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405 Concord Avenue #352, Belmont, MA 02478

| 617-977-4304

| info@lspa.org

| www.lspa.org

By email to Greg.Braun@mass.gov

June 5, 2024

Greg Braun
MassDEP/ORS
100 Cambridge Street, Suite 900
Boston, MA 02114

Subject: LSPA Comments, Risk Characterization Guidance, Chapters 1-5, Public Review Draft

Dear Mr. Braun:

The LSPA Association (LSPA), a professional non-profit association of 800 LSPs and other environmental professionals, appreciates the opportunity to provide comments on the above-referenced draft guidance document. The LSPA adhered to its typical process for collecting and submitting comments to MassDEP on draft documents: we solicited comments from the membership at large; the LSPA Regulations Committee formed a focused subcommittee of practitioners who drafted a set of comments based on those submitted and those from subcommittee members; and finally, the LSPA Board vetted the draft comments to develop this final matrix of comments document (attached).

LSPA comments on the draft guidance document fall into three broad categories:

- LSPA suggestions for reorganizing the structure and order of topics in the document, and suggestions for making the document easier to navigate;
- Areas that the LSPA feels need general clarification, where inconsistencies might need addressing, and where specific language changes might be more appropriate; and
- Areas where the LSPA thinks there are significant omissions from the draft guidance, or the draft guidance does not correspond to the experience of LSPs and other practitioners regarding the process of characterizing risk.

The attached matrix presents a full list of our comments; however, we felt that the following items were of significant importance to our membership to highlight them herein. These are divided into the broad categories listed above.

Suggestions for reorganizing the structure and order of topics in the document, and suggestions for making the document easier to navigate.

The LSPA suggests that MassDEP consider reorganizing the document so that it more closely aligns with the presentation of risk characterization in the MCP. A different internal organization would make the document easier to follow and would make it easier to find specific information.

One alternative would be to divide this into two separate documents: one that addresses "sampling and analysis" guidance for sampling approaches and chemical analyses, and another that is solely risk characterization guidance. Another alternative might be to better divide this guidance document into two distinct sections, with the first more focused on sampling and analysis planning and implementation, and the second focused exclusively on the risk assessment process and methods. As written, this document intermingles field sampling guidance and risk characterization guidance in a way that could make the information less accessible for some practitioners. While the LSPA understands the interconnectivity of these two multifaceted subjects, practitioners are not always conducting both (e.g., risk assessors rarely collect samples) and separating the topics into different guidance documents or sections would provide better focus for the target audiences. The guidance document should also be retitled to reflect its content more accurately.

In addition to dividing the document, some other organizational changes could be made to increase clarity and usability. Specific examples of potential confusion related to the current document format include:

- The subsection on AULs and soil characterization comes before any discussion of the selected Method of the risk assessment. While soil categorization is used in each risk assessment method, the actual evaluation of risk and exposure to soil depends on the risk assessment method. A Method 1 approach may identify exposure points differently than a Method 3 approach. While it is the case that an AUL can be implemented using a Method 1 or 2 risk characterization, this section is not really relevant for risk characterizations that use a Method 3 approach. The LSPA suggests that this section include a discussion on the use of a Method 3 to evaluate whether an AUL is required.
- The document does not follow the same general path that the MCP lays out. We suggest that MassDEP consider moving the entire AUL section to the end of the Risk Characterization guidance or, preferably, making it a part of MassDEP's AUL guidance. This would conform with the order within the MCP, as risk characterization is Subpart I and AULs are discussed in Subpart J.
- Quick access to sections and topics. We suggest a Table of Contents and an index be included in the next version (even if it is only a partial document) so that the structure of the document is more easily understood and accessed from the outset.

Areas that the LSPA feels need general clarification, where inconsistencies might need addressing, and where specific language changes might be more appropriate.

The editorial comments in our attached matrix are presented in chronological order according to MassDEP's draft guidance document. Overall, the LSPA suggests a careful editorial reading of the guidance to correct typos, punctuation, grammar, inconsistent use of typeface and font size, inconsistent use of abbreviations, and repetitive introduction of terms and abbreviations. The LSPA also recommends including a list of abbreviations, acronyms, and initialisms in the guidance.

Areas where the LSPA thinks there are significant omissions from the draft guidance, or the draft guidance does not correspond to the experience of LSPs and other practitioners regarding the process of characterizing risk.

Overall, the Draft Risk Characterization Guidance document, particularly the revised approaches to sampling and calculation of EPCs, appears to drive a paradigm shift by significantly reducing the use of professional judgement, both in the field and during risk evaluations, thereby making the process of assessing risk more prescriptive without necessarily increasing health protection. Shifting to a more rigid and conservative approach will disproportionately impact smaller sites, such as AST/UST releases, in some cases resulting in higher costs for PRPs without reducing potential exposure.

Acknowledge and discuss sites with data from both systematic and judgemental sampling. The draft guidance does not address the more common scenarios where some amount of sampling and/or remediation has been conducted at a site using a mix or "hybrid" of systematic and judgmental sampling. These situations frequently occur and should be discussed in the guidance, along with the related implications.

Allow calculation of EPCs based on the appropriate exposure point (location where exposure may occur) and not on the individual type of sampling plan(s) that may have been employed at the site. It seems counterintuitive that it is strictly prohibited to consider use of a 90 or 95 UCL as an EPC for exposure points unless they are characterized using only systematic sampling. There are situations where data quality, density, nature and extent, and variability/heterogeneity may be captured using various sampling approaches. There should be flexibility for the risk assessor to use professional judgment and select a 90 or 95 UCL on the mean concentration (for example) in lieu of an arithmetic mean, since it is more conservative for almost any environmental data set. This restriction seems punitive to the LSP who tried to clean up the Site and the Responsible Party paying to clean up the Site.

Clarify what is meant by OHM concentrations "in the surrounding environment." Section 5.6 states that "the risk assessment should contain summary tables which clearly indicate which oil or hazardous materials at or from the disposal site have been identified in each medium at the disposal site and in the surrounding environment" and that "[t]hese tables should also present the range of reported concentrations for each OHM detected at the disposal site and in the surrounding environment."

It is unclear what is meant by concentrations "in the surrounding environment." If the sample results are not considered to represent the disposal site, then they would not be included in the site data set by definition. If this text is referring to background, the vast majority of MCP sites do not have site-specific background data sets (for soil or other media), so it would seem unlikely that these data would be available in most cases. The LSPA suggests deleting the text "and in the surrounding environment" from these statements. If necessary, a separate statement could be made about including background data, if that is what was intended by these statements.

Include further revisions to the draft guidance document. We expect that further revisions to Chapters 1 through 5 will be needed once MassDEP releases the Exposure Assessment portion of the guidance. This will be a critical section of the guidance because exposure point concentrations consider the location/depth/types of exposure. The risk characterization guidance needs to provide examples of how sampling approaches are tied to exposure point definition and exposure point concentrations.

Thank you once again for providing this public comment opportunity and for considering our opinions. We respectfully suggest that MassDEP convene a stakeholder work group to discuss significant comments on the draft guidance before and during production of the next draft of the guidance. The LSPA is available at your convenience to discuss any of our comments.

Respectfully,

THE LSP ASSOCIATION, INC.



Charles P. Young, LSP, President



Wendy Rundle, Executive Director

cc:

Millie Garcia-Serrano, Assistant Commissioner, BWSC, MassDEP

Attachment:

LSPA Comments on the 2024 MassDEP Guidance for Disposal Site Risk Characterization (matrix)