

Activity and Use Limitations (AULS)

Soil and groundwater contamination by oil and hazardous materials has become regulated very specifically through the Massachusetts Contingency Plan (MCP; 310 CMR 40.0000). The Massachusetts Department of Environmental Protection (MADEP) designed these regulations as the result of the initial 21E Law (Oil and Hazardous Material Release Prevention and Response Act). All investigations and remedial (cleanup) procedures are regulated by the MADEP under this program.

One method of closure, approved by the MADEP, is the Activity and Use Limitation (AUL; 310 CMR 40.1070). Through an AUL, certain levels of oil or hazardous material may be left in place in soil, even if concentrations exceed the MADEP's cleanup criteria. AULs may offer an attractive alternative to active remediation, while achieving permanent closure with the MADEP.

An AUL is a legal document that identifies site conditions and areas of contamination left in place rather than performing an active remedial project. The AUL is filed with both the MADEP and County Registry of Deeds. In general, an AUL is designed to limit certain uses and activities on a site, while contaminated soil remains in place. Common use limitations include childcare facilities, schools, residences, or other uses where a child's presence is likely.

AULs can become a practical closure alternative in several situations, including:

1. Contaminated soil left in under a building slab/foundation, where removal would entail demolishing and/or reconstruction of the building.
2. Contaminated soil adjacent to a building, where removal of the soil may affect the structural integrity of the building.
3. Financial concerns - removal of contaminated soil may prove impractical due to exorbitant costs.
4. Subsurface structures – in some cases, underground tanks or other subsurface structures will not allow removal of contaminated soil.

AULs will delineate areas of contamination on a specific site and evidence must be provided to the MADEP that a significant threat is not posed to drinking water, surface water, or human contact (commonly indoor vapor migration). Also, the initial source of contamination must be removed or managed such that contamination will not increase. The AUL will remain in place on the property deed and can be passed through real estate transactions. If soil contamination is removed from the site in accordance with applicable MADEP regulations, the AUL can be removed. Certain other specific limits do apply to AULs.