

## An Oil Spill Close to Home: Your Legal Liability, Clean-Up Costs & Insurance

By Samantha P. McDonald, Esq.



Oil spills are in the news today and on people's minds, thanks in part to the gusher in the Gulf of Mexico. Clean up of that spill will likely run in the billions of dollars.

Have you ever thought about who would pay for clean up of an oil spill at your home? No matter who spills the oil, the property owner is responsible for clean up. Whether it is a spill or a leak, and no matter where it escapes from, the correct term is a "release." Clean up costs for a residential release average between \$20,000 and \$50,000, but can exceed \$300,000.

You can minimize your risk of a release by getting a reliable heating contractor to inspect your heating system; consider replacing your system if it's over 15 years old. In fact, there is a new law requiring residential property owners to have either an oil safety valve on the tank or a protective sleeve on the fuel delivery line. The estimated cost to comply is \$100-\$300. The requirement will be effective as of September 2011.

This same requirement has been in place for new systems since 1990, so if your system is less than twenty years old, you should be in compliance.

Your financial risk still exists even with a new and compliant heating system. Until recently, your homeowner's insurance only covered the cost of clean up under your "third party liability" coverage. That meant that clean up was covered only if the oil spill was migrating onto a neighboring property or contaminating groundwater. Even then, the cost of repairing your own house is not covered by your insurance because of the "owned property exclusion."

However, new insurance coverage became available as of 7/1/10 that covers both your property and third party liability. You will need to show that your fuel system meets the new requirements to qualify.

All insurers covering property in Massachusetts are required to offer this coverage. The minimum coverage available is \$50,000 for property damage and \$200,000 for liability. Premiums for a home with an above-ground tank will run about \$100.

There are some circumstances which complicate the coverage or the premium if you have a below-ground oil tank. Call us to discuss the risks before you call your insurance company. Most importantly, if you do not elect to get this coverage the next time your homeowner's policy renews after August 1, 2010, it is likely that you will have no insurance coverage whatsoever for any release. Many insurers have announced that they will be specifically excluding coverage for any oil release, even for liability to others, after August 1st.

### WHAT IF AN OIL RELEASE OCCURS?

If 10 gallons or more of oil are released, you must follow these steps as soon as possible. Your health and your bank account will thank you. If you are in doubt about the amount released, err on the side of caution and make the calls, as outlined by the DEP:

1. Turn off the furnace using the red emergency switch.
2. Call 911 or your fire department.
3. Call the DEP at 1-888-304-1133 (available 24/7).
4. Call your oil company. A technician should come out immediately to shut off the oil to prevent further release.
5. Ventilate the house. Exposure to fumes can affect your health, causing nausea, headache, confusion and skin irritation, and more. Use protective gear when in the spill area.
6. Contact one of FTW's environmental attorneys to discuss your options.
7. If your drinking water comes from a nearby well that could be contaminated, call your Board of Health.
8. Call your insurance company.
9. Hire a Licensed Site Professional (LSP), an independent contractor licensed by the state to supervise clean up. Not all LSPs work on residential releases, so call us for a recommendation.
10. Throughout the process, which may last many months, keep good records of everyone you speak to. Make sure you write down your RTN (Release Tracking Number) from your initial call to the DEP.

---

We are happy to help you through this process, assess when another party may be responsible for some of the clean up costs and advise you how to proceed after a spill to minimize your costs.

---

## RESPONSIVE SOLUTIONS

Two simple words that explain our commitment to you. Being responsive is a critical element in building a strong attorney-client relationship. Whether you are a new or existing client, we'll be quick to respond to your needs with the knowledge necessary to find solutions to your legal concerns.

[www.fletcherilton.com](http://www.fletcherilton.com)



**Samantha P. McDonald**

**P:** 508.459.8026

**F:** 508.459.8326

**E:** [smcdonald@fletcherilton.com](mailto:smcdonald@fletcherilton.com)

**Fletcher Tilton** <sup>PC</sup>  
Attorneys at law

### THE GUARANTY BUILDING

370 Main Street, 12th Floor  
Worcester, MA 01608  
TEL 508.459.8000 FAX 508.459.8300

### THE MEADOWS

161 Worcester Road, Suite 501  
Framingham, MA 01701  
TEL 508.532.3500 FAX 508.532.3100

### CAPE COD

1579 Falmouth Road, Suite 3  
Centerville, MA 02632  
TEL 508.815.2500 FAX 508.459.8300

*This material is intended to offer general information to clients and potential clients of the firm, which information is current to the best of our knowledge on the date indicated below. The information is general and should not be treated as specific legal advice applicable to a particular situation. Fletcher Tilton PC assumes no responsibility for any individual's reliance on the information disseminated unless, of course, that reliance is as a result of the firm's specific recommendation made to a client as part of our representation of the client. Please note that changes in the law occur and that information contained herein may need to be reverified from time to time to ensure it is still current. This information was last updated September, 2010.*