115B.175 VOLUNTARY RESPONSE ACTIONS; LIABILITY PROTECTION; PROCEDURES.

Subdivision 1. **Protection from liability; scope.** (a) Subject to the provisions of this section, a person who is not otherwise responsible under sections 115B.01 to 115B.18 for a release or threatened release will not be responsible under those sections for the release or threatened release if the person undertakes and completes response actions to remove or remedy all known releases and threatened releases at an identified area of real property in accordance with a voluntary response action plan approved by the commissioner.

(b) The liability protection provided under this subdivision applies to releases or threatened releases at the identified property that are not required to be removed or remedied by the approved voluntary response action plan if the requirements of subdivision 2 are met.

Subd. 2. **Partial response action plans; criteria for approval.** (a) The commissioner may approve a voluntary response action plan submitted under this section that does not require removal or remedy of all releases and threatened releases at an identified area of real property if the commissioner determines that all of the following criteria have been met:

(1) if reuse or development of the property is proposed, the voluntary response action plan provides for all response actions required to carry out the proposed reuse or development in a manner that meets the same standards for protection that apply to response actions taken or requested under section 115B.17, subdivision 1 or 2;

(2) the response actions and the activities associated with any reuse or development proposed for the property will not aggravate or contribute to releases or threatened releases that are not required to be removed or remedied under the voluntary response action plan, and will not interfere with or substantially increase the cost of response actions to address the remaining releases or threatened releases; and

(3) the owner of the property agrees to cooperate with the commissioner or other persons acting at the direction of the commissioner in taking response actions necessary to address remaining releases or threatened releases, and to avoid any action that interferes with the response actions.

(b) Under paragraph (a), clause (3), an owner may be required to agree to any or all of the following terms necessary to carry out response actions to address remaining releases or threatened releases:

(1) to provide access to the property to the commissioner and the commissioner's authorized representatives;

(2) to allow the commissioner, or persons acting at the direction of the commissioner, to undertake reasonable and necessary activities at the property including placement of borings, wells, equipment, and structures on the property, provided that the activities do not unreasonably interfere with the proposed reuse or redevelopment; and

(3) to grant easements or other interests in the property to the agency for any of the purposes provided in clause (1) or (2).

(c) An agreement under paragraph (a), clause (3), must apply to and be binding upon the successors and assigns of the owner. The owner shall record the agreement, or a memorandum approved by the commissioner that summarizes the agreement, with the county recorder or registrar of titles of the county where the property is located.

Subd. 3. **Submitting and approving voluntary response action plans.** (a) A person shall submit a voluntary response action plan to the commissioner under section 115B.17, subdivision 14. The commissioner

may provide assistance to review voluntary response action plans or supervise response action implementation under that subdivision.

(b) A voluntary response action plan submitted for approval of the commissioner must include an investigation report that describes the methods and results of an investigation of the releases and threatened releases at the identified area of real property. The commissioner must not approve the voluntary response action plan unless the commissioner determines that the nature and extent of the releases and threatened releases at the identified area of real property have been adequately identified and evaluated in the investigation report.

(c) Response actions required in a voluntary response action plan under this section must meet the same standards for protection that apply to response actions taken or requested under section 115B.17, subdivision 1 or 2.

(d) When the commissioner approves a voluntary response action plan, the commissioner may include in the approval an acknowledgment that, upon certification of completion of the response actions as provided in subdivision 5, the person submitting the plan will receive the protection from liability provided under this section.

Subd. 4. **Performing response actions; no association with release.** Persons specified in subdivision 6 or 6a, paragraph (c), do not associate themselves with, or aggravate or contribute to, any release or threatened release identified in an approved voluntary response action plan for the purpose of subdivision 7, clause (1), or section 115B.03, subdivision 3, paragraph (a), clause (4), as a result of performance of the response actions required in accordance with the plan and the direction of the commissioner. Nothing in this section relieves a person of any liability for failure to exercise due care in performing a response action.

Subd. 5. **Certified completion of response actions.** (a) Response actions taken under an approved voluntary response action plan are not completed until the commissioner certifies completion in writing.

(b) Certification of completion of response actions taken under a voluntary response action plan that does not require removal or remedy of all releases and threatened releases is subject to compliance by the owner, and the owner's successors and assigns, with the terms of the agreement required under subdivision 2, paragraph (a), clause (3).

Subd. 6. **Persons protected from liability.** In addition to the person who undertakes and completes response actions, and subject to the provisions of subdivision 7, the liability protection provided by this section applies to the following persons when the commissioner issues the certificate of completion of response actions under subdivision 5:

(1) the owner of the identified property, if the owner is not responsible for any release or threatened release identified in the approved voluntary response action plan;

(2) a person providing financing to the person who undertakes and completes the response actions, or who acquires or develops the identified property; and

(3) a successor or assign of any person to whom the liability protection applies.

Subd. 6a. **Voluntary response actions by responsible persons.** (a) Notwithstanding subdivision 1, paragraph (a), when a person who is responsible for a release or threatened release under sections 115B.01 to 115B.18 undertakes and completes response actions, the protection from liability provided by this section applies to persons described in paragraph (c) if the response actions are undertaken and completed in accordance with this subdivision.

(b) The response actions must be undertaken and completed in accordance with a voluntary response action plan approved as provided in subdivision 3. Notwithstanding subdivision 2, a voluntary response action plan submitted by a person who is responsible for the release or threatened release must require remedy or removal of all releases and threatened releases at the identified area of real property. The identified area of real property must correspond to the boundaries of a parcel that is either separately platted or is the entire parcel.

(c) Subject to the provisions of subdivision 7, when the commissioner issues a certificate of completion under subdivision 5 for response actions completed at an identified area of real property in accordance with this subdivision, the liability protection under this section applies to:

(1) a person who acquires the identified real property after approval of the voluntary response action plan;

(2) a person providing financing for response actions or development at the identified real property after approval of the response action plan, whether the financing is provided to the person undertaking the response actions or other person who acquires or develops the property; and

(3) a successor or assign of a person to whom the liability protection applies under this paragraph.

(d) When the commissioner issues a certificate of completion for response actions completed by a responsible person, the commissioner and the responsible person may enter into an agreement that resolves the person's future liability to the agency under sections 115B.01 to 115B.18 for the release or threatened release addressed by the response actions.

Subd. 7. **Persons not protected from liability.** The protection from liability provided by this section does not apply to:

(1) a person who aggravates or contributes to a release or threatened release that was not remedied under an approved voluntary response action plan;

(2) a person who was responsible under sections 115B.01 to 115B.18 for a release or threatened release identified in the approved voluntary response action plan before taking an action that would have made the person subject to the protection under subdivision 6 or 6a; or

(3) a person who obtains approval of a voluntary response action plan for purposes of this section by fraud or misrepresentation, or by knowingly failing to disclose material information, or who knows that approval was so obtained before taking an action that would have made the person subject to the protection under subdivision 6 or 6a.

Subd. 8. **Other rights and authorities not affected.** Nothing in this section affects the authority of the agency or commissioner to exercise any powers or duties under this chapter or other law with respect to any release or threatened release, or the right of the agency, the commissioner, or any other person to seek any relief available under this chapter against any party who is not subject to the liability protection provided under this section.

History: *1992 c 512 s 2; 1993 c 287 s 1-3; 1995 c 168 s 4,5; 1997 c 216 s 107,108*