



**LSPA Comments on
MassDEP’s 2024 Interim Guidance on
Implementing Activity and Use Limitations, Policy #WSC 24-300**

Provided below are the LSP Association’s (LSPA’s) detailed comments on MassDEP’s 2024 Interim Guidance on Implementing Activity and Use Limitations, Policy #WSC 24-300.

“Page” refers to the pages in the 2024 Interim Guidance Policy made available electronically in PDF format [here](#).
“Section” refers to the section or subsection of Policy #WSC 24-300, unless otherwise noted.

The LSPA has made every effort to state the issue of concern, provide a specific example wherever possible, and propose suggested language changes where appropriate (shown in red).

Section 1: Introduction		
Page	Section	LSPA Comment
1	1.1	It seems unnecessary to cite “approximately 120 of the most common contaminants,” this runs the risk of becoming outdated and does not substantively add value to the discussion. The LSPA recommends deleting the phrase entirely or de-emphasizing the number i.e., “...over one hundred of the most common”
Section 2: AULs and Risk Characterization		
Page	Section	LSPA Comment
22	2.6.3	“AULs may be necessary to ensure the maintenance of Exposure Pathway Mitigation Measures that are installed and maintained to prevent exposure to the volatilization of OHM in the subsurface...”

		<p>The LSPA thinks that MassDEP discouraging the use of AULs at mixed commercial/residential space is overly restrictive. Vapor intrusion assessment requires characterizing risk at distinct exposure points, in this case the commercial and residential space. If sufficient sampling has been performed to demonstrate No Significant Risk at all exposure points under current conditions, and to assess the potential for any preferential pathways, then an AUL can be filed to maintain the current building use. If future building modification is a concern for exacerbating vapor intrusion, prohibiting future building modifications (or requiring LSP evaluation of future building modifications) can easily be incorporated into the AUL.</p> <p>The VI guidance also provides options for developing a conservative future indoor air EPC (see Section 2.3.3.2). The draft AUL guidance reference to “<i>current indoor air data has limited use for predicting future EPCs because buildings change over time</i>” is only a partial reference to the discussion of future EPCs in the VI guidance, and thus may be misleading.</p>
29	Table 2-1	The example for subslab soil gas, does not include the condition where VOCs are present in soil gas, but not very high, there are no indoor air impacts, and No Significant Risk can be demonstrated with no AUL. The LSPA cautions MassDEP against implying that all sites with VOCs in soil gas require an AUL.
9	2.3	The LSPA suggests adding a note to the first paragraph clarifying that AULs alone cannot limit exposure to ecological receptors.
15	2.4.1	Relative to managing NAPL as part of the HASP and SMP, the LSPA suggests adding the groundwater management element; that is, a soil and groundwater management plan (SGMP).
25	2.7.2	The LSPA recommends that MassDEP allow a Method 1 risk characterization using S-3 standards to evaluate risk to a utility worker with acknowledgement that this evaluation does not necessarily consider potential inhalation of vapors from soil and/or groundwater.
Section 3: AUL Types and Elements		
Page	Section	LSPA Comment
35	3.5	<p>Exhibit B paragraph: The LSPA suggests editing the language from Form 1075 to be in italics to be consistent with that form.</p> <p><i>“...a sketch plan showing the boundaries of the area subject to the Notice in relation to the boundaries of the disposal site as they exist within the limits of the Property, the property boundaries,”</i></p>

36	3.5	Last paragraph, second sentence: change “recoding” to “recording”
Section 4: Preparing an AUL		
Page	Section	LSPA Comment
38	4.1.1	Recorded Land, second paragraph, last sentence: replace “As such” with “Therefore.”
38	4.1.3	<p>The LSPA suggests rephrasing item 1 as follows to clarify: “...obtain two sets of original documents and file one set with the recorded land section of the Registry of Deeds and one set with the registered land section of the Registry of Deeds.”</p> <p>The LSPA suggests rephrasing the first sentence of item 2 as follows: “...obtain one set of original documents, and file the originals with the registered land section of the Registry of Deeds, and then record the registered documents with the recorded land section of the Registry of Deeds.”</p>
39	4.2	Legal Description of Area Covered by the AUL, second paragraph, second sentence: replace “f” with “if.”
39	4.2	Third paragraph: Separate run-on first sentence into two sentences by inserting a period after “it” and beginning a new sentence with “If the property is small in size”
40	4.2	First full paragraph on the page, third (last) sentence: insert comma after “otherwise”
40	Fig 1	Legal Description of the Area Subject to the AUL, fourth sentence beginning “For parcel B, two written legal description are required ...” - insert “s” on “description”
41	4.2.2	First paragraph, first sentence: insert “the” before “parcel”
41	4.2.2	First paragraph, first sentence: insert closed parenthesis in the example as follows: “...(e.g., “NORTHERLY by Old Boston Post Road, one hundred (100) feet ...”), or a ...”
43	4.3.2	Survey Plan of Area... Recorded Land, second paragraph, first word: replace “!n” with “In.”
43	4.3.3	The LSPA suggests adding resources that would enable someone preparing an AUL to assess whether or not a survey plan was prepared by a Massachusetts Registered Land Surveyor, especially for older plans.

Section 5: AUL Recording and Processing Requirements		
Page	Section	LSPA Comment
54	5.2	AUL Compliance fees: The LSPA suggests deleting reference to dollar amount in case fees change and instead refer to 310 CMR 4.03 or the MassDEP “MCP Timelines and Fees” document.
Section 6: Maintaining AULs		
Page	Section	LSPA Comment
60	6.1	The paragraph on Limited Soil Excavation contains the following phrase “...provided that such excavation is not prohibited by the AUL”. The LSPA recommends that MassDEP consider adding this phrase in the corresponding RAM, URAM, and Phase IV sections. It should be clear that in all cases, practitioners must evaluate AUL conditions (if in place) regardless of whether site activities or uses are changing.
61	6.1	Consider clarifying the requirements for conducting a URAM within an AUL area where the URAM activities are inconsistent with the AUL.
Appendix A		
Page	Section	LSPA Comment
		No comments
Appendix B		
Page	Section	LSPA Comment
		No comments
Appendix C		
Page	Section	LSPA Comment
		No comments
Appendix D		
Page	Section	LSPA Comment
		No comments
Appendix E		
Page	Section	LSPA Comment
		No comments
Appendix F		
Page	Section	LSPA Comment
A-24	Appendix F	Page A-24 Public Notice for an Amended AUL states that one must “List the Amended Information”. If the amended AUL contains a significant number of provisions, say, to the Obligations and Conditions Section, then it appears each and every one must be listed, along with any and all new provisions from Activities Consistent with Maintaining a Condition of No Significant Risk (NSR), and Activities Inconsistent with Maintaining a Condition of No Significant Risk. In an original AUL, one is only required to include the list of activities inconsistent with NSR.

		Although not required by 310 CMR 40.1403(7), this language would seem to suggest that PRPs go above and beyond the requirements when filing an amended AUL. The LSPA requests clarification of what activities (inconsistent with an AUL, consistent with an AUL, or both) are required for newspaper notice of an amended AUL.
Appendix G		
Page	Section	LSPA Comment
		No comments
Appendix H		
Page	Section	LSPA Comment
		No comments
Appendix I		
Page	Section	LSPA Comment
		No comments
Appendix J		
Page	Section	LSPA Comment
A-34	Table req. #21	In addition to the listed paragraphs, bracketed language regarding NSR or NSH is also in paragraphs 9, 12, and 19. The LSPA suggests it also should be included with the listed paragraphs.
A-42	Table req. #63	The LSPA suggests adding the language in italics to clarify: Instrument Number (recorded land only <i>when Book and Page not yet assigned</i>)
Appendix K		
Page	Section	LSPA Comment
		No comments
Appendix L		
Page No.	Section	LSPA Comment
		No comments