

**Update:  
AUL Guidance Revisions  
Summary of Comments**

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Comments available online:

[www.mass.gov/dep/cleanup/laws/aulcom.pdf](http://www.mass.gov/dep/cleanup/laws/aulcom.pdf)

Draft Guidance:

[www.mass.gov/dep/cleanup/laws/auldr.pdf](http://www.mass.gov/dep/cleanup/laws/auldr.pdf)

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# Draft AUL Guidance: Background

- Draft was released in December, 2010
- Primary goal of draft was to update Guidance to make consistent with MCP and current practice
- Comment period ended April 1, 2011
- Comments sought/received on content of draft, and identifying issues where further guidance would be helpful

# Process for Addressing Comments

- Prepare and make available written Response to Comments
- Potential workgroup in Fall 2011, if necessary to discuss our response to comments
- Some changes may involved revisions to MCP and/or further discussion

# Sections of AUL Guidance:

Section 1: Introduction

Section 2: AULs and Risk Characterization

Section 3: AULs: Types and Elements

Section 4: Preparing an AUL

Section 5: AUL Recording and Processing Requirements

Section 6: Maintaining an AUL

Appendices



# Section 2: AULs and Risk Characterization

- Substantial editing to Section 2 with intent to:
  - eliminate redundancies with Risk Characterization Guidance
  - streamline policy
- Based on comments, we will be making several revisions

# Planned Use = Current Use (Section 2.3.1)

- Issue: '99 Guidance states that current use includes “those uses that are actually occurring and those that are probable and consistent with surrounding areas,” but does not mention “planned uses”
- Response: Revision intended to clarify that *imminent* “planned uses” should be evaluated as a current use
- Action: Discuss/revise Section 2.3.1 to clarify

# Reasonably Foreseeable Use (Section 2.3.2)

- Issue: Proposed changes suggest a change in DEP's interpretation of reasonably foreseeable use
- Response: Substantial editing to Section 2 of Guidance to streamline and provide clarification, not to indicate a change in policy
- Action: Will revise Section 2.3.2 to ensure consistency with MCP



# “Voluntary” AULs (Section 2.4.2)

- Issue: Add language consistent with 40.1012(3) allowing AULs to be used to provide notice when not required by MCP
- Response: Draft de-emphasizes use of “voluntary” AULs, but we were persuaded by comments to address
- Action: Revise draft; and explore options for making clear to DEP when an AUL is voluntary (e.g., form change)



# AULs and Sediment (Section 2.6.3)

- Issue: Legal and administrative difficulties implementing AULs where there is sediment contamination were noted; provide more details on procedures
- Response: Addresses limited case where AUL is documenting a cap that is part of remedy; does not create any new requirement to install a sediment cap
- Action: Will make additional clarifications



# Residential AULs and Wetlands (Section 2.7.1)

- Issue: Current draft notes wetlands as a possible exception to residential use
- Response: Editing oversight
- Action: Will eliminate reference with next revision

# Plans (Sections 2.7.3 & 2.7.4)

- Issue: HASP – both ends of the spectrum: should be more prescriptive; and bulleted list of requirements should not be included
- Response/Action: We can only require what is allowed for via 40.0018; will clarify that bulleted is recommendation
- Issue: SMPs – unreasonable to ask for meaningful details at time of AUL
- Response/Action: Will clarify that this is meant broadly (i.e., goals of plan, not specifics)

# Risk of Harm to Safety (Section 2.9)

- Issue: Example describing AUL providing for maintenance of cap where physical hazards (e.g., glass/metal) comingled with contamination could be interpreted broadly
- Response/Action: Will clarify that not intended to impose a requirement, but to provide option for addressing physical hazards as part of an AUL that is being implemented anyway

# Use of Fences (Section 2.9)

- Issue: Guidance states that a fence should not be used as part of a Permanent Solution if NSR relies on maintenance of fence – comments disagree
- Response: Fences are referenced as an example of a temporary measure at 40.0923(5); alone is not an adequate barrier to eliminate exposure pathway

# Other Comments

## Exhibits (Section 3.5)

- Issue: More details concerning Exhibits A-1 and A-2 would be helpful
- Issue: Signatory Authority documentation should be submitted following Notice signature page, not as Exhibit D
- Action: Will provide clarifications, as appropriate

# Notices (Sections 5.3 & 5.4)

- Issue: Clarify Notice to Record Interest Holders procedure when parties agree to waive 30-day waiting period
- Response/Action: Will revise to clarify that submitting written waiver to DEP is recommendation, not requirement
- Issue: Add public notice requirements for Amendments and Terminations, if different
- Response/Action: Will revise to note that public notice requirements are the same



# Use of Terms

- Issue: E.g., use of “must” vs. “should” vs. “may”
- We will review document and make revisions where appropriate

# Overlapping AULs

- Issue: AULs on single property with releases at different times, owners, PRPs, LSPs, constituents of concern, etc.
- Will address after further discussion

# Barriers and Survey Plans

- For multiple barriers, survey or sketch plan is required to delineate each barrier, but submitting Amendment when there is a change in barriers (e.g., new building), but no change in exposure pathways is excessive
- Response: AUL could be written with construction contingencies; Post RAO submittals could address

# Future Buildings

- Policy eventually set forth in Vapor Intrusion Guidance will be referenced in AUL Guidance

# Gardening

- Approach to the gardening pathway is being reconsidered, and will be referenced in AUL Guidance in the future

# Case Studies

- Case studies or similar “examples” will be added to document, after discussions with external workgroup

# Regulatory Reform

- DEP's Regulatory Reform Effort may impact procedures for implementing AULs

# Next Steps

- Complete and distribute Response to Comments
- Workgroup meeting in Fall 2011, as necessary
- Revise document to include changes that will bring document up to date with current MCP
- Distribute as an Interim Final

