

## The Issue – Home Heating Oil Releases

March 2019

Every year in Massachusetts, according to the Massachusetts Department of Environmental Protection (“MassDEP”), there are more than one hundred heating oil releases on residential properties.<sup>1</sup> Cleanup costs for home heating oil releases can range from \$20,000 to \$50,000 for simple releases, to more than \$300,000 for complex releases that impact both soil and groundwater.<sup>2</sup>

Currently, there is no state funded cleanup mechanism in Massachusetts for residential home heating oil releases, and insurance options can be limited and confusing to homeowners. Licensed Site Professionals (“LSPs”), attorneys, MassDEP, and the LSP Association (“LSPA”) hear regularly from homeowners who are overwhelmed and desperate about how they will afford to clean up their properties to meet the environmental requirements of the Massachusetts Contingency Plan (“MCP”), MassDEP’s hazardous waste site cleanup regulations. Some homeowners have spent their retirement or children’s college savings on cleanups; others have seen their property values diminish so much so that their “nest egg” disappears. Still others have no means whatsoever to fund a cleanup. These personal stories are heartbreaking.

Since the late 1990s, homeowners’ insurers began adding pollution exclusions to their policies, precluding coverage for oil cleanup costs and resulting property damage. Obtaining cleanup cost and damages coverage even under those policies *without* pollution exclusions can be expensive, complicated, and sometimes impossible for a variety of legal and technical reasons.

To address the problem of providing financial coverage for home heating oil releases, legislation went into effect in 2010 to assist homeowners, but the LSPA believes more should be done. The 2010 legislation<sup>3</sup> (MGL c. 175, sec 4D) required homeowners’ insurers to “make ...available” so-called “liquid fuel” riders to homeowners seeking environmental cleanup coverage, as long as certain preventative upgrades to their heating systems were made and certified, and subject to a relatively small additional premium. In insurance parlance, making this coverage “available” is not the same as “offering” it to all homeowners; rather, it only requires insurers to offer a fuel oil rider to those insureds who affirmatively request it. The legislation was a compromise with the insurance industry, after it had effectively lobbied against a bill for legislation in three consecutive legislative sessions that would have mandated home heating oil release cleanup coverage. The LSPA was one of the lead parties working for the passage of this homeowner protection.

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<sup>1</sup> MassDEP “Report to the Joint Committee on Environment, Natural Resources and Agriculture”, July 16, 2018

<sup>2</sup> <http://www.mass.gov/eea/agencies/massdep/cleanup/regulations/homeowner-oil-spill-cleanupguide.html>

<sup>3</sup> <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXII/Chapter175/Section4D>

Although some homeowners have benefitted from the law, and it appears that its preventative heating system upgrade requirements may have resulted in a reduced number of home heating oil releases, the law does not go far enough for a variety of reasons.

First, as noted above, it does not require insurers actively to “offer” the coverage for an additional premium or affirmatively “provide” the rider. Consequently, many homeowners are unaware of its availability and do not request it from their insurance carriers.

Second, many homeowners who are offered the rider by those insurers actively marketing it opt not to invest in it, even though it would typically increase their annual premium by something less than \$100, presumably because they don’t appreciate the risk or don’t want to pay for system upgrades and/or additional premiums. Currently, only approximately 44,000<sup>4</sup> homeowners have purchased riders for the nearly 700,000<sup>5</sup> Massachusetts homes heated by oil.

Third, the legislation’s minimum coverage is \$50K first party (*i.e.*, property damage) and \$200K third party (*i.e.*, groundwater or off-site cleanups), which sometimes is insufficient. Meanwhile, we are observing that the trend by homeowners’ insurers to add pollution exclusions to standard policies continues. Finally, since this insurance coverage is not widespread, some insurers do not understand their legal obligations under the rider and make coverage extremely difficult for homeowners who have procured this specialized coverage and then have fuel oil releases on their properties.

### **LSPA Action**

The LSPA has authored legislation to enhance the current law by requiring that coverage be provided to homeowners and raising coverage limits to keep pace with rising remediation costs.

The LSPA’s bill is sponsored by Senator Anne Gobi of Spencer, Senate Chair, Joint Committee on Environment, Natural Resources, and Agriculture, and others.

S. 594: An Act relative to the remediation of home heating oil releases

<https://malegislature.gov/Bills/191/S594>

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<sup>4</sup> MassDEP “Report to the Joint Committee on Environment, Natural Resources and Agriculture”, July 16, 2018

<sup>5</sup> <https://www.mass.gov/service-details/how-massachusetts-households-heat-their-homes>