specific purpose; no other person or entity for any other purpose may use, or rely on this report or its contents unless specifically authorized in writing by Property Solutions Inc. No other special terms and conditions are applicable to this Regulatory Database Review.

1.6 Reliance

This report has been prepared for the sole benefit of Ten-X, LLC, and may not be relied upon by any other person or entity without the written authorization of Property Solutions.

2.0 ENVIRONMENTAL DATABASE INFORMATION

Property Solutions utilized Environmental Data Resources, Inc. (EDR) of Shelton, Connecticut, as an information source for regulatory agency environmental database records. The environmental database was dated October 10, 2018.

Data supplied by EDR is included in Appendix A.

The following summary of the database information is divided into two columns. The first column lists sites as identified and located by EDR within the specified distance of the subject property. The second column lists orphan sites, which could not be located by EDR due to incomplete and/or inaccurate address information included in the United States Environmental Protection Agency (USEPA)/state databases, which Property Solutions identified as potentially lying within the search distance.

Although the exact locations of the orphan sites are frequently unknown, Property Solutions attempts to evaluate the potential adverse environmental impact that these sites may have on the subject property. This evaluation consists of reviewing street names in an effort to learn whether the street on which the site is located lies within the search distance of the subject property. The orphan sites included in the following table are those Property Solutions identified as potentially located within the identified search distance. A complete list of sites is included in Appendix A.

Environmental Database Summary

Database	Search Distance	Plottable	Orphan
National Priorities List	1 Mile	0	0
State/Tribal Hazardous Waste Sites	1 Mile	0	0
RCRA Corrective Action Treatment/Storage/Disposal (TSD) Facilities (CORRACTS)	1 Mile	0	0
Delisted National Priorities List	½ Mile	0	0
CERCLIS Sites	½ Mile	0	0
CERCLIS No Further Remedial Action Planned (NFRAP) Sites	½ Mile	0	0
RCRA Non-Corrective Action TSD Facilities	½ Mile	0	0
State/Tribal Voluntary Cleanup Sites	½ mile	0	0
State/Tribal Brownfield Sites/CERCLIS Equivalent	½ mile	0	0
State/Tribal Leaking Registered Storage Tank Sites	½ Mile	2	0

Database	Search Distance	Plottable	Orphan
State/Tribal Solid Waste Landfill Sites/Facilities (SWRCY)	½ Mile	1	0
Historic Landfills	½ Mile	0	0
Federal/State/Tribal Engineering Controls Registries	½ Mile	0	0
Federal/State/Tribal Institutional Controls Registries	½ Mile	0	0
RCRA Large Quantity Generators	Subject Property and Adjoining Properties	0	0
RCRA Small Quantity Generators	Subject Property and Adjoining Properties	0	0
RCRA Conditionally Exempt Small Quantity Generators	Subject Property and Adjoining Properties	1	0
State/Tribal Registered Storage Tank Sites	Subject Property and Adjoining Properties	0	0
Manifest	Subject Property	0	0
Spill/Release Sites	Subject Property	0	0
Facility Index System(FINDS)/Environmental Compliance History Online (ECHO)	Subject Property	0	0
Emergency Response Notification System	Subject Property	0	0

Database Summary

A complete copy of the database report is attached as an appendix to this report. Those sites noted within the search radius with a closed status from regulators, or not listed with known, documented, or suspected release sites will not be discussed below but can be referred to in the database report. The above sites are not expected to significantly impact the subject property based on the regulatory status listed. In addition, those remaining sites which are expected to be hydraulically downgradient, at a sufficient distance from the subject property, or due to the urban setting and density of the area, will not be discussed below but can be referred to in the database report. These above sites are not expected to significantly impact the subject property based on the above factors and as per ASTM E 1527-13.

The following is a discussion of the database findings:

Subject and Adjoining Properties

The subject property was not listed in the environmental database. The adjacent properties were listed in the database as follows:

- Florence Morning News Production Facility, 1803 Otis Way, Florence, SC - RCRA CESQG and FINDS/ECHO.

Per ASTM 1527-13, if the property or any of the adjoining properties is identified on one or more of the standard environmental record sources in 8.2.1, pertinent regulatory files and/or records associated with the listing should be reviewed in accordance with 8.1.1 through 8.1.8. The purpose of the regulatory file review is to obtain sufficient information to assist the environmental professional in determining if a recognized environmental condition, historical recognized environmental condition, controlled recognized environmental condition, or a de minimis condition exists at the property in connection with the listing. If, in the environmental professional's opinion, such a review is not warranted, the environmental professional must explain within the report the justification for not conducting the regulatory file review. As an alternative, the environmental professional may review files/records from an alternative source(s).

Record information that is not publically available, obtainable within reasonable cost and time constraints, or practically reviewable is considered as being not reasonably ascertainable and is beyond the scope of the Phase I Environmental Assessment. Record information that costs greater than \$125 to obtain or requires more than two hours of environmental scientist time to obtain and review is beyond the scope of the Phase I Environmental Assessment.

Further information regarding these listings is provided below.

Resource Conservation and Recovery Act Conditionally Except Small Quantity Generators

- | | | |
|----|-----------------------|---|
| 1. | Site Name: | Florence Morning News Production Facility |
| | Address: | 1803 Otis Way
Florence, SC 29506 |
| | Facility ID No.: | SCR000760777 (EPA ID) |
| | Distance: | Adjacent property |
| | Direction: | North |
| | Gradient: | Downgradient |
| | Reported Waste Codes: | D001, D002 |
| | Violations: | No reported violations |

FINDS/ECHO

- | | | |
|----|-----------------------|---|
| 1. | Site Name: | Florence Morning News Production Facility |
| | Address: | 1803 Otis Way
Florence, SC 29506 |
| | Facility ID No.: | SCR000760777 (EPA ID) |
| | FINDS System Program: | RCRA Information system |

The potential for obvious vapor encroachment from volatile organic compounds and petroleum products on the subject property or from nearby properties listed in the above databases with known or suspected releases was evaluated.

No activity and use limitations at the subject property indicating vapor encroachment was identified during this Regulatory Database Review.

Based on standard sources reviewed no significant of chemicals of concern have occurred on the subject property. No significant releases of chemicals of concern have occurred on the adjacent properties.

Based on the above information, no further action is recommended at this time regarding potential vapor encroachment at the subject property.

Database Proprietary Lists

The subject property and adjoining properties were not listed in the EDR proprietary information searched in the EDR database.

3.0 CONCLUSIONS AND RECOMMENDATIONS

The Regulatory Database Review revealed the following:

The subject property was not listed in the environmental database. The adjacent properties were listed in the database as follows:

- Florence Morning News Production Facility, 1803 Otis Way, Florence, SC - RCRA CESQG and FINDS/ECHO.

Based on the results of this Regulatory Database Review, no further action is recommended at this time.

4.0 REFERENCES

4.1 Information Sources

1. The EDR Radius Map Report, produced by Environmental Data Resources, Inc.
2. United States Geological Survey's 7.5-minute topographic quadrangle map of Florence West, SC.

4.2 Definitions

Abandoned property – property that can be presumed to be deserted, or an intent to relinquish possession or control can be inferred from the general disrepair or lack of activity thereon such that a reasonable person could believe that there was an intent on the part of the current owner to surrender rights to the property.

Activity and use limitations – 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, soil vapor, groundwater, and/or surface 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, soil vapor, groundwater, and/or surface water on the property. See Note 1.

NOTE 1—The term *AUL* is taken from 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*.” Department of Defense and International County/City Management Association use “Land Use Controls.” The term “land use restrictions” is used but not defined in the *Brownfields Amendments*).

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.

Actual Knowledge Exception – If the user or environmental professional(s) conducting an environmental site assessment has actual knowledge that the information being used from a prior environmental site assessment is not accurate or if it is obvious, based on other information obtained by means of the environmental site assessment or known to the person conducting the environmental site assessment, that the information being used is not accurate, such information from a prior environmental site assessment may not be used.

Adjoining properties – any real property or properties the border of which is contiguous or partially contiguous with 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.

All appropriate inquiries – that inquiry constituting all appropriate inquiries into the previous ownership and uses of the property consistent with good commercial and 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. See ASTM 1527-13 Appendix X1.

Approximate minimum search distance – the area for which records must be obtained and reviewed pursuant to Section 8 subject to the limitations provided in that section. This may include areas outside the property and shall be measured from the nearest property boundary. This term is used in lieu of radius to include irregularly shaped properties.

Bona fide prospective purchaser liability protection – (42 U.S.C. §9607(r))—a person may qualify as a bona fide prospective purchaser if, among other requirements, such person made “all appropriate inquiries into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices.” Knowledge of contamination resulting from all appropriate inquiries would not generally preclude this liability protection. A person must

make all appropriate inquiries on or before the date of purchase. The facility must have been purchased after January 11, 2002. See ASTM E 1527-13, Appendix X1 for the other necessary requirements that are beyond the scope of this practice.

Business environmental risk – a risk which can have a material environmental or environmentally-driven impact on the business associated with the current or planned use of a parcel of commercial real estate, not necessarily limited to those environmental issues required to be investigated in this practice. Consideration of business environmental risk issues may involve addressing one or more non-scope considerations, some of which are identified in ASTM E 1527-13, Section 13.

Comparison with Subsequent Inquiry – It should not be concluded or assumed that an inquiry was not all appropriate inquiries merely because the inquiry did not identify recognized environmental conditions in connection with a property. Environmental site assessments 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 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.

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.

Controlled recognized environmental condition – a recognized environmental condition resulting from a past release of hazardous substances or petroleum products that has been addressed to the satisfaction of the applicable regulatory authority (for example, as evidenced by the issuance of a no further action letter or equivalent, or meeting risk-based criteria established by regulatory authority), with hazardous substances or petroleum products allowed to remain in place subject to the implementation of required controls (for example, property use restrictions, activity and use limitations, institutional controls, or engineering controls). (See Note 2.) A condition considered by the environmental professional to be a controlled recognized environmental condition shall be listed in the findings section of the Phase I Environmental Site Assessment report, and as a recognized environmental condition in the conclusions section of the Phase I Environmental Site Assessment report. (See Note 3.)

Note 2-For example, if a leaking underground storage tank has been cleaned up to a commercial use standard, but does not meet unrestricted residential cleanup criteria, this would be considered a controlled recognized environmental condition. The “control” is represented by the restriction that the property use remain commercial.

Note 3-A condition identified as a controlled recognized environmental condition does not imply that the environmental professional has evaluated or confirmed the adequacy, implementation, or continued effectiveness of the required control that has been, or intended to be, implemented.

Construction debris – concrete, brick, asphalt, and other such building materials discarded in the construction of a building or other improvement to property.

Contiguous property owner liability protection – (42 U.S.C. §9607(q))—a person may qualify for the contiguous property owner liability protection if, among other requirements, such person owns real property that is contiguous to, and that is or may be contaminated by hazardous substances from other real property that is not owned by that person. Furthermore, such person conducted all appropriate inquiries at the time of acquisition of the property and did not know or have reason to know that the property was or could be contaminated by a release or threatened release from the contiguous property. The all appropriate inquiries must not result in knowledge of contamination. If it does, then such person did “know” or “had reason to know” of contamination and would not be eligible for the contiguous property owner liability protection. See ASTM E 1527-13, Appendix X1 for the other necessary requirements that are beyond the scope of this practice.

Continued Viability of Environmental Site Assessment – Subject to ASTM E 1527-13, Section 4.8, an environmental site assessment meeting or exceeding this practice and completed less than 180 days prior to the date of acquisition⁵ of the property or (for transactions not involving an acquisition) the date of the intended transaction is presumed to be valid.⁶ If within this period the assessment will be used by a user different than the user for whom the assessment was originally prepared, the subsequent user must also satisfy the User’s Responsibilities in ASTM E 1527-13, Section 6. Subject to Section 4.8 and the User’s Responsibilities set forth in ASTM E 1527-13, Section 6, an environmental site assessment meeting or exceeding this practice and for which the information was collected or updated within one year prior to the date of acquisition of the property or (for transactions not involving an acquisition) the date of the intended transaction may be used provided that the following components of the inquiries were conducted or updated within 180 days of the date of purchase or the date of the intended transaction: (i) interviews with owners, operators, and occupants; (ii) searches for recorded environmental cleanup liens; (iii) reviews of federal, tribal, state, and local government records; (iv) visual inspections of the property and of adjoining properties; and (v) the declaration by the environmental professional responsible for the assessment or update.

⁵ Under “*All Appropriate Inquiries*” 40 C.F.R. Part 312, EPA defines date of acquisition as the date on which a person acquires title to the *property*.

⁶ Subject to meeting the other requirements set forth in this section, for purpose of the *LLPs*, information collected in an assessment conducted prior to the effective date of the federal regulations for *All Appropriate Inquiries* or this practice can be used if the information was generated as a result of procedures that meet or exceed the requirements of the E 1527-97 or -00 standards.

Contractual Issues Regarding Prior Assessment Usage – The contractual and legal obligations between prior and subsequent users of environmental site assessments or between environmental professionals who conducted prior environmental site assessments and those who would like to use such prior environmental site assessments are beyond the scope of this practice.

Data failure – a failure to achieve the historical research objectives in ASTM E 1527-13, §8.3.1 through 8.3.2.2 even after reviewing the standard historical sources in §8.3.4.1 through 8.3.4.8 that are reasonably ascertainable and likely to be useful. Data failure is one type of data gap. See ASTM E 1527-13, 8.3.2.3.

Data gap – a lack of or inability to obtain information required by this practice despite good faith efforts by the environmental professional to gather such information. Data gaps may result from incompleteness in any of the activities required by this practice, including, but not limited to

interviews (for example, an inability to interview the key site manager, regulatory officials, etc.). See ASTM E 1527-13 12.7.

De minimis Condition - a condition that generally does not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies. Conditions determined to be de minimis conditions are not recognized environmental conditions nor controlled recognized environmental conditions.

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

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 groundwater on the property. Engineering controls are a type of activity and use limitation (AUL).

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 CERCLA 42 U.S.C. §§9607(1) & 9607(r) and similar state or local laws.

Environmental professional – a person meeting the education, training, and experience requirements as set forth in 40 CFR §312.10(b). See ASTM E 1527-13 Appendix X2. The person may be an independent contractor or an employee of the user.

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.

Good faith – the absence of any intention to seek an unfair advantage or to defraud another party; an honest and sincere intention to fulfill one’s obligations in the conduct or transaction concerned.

Hazardous substance – a substance defined as a hazardous substance pursuant to CERCLA 42 U.S.C. §9601(14), as interpreted by EPA regulations and the courts: “(A) any substance designated pursuant to section 1321(b)(2)(A) of Title 33, (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this title, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Resource Conservation and Recovery Act of 1976 (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), (D) any toxic pollutant listed under section 1317(a) of Title 33, (E) any hazardous air pollutant listed under section 112 of the Clean Air Act (42 U.S.C. §7412), and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator (of EPA) has taken action pursuant to section 2606 of Title 15. 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).” (See ASTM E 1527-13, Appendix X1.)

Hazardous waste – any hazardous 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. §§6901-6992k) has been suspended by Act of Congress). RCRA is sometimes also identified as the Solid Waste Disposal Act. RCRA defines a hazardous waste, at 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.”

Hazardous waste/contaminated sites – sites on which a release has occurred, or is suspected to have occurred, of any hazardous substance, hazardous waste, or petroleum products, and that release or suspected release has been reported to a government entity.

Historical recognized environmental condition – a past release of any hazardous substances or petroleum products that has occurred in connection with the property and has been addressed to the satisfaction of the applicable regulatory authority or meeting unrestricted use criteria established by a regulatory authority, without subjecting the property to any required controls (for example, property use restrictions, activity and use limitations, institutional controls, or engineering controls). Before calling the past release a historical recognized environmental condition, the environmental professional must determine whether the past release is a recognized environmental condition at the time the Phase I Environmental Site Assessment is conducted (for example, if there has been a change in the regulatory criteria). If the EP considers the past release to be a recognized environmental condition at the time the Phase I ESA is conducted, the condition shall be included in the conclusions section of the report as a recognized environmental condition.

IC/EC registries – databases of institutional controls or engineering controls that may be maintained by a federal, state or local environmental agency for purposes of tracking sites that may contain residual contamination and AULs. The names for these may vary from program to program and state to state, and include terms such as Declaration of Environmental Use Restriction database (Arizona), list of “deed restrictions” (California), environmental real covenants list (Colorado), brownfields site list (Indiana, Missouri) and the Pennsylvania Activity and Use Limitation (PA AUL) Registry.

Innocent landowner defense – (42 U.S.C. §§9601(35) & 9607(b)(3)) – a person may qualify as one of three types of innocent landowners: (i) a person who “did not know and had no reason to know” that contamination existed on the property at the time the purchaser acquired the property; (ii) a government entity which acquired the property by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation; and (iii) a person who “acquired the facility by inheritance or bequest.” To qualify for the innocent landowner defense, such person must have made all appropriate inquiries on or before the date of purchase. Furthermore, the all appropriate inquiries must not have resulted in knowledge of the

contamination. If it does, then such person did “know” or “had reason to know” of contamination and would not be eligible for the innocent landowner defense. See ASTM E 1527-13, Appendix X1 for the other necessary requirements that are beyond the scope of this practice.

Institutional controls (IC) – a legal or administrative restriction (for example, “deed restrictions,” restrictive covenants, easements, or zoning) on the use of, or access to, a site or facility to (1) reduce or eliminate potential exposure to hazardous substances or petroleum products in the soil or groundwater 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. An institutional control is a type of Activity and Use Limitation (AUL).

Interviews – those portions of ASTM E 1527-13 practice that are contained in Section 10 and 11 thereof and address questions to be asked of past and present owners, operators, and occupants of the property and questions to be asked of local government officials.

Key site manager – the person identified by the owner or operator of a property as having good knowledge of the uses and physical characteristics of the property. See ASTM E 1527-13, 10.5.1.

Landowner Liability Protections (LLPs) – landowner liability protections under CERCLA; these protections include the bona fide prospective purchaser liability protection, contiguous property owner liability protection, and innocent landowner defense from CERCLA liability. See 42 U.S.C. §§9601(35)(A), 9601(40), 9607(b), 9607(q), 9607(r).

Level of Inquiry is Variable – Not every property will warrant the same level of assessment. Consistent with good commercial and customary practice, the appropriate level of environmental site assessment 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.

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.

Material threat – a physically observable or obvious threat which is reasonably likely to lead to a release that, in the opinion of the environmental professional, is threatening and might result in impact to public health or the environment. An example might include an aboveground storage tank system that contains a hazardous substance and which shows evidence of damage. The damage would represent a material threat if it is deemed serious enough that it may cause or contribute to tank integrity failure with a release of contents to the environment.

Migrate/migration – for the purposes of this practice, “migrate” and “migration” refers to the movement of hazardous substances or petroleum products in any form, including, for example, solid and liquid at the surface or subsurface, and vapor in the subsurface. See Note 4.

Note 4-Vapor migration in the subsurface is described in Guide E2600; however, nothing in this practice should be construed to require application of the Guide E2600 standard to achieve compliance with all appropriate inquiries.

Not Exhaustive – All appropriate inquiries does not mean an exhaustive assessment of a property. There is a point at which the cost of information obtained or the time required to gather it outweighs the usefulness of the information and, in fact, may be a material detriment to the orderly completion of transactions. One of the purposes of this practice is to identify a balance between the competing goals of limiting the costs and time demands inherent in performing an environmental site assessment and the reduction of uncertainty about unknown conditions resulting from additional information.

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

Occupants – those tenants, subtenants, or other persons or entities using the property or a portion of the property.

Operator – the person responsible for the overall operation of a facility.

Owner – generally the fee owner of record of the property.

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).”

Petroleum products – those substances included within the meaning of 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 which 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.⁴)

⁴ *Standard Definitions of Petroleum Statistics*, American Petroleum Institute, Fifth Edition, 1995.

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 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.

Prior Assessment Usage – The ASTM E 1527-13 practice recognizes that environmental site assessments performed in accordance with this practice will include information that subsequent users may want to use to avoid undertaking duplicative assessment procedures. Therefore, this practice describes procedures to be followed to assist users in determining the appropriateness of using information in environmental site assessments performed more than one year prior to the date of acquisition of the property or (for transactions not involving an acquisition) the date of the intended transaction. The system of prior assessment usage is based on the following principles that should be adhered to in addition to the specific procedures set forth elsewhere in the ASTM E 1527-13 practice.

Property – the real property that is the subject of the environmental site assessment described in the ASTM E 1527-13 practice. Real property includes buildings and other fixtures and improvements located on the property and affixed to the land.

Publicly available – information that is publicly available means that the source of the information allows access to the information by anyone upon request.

Reasonably Ascertainable – information that is (1) publicly available, (2) obtainable from its source within reasonable time and cost constraints, and (3) practically reviewable.

Reasonable time and cost – information that is obtainable within reasonable time and cost constraints means that the information will be provided by the source within 20 calendar days of receiving a written, telephone, or in-person request at no more than a nominal cost intended to cover the source's cost of retrieving and duplicating the information. Information that can only be reviewed by a visit to the source is reasonably ascertainable if the visit is permitted by the source within 20 days of request.

Recognized environmental conditions – the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property: (1) due to release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment. De minimis conditions are not recognized environmental conditions.

Recorded land title records – records of historical fee ownership, which may include leases, land contracts, and AULs on or of the property recorded in the place where land title records are, by law or custom, recorded for the local jurisdiction in which the property is located. (Often such records are kept by a municipal or county recorder or clerk.) Such records may be obtained from title companies or directly from the local government agency. Information about the title to the property that is recorded in a U.S. district court or any place other than where land title records are, by law or custom, recorded for the local jurisdiction in which the property is located, are not considered part of recorded land title records. See ASTM E 1527-13 8.3.4.4.

Release – a release of any hazardous substance or petroleum product shall have the same meaning as the definition of “release” in CERCLA 42 U.S.C. § 9601(22)). For additional background information, see Legal Appendix (Appendix X1) to X1.1.1 “Releases and Threatened Release.”

Relevant experience (as used in the definition of environmental professional) – participation in the performance of all appropriate inquiries investigations, environmental site assessments, or other site investigations that may include environmental analyses, investigations, and remediation which involve the understanding of surface and subsurface environmental conditions and the processes used to evaluate these conditions and for which professional judgment was used to develop opinions regarding conditions indicative of releases or threatened releases (see §312.1(c)) to the subject property.

Rules of Engagement – The contractual and legal obligations between an environmental professional and a user (and other parties, if any) are outside the scope of this practice. No specific legal relationship between the environmental professional and the user is necessary for the user to meet the requirements of this practice.

Uncertainty Not Eliminated – No environmental site assessment can wholly eliminate uncertainty regarding the potential for recognized environmental conditions in connection with a property. Performance of this practice is intended to reduce, but not eliminate, uncertainty regarding the potential for recognized environmental conditions in connection with a property, and this practice recognizes reasonable limits of time and cost.

Use of Prior Information – Subject to the requirements set forth in ASTM E 1527-13, Section 4.6, users and environmental professionals may use information in prior environmental site assessments provided such information was generated as a result of procedures that meet or exceed the requirements of this practice. However, such information shall not be used without current investigation of conditions likely to affect recognized environmental conditions in connection with the property. Additional tasks may be necessary to document conditions that may have changed materially since the prior environmental site assessment was conducted.

User – the party seeking to use Practice E 1527 to complete an environmental site assessment 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. The user has specific obligations for completing a successful application of this practice as outlined in ASTM E 1527-13, Section 6.

4.3 Acronyms

ACM – asbestos-containing material
AST – aboveground storage tank
ASTM – American Society for Testing and Materials
AUL – Activity and Use Limitations
bgs – below ground surface
CERCLA – Comprehensive Environmental Response, Compensation and Liability Act of 1980 (as amended, 42 USC § 9601 et seq.)
CERCLIS – Comprehensive Environmental Response, Compensation and Liability Information System (maintained by EPA)
CFR – Code of Federal Regulations
CORRACTS – Facilities subject to Corrective Action under RCRA
CREC – Controlled recognized environmental condition
EA – Environmental assessment
ECRA – Environmental Cleanup Responsibility Act
EDR – Environmental Data Resources, Inc.
EPA – United States Environmental Protection Agency
EPCRA – Emergency Planning and Community Right to Know Act ((also known as SARA Title III), 42 USC § 11001 et seq.)
ERNS – Emergency Response Notification System
ESA – Environmental Site Assessment (different than an *environmental compliance audit*, 3.2.27)
FOIA – U.S. Freedom of Information Act (5 U.S.C. §552 as amended by Public Law No. 104-231, 110 Stat.)
FR – Federal Register
HREC – Historical recognized environmental condition
ICs – Institutional Controls
ISRA – Industrial Site Recovery Act
LBP – Lead-based paint
LLP – Landowner Liability Protections under the *Brownfields Amendments*
LRST – Leaking registered storage tank
LUST – Leaking underground storage tank
MSDS – Material safety data sheet
NCP – National Contingency Plan
NFRAP – former CERCLIS sites where no further remedial action is planned under CERCLA
NPDES – National Pollutant Discharge Elimination System
NPL – National Priorities List
NVLAP – National Voluntary Laboratory Accreditation Program
OSHA – Occupational Safety and Health Administration
PACM – Presumed asbestos-containing material
PCBs – Polychlorinated biphenyls
PLM – Polarized light microscopy
PRP – Potentially responsible party (pursuant to CERCLA 42 USC § 9607(a))
RCRA – Resource Conservation and Recovery Act (as amended, 42 USC § 6901 et seq.)
RCRIS – Resource Conservation and Recovery Act Information System

REC – Recognized environmental condition
ROC – Record of communication
RST – Registered storage tank
SACM – Suspect asbestos-containing material
SARA – Superfund Amendments and Reauthorization Act of 1986 (amendment to CERCLA)
SIC – Standard Industrial Classification
TEM – Transmission electron microscopy
TSDf – Hazardous waste treatment, storage or disposal facility
USC – United States Code
USEPA – United States Environmental Protection Agency
USGS – United States Geological Survey
UST – Underground storage tank

APPENDIX A
ENVIRONMENTAL DATABASE