

West's Annotated Code of Virginia Currentness

Title 32.1. Health

▢ Chapter 6. Environmental Health Services

➔ Article 8. Radiation Control (Refs & Annos)

### § 32.1-227. Definitions

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

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. Any discrete source of radium-226 that is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity;
  - d. 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
  - e. Any discrete source of naturally occurring radioactive material (NORM), other than source material that the Nuclear Regulatory Commission (NRC), 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.
3. "Ionizing radiation" means gamma rays and X-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles.
4. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, department of the Common-

wealth 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.

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.

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

7. "Source material" means uranium or thorium, or any combination thereof, in any physical or chemical form; or ores that 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.

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.

#### **§ 32.1-228. Exemption**

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

#### **§ 32.1-228.1. Department designated state radiation control agency; powers and duties**

A. The Department of Health is hereby designated as the state radiation control agency. The Commissioner of Health may employ, compensate, and prescribe the duties of such individuals as may be necessary to discharge the responsibilities imposed by this article.

B. The Department shall:

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

including:

- a. Establishing and maintaining a file of all applications for, issuances, denials, transfers, renewals, modifications, suspensions and revocations of, and amendments to all licenses;
  - b. Establishing and maintaining a file of registrants possessing sources of radiation requiring registration under the provisions of this article and any administrative or judicial action pertaining thereto; and
  - c. Establishing and maintaining a file of all agency rules and regulations related to regulation of sources of radiation, pending or promulgated, and proceedings thereon.
2. 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.
  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. Develop programs for responding adequately to radiation emergencies and coordinate such programs with the Department of Emergency Management.
  6. Maintain, revise as needed, and make available to the public a list of persons who 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.
  7. Publish and make available a list of qualified inspectors of X-rays and X-ray machines.

**§ 32.1-229. Powers and duties of the Board**

The Board 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. Promulgate regulations providing for (i) general or specific 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. Establish fee schedules for the licensure of radioactive materials.

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 title.

**§ 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.

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.

**§ 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.

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

A. All X-ray machines shall be registered with the Department.

B. Every owner or operator of an X-ray machine used in the healing arts shall request an initial inspection by a private inspector or a Department inspector no later than 30 days after the installation of the equipment.

Inspections shall be performed periodically on a schedule prescribed by the Board. The Department may also require random, unannounced, follow-up inspections of machines that were inspected by private inspectors in order to maintain quality control. In the event of changes in or installations of new equipment during the last 90 days of a period for which an inspection has been made, no interim inspection shall be required. In addition, the Department may require the inspection and certification of other machines emitting radiation or utilizing radiation for patients, consumers, workers, or the general public.

Inspections shall be performed by Department personnel or by private inspectors only. Inspections conducted by 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. Results of all inspections shall be reviewed by the Department.

C. The Department shall issue a certificate for a diagnostic or therapeutic X-ray machine when the results of the inspection indicate 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 dis-

played by the registrant in a conspicuous place in close proximity to the X-ray machine.

D. The Board shall, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), promulgate such regulations as the Board deems necessary to protect the health and safety of health care workers, patients, and the general public, including but not limited to regulations to:

1. Fee schedules for registration of X-ray machines;
2. Schedule for inspections of X-ray machines;
3. Fee schedules for inspections of X-ray machines by Department personnel; however, no fee shall be charged for inspections initiated by the Department;
4. Standards for certification of X-ray machines; and
5. Qualifications for private inspectors.

E. 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 purchased or used primarily for personal, family, or household purposes.

**§ 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.

**§ 32.1-229.3. Licensing of radioactive material**

A. All radioactive material not under the authority of the United States Nuclear Regulatory Commission, and devices or equipment utilizing such material, shall be licensed by the Board. The Board shall promulgate regulations that provide for general or specific licenses. The Board may require registration or licensing of any other source of radiation and may exempt certain sources of radiation, uses of radiation, or users of radiation from the licensing and registration requirements set forth in this article when the Commissioner finds that the exemption of such sources, uses, or users of radiation will not constitute a significant risk to the health and safety of the public. 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. 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.

C. 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 this article and any regulations promulgated by the Board pursuant to 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 mainten-

ance 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.

#### **§ 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.

#### **§ 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.

**[§ 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 [subdivision 6 of § 32.1-229](#) 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.

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

A. The Radiation Advisory Board shall consist of ten appointive members and the six 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. The Commissioner of Labor and Industry, the Commissioner of Agriculture and Consumer Services, the State Coordinator of Emergency 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 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.

**§ 32.1-234. Repealed by Acts 1987, c. 666****§ 32.1-234.1. Enforcement**

A. Whenever the Department finds, following inspection and examination, that a source of radiation as constructed, operated, or maintained results in a violation of this article or of any regulations promulgated pursuant to this article, the Department shall:

1. Notify the person in control of the source of radiation as to the nature of the violation; and
2. Specify a time frame for termination or abatement of the violation, including a deadline by which the source of the violation shall be reconstructed, operated, or maintained in compliance with this article and any regulations promulgated pursuant to this article.

B. Upon failure to comply with the time frame specified by the Department for termination or abatement of the violation, the Department may revoke the license, and pursue penalties or enforcement in accordance with § 32.1-27.

C. Whenever, in the judgment of the Department, any person has engaged in or is about to engage in any acts or practices that constitute or will constitute an emergency, hazard to health and safety, or a 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.

D. In addition to the provisions of § 32.1-27, any person who violates the provisions of this article or any order or regulation adopted pursuant thereto shall, upon a 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 arising 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.

E. 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, 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 Department of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier.

**§ 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.

**§ 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.

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

The Department is authorized, in the event of an emergency or under other circumstances constituting a hazard to 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.

Current through End of 2009 Regular Session and includes 2009  
Special Session I cc. 1 and 2  
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