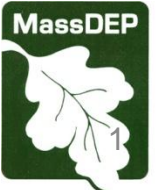


# AUL Amendments

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**(617) 556-1092**



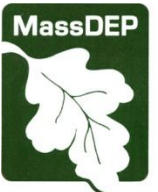
# Exhibit C Narrative

- Current Exhibit C - LSP signature/seal required
  - Repeats Site Activities/Uses, Obligations and Conditions from Form 1075
- New Exhibit C - no LSP signature required
  - Description of why AUL is appropriate
  - Summary of OHM release/site history
  - Description of contaminated media
  - Requirements found at 40.1074(2)(e)-(g) and 5<sup>th</sup> Whereas clause of 1075
- Transmittal Form 113A also eliminated as part of this change



# Incorporating AUL into future instruments of transfer

- 40.1074(5) revised to include requirement to submit a new deed to MassDEP within 30 days of recording or registering such deed when title of property subject to an AUL is conveyed
- Requirement falls upon **both grantor and grantee**, but will be fulfilled by submittal of deed by either party
- Form 1075 restates this new requirement at top of form

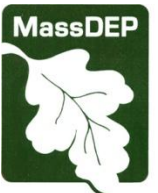


Note: Pursuant to 310 CMR 40.1074(5), upon transfer of any interest in or a right to use the property or a portion thereof that is subject to this Notice of Activity and Use Limitation, the Notice of Activity and Use Limitation shall be incorporated either in full or by reference into all future deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer. Within 30 days of so incorporating the Notice of Activity and Use Limitation in a deed that is recorded or registered, a copy of such deed shall be submitted to the Department of Environmental Protection.



# Notices of AUL at CERCLA sites

- 40.0110 revisions allows for the optional use of Notices of AUL at Federal Superfund Sites
- MCP procedures for implementing Notices must be followed, except where noted
- Enforced through the MCP and c. 21E
- Completion of remedial actions in accordance with ROD/EPA approval = achieving a Permanent Solution pursuant to the MCP



# Notices of AUL at CERCLA sites

- EPA and DEP oversight
- Subordination agreements not required
- Land use control requirements in ROD or other documents must be incorporated into Notice
- EPA and DEP approval for changes in land use, and for subsequent Amendments and Terminations



# Notices of AUL at CERCLA sites

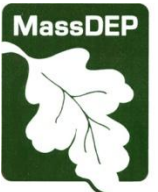
- If implementing an MCP Notice of AUL, MCP provisions must be followed, except (40.1074(4)):
  - Requirement to use AUL forms in MCP (40.1099)
  - Requirement to maintain NSR (40.1074(1)(b))
  - Requirement for LSP signature (40.1074(2)(m))
  - Procedures for changing site uses/activities after Permanent Solution is filed (40.1080)
  - Procedures for Public Involvement (40.1400)



# Standardized AUL Conditions for Active Exposure Pathway Mitigation Measure

Must:

- Be operated according to regimen in Permanent Solution statement
- Employ remote monitoring technology
- Take immediate steps in case of system suspension or failure
- Provide notice to MassDEP & building occupants if system suspension or failure lasts 30 consecutive days



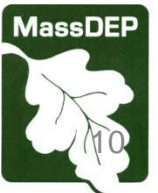


# Signatory Authority

- Requirements when owner is an entity now appear in Notice provisions (40.1074(2)(c))
- “Consistent with conveyancing standards and practices” added to emphasize that current real estate practices are considered appropriate to fulfill this requirement
- More details on specific requirements in AUL Guidance

# Form Clarifications

- Amendments (1082B) now include the complete list of amended AND unchanged conditions
- Terminations include description of what each form (1084B, 1084C, 1084D) is used for



# Amendments – 3<sup>rd</sup> “Whereas” clause includes changes

[WHEREAS, the undersigned Licensed Site Professional, in accordance with M.G.L. c. 21E and the MCP opines that the implementation of the following proposed changes in Site Activities and Uses at the Property will (select one)[maintain a Permanent Solution and condition of No Significant Risk][maintain a Temporary Solution and condition of No Substantial Hazard]];

**(Select as appropriate the paragraph or paragraphs that are amended from the original Notice of Activity and Use Limitation)**

**[Paragraph 1, "Activities and Uses Consistent with (select one)[Maintaining No Significant Risk] [No Substantial Hazard Conditions]", is amended to read as follows:]**

**[Paragraph 2, "Activities and Uses Inconsistent with (select one)[Maintaining No Significant Risk][No Substantial Hazard Conditions]", is amended to read as follows:]**

**[Paragraph 3, "Obligations and Conditions", is amended to read as follows:]**



# Amendments – “Now Therefore” clause includes complete list

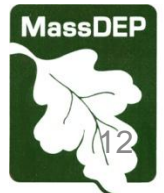
NOW THEREFORE, in accordance with M.G.L. c. 21E and the MCP, the undersigned \_\_\_\_\_, of \_\_\_\_\_ (Town/City), \_\_\_\_\_ County, \_\_\_\_\_ (State), being the owner of the Property pursuant to [a deed recorded with the \_\_\_\_\_ Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_]; [source of title other than by deed]; and/or [Certificate of Title No. \_\_\_\_\_, issued by the Land Registration Office of the \_\_\_\_\_ Registry District], hereby amends said Notice as follows:

**(In Paragraphs 4, 5 and 6, provide complete list that includes both amended conditions and conditions that remain unchanged from the original Notice of Activity and Use Limitation)**

[Paragraph 4, "Activities and Uses Consistent ... “:]

[Paragraph 5, “Activities and Uses Inconsistent ...” :]

[Paragraph 6, "Obligations and Conditions”:]



# Termination – sample of revision

Form 1084B

[CONFIRMATORY] TERMINATION OF NOTICE OF  
ACTIVITY AND USE LIMITATION

M.G.L. c. 21E, § 6 and 310 CMR 40.0000

(310 CMR 40.1083(1)(a))

Form 1084B Is Used When the Notice of Activity and  
Use Limitation Is No Longer Required to Meet the  
Requirements of 310 CMR 40.0000

# Questions?

