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June 5, 2023

The Honorable Paul R. Feeney, Senate Chair
The Honorable James M. Murphy, House Chair
Joint Committee on Financial Services
State House
24 Beacon Street
Boston, MA 02133

Subject: H.1129 and S.648, An Act relative to the remediation of home heating oil releases

Dear Chair Feeney, Chair Murphy, and Members of the Joint Committee:

The LSP Association (LSPA) urges your committee's support of H.1129 and S.648, *An Act relative to the remediation of home heating oil releases*. These two identical bills address a serious consumer protection and environmental protection issue.

The LSP Association

The LSPA is the non-profit association for Licensed Site Professionals (LSPs) and related practitioners. LSPs are the scientists, engineers, and public health specialists licensed by the Commonwealth to work on behalf of property owners and other involved parties to oversee the assessment and cleanup of oil and hazardous materials released to the environment. These sites include multi-acre urban brownfields, roadside spills, "mom and pop" gas stations and dry cleaners, home heating oil spills, and everything in between.

The LSPA has approximately 800 members. Our members are consultants who work with institutional, non-profit, government, and private clients to remediate contaminated sites so these properties can be placed back into active and productive use. Together with the Massachusetts Department of Environmental Protection ("MassDEP") and the Board of Registration of Hazardous Waste Site Cleanup Professionals, LSPs are the third "arm" of an innovative, privatized program, created by the legislature in 1993. In adherence with the hazardous waste site cleanup regulations at 310 CMR 40.0000, also known as the Massachusetts Contingency Plan, LSPs have helped bring over 40,000 sites to a condition where they safely meet regulatory standards for business, commercial/retail, industrial, institutional, open space or housing.

The Problem

When there is a spill or leak of residential heating oil, an LSP is eventually and inevitably involved. Our members feel powerless when working with distraught homeowners who find themselves without coverage, despite having homeowner's insurance in place, for what they soon realize is a complex, daunting, and very expensive cleanup. These situations motivated the LSPA to become one of the lead parties in a legislative effort, beginning more than twenty years ago, to try to find a way for homeowners using oil heat to be covered by insurance coverage should their system leak or cause a spill.

In 2010, the current law, G.L. c. 175, § 4D, went into effect, requiring insurers to “make available” so-called “liquid fuel” riders to homeowners seeking environmental cleanup coverage. The legislation was a compromise between the LSPA (and others working in collaboration with us) and the insurance industry; it only required insurers to offer a fuel oil rider to those insureds who affirmatively requested it. The insurance industry insisted that this be tried as a first step, before ever considering mandatory coverage, to see if it would resolve the uninsured fuel oil problem. For those few who have requested and received coverage and then had a fuel oil spill, we are certain this law has been a lifeline. Unfortunately, the legislation did not go far enough. More than ten years later, most homeowners still do not have this liquid fuel rider. Many first learn about the availability of the rider after reporting an oil spill to their homeowners’ insurer, only to have their claim rejected, much to their surprise and detriment.

The Solution

It has become abundantly clear that additional legislation is needed to close that loophole to assure that all Massachusetts homeowners who heat with fuel oil have insurance in place to pay for the cleanup that is required by law in the event of a fuel oil release. The LSPA is promoting H.1129 and S.648 to correct the significant omission in the 2010 law—the lack of mandatory coverage—so that the law can accomplish the objective for which it was designed.

Provided below are some important facts that cannot be ignored.

- Of the approximately 650,000 Massachusetts homes heated by oil¹, the vast majority are not covered by home heating oil remediation insurance. Only approximately 64,600 homeowners² (less than 10% of all homes heated with oil) have specialized liquid fuel release coverage.
- Most of the homeowners who report heating oil spills annually (there were 93 reported incidents in 2021³) will be caught unaware. At that point, it’s too late to get coverage.
- Cleanup costs can range from \$20,000 to \$50,000 for simple releases, to more than \$500,000 or even over \$1 million for the most complex releases that impact both soil and groundwater. MassDEP has noted that for a high percentage of these residential fuel oil releases, homeowners are unable to pay for cleanups.
- The stories of uninsured homeowners who face the daunting task of cleaning up a leaking system are heartbreaking: The hardships endured, the nest egg savings spent, the college fund diminished, the retirement delayed. These weigh on all involved. Some LSPs provide a portion of their services pro bono to homeowners but that alone is not enough.
- Even though the current cost to homeowners for spill cleanup insurance is typically less than \$100 per year, most homeowners are unaware that it can be purchased. Notably, insurance companies do not actively promote it or explain its value.

¹ <https://www.mass.gov/service-details/how-massachusetts-households-heat-their-homes>

² MassDEP Aug. 16, 2022, “Report to the Joint Committee on Environment, Natural Resources and Agriculture”

³ MassDEP Aug. 16, 2022, “Report to the Joint Committee on Environment, Natural Resources and Agriculture”

- When homeowners do not have insurance coverage and cannot afford to clean up their property, contamination often remains in the environment where it can spread and impact neighboring properties, drinking water supplies, and protected ecological habitats.

Insurance coverage should be provided for homeowners who use fuel oil, just like coverage for fires or explosions in homes using electric or natural gas heating systems. That coverage is standardly included in most homeowner's policies, regardless of the energy source of the property's heating system; risks attendant to heating oil should be treated no differently. If the cost of mandatory fuel oil cleanup coverage were spread-out over all Massachusetts homeowner's policies, similar to the way the risks of gas and electric heat are handled, the incremental additional cost to homeowners would be nominal.

Legislative History

Senator Anne Gobi originally introduced this legislation during the 2017-2018 legislative session as S. 534. That bill received a favorable report from the Joint Committee on Financial Services. Senator Gobi refiled the bill in both the 2019-2020 (S. 594) and 2012-2022 (S. 676) legislative sessions; with it again receiving favorable recommendations in both sessions from the Joint Committee on Financial Services.

The Senate Committee on Ways and Means recommended S. 676 ought to pass with an amendment, substituting a new draft (S. 2821) on April 7, 2022. During debate on the bill on April 14th, Senator Gobi offered an amendment to the bill to provide an exclusion from coverage if the oil release would not have occurred but for the homeowner's failure to comply with the requirements of G.L. c. 148, § 38J (b) or (c) or any regulations promulgated pursuant to that statute. This exclusion, which would allow an insurer to deny a claim, was put forward as a major concession by the LSPA to the insurance industry, and that change is now reflected in both H.1129 and S.648.

Senator Gobi's amendment was adopted on a voice vote and the Senate engrossed the bill on a roll call vote of 39-0. It was subsequently referred to the House Committee on Ways and Means, where it stayed until the end of last session.

Conclusion

There have been many news media stories over the past few years highlighting the terrible costs, both financial and emotional, facing homeowners who find out, too late, that they are uninsured. NBC10 Boston ran [this story](#) on September 22, 2021. After extensive television and print media coverage kicked off by this [article](#), The Boston Globe published an [editorial](#) on February 26, 2022 in support of the bill. These and many other heartbreaking examples demonstrate the acute need for legislation to rectify the loophole that allows insurance companies to abandon homeowners at their greatest time of need.

The LSPA believes H.1129 and S.648 offer a simple, effective and fair way to address the economic, public health, and environmental issues that arise from an accidental release of home heating oil.

The LSPA urges the Joint Committee on Financial Services to report out favorably on H.1129 and S.648.

Respectfully,

THE LSP ASSOCIATION, INC.



Charles P. Young, LSP, President



Wendy Rundle, Executive Director