

LSPA Comments on MassDEP Guidance on Establishing Financial Assurance Mechanisms for Engineered Barriers at Chapter 21E Sites

Guidance:

<https://www.mass.gov/doc/public-comment-draft-guidance-on-establishing-financial-assurance-mechanisms-for-engineered-barriers-at-chapter-21e-sites-september-9-2025/download>

Provided below are the LSP Association's detailed comments on the MassDEP Guidance on Establishing Financial Assurance Mechanisms for Engineered Barriers at Chapter 21E Sites.

****"Page No." refers to the pages in the MassDEP Guidance on Establishing Financial Assurance Mechanisms for Engineered Barriers at Chapter 21E Sites.*

****"Section/Subsection" refers to the Sections in the MassDEP Guidance on Establishing Financial Assurance Mechanisms for Engineered Barriers at Chapter 21E Sites, 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 (in red font color), where appropriate.

Page No.	Section/Subsection Number	LSPA Comment
N/A	N/A	The following comment was from the EB Guidance, but we think it worth including here as well (comment was from Section 6, of EB Guidance, page 8): Recommend that additional flexibility be incorporated into the FAM process for EBs for certain types of facilities/sites, consistent with the language added to the Massachusetts Contingency Plan (MCP) in 2023 for state agencies, authorities and municipalities. For example, a simple maintenance agreement would be adequate for public utility sites, which have substantial infrastructure maintenance requirements and are subject to other regulatory programs, for most types of EBs. The formal FAM process outlined in the guidance is not warranted at many of these sites.
N/A	N/A	General Comment: I wonder if MassDEP has any guidance/suggestions on what should happen with a FAM if a property with an EB transfers ownership. Does the new owner have to establish their own FAM? Does MassDEP verify that FAMs are enacted throughout the 30-year lifecycle?
1	C	Under item (a), add "be" between the words "must" and "made".
2	C	Item (c) should read, "an Activity and Use Limitation..."
3	F	Step 2 of the process of obtaining a FAM, which requires review and approval of the FAM by DEP, appears to be open-ended. For sites where an engineered barrier has been implemented, typically by the time that the PRP is developing the FAM, the site is very close to closure. Therefore, timeliness of this review by DEP is likely an important consideration. Consider providing an estimate of the time that a PRP should anticipate for the step, so that it can be planned for accordingly in the site closure process.
8	6	Recommend that additional flexibility be incorporated into the FAM process for EBs for certain types of facilities/sites, consistent with the language added to the Massachusetts Contingency Plan (MCP) in 2023 for state agencies, authorities and municipalities. For example, a simple maintenance agreement would be adequate for public utility sites, which have substantial infrastructure maintenance requirements and are subject to other regulatory programs, for most types of EBs. The formal FAM process outlined in the guidance is not warranted at many of these sites.