

38 §343-E. VOLUNTARY RESPONSE ACTION PROGRAM

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1. Liability protection for complete cleanup. Subject to the provisions of this section, a person may not be deemed a responsible party and that person is not subject to department orders or other enforcement proceedings or otherwise responsible under sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to 1367 or 1371 for, or as a result of, a discharge, release or threatened release of a hazardous substance, hazardous waste, hazardous matter, special waste, pollutant or contaminant, including petroleum products or by-products, if the person investigates the discharge, release or threatened release and undertakes and completes response actions to remove or remedy all known discharges, releases and threatened releases at an identified area of real property in accordance with a voluntary response action plan approved by the commissioner.

[1993, c. 355, §5 (NEW) .]

2. Liability protection for partial cleanup. The commissioner may approve a voluntary response action plan submitted under this section that does not require removal or remedy of all discharges, releases and threatened releases at an identified area of real property conditioned upon any or all of the terms identified in subsection 3 and based on consideration of the following:

A. 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 protects public health and the environment; [1993, c. 355, §5 (NEW) .]

B. The response actions and the activities associated with any reuse or development proposed for the property will not cause, contribute or exacerbate discharges, 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 discharges, releases or threatened releases; and [1993, c. 355, §5 (NEW) .]

C. The owner of the property that is the subject of the partial voluntary response action plan agrees to cooperate with the commissioner, the requestor or the commissioner's authorized representatives to avoid any action that interferes with the response actions. [1993, c. 355, §5 (NEW) .]

[1993, c. 355, §5 (NEW) .]

3. Conditions for protection. The commissioner may condition the protection from liability provided by this section on the requestor's agreement to any or all of the following terms that the commissioner may determine to be necessary:

A. To provide access to the property to the commissioner and the commissioner's authorized representatives; [1993, c. 355, §5 (NEW) .]

B. To allow the commissioner or the commissioner's authorized representatives to undertake activities at the property including placement of borings, wells, equipment, and structures on the property; and [1993, c. 355, §5 (NEW) .]

C. To the extent the requestor has title to the property, to grant easements or other interests in the property to the department for any of the purposes provided in paragraph A or B. An agreement under this subsection must apply to and be binding upon the successors and assigns of the owner. To the extent the requestor has title to the property, the requestor shall record the agreement or a memorandum approved by the commissioner that summarizes the agreement in the registry of deeds for the county where the property is located. [1993, c. 355, §5 (NEW) .]

[1993, c. 355, §5 (NEW) .]

4. Investigation report. A voluntary response action plan submitted for approval of the commissioner must include an investigation report prepared by an appropriate professional that identifies and describes the nature and extent of the discharges, releases and threatened releases at the identified area of real property, methods of investigation, the analytical results and the professional's evaluation of this information.

[1993, c. 355, §5 (NEW) .]

5. Approval of plan. When the commissioner approves a voluntary response action plan pursuant to subsection 1 or 2, the commissioner shall include in the approval a no-action assurance pursuant to subsection 9, acknowledging that so long as the plan is implemented pursuant to its terms and with the exercise of due care, the person submitting the plan and those persons identified in subsection 6 will receive the protection from liability provided under this section. Upon completion of the voluntary response action plan, the parties implementing the voluntary response action plan shall notify the commissioner who shall issue a certificate of completion upon demonstration by the parties that the response action is complete. In addition, a person who has submitted and received department approval of a voluntary response action plan and is implementing or has implemented that plan pursuant to its terms is not liable for claims for contribution regarding the site.

[1993, c. 355, §5 (NEW) .]

6. Additional persons protected from liability. In addition to the person who undertakes and completes a voluntary response action pursuant to an approved voluntary response action plan, the liability protection provided by this section applies to the following persons:

A. An owner or operator who is a responsible party or who is subject to department orders or other enforcement proceedings or otherwise responsible under sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to 1367 and 1371 for a discharge, release or threat of release and who undertakes and completes a voluntary response action plan that fully remediates all known discharges, releases or threatened releases. The liability protection is limited to protection from further clean-up requirements and does not include protection from liability for penalties, fines or natural resource damages, to the extent applicable, unless a no-action assurance issued pursuant to subsection 9 so provides; [1993, c. 355, §5 (NEW) .]

B. A person providing financing to the person who undertakes and completes the response actions or who acquires or develops the identified property; [1993, c. 355, §5 (NEW) .]

C. A lender or fiduciary as defined in section 1362 who arranges for the undertaking and completion of response actions; [1993, c. 355, §5 (NEW) .]

D. A person who seeks to acquire or develop the identified property and who arranges for the undertaking and completion of response actions; [1993, c. 355, §5 (NEW) .]

E. A successor or assign of a person to whom the liability protection applies; and [1993, c. 355, §5 (NEW) .]

F. A person acting in compliance with a voluntary response action program approved by the commissioner who, while implementing the voluntary response action plan and exercising due care in implementation, causes, contributes or exacerbates a discharge or release, provided that the discharge or release is removed or remediated to the satisfaction of the commissioner. [1993, c. 355, §5 (NEW) .]

[1993, c. 355, §5 (NEW) .]

7. Persons ineligible for protection from liability. The protection from liability provided by this section does not apply to:

A. A person who causes, contributes or exacerbates a discharge, release or threatened release that was not remedied under an approved voluntary response action plan; [1993, c. 355, §5 (NEW) .]

B. For partial voluntary response action plans that do not require removal or remediation of all known releases, a person who was responsible under sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to 1367 and 1371 for a discharge, release or threatened release; or [1993, c. 355, §5 (NEW).]

C. A person who obtains approval of a voluntary response action plan for purposes of this section by fraud or intentional misrepresentation, or by knowingly failing to disclose material information, or a successor or assign of the person who obtained approval if that successor or assign had knowledge that the approval was obtained by fraud or intentional misrepresentation or by knowingly failing to disclose material information. [1993, c. 355, §5 (NEW).]

[1993, c. 355, §5 (NEW) .]

8. Effect of protection from liability. This section does not affect the authority of the commissioner to exercise the powers or duties under law with respect to a discharge, release or threatened release, or the right of the commissioner or any other person to seek relief available, against a party who is not subject to the liability protection provided under this section.

[1993, c. 355, §5 (NEW) .]

9. No-action assurance. The commissioner shall issue a written determination or enter into an agreement pursuant to subsections 1 or 2 to take no action under sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to 1367 and 1371 against a person afforded protection for undertaking a voluntary response action plan pursuant to subsection 6 when the commissioner approves a voluntary response action plan pursuant to subsections 1 and 2. For partial voluntary response action plans approved under subsection 2, the commissioner's written determination or agreement to take no action may be limited to the matters addressed by the terms of the voluntary response action plan.

A. A determination issued or agreement entered into under this subsection may be conditioned upon those terms identified in subsection 3 and upon any other reasonable conditions determined necessary by the commissioner. [1993, c. 355, §5 (NEW).]

B. A determination issued or agreement entered into under this subsection may extend to the successors and assigns of the person to whom it originally applies if the successors and assigns are bound by the conditions in the determination or agreements. [1993, c. 355, §5 (NEW).]

C. Issuance of a determination or execution of an agreement under this subsection does not affect the authority of the commissioner to expend funds, to take response action with respect to the discharge or release subject to the determination or agreement, or to take administrative or judicial action with respect to persons not bound by the determination or agreement. [1993, c. 355, §5 (NEW).]

[1993, c. 355, §5 (NEW) .]

SECTION HISTORY

1993, c. 355, §5 (NEW).

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