



LEGISLATIVE POSITION

Professional Insurance Agents of New York State Inc.

25 Chamberlain St.
P.O. Box 997
Glenmont, NY
12077-0997
(518) 434-3111

**LEGISLATIVE
REPRESENTATIVES**

Patricia Lynch
Allison Lee

**DIRECTOR OF
GOVERNMENT/
INDUSTRY AFFAIRS**

Matthew F. Guilbault, Esq.

**EXECUTIVE
DIRECTOR**

Diane Fowler

PIANY opposes amendments to the law that require homeowners policies to provide coverage for remediating the consequences of spills or leaks from heating oil tanks.

Memo in opposition to: S.5818 by Sen. Dilan
A.8562 by M. of A. Weisenberg

An act to amend the Navigation Law, in relation to claims against insurers for petroleum spills.

PIANY opposes this legislation on behalf of its members and their clients. These bills would mandate that all homeowners policies cover the cleanup and removal costs and all direct and indirect damages relating to a discharge of petroleum within the meaning of the general liability portions of homeowners policies issued in New York.

PIANY believes that although there are undeniably significant consequences associated with petroleum spills, there are better ways to approach the problem than the requirements contained within these bills. We believe that the adoption of this proposal would lead to higher insurance premiums for policyholders, at best, and cause insurers to avoid this adverse risk, at worst.

These bills seek to amend Section 190 of the Navigation Law to require all homeowners policies of insurance to cover the cleanup and removal costs and all direct and indirect damages relating to a discharge of petroleum. The bills also establish an affirmative defense against a claim for coverage of the costs and damages relating to a discharge of petroleum if the insured had actual knowledge of a condition which a reasonable person would have understood to pose an imminent risk of a discharge of petroleum and that the insured failed to take reasonable steps to prevent the discharge. Moreover, the bills require insurers to provide notice in every homeowners policy, newly issued or renewed which insures against damage to property that states in part: "You have a responsibility to prevent a discharge from your petroleum tanks and associated pipelines." Finally, the bills establish that these new provisions do not limit any pre-existing right in which the insured may have had compensation from the insurer for cleanup and removal costs and all direct and indirect damages relating to the discharge of petroleum.

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The Insurance Department has not approved absolute pollution exclusions for homeowners policies. In most cases, therefore, a homeowners policy will cover third-party property damage associated with these spills. Moreover, first-party cleanup damages will likely be covered if the claim is the result of a broad-form peril.

It is well known that underground oil tanks have an estimated lifetime of approximately 30 years. As such, these exposures are largely preventable, and not fortuitous. Insurance is not intended to provide maintenance protection. Allowing homeowners to ignore a responsibility that comes with owning a home distorts the very purpose of insurance. Insurance is intended to provide coverage for leaks and spills that are accidental, not those that can be avoided by taking the necessary action.

PIANY urges lawmakers to vote against these bills in order to help avoid a crisis in homeowners insurance availability and affordability.

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