

# Findings from the AUL Audits

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For the last few years, there was a push within each region to focus audits on sites with Activity and Use Limitations (AULs). The question was raised (outside of late submittals): what are the most common AUL violations or problems that LSPs should try to avoid? Since some violations (e.g., leaving information off a form) are easier to correct than others (e.g., inadequate risk characterization), we'll list a dozen of the most common violations referenced in the last five years of Notices of Audit Findings (NOAF) from Level 3 Comprehensive Audits that included an audit of the AUL for a site. We'll note how many times these violations were referenced and the typical steps to return to compliance.

Note that the violations do not only fall within the sections of the MCP that directly address AULs. The violations may relate instead to earlier response actions during site and/or risk characterization. There are also a significant number of violations regarding notifications to public officials.

This is not a complete list, but a list of those used at least five times during the last few years. Since some of these NOAFs have more than one violation, the NOAFs were not counted per se.

Without further ado, here is the countdown to the most common violations relating to AULs:

**(12) Five incidences: 310 CMR 40.0904:** The scope and level of effort of the site characterization was neither commensurate with the complexity of the specific site nor adequate to conduct the appropriate Risk Characterization. MassDEP required submittal of a revised RAO and AUL.

**(11) Five incidences: 310 CMR 40.1012(2):** Failure to impose an AUL when required (e.g., an A-3 RAO was filed, but no AUL). Return to compliance required a revised RAO with AUL, in some cases, a revised Risk Characterization was also required.

**(10) Five incidences: 310 CMR 40.1074(2)(a)(2)(3):** Failure to include required information on location of the property, including, but not limited to, street address, description of metes and bounds subject to the AUL, survey or reference to a survey plan recorded with the appropriate registry or land court, description of parcel of land that contains the area subject to the AUL or of the restricted area. To return to compliance, MassDEP required site-specific actions to correct errors either through a corrected or revised AUL, actions to repair pavement or update the status of a Class C RAO or to submit a new RAO that no longer required an AUL to maintain No Significant Risk.

**(9) Six incidences: 310 CMR 40.1074:** Failure to meet general requirements for submitting and recording/registering information supporting a Notice of Activity and Use Limitation (e.g., AUL may not be used to limit access to and/or use of groundwater). Various steps were required to correct the site specific issues followed by termination of the existing AUL and submittal of a revised or confirmatory AUL correcting existing errors. In some instances additional sampling was also required.

**(8) Six incidences: 310 CMR 40.1403(7)(a) and (b):** Issues with either notification of public officials and/or providing said notification to MassDEP. In all cases, MassDEP required termination of the existing AUL and implementation of a new one with appropriate notifications.

**(7) Eight incidences: 310 CMR 40.1035:** Wrong class RAO applied where an AUL was required. Various site specific actions were required to correct these issues, from a revised Site or Risk Characterization and updated RAO and AUL.

**(6) Eight incidences: 310 CMR 40.0926(1):** During the Risk Characterization, failure to obtain a conservative Exposure Point Concentration to evaluate indoor air exposures. MassDEP required the EPC be properly calculated, followed by submittal of an amended AUL.

**(5) Nine incidences 310 CMR 40.1074(2)(c):** Signatory authority of person signing an AUL was not attached as an exhibit to the AUL. In these cases, MassDEP required submittal of a confirmatory AUL, with a revised Risk Characterization where necessary.

**(4) Sixteen incidences 310 CMR 40.1003(5):** Failure to document that the source area has been eliminated or controlled. In most cases, MassDEP required additional sampling or other evidence to show that this requirement was met and submittal of a confirmatory AUL.

**(3) Twenty incidences 310 CMR 40.0904(2)(a):** Failure to define nature and extent of contamination. In these cases, there are generally more questions about the validity of the RAO or the Permanent or Temporary Solution (PTS). In order to demonstrate that the requirements for the site closure were met, additional sampling was also required, followed by submittal of a revised PTS and AUL.

**(2) Twenty-three incidences 310 CMR 40.0926(3):** Failure to identify a conservative Exposure Point Concentration. Generally, additional Risk Characterization (and/or Site Characterization work) was required, followed by submittal of a revised or amended PTS and amended AUL.

**(1) Twenty-five incidences: 310 CMR 40.1004(1)(a) and (c):** And last but not least, failure to support the RAO or PTS with assessments of sufficient scope, detail and effort/commensurate with site conditions to characterize risk of harm to health, safety, public welfare and the environment. Here, again, MassDEP required site specific information be collected to demonstrate full understanding of site and risk conditions, followed by submittal of a revised RAO/PTS and AUL (if needed).

A few other violations that were noted in several times in various NOAFs included: failing to explicitly list what was or was not permitted, failing to evaluate hot spots as distinct exposure points, failing to marginally reference the Notice of AUL on the deed and failing to identify foreseeable uses, human receptors and/or exposure pathways.

But when it comes to the “most common” problems, the list is reminiscent of many of our Audit Case Studies. When site conditions aren’t fully evaluated during Phase II site and Risk Characterization then the conclusions of the RAO or PTS raise questions. Once again, it seems spending more effort evaluating and analyzing the site conditions early in the process leads to better conclusions at the end, and better AUL submittals as well.