

It's Time to Reevaluate the Uninsured Home Heating Oil Release Problem

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In 2000, a group of concerned environmental consultants, attorneys and other professionals came together to study the growing problem of uninsured home heating oil releases due to the increasing prevalence of pollution exclusions in homeowners policies. After the insurance industry flatly rejected mandatory insurance coverage for oil releases, a compromise was reached. In 2009, legislation was enacted requiring homeowner insurance companies doing business in Massachusetts to "make available" insurance coverage for home heating oil releases from above-ground storage tanks with certified release prevention upgrades.

The legislation, which finally took effect in 2010, was intended to accomplish two key goals:

- 1) Prevent many oil releases by encouraging homeowners to make fairly inexpensive upgrades to older, previously grandfathered home heating oil systems by installing either an oil safety valve or a protective sleeve on oil supply lines (<http://www.mass.gov/eea/agencies/massdep/cleanup/regulations/homeowner-oil-heating-system-upgrade-and-insurance-law.html>); and
- 2) Provide homeowners with the opportunity to purchase affordable insurance riders to cover response costs, property damage, and third party liability for heating oil releases.

The legislation has had the intended positive effects, at least for some homeowners. Upgrades have been made on some systems, which presumably have reduced the number of releases. Some fuel oil riders have been purchased, and at least one insurer has added home heating oil release coverage to its policies without a rider and at no extra cost.

The unfortunate reality, however, is that four years after the legislation took effect, homeowners' LSPs and lawyers are still encountering far too many uninsured home heating oil AST releases. LSPs who regularly work in the residential market report that the number of covered losses for fuel oil releases may have actually decreased since the legislation. Lawyers for homeowners are finding that the insurance industry continues to add pollution exclusions to both first and third party policies, which preclude all coverage for oil releases absent a liquid fuel oil endorsement.

The lack of insurance coverage comes as a nasty surprise to impacted homeowners. When they cannot fund the cleanup of fuel oil releases on their property, the occupants' health and safety can be at risk. The property value can be significantly diminished, and a homeowner's ability to mortgage or sell can be seriously compromised.

The source of the problem? Information has not been widely disseminated among the general public that "liquid fuel oil" riders are available for a small surcharge, and insurers and their agents have no legal obligation to inform homeowners about these riders. Additionally, most homeowners are unaware of the potential risks of oil releases, their costly consequences, and how simple upgrades to their systems, now required under the 2009 legislation, can prevent many releases from ever happening.

It may be time to evaluate whether further action should be taken to assist homeowners. We are

encouraging the LSPA's Legislative Outreach Subcommittee to consider studying the uninsured home heating oil issue and make recommendations. There are many possible actions, but here are few ideas that could be considered:

- Propose a relatively minor legislative change requiring homeowner insurers in Massachusetts to notify their insureds of the availability of liquid fuel riders for all homeowners whose oil ASTs have been upgraded and certified.
- Propose mandatory home heating oil coverage for certified tanks, with an opt-out election by homeowners who choose not to pay the liquid fuel rider surcharge or to have their systems upgraded and certified.
- Engage in a public education and outreach campaign.
- Establish a 21J-like fund for home heating oil cleanups.

If you would be interested in working with the LSPA's Legislative Outreach Subcommittee on this issue, please contact Subcommittee Co-Chairs:

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