



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

MEMORANDUM
RE
AN ACT

OSC No. 20

to amend the navigation law, in relation to claims against insurers
for petroleum spills

PURPOSE: To protect homeowners from the onerous costs related to the remediation of petroleum discharges on residential property. Unless the insurer prevails on the affirmative defense, the standard homeowner's insurance policy should cover the claim.

SUMMARY OF PROVISIONS: Section 1 amends Section 190 of the Navigation Law to add the following provisions:

- (a) requires all homeowners' policies of insurance to cover the cleanup and removal costs and all direct and indirect damages relating to a discharge of petroleum;
- (b) establishes 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;
- (c) requires insurers to provide notice in every homeowner's 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"; and
- (d) establishes that nothing in this section shall be construed to 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.

Section 2 provides for an effective date of the first of January next succeeding the date on which it shall have become a law.

BACKGROUND AND JUSTIFICATION: A petroleum discharge or spill is a serious threat to the environment. Spills that occur on residential properties can cost anywhere from several thousand dollars to hundreds of thousands of dollars to clean up. Many of these spills involve petroleum storage systems in which tanks or lines have leaked, allowing oil to seep into the soil and impact groundwater which is a typical source of drinking water. Remediation may include soil excavation, tank removal and replacement (if the tank was the source), and groundwater

monitoring or treatment. The homeowner is strictly liable for the discharge or spill and the subsequent clean-up costs. Insurance companies have routinely included absolute “pollution exclusions” in all homeowners’ policies and denied coverage of these costs. This legislation requires these costs to be covered in homeowner policies. These cases, though they often constitute a severe financial burden to individual homeowners and are a threat to the environment, are limited and should not impose a burden on insurance companies.

Therefore, the Comptroller urges passage of this legislation.

LEGISLATIVE HISTORY:

S. 5818 and A. 8562 of 2009-2010

S. 6344 and A. 7640 of 2011-2012

FISCAL IMPLICATIONS: None to the State.

EFFECTIVE DATE: This act shall take effect on the first of January next succeeding the date on which it shall have become a law.