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February 9, 2023

Ms. Carline Lemoine
Deputy Director of EJ for External Stakeholder Coordination
Executive Office of Energy and Environmental Affairs
100 Cambridge St., Suite 900
Boston, MA 02114

Subject: Comments on the Draft EEA Environmental Justice Strategy

Dear Ms. Lemoine:

The LSP Association would like to thank the Executive Office of Energy and Environmental Affairs (EEA) Environmental Justice Task Force for the time and effort invested in the Environmental Justice (EJ) Strategy document. We appreciate the listening sessions that were held, which several LSPA members attended, and we have read the strategy document carefully.

The LSP Association (LSPA) is the non-profit association of Licensed Site Professionals (LSPs) and related practitioners. LSPs are the scientists, engineers, and public health specialists licensed by the Commonwealth to work on behalf of property owners, operators, and other involved parties to oversee the assessment and cleanup of oil and hazardous materials released to the environment. The LSPA has nearly 800 members, over half of whom are LSPs. Our members include consultants who work to remediate contaminated sites, often in areas with EJ populations, so that these properties can be placed back into active and productive use. Along with MassDEP and the Board of Registration of Hazardous Waste Site Cleanup Professionals (LSP Board of Registration), LSPs are the third “arm” of the innovative, semi-privatized program created in 1993. Since then, LSPs have helped bring over 40,000 sites to a condition where they meet regulatory standards for business, commercial/retail, industrial, institutional, open space or housing. This year is the 30th anniversary of this waste site cleanup program as well as the LSPA.

Page 4 of the Strategy document notes that *“The intended audience of this document is EEA staff to use to assist EEA staff in engaging the public on matters relevant to EEA functions and implementation of programs and policies under its purview.”* LSPs are in a unique situation in

the environmental community; they are neither MassDEP staff nor wholly independent. In their work, all LSPs must adhere to the detailed set of regulations at 310 CMR 40.0000, also known as the Massachusetts Contingency Plan (“the MCP”), as they work to assess and remediate sites for their clients. LSPs are an integral component of the implementation of the MCP and the success of the Commonwealth’s waste site cleanup program. As such, the LSPA believes that there are key aspects of this EJ Strategy in which LSPs should be included. We identify and comment on these aspects throughout this letter. It is important that LSPs are not only aware of EEA’s EJ strategy but that they also understand specific details of how MassDEP wishes to integrate EJ into its outward looking work with the public as well as implementation of its programs and policies.

The LSPA has specifically focused our comments on the beginning of the EJ Strategy document up to page 19, and the MassDEP section of the document which begins on page 77. Our comments are below.

Page 12, Current and On-going EJ Initiatives – Page 15, Future EJ Initiatives: In several places, dates are incorrect. This section needs to be updated to accurately represent events that have already occurred and those that are still in the future.

Page 15, Fact Sheets: EEA’s proposal is to *“inform residents in neighborhoods where EJ populations reside that these programs exist and how they function....Working with the agencies, the Director shall determine the languages in which said fact sheets shall be published.”* The LSPA suggests that EEA interact with communities to inquire how they would like to be involved, and how they can help shape the process. The above language suggests that EEA is still relying on the existing system to make inside-out decisions, and not involving communities in an intentional way. The Public Involvement Plan (PIP) process delineated in the MCP is a well-established tool for providing community involvement in a project and for giving agencies (or those acting for the agency) guidance on how to best meet those requests for outreach and inclusiveness. The LSPA therefore recommends that the EJ Strategy refer to and recommend the established PIP process.

Page 15-16, Annual EJ Report: The report states that *“EEA will convene an annual public meeting to report on the progress of the EJ Policy.”* This sounds like a one-way report-out. The LSPA suggests that EEA find ways for the public to provide feedback on how they are experiencing the progress of the EJ Policy. The EJ annual report should provide information on how the process will evolve given comments received from the public.

Page 16, Metrics: The report notes that “*EEA will establish metrics to track the fair distribution of benefits in its programs. EEA will publish these findings in its annual report and will include EJ metrics and progress for EEA’s agencies, offices, and programs.*” The report then lists some of the criteria that may be considered. All of the metrics seem to suggest actions that are agency-centric; while those may be important, we recommend opportunities for EJ populations to propose their own metrics of success. For example, rather than only measuring the number of meetings, metrics might also include considerations such as, “Do more people understand the project and its implications?”, “Is information more readily available to the community in their requested languages?”, or “How many members of the EJ community attended the meetings?”

As it is, this section does not inspire images of the meaningful involvement of EJ populations. It is important to have a sense that the metrics will provide information on measurable improvements. To avoid ongoing systemic racism and inequity it will be important for EEA to move beyond the established system and make the effort to incorporate perspectives from outside of the system.

Page 17, Training: The LSPA supports the idea that EEA should conduct training for the public. However, we encourage EEA to reach out to all stakeholders to solicit input and to identify topics that would be particularly helpful for all parties to increase community participation and improve the public process. Specifically, the LSPA encourages EEA to conduct training for the regulated community; for example, EEA could advise LSPs and Responsible Parties on how to conduct outreach and public involvement to increase community participation. Again, the MCP PIP process could be used as a training tool to assist the regulated community as it solicits and plans for community input in an effort to tailor communication and activities to the needs of that specific community.

Page 17, Stakeholder Outreach, Community Engagement, and Public Involvement: Has EEA developed a Stakeholder Outreach, Community Engagement, and Public Involvement Plan (PIP) as referred to here? It was written in the last paragraph on page 17 that by September 30, 2022, this Plan would be available to provide guidance to EEA staff on effective and meaningful public involvement and community engagement. This is an example of a document that would be very useful for LSPs as they work with their clients on public involvement requirements and other outreach efforts at MCP sites.

Page 18, Language Access Plans: Has EEA developed and adopted a Language Access Plan (LAP) consistent with A&F Bulletin #16? It was written in the first paragraph on page 18 that this would be available by September 30, 2022, for EEA staff working with neighborhoods in which 5% or more individuals have limited English proficiency (LEP). This is an example of a document

that would be very useful for LSPs as they conduct public involvement and outreach at MCP sites for their clients.

Page 18, Stakeholder Engagement and Community Outreach: The document states that “*EEA will seek methods for restructuring the format of public outreach and community engagement in order to make these opportunities more interactive and accessible.*” All of the strategies included are appropriate and reasonable. However, the LSPA reminds EEA that best practices are more effective when a “one size fits all” approach can be avoided, as best practices will likely vary from community to community. We suggest soliciting community input *before* outreach events as well as feedback afterwards, and acting on lessons learned. We propose a re-write as follows: “EEA will coordinate with community groups and leaders to identify approaches and methods for that community to participate in meaningful public outreach and community engagement, in order to make these opportunities more interactive and accessible. EEA will tailor these opportunities to specific community needs and feedback received.”

The LSPA suggests that EEA consider outreach through religious institutions, libraries, cultural centers, and Community Economic Development Centers. We also suggest that small group discussions avoid, to the extent practicable, separating/segregating attendees by language. For example, do not invite non-English speakers to a different location than English speakers.

MassDEP Page 81, Communication: The LSPA notes that MassDEP’s EJ Webpage defaults on some topics to EEA’s webpages. We support this and think that it encourages consistency and connectedness throughout EEA agencies. However, electronic communication may not be the best way for MassDEP to reach certain communities. EEA should explore a range of communication approaches to be as inclusive and accessible as possible.

MassDEP Page 82, Strengthen Community Outreach/Public Outreach: The LSPA commends MassDEP for articulating that strengthening community engagement and involvement, and building capacity, requires inclusive, collaborative, and ongoing efforts. This is demonstrated in language (our emphasis in italics) such as “*maintain and update* a list of community groups/advocacy groups....”; “*Continue to build* relationships”; and “*Engage* with project proponents and EJ populations and community leaders beyond the minimum statutory and regulatory requirements to ensure *meaningful involvement* for all people.”

Page 83, #5: The LSPA reminds MassDEP that there will likely be different “best practices” for different communities. We suggest soliciting community input before outreach events as well as feedback afterwards, and acting on lessons learned.

Page 83, #7: There is a focus on virtual outreach. The LSPA suggests that MassDEP consider other methods for those who do not have computer or internet access.

Page 83, Metrics: The LSPA commends MassDEP for stating outright that it is “seeking input from EJ Stakeholders about appropriate metrics to measure our progress...” This information should inform the selection of metrics as much as MassDEP input.

Page 84, Participation: The LSPA encourages MassDEP’s Bureau of Waste Site Cleanup to demonstrate its efforts to expand EJ community representation on its Advisory Committee. The LSPA suggests that MassDEP solicit input from current Advisory Committee members and other regular attendees of Advisory Committee and Office Hours meetings for additional suggestions for increasing public involvement in these meetings from EJ populations or their representatives.

Page 84 - 85, Limited English Proficiency: Will MassDEP EJ resources be available to Responsible Parties and their LSPs to facilitate communication and participation by affected EJ populations? The LSPA understands that MassDEP is unlikely to pay for translation or interpretation services but would MassDEP share translator/interpreter contact information? Since it will be providing guidance to its own staff, will MassDEP also provide guidance to LSPs about how to conduct public meetings, hearings, and other required events that incorporate simultaneous interpretation during online and in-person events? This will be especially important for PIP sites but also for smaller projects with EJ populations.

Page 85, Training: *“MassDEP will ensure that appropriate agency staff understand EJ issues, requirements, responsibilities, and opportunities through EJ related trainings.”* “Ensure” is a term of strong commitment. The LSPA recommends that the report explain how MassDEP will “ensure” that staff understand these topics. For example, is there a plan for keeping appropriate agency staff accountable?

As professionals licensed to oversee the implementation of the MCP, the LSPA believes it is important for LSPs to not only be aware of EEA’s strategy but to also understand the details of how MassDEP wishes to integrate EJ into its outward looking work with the public. Because of their unique role, the LSPA suggests that LSPs also need to participate in appropriate aspects of MassDEP EJ training so that they are aware of, and possibly have access to, the resources necessary to implement the MCP in accordance with EEA and MassDEP EJ policies. Specific content could include training in the use of GIS maps and the EJ Viewer; DPH’s GIS Health Tracking tools, including its GIS mapping tool; and EPA’s EJSCREEN.

Page 86, Enforcement: The LSPA suggests that in situations where a civil administrative penalty is revised upward for a violation within an EJ population or where a violation has occurred outside a mapped EJ population but affects an EJ population, this is communicated to the regulated community. This will be important for raising awareness and sensitivity to EJ populations and associated issues, as well as potentially improving performance. This information could be included in the Annual EJ report.

Page 88, Incorporating EJ Considerations in Permit Proceedings: While not a permitting process, the MCP requires Responsible Parties to conduct certain public involvement activities at PIP sites, which LSPs are often responsible for implementing. The need for appropriate public involvement is specified in the MCP. While public involvement regulations, policy, and guidance are not a focus of this EJ Strategy, nevertheless, LSPs are often the professionals managing public involvement efforts at MCP sites. Components of this EJ strategy will inform MCP public involvement activities.

For all the reasons articulated in the EJ Strategy, the LSPA urges MassDEP to update its current PIP regulations and guidance to reflect EEA's and MassDEP's EJ principles, objectives, and best practices. These updates and revisions would direct LSPs and Responsible Parties, working at PIP sites in communities with EJ populations, to conduct activities in such a way as to make them more inclusive, collaborative, impactful, and effective.

Page 89, 1st bullet: Add "Cumulative Impact Analysis" before "CIA."

The LSPA very much appreciates the opportunity to provide comments on this Draft Environmental Justice Strategy. We look forward to supporting EEA and MassDEP as you implement this strategy and seek to make equity a priority.

Please do not hesitate to contact us with any questions.

Sincerely,

THE LSP ASSOCIATION



Charles P. Young, LSP
President



Wendy Rundle
Executive Director