# COMMONWEALTH of VIRGINIA

*Department of Health*
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November 30, 2007

U.S. Nuclear Regulatory Commission
Rob Lewis, Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials and
Environmental Management Programs
Washington, DC 20555-0001

Dear Mr. Lewis,

Enclosed is a proposed revision to the *Code of Virginia*, sections 32.1-227 through 238, referred to as the Radiation Control Act, for your final review and approval. As you know, the Nuclear Regulatory Commission (NRC) reviewed Virginia's enabling legislation submitted in the draft application. Comments resulting from this review were provided to the Virginia Department of Health in a letter dated October 23, 2006. The enclosed proposal addresses these comments and also includes more recent recommendations suggested by NRC staff during several teleconference calls in November 2007.

This proposal is also being submitted today as a legislative package for the 2008 session of Virginia General Assembly that begins on January 9, 2008. In most cases, legislation that passes both houses of the legislature and signed by the Governor will become effective on July 1.

I look forward to your concurrence of the proposal. In case there are any further revisions it will be difficult, but not impossible, to make changes up until the end of the first week into the General Assembly session. If you have any questions or comments please contact me or Michael Welling at 804-864-8168 or mike.welling@vdh.virginia.gov.

Sincerely,

Leslie P. Foldesi, M.S., CHP
Director, Division of Radiological Health
804-864-8151
les.Foldesi@vdh.virginia.gov

Enclosure:

cc: Joshua Paloty, Duncan White

# ENCLOSURES

1. Final proposed Virginia Statutes
2. Current Virginia Statutes
3. Letter to NRC dated September 5, 2007
4. Other NRC comments regarding Virginia Statutes
5. Other pertinent Virginia Statutes

ENCL 1

Not Approved

Not version for NRC Review (old)

**VDH Draft Legislative Proposal – Radioactive Materials Program**

§ 32.1-227. Definitions.

As used in this article unless the context requires a different meaning:

~~1. "By-product material" means any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.~~

1. "By-Product material" means:

a. Any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

b. The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily of its source material content;

c. (1) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity; or (2) Any material that has been made radioactive by use of a particle accelerator and is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity; and

d. Any discrete source of naturally occurring radioactive material (NORM), other than source material that the Nuclear Regulatory Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security, that is extracted, or converted after extraction, for use for a commercial, medical, or research activity.

2. "General license" means a license effective under regulations promulgated by the Board without the filing of an application with the Department or the issuance of licensing documents to particular persons to transfer, acquire, own, possess or use quantities of, or devices or equipment utilizing, radioactive material.

~~2.~~ 3. "Ionizing radiation" means gamma rays and X rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles.

~~3. "Person" includes, in addition to the entities enumerated in subdivision 4 of § 32.1-3, an institution, agency and political subdivision of this Commonwealth and of any other state but does not include the United States Nuclear Regulatory Commission or any successor thereto or any federal government agencies licensed by the United States Nuclear Regulatory Commission or any successor thereto.~~

4. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Department of this Commonwealth other than the Department of Health, political subdivision of the Commonwealth, any other state or political subdivision or Department thereof, and any legal successor, representative, agent, or Department of the foregoing, but not including federal government agencies.

~~4.~~ 5. "Radiation emergency" means any situation, excluding events resulting from nuclear warfare, which involves the possibility of accidental release of ionizing radiation that may pose a threat to the safety and health of any citizen of this Commonwealth.

~~5.~~ 6. "Radioactive material" means any material that emits ionizing radiation spontaneously.

~~6. "Source material" means (i) uranium, thorium, or any other material which the United States Nuclear Regulatory Commission, or any successor thereto, has determined to be source material; or (ii) ores containing one or more of the foregoing materials in concentrations determined by the United States Nuclear Regulatory Commission or any successor thereto to be source material.~~

7. "Source material" means uranium or thorium, or any combination thereof, in any physical or chemical form; or ores which contain by weight one-twentieth of one percent (0.05 percent) or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.

~~7.~~ 8. "Special nuclear material" means (i) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the United States Nuclear Regulatory Commission or any successor thereto has determined to be such but does not include source material; or (ii) any material artificially enriched by any of the foregoing but not including source material.

9. "Specific license" means a license, issued to a named person upon application filed under the regulations promulgated pursuant to this article to use, manufacture, produce, transfer, receive, acquire, or possess quantities of, or devices or equipment utilizing, radioactive material.
(Code 1950, § 32-414.3; 1964, c. 158; 1975, c. 563; 1979, c. 711.)

§ 32.1-228. Exemption.
The provisions of this article shall not apply to radioactive material or facilities, including nuclear reactors, ~~that~~ which are subject to exclusive licensing and regulation by the United States Nuclear Regulatory Commission.
(Code 1950, § 32-414.7; 1964, c. 158; 1979, c. 711.)

§ 32.1-229. ~~General powers of Board.~~ Powers and Duties
A. The Department of Health is designated as the state radiation control agency.
B. In accordance with the laws of the state, the Commissioner, as the manager and supervisor of the Department, may employ, compensate and prescribe the powers and duties of such individuals as may be necessary to carry out the provisions of this article.
~~A.~~ C. The Board ~~is authorized to~~ shall:
1. Establish a program of effective regulation of sources of radiation for the protection of the public health and safety, including a program of education and technical assistance relating to radon that is targeted to those areas of the Commonwealth known to have high radon levels.
2. Establish a program to promote the orderly regulation of radiation within the Commonwealth, among the states and between the federal government and the Commonwealth and to facilitate intergovernmental cooperation with respect to use and regulation of sources of radiation to the end that duplication of regulation may be minimized.
3. Establish a program to permit maximum utilization of sources of radiation consistent with the public health and safety.
4. ~~Adopt~~ Promulgate regulations providing for (i) licenses to use, manufacture, produce, transfer, receive, acquire, own or possess quantities of, or devices or equipment utilizing, by-product,

source, special nuclear materials, or other radioactive material occurring naturally or produced artificially, (ii) registration of the possession of a source of radiation and of information with respect thereto, and (iii) regulation of by-product, source and special nuclear material.

5. Encourage, participate in and conduct studies, investigations, training, research and demonstrations relating to control of sources of radiation.

~~6. Develop programs for responding adequately to radiation emergencies and coordinate such programs with the Department of Emergency Management.~~

~~7. Maintain, revise as necessary, and make available to the public a list of persons that have been listed as proficient to offer screening, testing or mitigation for radon by the United States Environmental Protection Agency, the National Radon Measurement Proficiency Program of the National Environmental Health Association or the National Radon Safety Board Certified Radon Professional Program or any other proficiency program acceptable to the Board of Health.~~

~~8.~~ 6. Establish fee schedules~~, which shall not exceed comparable federal Nuclear Regulatory Commission fees,~~ for the licensure ~~and inspection~~ of radioactive materials.

~~9. Adopt regulations for the imposition of civil penalties pursuant to § 32.1-27 C for violations of law, regulation or licensure conditions by persons licensed for the use or possession of radioactive materials.~~

~~10.~~ 7. Establish guidelines to require the licensed facilities or physicians' offices where mammography services are performed to offer to the patient, prior to departure, development of such films to ensure integrity and quality of the film. When film developing is not available or the patient chooses not to wait, the patient shall be notified within two business days if another mammogram is necessary. This requirement does not imply or require that a diagnostic opinion be made at the time of the mammogram. The interpreting physician may require that the mammogram be retaken if, in the opinion of the physician, the study is of inadequate quality.

8. Issue such orders or modifications thereof as may be necessary in connection with proceedings under this article.

~~B. The Board shall require registration, inspection and certification for all diagnostic and therapeutic X-ray machines used in the healing arts. In addition, the Board may require the registration, inspection and certification of other machines emitting radiation or utilizing radiation for patients, consumers, workers or the general public, except those machines operated by remote control which are not accessible to human beings during operation.~~

~~C. Pursuant to its powers enumerated in § 32.1-25, the Board shall provide for scheduled and random unannounced inspections of facilities and physicians' offices that provide mammography services to ensure compliance with laws, regulations or conditions specified by the Board.~~

~~D. The Board shall require reporting to both the Department and the Virginia Department of State Police immediately if any radioactive materials, including sources of ionizing radiation approved by the Federal Food and Drug Administration for the treatment of foods pursuant to the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.), cannot be accounted for within 24 hours. Such reporting shall only be necessary when required by the United States Nuclear Regulatory Commission. Except as provided in this subsection, a report submitted pursuant to this subsection shall be confidential and shall not be a public record pursuant to the Freedom of Information Act (§ 2.2-3700 et seq.). The Department shall cooperate and may share information submitted to it pursuant to this subsection with the Department of Emergency Management, United States Nuclear Regulatory Commission, United States Food and Drug Administration, and state, local and federal law enforcement agencies, as appropriate. The Department or the Virginia Department of State Police may make public all or part of any report made or other information obtained, pursuant to this section (i) where the release of such report or information may assist in the prevention of imminent harm to public health or safety, or (ii) where the release of such report or information may be useful for education of the public on health, safety or homeland defense issues. Any unauthorized disclosure of reports made pursuant to this subsection shall be subject to the penalties of § 32.1-27.~~

D. The Department shall:

1. Collect and disseminate information relating to control of sources of radiation, including:

a. Maintain a file of all license application, issuances, denials, amendments, transfers, renewals, modifications, suspensions and revocations.

b. Maintain a file of registrants possessing sources of radiation requiring registration under the provisions of this article and any administrative or judicial action pertaining thereto.

c. Maintain a file of all of the agency's rules and regulations relating to regulation of sources of radiation, pending or promulgated, and proceedings thereon.

2. Require registration, inspection and certification for all diagnostic and therapeutic X-ray machines used in the healing arts. In addition, the Department may require the registration, inspection and certification of other machines emitting radiation or utilizing radiation for

patients, consumers, workers or the general public, except those machines operated by remote control which are not accessible to human beings during operation.

3. Pursuant to its powers enumerated in § 32.1-25, provide for scheduled and random unannounced inspections of facilities and physicians' offices that provide mammography services to ensure compliance with laws, regulations or conditions specified by the Board.

4. Establish forms for the periodic Radiation Inspection Report;

5. Establish a database of registered and certified X-ray machines which shall include, but not be limited to, the name of the owner or operator and the location of the machine

6. Develop programs for responding adequately to radiation emergencies and coordinate such programs with the Department of Emergency Management

7. Maintain, revise as necessary, and make available to the public a list of persons that have been listed as proficient to offer screening, testing or mitigation for radon by the United States Environmental Protection Agency, the National Radon Measurement Proficiency Program of the National Environmental Health Association or the National Radon Safety Board Certified Radon Professional Program or any other proficiency program acceptable to the Board of Health

(Code 1950, §§ 32-414.2, 32-414.4, 32-414.6, 32-414.7, 32-414.16; 1964, c. 158; 1968, c. 314; 1975, c. 563; 1979, c. 711; 1987, c. 666; 1988, c. 736; 1989, cc. 275, 283; 1999, c. 755; 2000, cc. 271, 936; 2001, cc. 408, 426; 2003, c. 635.)

§ 32.1-229.01. Companies listed as proficient to perform radon screening, testing or mitigation; compliance.

A. No person shall conduct or offer to conduct any radon screening, testing or mitigation in the Commonwealth unless he has been listed as proficient by the United States Environmental Protection Agency, the National Radon Measurement Proficiency Program of the National Environmental Health Association or the National Radon Safety Board Certified Radon Professional Program or any other proficiency program acceptable to the Board of Health to offer such screening, testing or mitigation.

~~For the purposes of this article, "person" shall be defined as provided in § 1-230.~~

B. Radon professionals listed as proficient pursuant to subsection A shall comply with the radon mitigation and testing standards outlined in the Environmental Protection Agency's publication,

EPA 402-R-93-078, as revised, or the American Society for Testing and Materials (ASTM International) Standard, E-2121-02, or any other radon testing and mitigation standards accepted by the Environmental Protection Agency and the Board.
(1988, c. 736; 1989, cc. 275, 283; 2001, cc. 408, 426; 2003, c. 709; 2005, c. 839.)

§ 32.1-229.01:1. Action for damages.
Any person who engages or otherwise uses the radon screening, testing, or mitigation services of a person misrepresenting his proficiency listing to conduct such services as described in § 32.1-229.01 may bring an action to recover the greater of (i) actual damages sustained, together with costs and reasonable attorneys' fees, or (ii) $100.
(1993, c. 765.)

§ 32.1-229.1. Inspections of X-ray machines required; Radiation Inspection Reports; fees; qualification of inspectors.
~~All X-ray machines shall be registered with the Board of Health, and inspected and certified as meeting the standards established pursuant to its regulations. The inspections shall be conducted periodically on a schedule prescribed by the Board. The Board shall notify each registrant by September 1, 1987, of the date when the compliance with the schedule shall be required. The Board may also require random unannounced, follow-up inspections of machines which were inspected by private inspectors in order to maintain quality control. Inspections may be performed by personnel of the Department of Health or by private inspectors. Inspections conducted by the private inspectors shall be conducted in conformance with the regulations of the Board and reports on these inspections shall be filed by the registrant with the Commissioner on forms prescribed by the Board. Every owner or operator of an X-ray machine shall have his machine inspected according to the Board's schedule by a private inspector or a Department of Health inspector. Following inspection, the test results shall be analyzed by the Department of Health, which shall issue a certificate when the data indicates the machine meets the Board's standards. If the machine does not meet the Board's standards, the certification may be denied. If the certification is denied, the machine shall not be used for treatment, diagnosis or evaluation of patients, whether human or animal, until the standards of the Board have been met. A copy of the certificate shall be displayed by the registrant in a conspicuous place in close proximity to the X-~~

~~ray machine. Every owner or operator of an X-ray machine shall register and request an initial inspection by a private inspector or a Department of Health inspector no later than thirty days after the installation of the equipment. Subsequent inspections shall be made periodically in accordance with a schedule promulgated by the Board. In the event of changes in or installation of new equipment during the last ninety days of a period for which an inspection has been made no interim inspection shall be required. In accordance with the Administrative Process Act (§ 2.2-4000 et seq.), the Board of Health shall promulgate rules and regulations to: 1. Establish fee schedules for registration of machines, for inspections of X-ray machines by Department of Health personnel; however, no fee shall be charged for inspections initiated by the Department; 2. Set criteria for qualifications to be listed as a private inspector and publish a list of such inspectors; 3. Establish forms for the periodic Radiation Inspection Report; 4. Establish the schedule for inspections; 5. Set standards for certification of X-ray machines; 6. Establish a database of registered and certified X-ray machines which shall include, but not be limited to, the name of the owner or operator and the location of the machine; and 7. Act upon such other matters as the Board deems appropriate to protect the health and safety of the patients, workers and the general public. The provisions of this section and of §§ 32.1-229 and 32.1-229.2 relating to X-ray machines and machines emitting or utilizing radiation shall not apply to devices used or bought for use primarily for personal, family or household purposes.~~

A. All X-ray machines shall be registered with the Department, and inspected and certified as meeting the standards established pursuant to its regulations. The inspections shall be conducted periodically on a schedule prescribed by the Board. The Department may also require random unannounced, follow-up inspections of machines which were inspected by private inspectors in order to maintain quality control.

B. Every owner or operator of an X-ray machine shall register and request an initial inspection by a private inspector or a Department inspector no later than thirty days after the installation of the equipment. Subsequent inspections shall be made periodically in accordance with the schedule prescribed by the Board. In the event of changes in or installation of new equipment during the last ninety days of a period for which an inspection has been made no interim inspection shall be required.

C. Inspections may only be performed by personnel of the Department of Health or by private inspectors. Inspections conducted by the private inspectors shall be conducted in conformance

with the regulations of the Board and reports on these inspections shall be filed by the registrant with the Department on forms prescribed by the Department.

D. Following inspection, the test results shall be analyzed by the Department, which shall issue a certificate when the data indicates the machine meets the Board's standards. If the machine does not meet the Board's standards, the certification may be denied. If the certification is denied, the machine shall not be used for treatment, diagnosis or evaluation of patients, whether human or animal, until the standards of the Board have been met. A copy of the certificate shall be displayed by the registrant in a conspicuous place in close proximity to the X-ray machine.

E. In accordance with the Administrative Process Act (§ 2.2-4000 et seq.), the Board shall promulgate rules and regulations to:

1. Establish fee schedules for registration of machines, for inspections of X-ray machines by Department personnel; however, no fee shall be charged for inspections initiated by the Department;

2. Set criteria for qualifications to be listed as a private inspector and publish a list of such inspectors;

3. Establish the schedule for inspections;

4. Set standards for certification of X-ray machines; and

5. Act upon such other matters as the Board deems appropriate to protect the health and safety of the patients, workers and the general public.

The provisions of this section and of §§ 32.1-229 and 32.1-229.2 relating to X-ray machines and machines emitting or utilizing radiation shall not apply to devices used or bought for use primarily for personal, family or household purposes.

(1987, c. 666.)

§ 32.1-229.2. Costs of inspection conducted by Health Department; fees to be used to support program.

In order to minimize competition with the private sector, the fee schedule developed by the Board for routine inspections of X-ray machines by Department inspectors shall include all reasonable costs of such inspections. ~~The fees collected pursuant to § 32.1-229.1 shall be deposited in the general fund.~~

(1987, c. 666.)

§ 32.1-229.3 Licensing of Radioactive Material

A. The Board's regulations shall provide for licensing of radioactive material not under the authority of the United States Nuclear Regulatory Commission, or devices or equipment utilizing such material(s). Such regulations shall provide for amendment, modification, suspension or revocation of licenses. The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations or orders issued in accordance with the provisions of this article.

B. The Board's regulations may require registration or licensing of other sources of radiation.

C. The Board may exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this article when the Commissioner makes a finding that the exemption of such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

D. Regulations promulgated under this article should provide for recognition of other Agreement State or federal licenses, subject to such requirements as the Board may prescribe.

E. It shall be unlawful for any person to use, manufacture, produce, distribute, sell, transport, transfer, install, repair, receive, acquire, own or possess any source of radiation unless licensed by or registered with the Department in conformance with regulations, promulgated in accordance with the provisions of this article.

§ 32.1-230. Further powers of Board.

The Board shall have the power, subject to the approval of the Governor:

1. To acquire by purchase, exercise of the right of eminent domain, grant, gift, devise or otherwise, the fee simple title to or any acceptable lesser interest in any lands, selected in the discretion of the Board as constituting necessary, desirable or acceptable sites for ionizing radiation control projects of the Board, including any and all lands adjacent to a project site as in the discretion of the Board may be necessary or suitable for restricted areas; but in all instances lands which are to be designated as radioactive waste material sites shall be acquired in fee simple absolute and dedicated in perpetuity to such purpose.

2. To convey or lease, for such term as in the discretion of the Board may be in the public interest, any lands so acquired, either for a fair and reasonable consideration or solely or partly as

an inducement to the establishment or location in the Commonwealth of any scientific or technological facility, project, satellite project or nuclear storage area; but subject to such restraints as may be deemed proper to bring about a reversion of title or termination of any lease in the event the grantee or lessee, as the case may be, shall cease to use the premises or facilities in the conduct of business or activities consistent with the purposes of this article; provided, however, radioactive waste material sites may be leased but may not otherwise be disposed of except to another department, agency or institution of the Commonwealth or to the United States.

3. To assume responsibility for perpetual custody and maintenance of radioactive materials held for custodial purposes at any publicly or privately operated facility located within the Commonwealth in the event the parties operating such facilities abandon their responsibility and whenever the federal government or any of its agencies has not assumed the responsibility. In such event, the Board may collect fees from private or public parties holding radioactive materials for perpetual custodial purposes in order to finance such perpetual custody and maintenance as the Board may undertake; provided, that the fees shall be sufficient in each individual case to defray the estimated cost of the Board's custodial management activities for that individual case. All such fees, when received by the Board, shall be credited to a special fund of the Department, shall be used exclusively for maintenance costs or for otherwise satisfying custodial and maintenance obligations and are hereby appropriated for such purpose.

4. To enter into an agreement with the federal government or any of its authorized agencies to assume perpetual maintenance of lands donated, leased, or purchased from the federal government or any of its authorized agencies and used for development of atomic energy resources or used as custodial sites for radioactive material.

(Code 1950, § 32-414.4; 1964, c. 158; 1968, c. 314; 1975, c. 563; 1979, c. 711.)

§ 32.1-231. Bonds of licensees.

A. The Board is authorized to require bonds of licensees. A bond shall be forfeited when the public health and safety is endangered by ionizing radiation due to the abandonment by a licensee of a licensed activity or licensed materials or due to a violation of law by a licensee. Each bond so forfeited shall be credited to a special fund on the books of the Department called

the Radiation Reclamation Fund and shall be expended as necessary to restore to a safe condition the site where the licensed activity is or was conducted or the licensed materials are located.

B. The Board shall adopt regulations for determining the amount of each bond based upon the potential for contamination and injury by the licensed activity or material, the cost of disposal of the licensed material and the cost of restoring the site of the licensed activity to a safe condition.

C. No state, local or other governmental agency shall be required to file a bond. The Board may, by regulation, provide for the exemption of classes of licensees from bonding requirements if such classes present no significant risk to the public health and safety.

D. An acceptable bond for the purposes of this section shall be a bond issued by a fidelity or surety company authorized to do business in Virginia, a personal bond secured by such collateral as the Board may require or a cash bond.

(Code 1950, § 32-414.4:1; 1976, c. 652; 1979, c. 711.)

§ 32.1-232. Radioactive Material Perpetual Care Trust Fund.

A. The Board may require a licensee to deposit funds on an annual basis in a trust fund which shall be known as the Radioactive Material Perpetual Care Trust Fund, when the Board determines that it is probable that the licensee may cease to operate a licensed facility thereby leaving a site containing or associated with licensable radioactive material which will require maintenance, surveillance or other care on a continuing basis.

B. In order to provide for such maintenance, surveillance or other care, the Board may acquire any such site pursuant to § 32.1-230.

C. The Board may by lease with or license to any person provide for the maintenance, surveillance or other care of any such site. Any lessee or licensee operating under the provisions of this section shall be subject to § 32.1-231.

D. Each deposit of funds required of a licensee shall be in such amount that interest on the sum of all funds reasonably anticipated as payable by such licensee shall provide an annual amount equal to the anticipated reasonable costs necessary to maintain, monitor and otherwise supervise and care for the site as required in the interest of public health and safety. In arriving at the amount of funds to be deposited, the Board shall consider the nature of the licensed material, size

and type of activity, estimated future receipts and estimated future expenses of maintenance, monitoring, and supervision.

E. All accrued interest on funds deposited in the Radioactive Material Perpetual Care Trust Fund is hereby appropriated to the Board and may be expended by the Board to acquire, monitor, maintain, supervise and care for such sites as required to protect the public health and safety on a continuing basis.

F. If a person licensed by any government agency other than the Commonwealth desires to transfer a site to the Board for the purpose of administering or providing perpetual care and if the Board accepts such transfer, a lump-sum deposit shall be made to the Perpetual Care Trust Fund. The amount of such deposit shall be determined by the Board taking into consideration the factors stated in subsection D of this section.

(Code 1950, § 32-414.4:2; 1976, c. 652; 1979, c. 711.)

§ 32.1-232.1. Special Trust Fund for Radioactive Materials Facility Licensure and Inspection created.

There is hereby created in the Department of the Treasury a special nonreverting fund known as the Special Trust Fund for Radioactive Materials Facility Licensure and Inspection, hereinafter referred to as the "Fund." The Fund shall be established on the books of the Comptroller, and any moneys remaining in the Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund. All deposits of fees collected pursuant to ~~§ 32.1-229 A 8~~ § 32.1-229 C 6 shall be paid into the Department of the Treasury and credited to the Fund; in addition, the Fund shall consist of such funds as may be appropriated for the purpose of licensure and inspection of radioactive materials facilities, and such gifts, donations, grants, bequests, and other funds as may be received on its behalf. Interest earned on such moneys shall remain in the Fund and be credited to it. Moneys in the Fund shall be used solely to support the Department of Health's program for licensure and inspection of radioactive materials facilities as provided in this article and Board of Health regulations. Disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request of the Commissioner of Health.

(1999, c. 755.)

§ 32.1-233. Radiation Advisory Board; composition; duties generally.

A. The Radiation Advisory Board shall consist of ten appointive members and the seven ex officio members specified below. The Governor shall appoint to the Advisory Board individuals from industry, labor and agriculture as well as individuals with scientific training in one or more of the following fields: radiology, medicine, radiation or health physics, or related sciences, with specialization in ionizing radiation. Not more than two individuals shall be specialists in any one of the above-named fields. Members of the Advisory Board shall serve at the pleasure of the Governor. The Commissioner shall be an ex officio member and chairman of the Advisory Board~~,~~. ~~and the~~ The Commissioner of Labor and Industry, the Commissioner of Agriculture and Consumer Services, ~~the chairman of the State Water Control Board or his designee~~ the State Coordinator of Emergency Management, ~~the Governor's representative on the Southern Interstate Nuclear Board~~, ~~the Executive Director of the Department of Waste Management~~ the Director of Environmental Quality and the Director of the Virginia Institute of Marine Science shall be ex officio members of the Advisory Board.

B. The Advisory Board shall meet at least annually and shall:

1. Review and evaluate policies and programs of the Commonwealth relating to ionizing radiation; and

2. Make recommendations to the Commissioner and the Board of Health, the ~~Executive Director of the Department of Waste Management~~ Director of Environmental Quality and the Virginia Waste Management Board and furnish such technical advice as may be required, on matters relating to development, utilization and regulation of sources of ionizing radiation.

(Code 1950, § 32-414.5; 1964, c. 158; 1979, c. 711; 1980, c. 728; 1985, c. 448; 1987, c. 157.)

§ 32.1-234. ~~Repealed by Acts 1987, c. 666.~~ Enforcement

A. Whenever the Department finds, upon inspection and examination, that a source of radiation as constructed, operated or maintained results in a violation of this article or of any rules promulgated under this article, the Department shall do all of the following:

1. Notify the person in control that is causing, allowing or permitting the violation as to the nature of the violation.

2. Specify at time by which the person in control shall cease and abate causing, allowing or permitting the violation and take such action as may be necessary to have the source of radiation constructed, operated, or maintained in compliance with this article and rules promulgated under this article.

B. Upon failure to comply within the time specified, the Department may proceed to revoke the license and the person responsible for the source of radiation may be subject to the penalties provided by § 32.1-27.

C. In addition to the provisions of § 32.1-27,

1. Whenever, in the judgment of the Department, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute an emergency, hazard to health and safety, or violation of any provision of this article, or any rule, regulation or order issued thereunder, and at the request of the Commissioner, the attorney general may make application to the appropriate court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the Department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

2. Any person who violates any provisions of this article or any order or regulation adopted pursuant thereto shall, upon such finding by a court of competent jurisdiction, be assessed a civil penalty of not more than $10,000 for each day of such violation. All penalties under this section shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth. Civil penalties collected pursuant to this section shall be paid into the state treasury and credited to the Radioactive Material Perpetual Care Trust Fund created pursuant to § 32.1-232.

D. In addition to the provisions of § 32.1-25, the Department shall have the power to enter at all reasonable times, or in cases of an emergency, upon any private or public property for the purpose of determining whether or not there is compliance with or violation of the provisions of this article and rules and regulations issued thereunder, except that entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.

§ 32.1-235. Authority of Governor to enter into agreements with federal government; effect on federal licenses.

A. The Governor is authorized, subject to the appropriation of funds, to enter into agreements with the federal government providing for discontinuance of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this Commonwealth.

B. Any person who, on the effective date of an agreement under subsection A above, except those exempted under § 32.1-228, possesses a license issued by the federal government shall be deemed to possess the same pursuant to this article. Such license shall expire either ninety days after receipt of a notice from the ~~Commissioner~~ Department of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier.

(Code 1950, § 32-414.11; 1964, c. 158; 1974, c. 300; 1979, c. 711; 1999, c. 755.)

§ 32.1-236. Authority of Board to enter into agreements with federal government, other states or interstate agencies; training programs for personnel.

A. The Board, with the prior approval of the Governor, is authorized to enter into an agreement or agreements with the federal government, other states or interstate agencies, whereby this Commonwealth will perform, on a cooperative basis with the federal government, other states or interstate agencies, inspections or other functions relating to control of sources of ionizing radiation.

B. The Board, from funds provided by law, may institute programs for the purpose of training personnel to carry out the provisions of this article and, with the prior approval of the Governor, may make such personnel available for participation in any program or programs of the federal government, other states or interstate agencies in furtherance of this article.

(Code 1950, § 32-414.12; 1964, c. 158; 1979, c. 711.)

§ 32.1-237. Effect upon local ordinances, etc.

Ordinances, resolutions or regulations, now or hereafter in effect, of the governing body of a county or city relating to by-product, source and special nuclear materials shall not be

superseded by this article, provided that such ordinances or regulations are and continue to be consistent with the provisions of this article, amendments thereto and regulations thereunder. (Code 1950, § 32-414.13; 1964, c. 158; 1979, c. 711.)

§ 32.1-238. Impounding sources of ionizing radiation.

The ~~Commissioner~~ Department is authorized, in the event of an emergency or under other circumstances constituting a hazard to ~~the public~~ health and safety, to impound or order the impounding of sources of ionizing radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this article or any regulations issued thereunder. (Code 1950, § 32-414.17; 1964, c. 158; 1979, c. 711.)

DRAFT

ENCL 2

Code of Virginia, sections 32.1-227 through 32.1-238 are for Radiation Control

**§ 32.1-227. Definitions.**

As used in this article unless the context requires a different meaning:

1. "By-product material" means any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

2. "Ionizing radiation" means gamma rays and X rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles.

3. "Person" includes, in addition to the entities enumerated in subdivision 4 of § 32.1-3, an institution, agency and political subdivision of this Commonwealth and of any other state but does not include the United States Nuclear Regulatory Commission or any successor thereto or any federal government agencies licensed by the United States Nuclear Regulatory Commission or any successor thereto.

4. "Radiation emergency" means any situation, excluding events resulting from nuclear warfare, which involves the possibility of accidental release of ionizing radiation that may pose a threat to the safety and health of any citizen of this Commonwealth.

5. "Radioactive material" means any material that emits ionizing radiation spontaneously.

6. "Source material" means (i) uranium, thorium, or any other material which the United States Nuclear Regulatory Commission, or any successor thereto, has determined to be source material; or (ii) ores containing one or more of the foregoing materials in concentrations determined by the United States Nuclear Regulatory Commission or any successor thereto to be source material.

7. "Special nuclear material" means (i) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the United States Nuclear Regulatory Commission or any successor thereto has determined to be such but does not include source material; or (ii) any material artificially enriched by any of the foregoing but not including source material.

(Code 1950, § 32-414.3; 1964, c. 158; 1975, c. 563; 1979, c. 711.)

**§ 32.1-228. Exemption.**

The provisions of this article shall not apply to nuclear reactors that are subject to exclusive licensing and regulation by the United States Nuclear Regulatory Commission.

(Code 1950, § 32-414.7; 1964, c. 158; 1979, c. 711.)

**§ 32.1-229. General powers of Board.**

A. The Board is authorized to:

1. Establish a program of effective regulation of sources of radiation for the protection of the public health and safety, including a program of education and technical assistance relating to radon that is targeted to those areas of the Commonwealth known to have high radon levels.

2. Establish a program to promote the orderly regulation of radiation within the Commonwealth, among the states and between the federal government and the Commonwealth and to facilitate intergovernmental cooperation with respect to use and regulation of sources of radiation to the end that duplication of regulation may be minimized.

3. Establish a program to permit maximum utilization of sources of radiation consistent with the public health and safety.

4. Adopt regulations providing for (i) licenses to use, manufacture, produce, transfer, receive, acquire, own or possess quantities of, or devices or equipment utilizing, by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially, (ii) registration of the possession of a source of radiation and of information with respect thereto, and (iii) regulation of by-product, source and special nuclear material.

5. Encourage, participate in and conduct studies, investigations, training, research and demonstrations relating to control of sources of radiation.

6. Develop programs for responding adequately to radiation emergencies and coordinate such programs with the Department of Emergency Management.

7. Maintain, revise as necessary, and make available to the public a list of persons that have been listed as proficient to offer screening, testing or mitigation for radon by the United States Environmental Protection Agency, the National Radon Measurement Proficiency Program of the National Environmental Health Association or the National Radon Safety Board Certified Radon Professional Program or any other proficiency program acceptable to the Board of Health.

8. Establish fee schedules, which shall not exceed comparable federal Nuclear Regulatory Commission fees, for the licensure and inspection of radioactive materials.

9. Adopt regulations for the imposition of civil penalties pursuant to § 32.1-27 C for violations of law, regulation or licensure conditions by persons licensed for the use or possession of radioactive materials.

10. Establish guidelines to require the licensed facilities or physicians' offices where mammography services are performed to offer to the patient, prior to departure, development of such films to ensure integrity and quality of the film. When film developing is not available or the patient chooses not to wait, the patient shall be notified within two business days if another mammogram is necessary. This requirement does not imply or require that a diagnostic opinion be made at the time of the mammogram. The interpreting physician may require that the mammogram be retaken if, in the opinion of the physician, the study is of inadequate quality.

B. The Board shall require registration, inspection and certification for all diagnostic and therapeutic X-ray machines used in the healing arts. In addition, the Board may require the registration, inspection and certification of other machines emitting radiation or utilizing radiation for patients, consumers, workers or the general public, except those machines operated by remote control which are not accessible to human beings during operation.

C. Pursuant to its powers enumerated in § 32.1-25, the Board shall provide for scheduled and random unannounced inspections of facilities and physicians' offices that provide mammography services to ensure compliance with laws, regulations or conditions specified by the Board.

D. The Board shall require reporting to both the Department and the Virginia Department of State Police immediately if any radioactive materials, including sources of ionizing radiation approved by the Federal Food and Drug Administration for the treatment of foods pursuant to the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.), cannot be accounted for within 24 hours. Such reporting shall only be necessary when required by the United States Nuclear Regulatory Commission.

Except as provided in this subsection, a report submitted pursuant to this subsection shall be confidential and shall not be a public record pursuant to the Freedom of Information Act (§ 2.2-3700 et seq.). The Department shall cooperate and may share information submitted to it pursuant to this subsection with the Department of Emergency Management, United States Nuclear Regulatory Commission, United States Food and Drug Administration, and state, local and federal law-enforcement agencies, as appropriate. The Department or the Virginia Department of State Police may make public all or part of any report made or other information obtained, pursuant to this section (i) where the release of such report or information may assist in the prevention of imminent harm to public health or safety, or (ii) where the release of such report or information may be useful for education of the public on health, safety or homeland defense issues.

Any unauthorized disclosure of reports made pursuant to this subsection shall be subject to the penalties of § 32.1-27.

(Code 1950, §§ 32-414.2, 32-414.4, 32-414.6, 32-414.7, 32-414.16; 1964, c. 158; 1968, c. 314; 1975, c. 563; 1979, c. 711; 1987, c. 666; 1988, c. 736; 1989, cc. 275, 283; 1999, c. 755; 2000, cc. 271, 936; 2001, cc. 408, 426; 2003, c. 635.)

**§ 32.1-229.01. (Effective until October 1, 2005) Companies listed as proficient to perform radon screening, testing or mitigation; compliance.**

A. No person shall conduct or offer to conduct any radon screening, testing or mitigation in the Commonwealth unless he has been listed as proficient by the United States Environmental Protection Agency, the National Radon Measurement Proficiency Program of the National Environmental Health Association or the National Radon Safety Board Certified Radon Professional Program or any other proficiency program acceptable to the Board of Health to offer such screening, testing or mitigation.

For the purposes of this article, "person" shall be defined as provided in § 1-13.19.

B. Radon professionals listed as proficient pursuant to subsection A shall comply with the radon mitigation and testing standards outlined in the Environmental Protection Agency's publication, EPA 402-R-93-078, as revised, or the American Society for Testing and Materials (ASTM International) Standard, E-2121-02, or any other radon testing and mitigation standards accepted by the Environmental Protection Agency and the Board.

(1988, c. 736; 1989, cc. 275, 283; 2001, cc. 408, 426; 2003, c. 709.)

**§ 32.1-229.01. (Effective October 1, 2005) Companies listed as proficient to perform radon screening, testing or mitigation; compliance.**

A. No person shall conduct or offer to conduct any radon screening, testing or mitigation in the Commonwealth unless he has been listed as proficient by the United States Environmental Protection Agency, the National Radon Measurement Proficiency Program of the National Environmental Health Association or the National Radon Safety Board Certified Radon Professional Program or any other proficiency program acceptable to the Board of Health to offer such screening, testing or mitigation.

For the purposes of this article, "person" shall be defined as provided in § 1-230.

B. Radon professionals listed as proficient pursuant to subsection A shall comply with the radon mitigation and testing standards outlined in the Environmental Protection Agency's publication, EPA 402-R-93-078, as revised, or the American Society for Testing and Materials (ASTM International) Standard, E-2121-02, or any other radon testing and mitigation standards accepted by the Environmental Protection Agency and the Board.

(1988, c. 736; 1989, cc. 275, 283; 2001, cc. 408, 426; 2003, c. 709; 2005, c. 839.)

**§ 32.1-229.01:1. Action for damages.**

Any person who engages or otherwise uses the radon screening, testing, or mitigation services of a person misrepresenting his proficiency listing to conduct such services as described in § 32.1-229.01 may bring an action to recover the greater of (i) actual damages sustained, together with costs and reasonable attorneys' fees, or (ii) $100.

(1993, c. 765.)

**§ 32.1-229.1. Inspections of X-ray machines required; Radiation Inspection Reports; fees; qualification of inspectors.**

All X-ray machines shall be registered with the Board of Health, and inspected and certified as meeting the standards established pursuant to its regulations. The inspections shall be conducted periodically on a schedule prescribed by the Board.

The Board shall notify each registrant by September 1, 1987, of the date when the compliance with the schedule shall be required. The Board may also require random unannounced, follow-up inspections of machines which were inspected by private inspectors in order to maintain quality control.

Inspections may be performed by personnel of the Department of Health or by private inspectors. Inspections conducted by the private inspectors shall be conducted in conformance with the regulations of the Board and reports on these inspections shall be filed by the registrant with the Commissioner on forms prescribed by the Board.

Every owner or operator of an X-ray machine shall have his machine inspected according to the Board's schedule by a private inspector or a Department of Health inspector. Following inspection, the test results shall be analyzed by the Department of Health, which shall issue a certificate when the data indicates the machine meets the Board's standards. If the machine does not meet the Board's standards, the certification may be denied. If the certification is denied, the machine shall not be used for treatment, diagnosis or evaluation of patients, whether human or animal, until the standards of the Board have been met. A copy of the certificate shall be displayed by the registrant in a conspicuous place in close proximity to the X-ray machine.

Every owner or operator of an X-ray machine shall register and request an initial inspection by a private inspector or a Department of Health inspector no later than thirty days after the installation of the equipment. Subsequent inspections shall be made periodically in accordance with a schedule promulgated by the Board. In the event of changes in or installation of new equipment during the last ninety days of a period for which an inspection has been made no interim inspection shall be required.

In accordance with the Administrative Process Act (§ 2.2-4000 et seq.), the Board of Health shall promulgate rules and regulations to:

1. Establish fee schedules for registration of machines, for inspections of X-ray machines by Department of Health personnel; however, no fee shall be charged for inspections initiated by the Department;

2. Set criteria for qualifications to be listed as a private inspector and publish a list of such inspectors;

3. Establish forms for the periodic Radiation Inspection Report;

4. Establish the schedule for inspections;

5. Set standards for certification of X-ray machines;

6. Establish a database of registered and certified X-ray machines which shall include, but not be limited to, the name of the owner or operator and the location of the machine; and

7. Act upon such other matters as the Board deems appropriate to protect the health and safety of the patients, workers and the general public.

The provisions of this section and of §§ 32.1-229 and 32.1-229.2 relating to X-ray machines and machines emitting or utilizing radiation shall not apply to devices used or bought for use primarily for personal, family or household purposes.

(1987, c. 666.)

**§ 32.1-229.2. Costs of inspection conducted by Health Department; fees to be used to support program.**

In order to minimize competition with the private sector, the fee schedule developed by the Board for routine inspections of X-ray machines by Department of Health inspectors shall include all reasonable costs of such inspections. The fees collected pursuant to § 32.1-229.1 shall be deposited in the general fund.

(1987, c. 666.)

**§ 32.1-230. Further powers of Board.**

The Board shall have the power, subject to the approval of the Governor:

1. To acquire by purchase, exercise of the right of eminent domain, grant, gift, devise or otherwise, the fee simple title to or any acceptable lesser interest in any lands, selected in the discretion of the Board as constituting necessary, desirable or acceptable sites for ionizing radiation control projects of the Board, including any and all lands adjacent to a project site as in the discretion of the Board may be necessary or suitable for restricted areas; but in all instances lands which are to be designated as radioactive waste material sites shall be acquired in fee simple absolute and dedicated in perpetuity to such purpose.

2. To convey or lease, for such term as in the discretion of the Board may be in the public interest, any lands so acquired, either for a fair and reasonable consideration or solely or partly as an inducement to the establishment or location in the Commonwealth of any scientific or technological facility, project, satellite project or nuclear storage area; but subject to such restraints as may be deemed proper to bring about a reversion of title or

termination of any lease in the event the grantee or lessee, as the case may be, shall cease to use the premises or facilities in the conduct of business or activities consistent with the purposes of this article; provided, however, radioactive waste material sites may be leased but may not otherwise be disposed of except to another department, agency or institution of the Commonwealth or to the United States.

3. To assume responsibility for perpetual custody and maintenance of radioactive materials held for custodial purposes at any publicly or privately operated facility located within the Commonwealth in the event the parties operating such facilities abandon their responsibility and whenever the federal government or any of its agencies has not assumed the responsibility. In such event, the Board may collect fees from private or public parties holding radioactive materials for perpetual custodial purposes in order to finance such perpetual custody and maintenance as the Board may undertake; provided, that the fees shall be sufficient in each individual case to defray the estimated cost of the Board's custodial management activities for that individual case. All such fees, when received by the Board, shall be credited to a special fund of the Department, shall be used exclusively for maintenance costs or for otherwise satisfying custodial and maintenance obligations and are hereby appropriated for such purpose.

4. To enter into an agreement with the federal government or any of its authorized agencies to assume perpetual maintenance of lands donated, leased, or purchased from the federal government or any of its authorized agencies and used for development of atomic energy resources or used as custodial sites for radioactive material.

(Code 1950, § 32-414.4; 1964, c. 158; 1968, c. 314; 1975, c. 563; 1979, c. 711.)

**§ 32.1-231. Bonds of licensees.**

A. The Board is authorized to require bonds of licensees. A bond shall be forfeited when the public health and safety is endangered by ionizing radiation due to the abandonment by a licensee of a licensed activity or licensed materials or due to a violation of law by a licensee. Each bond so forfeited shall be credited to a special fund on the books of the Department called the Radiation Reclamation Fund and shall be expended as necessary to restore to a safe condition the site where the licensed activity is or was conducted or the licensed materials are located.

B. The Board shall adopt regulations for determining the amount of each bond based upon the potential for contamination and injury by the licensed activity or material, the cost of disposal of the licensed material and the cost of restoring the site of the licensed activity to a safe condition.

C. No state, local or other governmental agency shall be required to file a bond. The Board may, by regulation, provide for the exemption of classes of licensees from bonding requirements if such classes present no significant risk to the public health and safety.

D. An acceptable bond for the purposes of this section shall be a bond issued by a fidelity or surety company authorized to do business in Virginia, a personal bond secured by such collateral as the Board may require or a cash bond.

(Code 1950, § 32-414.4:1; 1976, c. 652; 1979, c. 711.)

**§ 32.1-232. Radioactive Material Perpetual Care Trust Fund.**

A. The Board may require a licensee to deposit funds on an annual basis in a trust fund which shall be known as the Radioactive Material Perpetual Care Trust Fund, when the Board determines that it is probable that the licensee may cease to operate a licensed facility thereby leaving a site containing or associated with licensable radioactive material which will require maintenance, surveillance or other care on a continuing basis.

B. In order to provide for such maintenance, surveillance or other care, the Board may acquire any such site pursuant to § 32.1-230.

C. The Board may by lease with or license to any person provide for the maintenance, surveillance or other care of any such site. Any lessee or licensee operating under the provisions of this section shall be subject to § 32.1-231.

D. Each deposit of funds required of a licensee shall be in such amount that interest on the sum of all funds reasonably anticipated as payable by such licensee shall provide an annual amount equal to the anticipated reasonable costs necessary to maintain, monitor and otherwise supervise and care for the site as required in the interest of public health and safety. In arriving at the amount of funds to be deposited, the Board shall consider the nature of the licensed material, size and type of activity, estimated future receipts and estimated future expenses of maintenance, monitoring, and supervision.

E. All accrued interest on funds deposited in the Radioactive Material Perpetual Care Trust Fund is hereby appropriated to the Board and may be expended by the Board to acquire, monitor, maintain, supervise and care for such sites as required to protect the public health and safety on a continuing basis.

F. If a person licensed by any government agency other than the Commonwealth desires to transfer a site to the Board for the purpose of administering or providing perpetual care and if the Board accepts such transfer, a lump-sum deposit shall be made to the Perpetual Care Trust Fund. The amount of such deposit shall be determined by the Board taking into consideration the factors stated in subsection D of this section.

(Code 1950, § 32-414.4:2; 1976, c. 652; 1979, c. 711.)

**§ 32.1-232.1. Special Trust Fund for Radioactive Materials Facility Licensure and Inspection created.**

There is hereby created in the Department of the Treasury a special nonreverting fund known as the Special Trust Fund for Radioactive Materials Facility Licensure and Inspection, hereinafter referred to as the "Fund." The Fund shall be established on the books of the Comptroller, and any moneys remaining in the Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund. All deposits of fees collected pursuant to § 32.1-229 A 8 shall be paid into the Department of the Treasury and credited to the Fund; in addition, the Fund shall consist of such funds as may be appropriated for the purpose of licensure and inspection of radioactive materials facilities, and such gifts, donations, grants, bequests, and other funds as may be received on its behalf. Interest earned on such moneys shall remain in the Fund and be credited to it. Moneys in the Fund shall be used solely to support the Department of Health's program for licensure and inspection of radioactive materials facilities as provided in this article and Board of Health regulations. Disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request of the Commissioner of Health.

(1999, c. 755.)

**§ 32.1-233. Radiation Advisory Board; composition; duties generally.**

A. The Radiation Advisory Board shall consist of ten appointive members and the seven ex officio members specified below. The Governor shall appoint to the Advisory Board individuals from industry, labor and agriculture as well as individuals with scientific training in one or more of the following fields: radiology, medicine, radiation or health physics, or related sciences, with specialization in ionizing radiation. Not more than two individuals shall be specialists in any one of the above-named fields. Members of the Advisory Board shall serve at the pleasure of the Governor. The Commissioner shall be an ex officio member and chairman of the Advisory Board, and the Commissioner of Labor and Industry, the Commissioner of Agriculture and Consumer Services, the chairman of the State Water Control Board or his designee, the Governor's representative on the Southern Interstate Nuclear Board, the Executive Director of the Department of Waste Management and the Director of the Virginia Institute of Marine Science shall be ex officio members of the Advisory Board.

B. The Advisory Board shall meet at least annually and shall:

1. Review and evaluate policies and programs of the Commonwealth relating to ionizing radiation; and

2. Make recommendations to the Commissioner and the Board of Health, the Executive Director of the Department of Waste Management and the Virginia Waste Management Board and furnish such technical advice as may be required, on matters relating to development, utilization and regulation of sources of ionizing radiation.

(Code 1950, § 32-414.5; 1964, c. 158; 1979, c. 711; 1980, c. 728; 1985, c. 448; 1987, c. 157.)

**§ 32.1-234.**

Repealed by Acts 1987, c. 666.

**§ 32.1-235. Authority of Governor to enter into agreements with federal government; effect on federal licenses.**

A. The Governor is authorized, subject to the appropriation of funds, to enter into agreements with the federal government providing for discontinuance of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this Commonwealth.

B. Any person who, on the effective date of an agreement under subsection A above, possesses a license issued by the federal government shall be deemed to possess the same pursuant to this article. Such license shall expire either ninety days after receipt of a notice from the Commissioner of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier.

(Code 1950, § 32-414.11; 1964, c. 158; 1974, c. 300; 1979, c. 711; 1999, c. 755.)

**§ 32.1-236. Authority of Board to enter into agreements with federal government, other states or interstate agencies; training programs for personnel.**

A. The Board, with the prior approval of the Governor, is authorized to enter into an agreement or agreements with the federal government, other states or interstate agencies, whereby this Commonwealth will perform, on a cooperative basis with the federal government, other states or interstate agencies, inspections or other functions relating to control of sources of ionizing radiation.

B. The Board, from funds provided by law, may institute programs for the purpose of training personnel to carry out the provisions of this article and, with the prior approval of the Governor, may make such personnel available for participation in any program or programs of the federal government, other states or interstate agencies in furtherance of this article.

(Code 1950, § 32-414.12; 1964, c. 158; 1979, c. 711.)

**§ 32.1-237. Effect upon local ordinances, etc.**

Ordinances, resolutions or regulations, now or hereafter in effect, of the governing body of a county or city relating to by-product, source and special nuclear materials shall not be superseded by this article, provided that such ordinances or regulations are and continue to be consistent with the provisions of this article, amendments thereto and regulations thereunder.

(Code 1950, § 32-414.13; 1964, c. 158; 1979, c. 711.)

**§ 32.1-238. Impounding sources of ionizing radiation.**

The Commissioner is authorized, in the event of an emergency constituting a hazard to the public health and safety, to impound or order the impounding of sources of ionizing radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this article or any regulations issued thereunder.

(Code 1950, § 32-414.17; 1964, c. 158; 1979, c. 711.)

Other state laws pertaining to radiation protection:

**§ 18.2-321. Using X ray, fluoroscope, etc., in the fitting of footwear.**

It shall be unlawful for any person to use any X ray, fluoroscope, or other equipment or apparatus employing roentgen rays, in the fitting of shoes or other footwear. This section shall not apply to any licensed physician or surgeon in the practice of his profession. Any person violating the provisions of this section shall be guilty of a Class 3 misdemeanor.

(Code 1950, § 18.1-416; 1960, c. 358; 1975, cc. 14, 15.)

ENCL 3

September 5, 2007

U.S. Nuclear Regulatory Commission
Janet R. Schlueter, Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials and
Environmental Management Programs
Washington, DC 20555-0001

Dear Ms. Schlueter,

The United States Nuclear Regulatory Commission (NRC) reviewed Virginia's enabling legislation and provided 10 comments in a letter dated October 23, 2006.

The Virginia Department of Health has proposed a change to the Code of Virginia, sections § 32.1-227 through 238 encompassing the 10 comments. Please see the listed sections of the proposed code addressing the comments.

If you have any questions or comments please contact me, or Michael Welling at 804-864-8168 or mike.welling@vdh.virginia.gov.

Sincerely,

Les Foldesi
Director, Division of Radiological Health
804-864-8151
les.Foldesi@vdh.virginia.gov

1. The Virginia legislation does not directly establish a radioactive materials program or define its structure. The legislation does define the authorizations of the Board; however, the legislation does not expressly designate the Board as the radiation control agency. Please see SA-700, Section 4.1.1.1, Information Needed paragraph (a).

   **VDH Response: See section 32.1-229 A; "Department" is defined at section 32.1-3 to mean the State Department of Health.**

2. Although the Virginia legislation does authorize the program to issue licenses, the Virginia legislation does not clearly authorize the program to:
   - impose additional license requirements; **VDH: See section 32.1-229 C 8**
   - give exemption from the licensure requirements;
     **VDH: See section 32.1-229.3 C**
   - recognize the licenses of other jurisdictions; or
     **VDH: See section 32.1-229.3 D**
   - make it unlawful to acquire, possess, store, use, transfer, or dispose of materials without a valid license, or to violate the conditions of a license.
     **VDH: See section 32.1-229.3 E**

   Please see SA-700 Handbook, Section 4.1.1.1, Information Needed, paragraph (b)(1), (2), (3), (4), and (5).

3. Although the Virginia legislation does authorize the program to adopt regulations, the Virginia legislation does not:
   - specify the procedures and requirements for adoption of regulations, including public participation; or
     **VDH: See section 32.1-229 C giving the Board the authority to adopt regulations for a radiation control program; "Board" is defined at section 32.1-3 to mean the State Board of Health. The procedures and requirements for adoption of regulations are in Article 2 of Virginia's Administrative Process Act, sections 2.2-4006 through 2.2-4017. Section 2.2-4006 A.4.c. provides an exemption for regulations that are necessary to meet the requirements of federal law or regulations. Specific procedural requirements, including provisions for public participation, are in sections 2.2-4007.01 through 4007.06.**
   - allow the program to impose requirements in the form of other generic legally binding requirements, such as orders.
     **VDH: See section 32.1-229 C 8**

   Please see SA-700 Handbook, Section 4.1.1.1, Information Needed, paragraph ( c)(1) and (2).

4. The Virginia legislation does not expressly authorize the program to require compliance with regulatory requirements by both licensees and unlicensed individuals. Please see SA-700 Handbook, Section 4.1.1.1, paragraph (e).

   **VDH: See section 32.1-229.3.E making it unlawful for any person to use, manufacture, produce, distribute, sell, transport, transfer, install, repair, receive, acquire, own or possess any source of radiation unless licensed by or registered with the Department in conformance with regulations . . . The regulations, 12 VAC 5-481-20, provide that, "Except as otherwise specifically provided, these**

**regulations apply to all persons who receive, possess, use, transfer, own, or acquire any source of radiation; provided, however, that nothing in these regulations shall apply to any person to the extent such person is subject to regulation by the Nuclear Regulatory Commission. Attention is directed to the fact that regulation by the state of source material, byproduct material, and special nuclear material in quantities not sufficient to form a critical mass is subject to the provisions of the agreement between the state and the Nuclear Regulatory Commission and to 10 CFR Part 150 of the commission's regulations."**

**According to the maxim of statutory interpretation *expressio unius est exclusio alterius*, if a statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded. Section 32.1-228 exempts radioactive material, including nuclear reactors, that is subject to the exclusive licensing and regulation by the United States Nuclear Regulatory Commission. Interpreting the statute, no other person, activity or material would be exempt, whether licensed or not.**

**To enforce the statutory and regulatory requirements related to radioactive materials (in addition to section 32.1-234), section 32.1-26 authorizes the State Board of Health (Board) to issue orders requiring any person to comply with the provisions of any law administered by it, the State Health Commissioner (Commissioner) or the Department or any regulations promulgated by the Board. Section 32.1-20 vests the Commissioner with the power of the Board when it is not in session. Section 32.1-27 A. declares that any person willfully violating or refusing, failing or neglecting to comply with any regulation or order of the Board or Commissioner or any provision of Title 32.1 (Health) shall be guilty of a Class I misdemeanor unless a different penalty is specified. Civil actions (injunction, mandamus, or other appropriate remedy) are allowed pursuant to section 32.1-27 B.**

5. The definitions of "Person" and "Source Material" in the Virginia legislation and those in the Virginia regulations are not identical. These two definitions should be identically listed in both the Virginia regulations and legislation.

   **VDH: See section 32.1-227**

6. Although the Virginia legislation does not apply to nuclear reactors, the Virginia legislation does not explicitly exclude other materials or activities reserved to the NRC under Section 274c of the Atomic Energy Act of 1954, as amended, and Title 10 of the Code of Federal Regulations Part 150.

   **VDH: See section 32.1-228**

   Please see SA-700 Handbook, Section 4.1.1.2, Evaluation Criteria, paragraph (b).

7. Although the Virginia legislation does provide for recognition of licenses transferred from NRC to the Commonwealth under the Agreement, the Virginia legislation does not authorize the reciprocal recognition of specific licenses issued by NRC or other Agreement States.

   **VDH: See section 32.1-229.3 D**

Please see SA-700 Handbook, Section 4.1.1.2, Evaluation Criteria, paragraph ( c).

8. Although the Virginia legislation does provide for inspections of x-ray machines and facilities that provide mammography services, the Virginia legislation does not contain a general authorization to conduct inspections of licensee operations to ensure compliance with regulatory requirements. The Virginia legislation also does not authorize inspections of unlicensed facilities to assess the risk resulting from accidents or environmental releases of materials.

   **VDH: See section 32.1-25**

   Please see SA-700 Handbook, Section 4.1.1.2, Evaluation Criteria, paragraph (g).

9. Although the Virginia legislation does provide for imposition of civil penalties, the Virginia legislation does not provide general authority to take prompt enforcement action and does not authorize a variety of legal sanctions, including suspension of licenses and impoundment of materials. In cases of imminent threat to public health and safety, the law should authorize immediate suspension without prior hearing.

   **VDH: For enforcement see section 32.1-234, for impound see section 32.1-328**

   Please see SA-700 Handbook, Section 4.1.1.2, Evaluation Criteria, paragraph (h).

10. Although the Virginia legislation does provide for the imposition of civil penalties, the Virginia legislation does not:
    - authorize suspension or revocation of a license for repeated or continued noncompliance; VDH: **See section 32.1-234 B**
    - authorize the program to seek injunctive relief; or **VDH: See section 32.1-234 C**
    - authorize the program to refer licensees for criminal prosecution.

    **VDH: See section 32.1-27, any person willfully violating or refusing, failing or neglecting to comply with any regulation or order of the Board or Commissioner or any provision of Title 32.1 (Health) shall be guilty of a Class I misdemeanor unless a different penalty is specified.**

Please see SA-700 Handbook, Section 4.1.1.2, Evaluation Criteria, paragraph (i).

Other Virginia Code Sections

§ 32.1-3. Definitions.

As used in this title unless the context requires otherwise or it is otherwise provided:

1. "Board" or "State Board" means the State Board of Health.

2. "Commissioner" means the State Health Commissioner.

3. "Department" means the State Department of Health.

4. "Person" means an individual, corporation, partnership, association or any other legal entity

§ 32.1-20. Vested with authority of Board.

The Commissioner shall be vested with all the authority of the Board when it is not in session, subject to such rules and regulations as may be prescribed by the Board

§ 32.1-26. Orders; hearing and notice.

The Board is authorized to issue orders to require any person to comply with the provisions of any law administered by it, the Commissioner or the Department or any regulations promulgated by the Board or to comply with any case decision, as defined in § 2.2-4001, of the Board or Commissioner. Any such order shall be issued only after a hearing with at least thirty days' notice to the affected person of the time, place and purpose thereof. Such order shall become effective not less than fifteen days after mailing a copy thereof by certified mail to the last known address of such person. The provisions of this section shall not affect the authority of the Board to issue separate orders and regulations to meet any emergency as provided in § 32.1-13.

§ 32.1-27. Penalties, injunctions, civil penalties and charges for violations.

A. Any person willfully violating or refusing, failing or neglecting to comply with any regulation or order of the Board or Commissioner or any provision of this title shall be guilty of a Class 1 misdemeanor unless a different penalty is specified.

B. Any person violating or failing, neglecting, or refusing to obey any lawful regulation or order of the Board or Commissioner or any provision of this title may be compelled in a proceeding instituted in an appropriate court by the Board or Commissioner to obey such regulation, order or provision of this title and to comply therewith by injunction, mandamus, or other appropriate remedy or, pursuant to § 32.1-27.1, imposition of a civil penalty or appointment of a receiver.

C. Without limiting the remedies which may be obtained in subsection B of this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to subsection B shall be subject, in the discretion of the court, to a civil penalty not to exceed $25,000 for each violation, which shall be paid to the general fund, except that civil penalties for environmental pollution shall be paid into the state treasury and credited to the Water Supply Assistance Grant Fund created pursuant to § 32.1-171.2. Each day of violation shall constitute a separate offense.

D. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Board or Commissioner or any provision of this title, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums, not to exceed the limits specified in § 32.1-27.1 and subsection C of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under § 32.1-27.1 and subsection C of this section. When civil charges are based upon environmental pollution, the civil charges shall be paid into the state treasury and credited to the Water Supply Assistance Grant Fund created pursuant to § 32.1-171.2.

## Section 4.1 Legal Elements

### Section 4.1.1 Statutory Authority

**Review Team Comment:** The Virginia legislation does not expressly: (i) authorize suspension or revocation of a license for repeated or continued noncompliance, (ii) authorize the ability to refer licensees for criminal prosecution, or (iii) authorize exemptions from licensing for prime contractors as noted in SA-700, Section 4.1.1.2 (e). In addition, in cases of an imminent threat to public health and safety, the Virginia legislation does not expressly authorize immediate suspension without prior hearing. Virginia needs to revise its legislation to meet the evaluation criteria in SA-700 Handbook, Section 4.1.1.2 (e), (h) and (i).

Virginia did not include statutes for low-level waste or 11e.(2) byproduct material. If Virginia does not plan to assume regulatory authority over these activities, Virginia needs to verify its plans; otherwise Virginia needs to submit legislation that includes these activities.

Additionally, the Virginia statutes, section 32.1-229 C.8, requires NRC licensees to report to both the Virginia Department of Health and the Virginia State Police if radioactive materials cannot be accounted for within 24 hours. This statutes create a duplication and conflict in regulation. Once Virginia becomes an Agreement State, Virginia can require its licensees to report to both the Virginia Department of Health and the Virginia State Police; however Virginia cannot place these requirements on NRC licensees.

### 4.1.2 Organization of the Proposed Program

**Review Team Comment:** The draft request contained sufficient information to enable NRC staff to conduct a detailed review.

### 4.1.3 Content of the Proposed Agreement

**Review Team Comment:** The proposed Agreement did not include provisions for regulatory authority of byproduct materials as defined in sections 11e.(3) and (4) of the Atomic Energy Act. It is the review team's understanding that Virginia plans to assume regulatory authority over materials defined in these sections. The proposed Agreement needs to be revised to reflect all categories of materials for which regulatory authority will transfer from NRC to Virginia.

## 4.2 Regulatory Requirements Program Elements

The regulatory requirements program elements were not included in the scope of the completeness review. Virginia's radiation protection regulations were submitted with the draft request; however at the request of Virginia, the regulations were withdrawn and resubmitted on October 1, 2007. The regulations will be reviewed by comparison to the equivalent NRC rules in Title 10 of the Code of Federal Regulations, and in accordance with FSME Procedure SA-201, *Review of State Regulatory Requirements*.

1. The Virginia legislation does not clearly explain the structure of the radioactive materials program in Virginia. While the new legislation provided by Virginia defines the term "Department," the legislation needs to define the term "Board" and clarify the interaction between the Board and the Department of Health's responsibilities. It is confusing because if the "Board" in Section 32.1-229 C is the same as Radiation Advisory Board in Section in 32.1-233 the Board responsibilities listed in Section 32.1-229C are beyond an advisory function. It is also unclear what ethic and conflict of interest provisions apply to Board members.

2. The Virginia legislation needs to clarify that it has the authority to allow additional licensing requirements by amending or modifying the license. It is also not clear that these modifications can be made by rule, regulations or orders.

3. We need to verify that the definitions of "Person" and "Source Material" are identical in the Virginia legislation and regulations. Virginia also needs to modify~~We also need to ensure~~ ~~that~~ the definition of "by-product" material in the legislation (Section 32.1-277) and the written agreement ~~are modified~~ to include 11e.(3) and 11e.(4) (NARM) material. The definition of "by-product material" does not have to be included in the Virginia regulations if by-product material is covered under their "radioactive material" definition.

4. We suggest revising Section 32.1-228 to read as follows: "The provisions of this article shall not apply to radioactive material or facilities, including nuclear reactors, which are subject to exclusive licensing and regulation by the United States Nuclear Regulatory Commission."

5. Virginia needs to modify Section 32.1-229.3D to read: "Regulations promulgated under this article ~~may~~ shall provide for recognition of other Agreement State or~~f~~ federal licenses, subject to such registration requirements as the Board may prescribe."

6. While Virginia provided their inspection authority in Section 32.1-25, it is unclear whether this authority would be sufficient in an emergency situation. Virginia should provide more information regarding their emergency powers for inspections, impoundments, injunctive relief or any other actions they can take in an emergency situation. The additional Administrative Act legislation provided by the State focused on the authority to develop regulations in an emergency situation, not on what authority a Department employee has to protect human health and the environment in an emergency situation.

7. Although the Virginia legislation does provide for the imposition of civil penalties, the legislation should be revised to clarify that the State has authority to suspended or revoke a license for repeated violations, not just continued violations. The legislation should also specifically state the State has authority to seek injunctive relief.

8. Section 32.1-229 C 9 must be ~~revised~~ deleted so that NRC licensees are not required to report to Virginia officials ~~before the effective date of the written agreement for the State to assume the regulatory authority for the~~

~~program~~because the State does not have regulatory authority over NRC licensees.~~.~~

ENCL 5

§ 2.2-3100. Policy; application; construction.

The General Assembly, recognizing that our system of representative government is dependent in part upon (i) citizen legislative members representing fully the public in the legislative process and (ii) its citizens maintaining the highest trust in their public officers and employees, finds and declares that the citizens are entitled to be assured that the judgment of public officers and employees will be guided by a law that defines and prohibits inappropriate conflicts and requires disclosure of economic interests. To that end and for the purpose of establishing a single body of law applicable to all state and local government officers and employees on the subject of conflict of interests, the General Assembly enacts this State and Local Government Conflict of Interests Act so that the standards of conduct for such officers and employees may be uniform throughout the Commonwealth.

This chapter shall supersede all general and special acts and charter provisions which purport to deal with matters covered by this chapter except that the provisions of §§ 15.2-852, 15.2-2287 and 15.2-2289 and ordinances adopted pursuant thereto shall remain in force and effect. The provisions of this chapter shall be supplemented but not superseded by the provisions on ethics in public contracting in Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of this title and ordinances adopted pursuant to § 2.2-3104.2 regulating receipt of gifts.

§ 2.2-3114. Disclosure by state officers and employees.

A. The Governor, Lieutenant Governor, Attorney General, Justices of the Supreme Court, judges of the Court of Appeals, judges of any circuit court, judges and substitute judges of any district court, members of the State Corporation Commission, members of the Virginia Workers' Compensation Commission, members of the Commonwealth Transportation Board, members of the Board of Trustees of the Virginia Retirement System, and members of the State Lottery Board and other persons occupying such offices or positions of trust or employment in state government, including members of the governing bodies of authorities, as may be designated by the Governor or, in the

case of officers or employees of the legislative branch, by the Joint Rules Committee of the General Assembly, shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and such other information as is specified on the form set forth in § 2.2-3117 and thereafter shall file such a statement annually on or before January 15. When the filing deadline falls on a Saturday, Sunday, or legal holiday, the disclosure statement shall be filed on the next day that is not a Saturday, Sunday, or legal holiday.

B. Nonsalaried citizen members of all policy and supervisory boards, commissions and councils in the executive branch of state government, other than the Commonwealth Transportation Board, members of the Board of Trustees of the Virginia Retirement System, and the State Lottery Board, shall file, as a condition to assuming office, a disclosure form of their personal interests and such other information as is specified on the form set forth in § 2.2-3118 and thereafter shall file such form annually on or before January 15. When the filing deadline falls on a Saturday, Sunday, or legal holiday, the disclosure statement shall be filed on the next day that is not a Saturday, Sunday, or legal holiday. Nonsalaried citizen members of other boards, commissions and councils, including advisory boards and authorities, may be required to file a disclosure form if so designated by the Governor, in which case the form shall be that set forth in § 2.2-3118.

C. The disclosure forms required by subsections A and B shall be provided by the Secretary of the Commonwealth to each officer and employee so designated, including officers appointed by legislative authorities, not later than November 30 of each year. Disclosure forms shall be filed and maintained as public records for five years in the Office of the Secretary of the Commonwealth.

D. Candidates for the offices of Governor, Lieutenant Governor or Attorney General shall file a disclosure statement of their personal interests as required by § 24.2-502.

E. Any officer or employee of state government who has a personal interest in any transaction before the governmental or advisory agency of which he is an officer or employee and who is disqualified from participating in that transaction pursuant to

subdivision A 1 of § 2.2-3112, or otherwise elects to disqualify himself, shall forthwith make disclosure of the existence of his interest, including the full name and address of the business and the address or parcel number for the real estate if the interest involves a business or real estate, and his disclosure shall also be reflected in the public records of the agency for five years in the office of the administrative head of the officer's or employee's governmental agency or advisory agency or, if the agency has a clerk, in the clerk's office.

F. An officer or employee of state government who is required to declare his interest pursuant to subdivision A 2 of § 2.2-3112, shall declare his interest by stating (i) the transaction involved, (ii) the nature of the officer's or employee's personal interest affected by the transaction, (iii) that he is a member of a business, profession, occupation, or group the members of which are affected by the transaction, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

G. An officer or employee of state government who is required to declare his interest pursuant to subdivision A 3 of § 2.2-3112, shall declare his interest by stating (i) the transaction involved, (ii) that a party to the transaction is a client of his firm, (iii) that he does not personally represent or provide services to the client, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and

make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

§ 2.2-3131. Exemptions.

A. The requirements of § 2.2-3130 shall not apply to state filers with a state agency who have taken an equivalent ethics orientation course through another state agency within the time periods set forth in subdivision 1 or 2 of § 2.2-3130, as applicable.

B. State agencies may jointly conduct and state filers from more than one state agency may jointly attend an orientation course required by § 2.2-3128, as long as the course content is relevant to the official duties of the attending state filers.

C. Before conducting each orientation course required by § 2.2-3128, state agencies shall consult with the Attorney General regarding appropriate course content.

§ 32.1-1. References to former sections, articles and chapters of Title 32 and other titles.

Whenever any of the conditions, requirements, provisions or contents of any section, article or chapter of Title 32 or any other title of this Code as such titles existed prior to October 1, 1979, are transferred in the same or in modified form to a new section, article or chapter of this title or any other title of this Code and whenever any such former section, article or chapter is given a new number in this or any other title, all references to any such former section, article or chapter of Title 32 or other title appearing in this Code shall be construed to apply to the new or renumbered section, article or chapter containing such conditions, requirements, provisions or contents or portions thereof.

§ 32.1-3. Definitions.

As used in this title unless the context requires otherwise or it is otherwise provided:

1. "Board" or "State Board" means the State Board of Health.

2. "Commissioner" means the State Health Commissioner.

3. "Department" means the State Department of Health.

4. "Person" means an individual, corporation, partnership, association or any other legal entity.

§ 32.1-5. Appointment of members; terms and vacancies.

There shall be a State Board of Health which shall consist of thirteen residents of the Commonwealth appointed by the Governor for terms of four years each. Two members of the Board shall be members of the Medical Society of Virginia, one member shall be a member of the Virginia Pharmaceutical Association, one member shall be a member of the State Dental Association, one member shall be a member of the Virginia Nurses' Association, one member shall be a member of the Virginia Veterinary Medical Association, one member shall be a representative of local government, one member shall be a representative of the hospital industry, one member shall be a representative of the nursing home industry, one member shall be a representative of the licensed health carriers responsible under Title 38.2 for a managed care health insurance plan, one member shall be a corporate purchaser of health care, and two members shall be consumers. A vacancy other than by expiration of term shall be filled by the Governor for the unexpired term.

No person shall be eligible to serve more than two full consecutive four-year terms.

§ 32.1-13. Emergency orders and regulations.

The Board may make separate orders and regulations to meet any emergency, not provided for by general regulations, for the purpose of suppressing nuisances dangerous to the public health and communicable, contagious and infectious diseases and other dangers to the public life and health.