

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Patrick M. O'Connor

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the board of registration of hazardous waste site cleanup professionals.

PETITION OF:

NAME:

Patrick M. O'Connor

DISTRICT/ADDRESS:

Plymouth and Norfolk

SENATE No.

[Pin Slip]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3873 OF 2019-2020.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to the board of registration of hazardous waste site cleanup professionals.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 21A of the General Laws is hereby amended by striking out section
2 19A and inserting in place thereof the following section:-

3 Section 19A. There is hereby established within the executive office of environmental
4 affairs the board of registration of hazardous waste site cleanup professionals. The board shall
5 consist of 11 members.

6 One member, who shall be the chairman of the board, shall be the commissioner of the
7 department or a designee; provided, that said designee shall be a full-time employee of the
8 department at all times while he or she is so designated. The designee shall have legal
9 experience serving in an administrative judiciary role or with the environmental crimes strike
10 force within the office of the attorney general.

11 The governor shall appoint 10 members of the board:

12 Three of whom shall be hazardous waste site cleanup professionals licensed by the board
13 at all times while they are members of the board effective consistent with the current board
14 administration: 1 of whom shall be a hydrogeologist; 1 of whom shall be a professional civil
15 engineer licensed by and practicing in the commonwealth with experience as a hazardous waste
16 site cleanup professional; and 1 of whom shall be a hazardous waste site cleanup professional
17 with extensive experience in the petroleum underground storage tank and distribution industry,
18 including residential homes. The members appointed pursuant to this paragraph shall have
19 significant experience in the assessment or redemption of sites contaminated with petroleum and
20 hazardous materials;

21 One of whom shall be a citizen of the commonwealth who owns or has owned a single
22 family residence heated by petroleum;

23 One of whom shall be a representative of a non-profit public interest environmental
24 organization that promotes the protection of the environment;

25 One of whom shall be a licensed construction supervisor and a representative of the
26 homebuilding industry;

27 One of whom shall be a banking official active in providing mortgage loans to for
28 residential and commercial real estate in the commonwealth, including a full-time environmental
29 due diligence officer employed by a Massachusetts bank;

30 One of whom shall be an active member of the bar of this commonwealth with
31 experience in real estate or environmental compliance;

32 One of whom shall be an active member of a municipal fire department who serves as a
33 capacity of fire chief or in an office of fire prevention and has participated in the removal and
34 replacement of underground storage tanks at residential and commercial real estate properties;
35 and

36 One of whom shall be a full-time employee of the bureau of waste site cleanup in the
37 department of environmental protection with experience investigating sites.

38 The governor shall appoint an alternate hazardous waste site cleanup professional to
39 serve as an alternate in the case of the resignation of a hazardous waste site cleanup professional
40 member to ensure 3 active hazardous waste site cleanup professionals serve the board. The
41 alternate shall serve in the absence of a hazardous waste site cleanup professional member to
42 ensure 3 hazardous waste site cleanup professional members serve the board.

43 The members of the board and the alternate appointed by the governor shall serve without
44 compensation. No member of the board shall serve for more than 1 4-year term; provided,
45 however, that a member may also serve as an alternate or for 1 partial term. . After the
46 expiration of such term, the alternate shall be appointed to as 1 of the hazardous waste site
47 cleanup professional members. A member of the board appointed by the governor whose term
48 has expired shall continue to be a member of the board until his or her successor is appointed and
49 qualified, at which time the successor shall complete the unexpired portion of the term.

50 Subject to appropriation, the secretary of the executive office of environmental affairs
51 shall employ such staff and other persons as are required to assist the secretary or the board, or
52 both, in the performance of their functions or duties pursuant to sections 19J, including, without
53 limitation, administrative law judges who may conduct adjudicatory proceedings held pursuant

54 to sections 19 to 19J, inclusive; provided, that the board shall make all final decisions in such
55 adjudicatory proceedings.

56 SECTION 2. The governor shall remove all members of the board of registration of
57 hazardous waste site cleanup professionals, except 3 hazardous waste site cleanup professional
58 members, and appoint members with the qualifications described in section 1; provided,
59 however, that the current chair of the board shall remain in such position at the chair's discretion
60 for a period not to exceed 3 years; and provided, further that at the commissioner's discretion,
61 the commissioner may appoint a chair with the qualifications described in section 1 to serve as
62 co-chair with the chair holding such position on the effective date of this act.

63 SECTION 3. This act shall take effect 6 months after its passage.

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

David F. DeCoste

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the board of registration of hazardous waste site cleanup professionals.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>David F. DeCoste</i>	<i>5th Plymouth</i>	<i>2/4/2021</i>
<i>Joesph Polsinello</i>	<i>51 Mill Street Unit 7 Hanover, MA 02339</i>	<i>2/4/2021</i>
<i>Max Wilensky</i>	<i>51 Mill Street Unit 7 Hanover, MA 02339</i>	<i>2/16/2021</i>
<i>Mark Hovis</i>	<i>51 Mill Street Unit 7 Hanover, MA 02339</i>	<i>2/16/2021</i>
<i>Teresa Coston</i>	<i>9 Stow Road Mattapan, MA</i>	<i>2/16/2021</i>
<i>James Coston</i>	<i>9 Stow Road Mattapan, MA</i>	<i>2/16/2021</i>
<i>Dominic Galluzzo</i>	<i>5 Della Way East Bridgewater, MA 02333</i>	<i>2/16/2021</i>

HOUSE No.

[Pin Slip]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3873 OF 2019-2020.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to the board of registration of hazardous waste site cleanup professionals.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 21A of the General Laws is hereby amended by striking out section
2 19A and inserting in place thereof the following section:-

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4 affairs the board of registration of hazardous waste site cleanup professionals. The board shall
5 consist of 11 members.

6 One member, who shall be the chairman of the board, shall be the commissioner of the
7 department or a designee; provided, that said designee shall be a full-time employee of the
8 department at all times while he or she is so designated. The designee shall have legal
9 experience serving in an administrative judiciary role or with the environmental crimes strike
10 force within the office of the attorney general.

11 The governor shall appoint 10 members of the board:

12 Three of whom shall be hazardous waste site cleanup professionals licensed by the board
13 at all times while they are members of the board effective consistent with the current board
14 administration: 1 of whom shall be a hydrogeologist; 1 of whom shall be a professional civil
15 engineer licensed by and practicing in the commonwealth with experience as a hazardous waste
16 site cleanup professional; and 1 of whom shall be a hazardous waste site cleanup professional
17 with extensive experience in the petroleum underground storage tank and distribution industry,
18 including residential homes. The members appointed pursuant to this paragraph shall have
19 significant experience in the assessment or redemption of sites contaminated with petroleum and
20 hazardous materials;

21 One of whom shall be a citizen of the commonwealth who owns or has owned a single
22 family residence heated by petroleum;

23 One of whom shall be a representative of a non-profit public interest environmental
24 organization that promotes the protection of the environment;

25 One of whom shall be a licensed construction supervisor and a representative of the
26 homebuilding industry;

27 One of whom shall be a banking official active in providing mortgage loans to for
28 residential and commercial real estate in the commonwealth, including a full-time environmental
29 due diligence officer employed by a Massachusetts bank;

30 One of whom shall be an active member of the bar of this commonwealth with
31 experience in real estate or environmental compliance;

32 One of whom shall be an active member of a municipal fire department who serves as a
33 capacity of fire chief or in an office of fire prevention and has participated in the removal and
34 replacement of underground storage tanks at residential and commercial real estate properties;
35 and

36 One of whom shall be a full-time employee of the bureau of waste site cleanup in the
37 department of environmental protection with experience investigating sites.

38 The governor shall appoint an alternate hazardous waste site cleanup professional to
39 serve as an alternate in the case of the resignation of a hazardous waste site cleanup professional
40 member to ensure 3 active hazardous waste site cleanup professionals serve the board. The
41 alternate shall serve in the absence of a hazardous waste site cleanup professional member to
42 ensure 3 hazardous waste site cleanup professional members serve the board.

43 The members of the board and the alternate appointed by the governor shall serve without
44 compensation. No member of the board shall serve for more than 1 4-year term; provided,
45 however, that a member may also serve as an alternate or for 1 partial term. . After the
46 expiration of such term, the alternate shall be appointed to as 1 of the hazardous waste site
47 cleanup professional members. A member of the board appointed by the governor whose term
48 has expired shall continue to be a member of the board until his or her successor is appointed and
49 qualified, at which time the successor shall complete the unexpired portion of the term.

50 Subject to appropriation, the secretary of the executive office of environmental affairs
51 shall employ such staff and other persons as are required to assist the secretary or the board, or
52 both, in the performance of their functions or duties pursuant to sections 19J, including, without
53 limitation, administrative law judges who may conduct adjudicatory proceedings held pursuant

54 to sections 19 to 19J, inclusive; provided, that the board shall make all final decisions in such
55 adjudicatory proceedings.

56 SECTION 2. The governor shall remove all members of the board of registration of
57 hazardous waste site cleanup professionals, except 3 hazardous waste site cleanup professional
58 members, and appoint members with the qualifications described in section 1; provided,
59 however, that the current chair of the board shall remain in such position at the chair's discretion
60 for a period not to exceed 3 years; and provided, further that at the commissioner's discretion,
61 the commissioner may appoint a chair with the qualifications described in section 1 to serve as
62 co-chair with the chair holding such position on the effective date of this act.

63 SECTION 3. This act shall take effect 6 months after its passage.

October 15, 2019

The Honorable Anne Gobi, Senate Chair
The Honorable Smitty Pignatelli, House Chair
Joint Committee on Environment, Natural Resources, and Agriculture
State House
Boston, MA 02133

Re: **Opposition to H. 3873**

An Act relative to the board of registration of hazardous waste site cleanup professionals

Dear Chairwoman Gobi, Chairman Pignatelli, and Members of the Committee:

The LSP Association (LSPA) is writing to express its opposition to H. 3873, *An Act relative to the board of registration of hazardous waste site cleanup professionals*.

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, operators, and other involved parties to oversee the assessment and cleanup of oil and hazardous materials released to the environment.

The LSPA has about 800 members, over half of whom are LSPs. Our members are consultants who work with government, non-profit, institutional, and private clients to remediate contaminated sites, so that these properties can be placed back into active and productive use. Along with the Massachusetts Department of Environmental Protection and the Board of Registration of Hazardous Waste Site Cleanup Professionals, commonly referred to as the LSP Board of Registration or the LSP Board, LSPs are the third “arm” of an innovative, privatized program created in 1993. LSPs have since helped bring over 42,000 sites to a condition where they meet regulatory standards for a variety of uses, including business, commercial/retail, industrial, institutional, open space, and housing.

H. 3873 proposes to change the composition of the current 11-member LSP Board of Registration that is under the jurisdiction of the MA Executive Office of Energy and Environmental Affairs (EOEEA). This bill would:

- Reduce from five to three the number of LSPs on the Board.
- Reduce from three to one the representatives of a “non-profit public interest environmental organization that promotes the protection of the environment.”
- Eliminate two current LSP Board seats: a hydrogeologist who is knowledgeable with respect to issues involving responding to releases of oil and hazardous materials and

environmental protection; and a member of a labor organization who is knowledgeable with respect to issues involving responding to releases of oil and hazardous materials.

These six seats are proposed to be filled by:

- A MA citizen who owns or has owned a single-family residence heated by petroleum.
- A “licensed construction supervisor and a representative of the homebuilding industry.”
- A banking official active in providing mortgage loans..., including a full-time environmental due diligence officer employed by a Massachusetts bank.”
- An active member of the MA Bar “with experience in real estate or environmental compliance.”
- “An active member of a municipal fire department...[who] has participated in the removal and replacement of underground storage tanks.”
- A full-time employee of MassDEP with experience investigating sites.

The LSPA is concerned that the proposed composition of the Board would result in problematic decisions in the licensing and disciplinary areas, due to its composition and the lack of expertise of some of its members in the technical specialty of hazardous waste site cleanup.

The prospect of such a Board is alarming. LSPs and other professionals on the LSP Board rely on their technical expertise and experience to interpret what is considered an appropriate standard of care for conducting the highly technical and extremely complex work conducted by this profession, which requires a thorough understanding of the Massachusetts Contingency Plan. (The MCP is the detailed set of regulations at 310 CMR 40.0000 to which all LSPs must adhere as they assess and remediate sites.)

A single-family homeowner who heats with petroleum is very unlikely to be qualified to interpret the MCP. Neither a licensed construction supervisor/representative of the homebuilding industry nor a banking official is likely to have a sufficient depth of knowledge about the work of LSPs or knowledge of the MCP. It is unclear how such qualifications would augment the work of the LSP Board.

The other proposed seats (attorney, firefighter, MassDEP employee) are perhaps more connected to the work of the LSP Board and might provide some expertise, but not necessarily more than that of an LSP or a member of an environmental organization with expertise in hazardous waste site cleanup.

Reducing the number of LSPs on the Board (where they are already in the minority) would significantly reduce the Board’s level of technical expertise. Moreover, the requirement that one of the LSPs be a civil engineer is arbitrary; many LSPs with experience in hazardous waste site cleanup are engineers with an environmental, chemical, and other specialty.

Reducing the number of representatives of environmental organizations on the Board would weaken the credibility and a central tenet of the privatized hazardous waste site cleanup program - that the Board be a diverse body representing the public interest and the environment.

H. 3873 also proposes that the LSP Board be under the jurisdiction of EOEEA with members appointed by the Governor, as is the case with the current LSP Board. The Chair of the current Board is the Commissioner of MassDEP or a designee. H. 3873 proposes that, in addition to being the "...commissioner of the department or a designee...", the Board Chair "...shall have legal experience serving in an administrative judiciary role or with the environmental crimes strike force within the office of the attorney general." These are more specific qualifications than are currently required by statute and they significantly limit the pool of qualified professionals. The LSPA has confidence that, without these proposed specifics, the MassDEP Commissioner and EOEEA will appoint a well-qualified professional to chair the Board, and therefore there is no need for changes to the statute in this area.

Lastly, H. 3873 proposes that, essentially, Board members not be allowed to serve more than one 4-year term. While we believe that term limits have value, limiting to one 4-year term is shortsighted and unwise, especially without staggering of terms.


Overall, it is our strong opinion that this bill would not result in a more effective or efficient LSP Board. Nor will the proposed changes to the LSP Board better serve consumers or protect the environment. The LSPA strongly urges the committee to give H. 3873 an adverse report.

Please do not hesitate to contact us for further information.

Respectfully,
The LSP Association



Michele Paul, LSP
President



Wendy Rundle
Executive Director

Cc:
Millie Garcia-Serrano, Chair, LSP Board of Registration
Beverly Coles-Roby, Executive Director, LSP Board of Registration
Commissioner Suuberg, MassDEP

Part I	ADMINISTRATION OF THE GOVERNMENT
Title II	EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE COMMONWEALTH
Chapter 21A	EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
Section 19A	BOARD OF REGISTRATION OF HAZARDOUS WASTE SITE CLEANUP PROFESSIONALS

Section 19A. There is hereby established within the executive office of environmental affairs the board of registration of hazardous waste site cleanup professionals. The board shall consist of eleven members. One member, who shall be the chairman of the board, shall be the commissioner of the department or his designee; provided, that said designee shall be a full-time employee of the department at all times while he is so designated. The governor shall appoint the other ten members of the board, who shall be the following: five shall be hazardous waste site cleanup professionals licensed by the board at all times while they are members of the board effective one year after the date of publication in the Massachusetts Register of the first regulations promulgated pursuant to section nineteen B; provided, however, one such licensed hazardous waste site cleanup professional shall be a full-time employee of a manufacturing firm engaged in the utilization of hazardous materials and one other such licensed hazardous waste site cleanup professional shall have significant experience in the assessment or redemption of sites contaminated with petroleum; three shall be members of statewide organizations that promote the protection of the environment at the time of appointments and who are knowledgeable with respect to issues involving responding to releases of oil and hazardous materials; one shall be a member of a labor organization who is knowledgeable with respect to issues involving responding to releases of oil and hazardous materials; and one shall be a hydrogeologist who is knowledgeable with respect to issues involving responding to releases of oil and hazardous materials and environmental protection. Until one year after the date of publication in the Massachusetts Register of the first regulations promulgated pursuant to section nineteen B, five environmental professionals who have knowledge and experience, and are presently engaged, in responding to releases of oil and hazardous materials shall serve in place of the five licensed hazardous waste site cleanup professionals; provided, however, that one such

environmental professional shall be a full-time employee of a manufacturing firm engaged in the utilization of hazardous materials, and one other such environmental professional shall be a full-time employee of a firm engaged in the manufacturing and processing of petroleum products. The terms of the ten members of the board initially appointed by the governor shall expire one year after the date of publication in the Massachusetts Register of the first regulations promulgated pursuant to section nineteen B. The governor shall thereupon appoint two licensed hazardous waste site cleanup professionals to a one-year term beginning one year after the date of publication in the Massachusetts Register of the first regulations promulgated pursuant to section nineteen B, one licensed hazardous waste site cleanup professional to a two-year term beginning on said date, one licensed hazardous waste site cleanup professional to a three-year term beginning on said date; and one licensed hazardous waste site cleanup professional to a four-year term beginning on said date; one member from a statewide organization that promotes the protection of the environment to a two-year term beginning on said date, a member from a statewide organization that promotes the protection of the environment to a three-year term beginning on said date, and a member from a statewide organization that promotes the protection of the environment to a four-year term beginning on said date, the representative from the labor organization to a three-year term beginning on said date and the hydrogeologist to a four-year term.

Thereafter, the term of the ten members of the board appointed by the governor shall be four years. Each of the ten members of the board appointed by the governor whose term has expired shall continue to be members of the board until his successor is appointed and qualified, at which time the successor shall complete the unexpired portion of the term. The ten members of the board appointed by the governor shall serve without compensation.

Subject to appropriation, the secretary of the executive office of environmental affairs shall employ such staff and other persons as are required to assist him or the board or both in the performance of their functions or duties pursuant to sections nineteen through nineteen J, inclusive, including, without limitation, administrative law judges who may conduct adjudicatory proceedings held pursuant to sections nineteen through nineteen J, inclusive; provided, that the board shall make all final decisions in such adjudicatory proceedings.

Biographies of Licensed Site Professional Board members November 2019

Read the biographies of a Licensed Site Professional Board member

Millie Garcia-Serrano, MPH, LSP Board Chairperson

Ms. Garcia-Serrano has over thirty years of demonstrated public and private sector experience focused on human health/environmental risk assessment and brownfields redevelopment. From 1987 until 1997, she worked as a senior risk assessor and environmental consultant in the United States and abroad. Ms. Garcia-Serrano was appointed Regional Director of the Massachusetts Department of Environmental Protection's Southeast Regional Office in 2015, after serving as Deputy Regional Director for the Bureau of Waste Site Cleanup from 1998 to 2015. As Regional Director, she is responsible for managing day-to-day operations and overseeing the work of engineers, scientists, planners, information technology professionals and program support staff to ensure optimal service delivery to the region's cities and towns, including pre-permitting, regulatory compliance assistance, enforcement program management, and municipal partnering and outreach. Ms. Garcia-Serrano also supports a number of key MassDEP programs including Drinking Water; Wastewater; Wetlands and Waterways; Air Quality; Asbestos; Compliance and Enforcement; Solid Waste; Brownfields; Emergency Response; chapter 21E; federal site ("CERCLA") cleanup; and Massachusetts Environmental Policy Act. She serves on the Association of States and Territorial Solid Waste Management Officials Board of Directors; the Association for Environmental Health and Sciences Foundation's Scientific Advisory Board; and the New England Waste Management Officials Association. Ms. Garcia-Serrano is also a member of the Licensed Site Professional Association. A native of San Juan, Puerto Rico, she earned a Bachelor of Science in Biology from the University of South Alabama, and a Master of Public Health from Boston University's School of Medicine.

David Austin, LSP Petroleum Board Member

Mr. Austin was appointed to the Board on June 20, 2013. He has been a LSP since 1994. Mr. Austin has over 25 years of extensive experience in the environmental consulting business, specifically, managing assessment and remediation of contaminated sites, many of them related to petroleum, primarily in Massachusetts, Connecticut, and elsewhere in the United States. He also has close ties to the LSP professional association, the LSPA, as a member of its Technical Practices Committee. He is currently employed at AECOM in Chelmsford, Massachusetts.

Gail Batchelder, Hydrogeologist Board Member

Dr. Batchelder was appointed to the Board on July 3, 1997. She has more than 25 years experience in investigating and remediating soil, ground water, and soil vapor at contaminated properties. As a hydrogeologist and geochemist, her professional activities have focused on identifying and delineating the nature and extent of contamination, developing site-specific conceptual models of contaminant fate and transport, and developing solutions that best meet project objectives. Her field of knowledge covers a vast array of contaminants, environmental media and hydrogeologic settings. She is employed by HRP Associates, Inc. in Farmington, Connecticut.

Gregg McBride

Mr. McBride is a Senior Principal with GZA GeoEnvironmental, Inc. He has been a LSP since 1997, and has more than thirty years of experience as an environmental scientist specializing in the impact of contaminants in the environment. In his work with industrial and power clients, Mr. McBride has directed projects in ecological and public health risk assessment, regulatory compliance, permitting and environmental investigations of subsurface soil, groundwater and surface water. He has also developed a number of clean-up strategies for large brownfield projects in Massachusetts which involved multi-faceted efforts where investigations, risk assessment and risk management decisions are made across state and federal regulatory programs. Prior to his association with GZA, Mr. McBride was with the USEPA Health Effects Research Laboratory and Stone & Webster Engineering Corporation (1980-1987) where he was responsible for public health impact assessments for utility and process industry development. Mr. McBride has also served in local government as a Conservation Commissioner for eighteen years and has been a Selectman in the Town of Norwell, Massachusetts for seven years.

Kathleen Campbell, LSP Board Member

Ms. Campbell was appointed to the Board on October 18, 2013. She has been a licensed LSP since July 1996 and is also a Registered Professional Engineer and LEED Accredited Professional. Her field of expertise is the assessment and remediation of small to large-scale Brownfields sites to bring them back to productive re-use. With over twenty-five years of experience, Ms. Campbell also has diverse experience in environmental compliance audits, hazardous building materials investigations, feasibility studies, conceptual site modeling, risk-based site remediation, wastewater treatment, and environmental permitting. She is President at CDW Consultants, Inc. in Natick, Massachusetts.

Kirk Franklin, Environmental Protection Board Member

Mr. Franklin was appointed to the Board on December 15, 1999. He is a principal at his firm Frank Corp. Environmental Service in New Bedford, Massachusetts. Frank Corp. is a United States government contractor in New Bedford, as well as Bristol, Massachusetts, and is part of the Environmental and Ecological Services industry.

Debra Listernick, Environmental Protection Board Member

Ms. Listernick was appointed to the Board on April 21, 2011. She has specialized in risk assessment for over twenty-five years. She has served as project manager for Massachusetts Contingency Plan and United States Environmental Protection Agency Superfund human health and ecological risk assessments. Ms. Listernick has been employed by O'Reilly, Talbot & Okun Associates Inc, since 1996, providing risk assessment services to environmental consulting and engineering firms throughout New England. Her office is located in Westborough, Massachusetts.

Farooq Siddique, LSP Board Member

Mr. Siddique, a LSP, was appointed to the LSP Board on April 21, 2011. He has more than twenty years of experience in environmental engineering, civil engineering and hazardous materials studies. He also has experience with assessment and remediation of Brownfields. In particular, Mr. Siddique was the LSP of record for remediation of an industrial parcel of land in the city of Boston. Moreover, he has performed hundreds of subsurface investigations and environmental assessments. He is a principal at his firm, FS Engineers, Inc. in Acton, Massachusetts.

James N. Smith, Labor Organization Board Member

Mr. Smith was appointed to the Board on September 6, 2013. After ten years of performing assessment and cleanup of contaminated sites under the Massachusetts Contingency Plan as a consultant, he joined the City of Boston Department of Neighborhood Development in 2011, as Senior Environmental Compliance Manager. In this role, he assesses and oversees remediation of Brownfields sites acquired by the city of Boston with the goal of bringing the sites back to productive use. He also oversees Massachusetts Contingency Plan compliance issues for the City. Mr. Smith is a member of the Service Employees International Union Local 888. His office is located in downtown Boston.

Marc J. Richards

Mr. Richards is a Vice President at Tighe & Bond and is the firm's practice leader for environmental services throughout New England. He has been a licensed LSP since 2003. Mr. Richards has more than twenty years of experience managing projects related to brownfield development, environmental assessment and cleanup, building deconstruction/demolition, and construction management. He currently provides integrated services for complex environmental construction projects that involve environmental permitting, LSP/MCP services, site cleanup, both above and below ground, and construction phase services. His expertise also includes assessment and cleanup of polychlorinated biphenyl ("PCB") sites, managing PCB issues located within building materials, assessing and mitigating vapor intrusion issues, historic/urban fill soils management, asbestos-in-soils, and in-situ remediation. Mr. Richards is also a licensed professional engineer in both Massachusetts and New Hampshire.

SENATE No. 594

By Ms. Gobi, a petition (accompanied by bill, Senate, No. 594) of Anne M. Gobi, Jason M. Lewis, Barry R. Finegold, Bruce E. Tarr and other members of the Senate for legislation relative to the remediation of home heating oil releases. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 534 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 175 of the General Laws, as appearing in the 2016 Official
2 Edition, is hereby amended by striking out Section 4D and inserting in place thereof the
3 following section:—

4 Section 4D. (a) As used in this section, unless the context clearly requires otherwise,
5 "residential property" shall mean a 1 to 4-unit dwelling used for living or sleeping and "liquid
6 fuel tank" shall mean a tank in which heating oil is stored and from which heating oil is delivered
7 or pumped through a fuel supply line to an oil burner, whether located within a dwelling or other
8 structure, including tanks installed at or below grade level, or located outdoors but excluding
9 underground tanks wherever located.

10 (b) The joint underwriting association, formed pursuant to chapter 175C, and each insurer
11 licensed to write and engaged in the writing of homeowners' insurance shall provide the
12 following coverage to residential owners to whom a homeowners' insurance policy is issued or
13 renewed: (1) first party property coverage for response action costs incurred under chapters 21E
14 or 21K, or regulations promulgated pursuant thereto and property damage on the insured's
15 property caused by or in response to a release of heating oil from a residential liquid fuel tank or
16 any piping, fuel supply lines, equipment or systems connected thereto; and (2) liability coverage
17 for third party claims arising out of a release of heating oil into the environment. Minimum
18 coverage of \$75,000 per occurrence for first party property subject to a reasonable deductible not
19 to exceed \$1,000 per claim and minimum coverage of \$250,000 per occurrence for third party
20 liability shall be provided. For the purposes of this section, first party property coverage shall
21 include response action costs incurred to assess and remediate a heating oil release impacting
22 soil, indoor air or other environmental media on the insured's property. Third party liability
23 coverage shall include the obligation to defend the insured at the insurer's expense against third
24 party claims, and such defense obligation shall include coverage for costs incurred to investigate
25 the source and extent of the release of heating oil. Damages covered under third party liability
26 coverage shall include response action costs incurred to address conditions on and off the
27 insured's property arising from a heating oil release on the insured's property that has impacted or
28 is likely to impact groundwater or has migrated to, or is likely to migrate to, a third party's
29 property. First party and third party liability coverage shall apply simultaneously and, in addition
30 to, one another when both coverages are applicable.

31 SECTION 2. This act shall take effect on January 1, 2020.

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

Some Facts About Home Heating Oil and Insurance in Massachusetts

1. There are just over 700,000¹ Massachusetts homes heated by oil and most of those home heating oil users are not covered by insurance, due to a flaw in the existing law.
2. Only approximately 44,000² homeowners (6%) of all homes heated with oil have specialized liquid fuel release insurance riders.
3. MassDEP noted that there were 117 residential home heating oil spills reported in Massachusetts in 2017.³
4. Insurance options for releases from home heating oil tanks are limited and confusing. Current law requires insurers to “**make ... available**” insurance for heating oil releases but does not require insurers to inform homeowners that the coverage may be purchased. If a homeowner asks for coverage it must be offered, and then the homeowner must opt in.
5. The current annual cost to a homeowner for oil spill cleanup insurance is under \$100 per year.
6. Cleanup costs can range from \$20,000 to \$50,000 for simple oil releases, to more than \$300,000 for complex releases that impact both soil and groundwater.⁴

What Can We Do To Fix This Ineffective Law?

One small change will fix the current law. The LSPA (www.lspa.org) has drafted legislation to enhance the current law by **requiring** that coverage automatically be provided to all homeowners and raising coverage limits to keep pace with rising cleanup costs.

Senator Anne Gobi (D-Spencer) and others are sponsoring [Senate Bill #594](#). This legislation will work to help prevent homeowners from going bankrupt or funding environmental cleanups with their retirement funds, children’s college funds, or all of their life’s savings.

For more information go to www.lspa.org or contact us at info@lspa.org. Let us know if you would like to be added to our contact list for updates on this bill.

Homeowner Resources

- Get an inspection from your oil company; ask about the most up-to-date equipment for your home.
- Request that your insurance company provide a rider for coverage of fuel oil releases.
- Check out MassDEP’s database of waste sites [here](#).

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

² MassDEP July 16, 2018 “Report to the Joint Committee on Environment, Natural Resources and Agriculture”

² MassDEP July 16, 2018 “Report to the Joint Committee on Environment, Natural Resources and Agriculture”

⁴ <http://www.mass.gov/eea/agencies/massdep/cleanup/regulations/homeowner-oil-spill-cleanup-guide.html>

Two Cases of Home Heating Oil Releases, Cleanup Actions, and Costs

Provided below are two recent examples of the extent of cleanups and costs: one owner did not have cleanup insurance; the other one had it in place after actively requesting it from their insurer.



Case Study 1: Release of 240 gallons of fuel oil from outdoor tank. Cleanup of soil and groundwater resulted in more than \$300,000 in cleanup costs. The homeowner does not have insurance coverage for this release.



Case Study 2: Release of 150 gallons of heating oil to earthen crawl space beneath home on Cape Cod. The resulting cleanup costs for contaminated soil removal, groundwater treatment, and moving the home to excavate impacted soil cost more than \$200,000. The homeowner had insurance that covered all but \$10,000 of the work.



MASSACHUSETTS
Rivers Alliance



June 17, 2020

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

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

Dear Chairman Rodrigues:

We, the undersigned organizations committed to river, watershed, and wetlands protection in Massachusetts, are writing to urge you to support S. 594, "An Act relative to the remediation of home heating oil releases," sponsored by Senator Anne Gobi, Senate Chair of the Joint Committee on Environment, Natural Resources, and Agriculture. We support this bill for numerous reasons.

After a decade, we know that the current law, M.G.L. c. 175, sec. 4D, is not accomplishing the objective for which it was designed – to assure that homeowners have insurance coverage for cleanup costs in the event of a home heating oil spill. It has been ten years since the law went into effect requiring that insurers "make available" home heating oil spill coverage; however, the percentage of homeowners with a liquid fuel rider on their homeowner's policy remains very small. Of the 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.

The low numbers of insured homeowners are a result of a flaw in the law. Even though the current cost to homeowners for spill cleanup insurance is typically under \$100 per year, most homeowners are unaware that it can be purchased. The reason is that insurance companies are not currently required to provide liquid fuel riders to their customers or even to inform them of its availability. Policyholders must actively opt in for this coverage. Most of the homeowners who report heating oil spills annually (there were 104 reported incidents in 2018) are caught unaware. At that point, it's too late to get coverage.

The Hon. Michael J. Rodrigues

June 17, 2020

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The law needs to mandate that insurance coverage be provided to all Massachusetts households that use fuel oil.

Environmental cleanups can be too expensive for homeowners to afford. Cleanup costs 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. The Massachusetts Department of Environmental Protection has noted that for a high percentage of these residential fuel oil releases, homeowners are unable to pay for cleanups. When this occurs, homeowners are left with an environmentally impaired and potentially unsafe property.

Serious environmental impacts can result from oil leaks and spills, and cleanup delays can exacerbate the release by spreading from soil, to groundwater, wetlands, surface water, and indoor air, significantly increasing cleanup costs. When homeowners do not have insurance coverage and cannot afford to clean up their property, contamination often remains in the environment unabated. Spills that are not addressed in a timely manner can spread and impact other neighboring properties or valuable environmental resource areas, including rivers, drinking water supplies, and protected ecological habitats. Without insurance in these difficult situations, everyone suffers.

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.** In addition to the financial and logistical challenges posed by dealing with a leak or spill of oil from a residential tank, the pandemic can add other unexpected complications to the devastating experience of learning that one's homeowner's insurance does not cover cleanup costs. Many Massachusetts homeowners are more financially challenged than ever in these unusual times. For those quarantining at home, any temporary relocation for their safety or to accommodate an oil cleanup may not be possible, and family members and friends might not be able or willing to assist.

We believe that insurance coverage should be mandatory for homeowners who use fuel oil, much the same as coverage for fires or explosions in homes using electric or natural gas heating systems. Senate bill 594 would enhance the current law by requiring that coverage be provided to all homeowners who use fuel oil; the bill would also slightly increase the coverage limits to keep pace with rising remediation costs. The current cost for a liquid fuel rider is less than \$100 per year. If the cost of mandatory 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 would be small. If these costs were then passed on to policyholders, the increase in homeowner's policy premiums statewide would be only nominal.

Delays in enacting S. 594 would put more homeowners in untenable financial positions and potentially endanger the environment, including Massachusetts's rivers, watersheds, and wetlands. **The Charles River Watershed Association, OARS, the Massachusetts Rivers Alliance, the Mystic River Watershed**

The Hon. Michael J. Rodrigues

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Association, and the Massachusetts Association of Conservation Commissions urge 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.

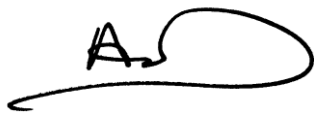
Respectfully,



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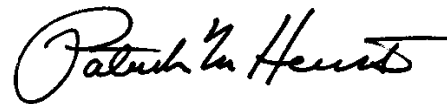
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