

May 29, 2020

The Honorable Michael J. Rodrigues, Chair
Senate Committee on Ways and Means
State House, Room 212
24 Beacon Street
Boston, MA 02133

Subject: Please support S. 594: An Act relative to the remediation of home heating oil releases. More urgent now because of Covid-19.

Dear Chairman Rodrigues:

The LSP Association (LSPA) urges your committee's support of S. 594: An Act relative to the remediation of home heating oil releases. The relief this legislation would bring to property owners is more important now than ever. The Covid-19 pandemic has exacerbated what was already a serious consumer protection and environmental protection issue. On top of the financial and logistical challenges posed by dealing with a leak or spill of oil from a residential tank, the pandemic adds another unexpected complication to the devastating experience of learning that one's homeowner's insurance does not cover cleanup costs. After providing a summary of the historical problem in this letter, we describe the experiences of two Massachusetts residents who are currently facing this situation.

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, and everything in between.

The LSPA has about 800 members, over half of whom are LSPs. 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. Along 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 42,000 sites to a condition where they safely meet

regulatory standards for business, commercial/retail, industrial, institutional, open space or housing.

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 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, M.G.L. c. 175, sec. 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, since 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, however, the legislation did not go far enough. 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 homeowner's insurer, only to have their claim rejected, much to their surprise.

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 required cleanup in the event of a fuel oil release. The LSPA is promoting S. 594 to correct the significant omission in the 2010 law, the lack of mandatory coverage, so that the legislation can accomplish the objective for which it was designed.

Provided below are some important facts that cannot be ignored.

- The percentage of homeowners with a liquid fuel rider on their homeowner's policy has steadily decreased since 2010. Of the just over 700,000 Massachusetts homes heated by oil, the vast majority are not covered by home heating oil remediation insurance. Only approximately 44,000 homeowners (6% of all homes heated with oil) have specialized liquid fuel release coverage.
- Most of the homeowners who report heating oil spills annually (there were 104 reported incidents in 2018) 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 fuel oil releases, to more than \$300,000 for complex releases that impact both soil and groundwater. MassDEP has noted that a high percentage of residential property owners who have fuel oil releases 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 well under \$100 per year, most homeowners are unaware that it can be purchased. Insurance companies do not actively promote it or explain its value.
- 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 costs to insurers, which would likely be passed on to homeowners, would be nominal.

We are writing this letter during the Covid-19 unprecedented global health crisis. We are dismayed (but not surprised) to learn that this pandemic has added yet another layer of anxiety to the challenging and upsetting experience of having a leaking home heating oil tank, then learning that one's homeowner's insurance does not cover cleanup costs. We recently learned of two Massachusetts residents who are currently facing this situation.

Teresa Maslon, a Palmer homeowner, had a leak in her 275-gallon above-ground oil heating tank in November 2019. It is estimated that 130 gallons of oil seeped through a hole in the basement's concrete floor, impacting soil under the floor. Although she had homeowner's insurance, her insurer refused to pay for the MassDEP-required assessment and remediation. Her center unit of a fourplex still smells of oil, but she cannot move out of her home due to both the expense and now, constraints related to Covid-19. Ms. Maslon has indicated that she will likely file for financial inability with MassDEP because, without insurance, she cannot afford to pay for a contractor to do the necessary and required cleanup work. Although that would suspend regulatory deadlines, it will do nothing whatsoever to enable remediation to proceed, leaving her with a severely compromised home. The initial assessment work in situations like this can cost from \$8,000 to \$11,000.

In April 2020, an older couple, while away for a morning from their Bellingham home, learned from the local Fire Department of a release of a large volume of home heating oil from their basement 275 gallon oil tank. When the Fire Department and a family member visited the property, they saw that the recently filled fuel oil tank was empty. When called to the property, MassDEP personnel and a contractor confirmed there was oil in the basement which flowed

outside from a basement perimeter floor trench. Oil was also present on the sidewalk outside the house, in the roadway, and in a storm drain that discharges to the Charles River. The town deployed sand in the roadway and an absorbent boom across the river to contain an oil sheen. The elderly couple's insurer told them there is no coverage for cleanup costs, even though the oil clearly had migrated off-site. Since the release occurred, the homeowners are now living with relatives and considering how to pay for cleanup expenses. Cleanup costs in situations like this can range from \$50,000 to over \$100,000.

These and many other heartbreaking examples demonstrate the acute need for legislation to rectify the loophole that allows insurance companies to walk away from their customers at their greatest time of need, especially during this public health and safety crisis. We would appreciate the opportunity to meet with you and your staff, by videoconference, to further discuss the dire situation that dozens of Massachusetts homeowners face annually.

The LSPA is grateful to Senator Anne Gobi, Senate Chair of the Joint Committee on Environment, Natural Resources, and Agriculture, for introducing S. 594. We are also very appreciative of the efforts of Senator Welch, Senate Chair of the Joint Committee on Financial Services, whose committee moved this bill forward earlier this year. We hope you will agree with them that the bill is a logical, simple, and fair way to address the economic, public health, and environmental issues at hand.

The LSPA urges you to report out favorably on S. 594. The Covid-19 pandemic makes this legislation more important than ever. Please don't hesitate to contact us for additional information.

Respectfully,
The LSP Association



Michele Paul, LSP
President



Wendy Rundle
Executive Director

Cc:
Senator Karen Spilka
Senator Anne Gobi
Senator James Welch
Senator James Eldridge