

## COMMONWEALTH OF VIRGINIA DRAFT REQUEST COMMENTS

### 4.1 Legal Elements

#### 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, "Processing New Agreements," 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, Section 4.1.1.2 (e), (h) and (i).

Virginia did not include statutes for low-level waste or 11e.(2) byproduct material. Virginia must either confirm that it does not plan to assume regulatory authority over these activities, or submit legislation that includes these activities.

Additionally, the Virginia statutes, Section 32.1-229 C.8, require 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 statute creates 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 impose these requirements on NRC licensees.

#### 4.1.2 Organization of the Proposed Program

**Review Team Comment:** The draft request contains 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 does 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 scope of the completeness review did not include the regulatory requirements program elements. 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 Office of Federal and State Materials and Environmental Management Programs Procedure SA-201, "Review of State Regulatory Requirements."

### **4.3 Licensing Program Elements**

#### **4.3.1 Procedures for the Technical Evaluation of Proposed Uses of Radioactive Material**

**Review Team Comment:** The Virginia licensing procedures do not provide for information exchange between the program's inspection staff and licensing staff, as appropriate. Virginia needs to revise the licensing procedures to meet the evaluation criteria in SA-700, Section 4.3.1.2.

#### **4.3.2 Procedures for the Evaluation of Radiation Safety Information on Sealed Sources or Devices (SS&D), and Registration for Distribution**

**Review Team Comment:** Virginia did not submit procedures for the evaluation of radiation safety information on sealed sources and devices (SS&Ds) and registration for distribution. Virginia must either confirm that it does not plan to assume regulatory authority over these materials, or submit procedures for evaluating radiation safety information on SS&Ds.

#### **4.3.3 Procedures for Conducting the Technical Evaluation of a Proposed License for a Low-level Radioactive Waste Land Disposal Site**

**Review Team Comment:** Virginia did not submit procedures for conducting the technical evaluation of a proposed license for a low-level radioactive waste land disposal site. Virginia must either confirm that it does not plan to assume regulatory authority over these materials, or submit a description of its program for regulating a commercial land disposal site and procedures for conducting the technical licensing evaluation and inspection program.

#### **4.3.4 Procedure for Conducting the Technical Evaluation of a Regulatory Program for 11e.(2) Byproduct Material including Uranium or Thorium Mining Facilities**

**Review Team Comment:** Virginia did not submit procedures for conducting the technical evaluation of a regulatory program for 11e.(2) byproduct material. Virginia must either confirm that it does not plan to assume regulatory authority over this material, or submit a description of its program for regulating 11e.(2) byproduct material and procedures for conducting the technical licensing evaluations and inspections.

#### **4.3.5 Procedures for Assuring the Technical Quality of Licenses**

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

#### **4.3.6 Administrative Licensing Procedures**

**Review Team Comment:** The Virginia administrative procedures for licensing do not include procedures for assuring the continued validity of licenses affected by the Agreement. Virginia needs to revise the administrative procedures for licensing to meet the evaluation criteria in SA-700, Section 4.3.6.1.

#### **4.4 Inspection Program Elements**

##### **4.4.1 Procedures for Inspecting Facilities Where Radioactive Materials Are Stored or Used**

**Review Team Comment:** The Virginia inspection procedures do not address (i) the different kinds of inspections (i.e. routine, reactive, reciprocity, security, etc.), (ii) the performance of inspections, (iii) field instrumentation and laboratory analysis, (iv) calibration and quality assurance, (v) all NRC license program codes of licensees that will transfer under the Agreement, and (vi) information exchange between the inspection staff and licensing staff, as appropriate. Virginia needs to revise the inspection procedures to meet the criteria in SA-700, Section 4.4.1.

##### **4.4.2 Procedures for Assuring the Technical Quality of Inspections and Inspection Reports**

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

##### **4.4.3 Administrative Procedures for Inspections**

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

#### **4.5 Enforcement Program Elements**

##### **4.5.1 Routine Enforcement Procedures**

**Review Team Comment:** The Virginia routine enforcement procedures do not describe the actions the program takes in response to a violation of a regulatory requirement that is not serious and is not a repeated violation. These actions would include (i) legal counsel review of the wording and format, (ii) a means for tracking the completion of enforcement actions, and (iii) assuring the fair and impartial administration of regulatory law. Virginia needs to revise the enforcement procedures to meet the criteria in SA-700, Section 4.5.1.

##### **4.5.2 Escalated Enforcement Procedures**

**Review Team Comment:** The Virginia escalated enforcement procedures do not describe the escalated enforcement actions that usually supplement the routine actions. These procedures would include coordination with legal counsel. Virginia needs to revise the enforcement procedures to meet the criteria in SA-700, Section 4.5.2.

#### **4.6 Technical Staffing and Training Program Elements**

##### **4.6.1 Technical Staff Organization**

**Review Team Comment:** Virginia must either confirm that it does not plan to assume regulatory authority over waste disposal sites or uranium mills, or submit a staffing plan and organization chart that includes additional staff to manage these activities.

#### **4.6.2 Formal Qualification Plan**

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

#### **4.6.3 Qualifications of Current Technical Staff**

**Review Team Comment:** The Virginia staff resumes do not, as a minimum, provide educational level, experience, and any specialty training. In addition, Virginia did not identify each individual's qualification, including interim qualifications, under Virginia's written qualification plan. Virginia needs to revise the resumes to be consistent and revise each staff member's qualification plan to meet the criteria in SA-700, Section 4.6.3.1.

### **4.7 Event and Allegation Response Program Elements**

#### **4.7.1 Procedures for Responding to Events and Allegations**

**Review Team Comment:** The Virginia event and allegation response procedures do not address (i) reporting events to the Nuclear Materials Events Database, (ii) criminal investigatory capability or the process for contacting appropriate authorities when needed, (iii) immediate response and actions to mitigate an event, (iv) follow-up inspections and enforcement actions, (v) notifications to licensing staff, and (vi) notification to other affected licensees of generic problems. In addition, the procedures did not reference SA-300, "Reporting Material Events." Virginia needs to revise the event and allegation procedures to meet the criteria in SA-700, Section 4.7.1.

#### **4.7.2 Procedures for Identifying Significant Events and Allegations, and for Entering Reports into the Nuclear Material Events Database (NMED)**

**Review Team Comment:** The Virginia event and allegation response procedures do not (i) assign responsibility for the completion of the reports and for assuring the quality of the reports, (ii) specify times for completion of the reports and submitting them to NRC, (iii) provide guidance for identifying abnormal occurrences, and (iv) specify criteria for identifying reportable events. Virginia needs to revise the event and allegation procedures to meet the criteria in SA-700, Section 4.7.2.