



COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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COMMISSIONER

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AGENDA

SAFETY AND HEALTH CODES BOARD

MONDAY, JUNE 19, 2006

**State Corporation Commission
Tyler Building
1300 East Main Street, Second Floor
Richmond, Virginia**

Court Room A

10:00 a.m.

1. Call to Order
2. Approval of Agenda
3. Approval of Minutes of March 7, 2006
4. Opportunity for the Public to Address the Board on the issues pending before the Board today or on any other topic that may be of concern to the Board or within the scope of authority of the Board.

This will be the only opportunity for public comment at this meeting.

[Please limit remarks to 5 minutes in consideration of others wishing to address the Board]

5. Old Business
 - a) 16 VAC 25-55, Proposed Regulation Governing Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors; Final Adoption

6. New Business
 - a) Various Corrections and Technical Amendments to: PART 1910 – General Industry; PART 1915 – Shipyard Employment; and PART 1926 – Construction

7. Items of Interest from the Department of Labor and Industry

8. Items of Interest from Members of the Board

9. Meeting Adjournment

VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

FOR JUNE 19, 2006

**Various Corrections and Technical Amendments to: PART 1910 -- General Industry;
PART 1915 -- Shipyard Employment; and PART 1926 -- Construction**

I. Action Requested.

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to consider for adoption federal OSHA's revised final rule for Corrections and Technical Amendments to Parts 1910, 1915 and 1926 (except for the revisions relating to §1910.20 at items 1, 33 and 34), as published in 71 FR 16669 on April 3, 2006.

The proposed effective date is for September 1, 2006.

II. Summary of the Amendments.

As part of the ongoing review of its regulations, federal OSHA amended various safety and health standards in need of corrections, housekeeping changes or technical amendments. The revisions do not affect the substantive requirements or coverage of the standards involved, modify or revoke existing rights and obligations, or establish new rights and obligations. The revisions include updating references and removing obsolete effective dates and startup dates from existing OSHA standards.

VOSH, however, is not requesting adoption of the changes in items 1, 33 and 34 of the attached Federal Register pages, 71 FR 6672 et seq. The changes covered under items 1, 33 and 34 update references from what was 29 CFR 1910.20 which, in 1988, federal OSHA substantively revised and renumbered as the current 29 CFR 1910.1020.

At that time in 1988, the Board chose to continue the enforcement of the old federal standard §1910.20 and did not adopt the revisions and section renumbering to 29 CFR 1910.1020. VOSH is also not requesting the changes to Part 1913 as it too changes §1910.20 references to the current federal 29 CFR 1910.1020, which, as stated previously, is not in effect in Virginia.

A. Effective Dates and Startup Dates

Federal OSHA removed outdated references to effective dates and startup dates in general industry (Part 1910). In the safety standards for general industry (Part 1910), §1910.178(a)(2) (“Powered Industrial Trucks”) refers to effective dates specified in paragraph (b) of former §1910.182 (“Effective dates”). OSHA removed §1910.182 during an earlier rulemaking, which made this reference obsolete. (61 FR 9227) Therefore, OSHA has now removed the reference to §1910.182(b) from §1910.178(a)(2).

Several additional safety standards for general industry had provisions that contained references to expired effective dates. Therefore, federal OSHA removed the entry “j. Effective date” in paragraph (a), as well as paragraph (j), from §1910.266 (“Logging operations”); and the single-sentence standard, §1910.441, that specifies the effective date for the general-industry diving standards in subpart T (“Commercial Diving Operations”).

Federal OSHA also removed a number of provisions among its substance-specific standards for general industry (part 1910); for shipyard employment [§1915.1001(q)]; and for construction (part 1926) because the effective and/or startup dates they contain are now fully effective and are no longer relevant for pending enforcement cases.

Federal OSHA also removed a number of provisions in parts 1910, 1915 and 1926 that refer to the effective date of a standard as a number of days after the date of publication in the *Federal Register* and not to a specific month, day and year.

B. Removal or Correction of Other Outdated Provisions and References

OSHA has removed or corrected other outdated provisions and references in the following standards:

- 1) Cadmium (§§1910.1027 and 1926.1127);
- 2) Benzene (§1910.1028);
- 3) Formaldehyde (§1910.1048);
- 4) Methylenedianiline (§§1910.1050 and 1926.60);
- 5) 1,3—Butadiene (§1910.1051);
- 6) Lead (§1926.62); and
- 7) Structural Steel Assembly (§1926.754)

III. Basis, Purpose and Impact of the Amendment.

A. Basis and Purpose.

The Department of Labor continues an on-going multi-year review of its regulations to update non-substantive or nomenclature references in the Code of

Federal Regulations (CFR). These updates help promote a regulatory structure that facilitates compliance flexibility and reduces regulatory burdens by eliminating errors, incorrect references and obsolete provisions to existing standards; thereby, aiding employer compliance and understanding by clarifying regulatory intent.

B. Impact on Employers.

These clean-up housekeeping and technical amendments do not affect the substantive requirements or coverage of the standards involved, modify or revoke existing rights and obligations, or establish new rights and obligations.

The corrections do not change employers' compliance costs, and OSHA has determined that this rule will not have a significant impact on a substantial number of small entities.

C. Impact on Employees.

OSHA believes that this correction will increase employee understanding and protection.

D. Impact on the Department of Labor and Industry.

These technical corrections will have no impact on the Department.

Federal regulations 29 CFR 1953.23(a) and (b) require that Virginia, within six months of the occurrence of a federal program change, to adopt identical changes or promulgate equivalent changes which are at least as effective as the federal change. The Virginia Code reiterates this requirement in § 40.1-22(5). Adopting these revisions will allow Virginia to conform to the federal program change.

Contact Person:

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RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt the attached Corrections and Technical Amendments to the final rules for various provisions in Parts 1910, 1915 and 1926, excluding items 1, 33 and 34, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-006.A.4(c), with an effective date of September 1, 2006.

The Department also recommends that the Board state in any motion it may make to amend this regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other regulation which has been adopted in accordance with the above-cited subsection A.4(c) of the Administrative Process Act.

Corrections and Technical Amendments to various standards in:

**PART 1910 -- General Industry;
PART 1915 -- Shipyard Employment; and
PART 1926 -- Construction; Final Rule**

As Adopted by the
Safety and Health Codes Board

Date: _____



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: _____

16 VAC 25-90 -- General Industry, Part 1910;
16 VAC 25-100 -- Shipyard Employment, Part 1915; and
16 VAC 25-175 -- Construction, Part 1926; Final Rule

When the regulations, as set forth in the attached Corrections and Technical amendments to the final rules of various provisions in Parts 1910, 1915 and 1926, are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms

VOSH Equivalent

29 CFR

VOSH Standard

Assistant Secretary

Commissioner of Labor and
Industry

Agency

Department

April 3, 2006 September 1, 2006



COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

FOR JUNE 19, 2006

**Regulation Governing Financial Responsibility of
Boiler and Pressure Vessel Contract Fee Inspectors,
16 VAC 25-55; Final Adoption**

I. Action Requested.

The Boiler Safety Compliance Program of the Department of Labor and Industry requests the Safety and Health Codes Board to consider for adoption as a final regulation of the Board the attached draft final regulatory language governing the financial responsibility of boiler and pressure vessel contract fee inspectors.

The proposed effective date is OCTOBER 1, 2006.

II. Summary of the Draft Final Regulation.

The attached draft final language is identical to that which was presented to the Board at its March 7, 2006 meeting. It requires contract fee inspectors operating in the Commonwealth to demonstrate financial responsibility for bodily injury and property damage resulting from, or directly relating to, an inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel. Financial responsibility in the form of insurance, guaranty, surety, or self-insurance will be required as follows:

Aggregate limits of \$500,000 for any contract fee inspector with less than 1% market share; \$1 million for those with 1% up to and including 10% market share; and \$2 million for those with more than 10% market share or any contract fee inspector that employs or has an arrangement with other contract fee inspectors.

As before, the draft final regulation has one change from the proposed regulation adopted by the Board at its meeting on May 24, 2005. This change, based on a comment received during the 60-day public comment period, does not change regulatory intent, but is made solely to provide further clarification. The final draft definition of a 'Contract fee inspection agency' is modified to add the word "certificate" to further define the type of inspection being performed under these regulations:

"Contract fee inspection agency" means a company that directly employs contract fee inspectors or has contractual arrangements with other contract fee inspectors for the purpose of providing boiler and pressure vessel **certificate** inspections to the general public.

III. Basis, Purpose and Impact of the Rulemaking.

A. Basis.

The Safety and Health Codes Board is authorized by Title 40.1-51.9:2 C of the *Code of Virginia* to "promulgate regulations requiring contract fee inspectors, as a condition of their doing business in the Commonwealth, to demonstrate financial responsibility sufficient to comply with the requirements of this chapter. Regulations governing the amount of any financial responsibility required by the contract fee inspector shall take into consideration the type, capacity and number of boilers or pressure vessels inspected or certified." (*Please refer to Appendix "A".*)

B. Purpose.

The purpose of the regulation is to set minimum aggregate limits for insurance coverage or other means provided for in the *Code of Virginia* and approved by the

Board to ensure the financial responsibility of boiler and pressure vessel contract fee inspectors operating in the Commonwealth. The intent of this financial responsibility is to assure additional protection to the public, including compensation to third parties, in cases where there is bodily injury and property damage resulting from, or directly relating to, a contract fee inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel.

Further documentation in support of the proposed required levels of indemnification is added in the form of the Commonwealth of Virginia's Risk Management Plan. *(Please refer to Appendices "B" and "C")*

Section II.B of the Commonwealth's Risk Management Plan deals with limits of liability carried by officers, employees and agents of the Commonwealth of Virginia which include boiler inspectors employed by the Department as well as members of the Board and provides for liability coverage up to \$2 million per each occurrence.

It should be noted that the required maximum liability coverage required by the proposed final regulation is \$2 million in the aggregate.

C. Impact on Contract Fee Inspectors.

Contract fee inspectors would be required to indemnify boiler and pressure vessel owners for any bodily injury and property damage resulting from or directly related to an inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel. Contract fee inspectors would be required to provide documentation of their means of indemnification at the time of their certification or before performing inspections and at renewal of the instrument of insurance, guaranty, surety or self-insurance.

D. Impact on Boiler or Pressure Vessel Owners.

The Department anticipates that any additional costs to the contract fee inspector, as a result of the requirements of this regulation, would be passed on to the boiler or pressure vessel owner, who is the end user of the service.

E. Impact on Employers and Employees.

Employers, employees, and the general public would be compensated up to the level of the required financial responsibility in cases of bodily injury and property damage resulting from or directly related to a contract fee inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel.

F. Impact on the Department of Labor and Industry.

The Department anticipates no additional fiscal impact beyond the cost to promulgate the regulation.

G. Technological Feasibility.

No technological feasibility issues are associated with this regulation.

H. Benefit/Cost.

The benefit of these changes is to ensure a minimum level of indemnification in cases involving bodily injury and/or property damage resulting from, or directly relating to, a contract fee inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel. The financial responsibility requirements would cost contract fee inspectors approximately \$4,000 - \$20,000 per year. It is anticipated that the costs would be passed on to the boiler or pressure vessel owner, who is the end user of the service.

Individual property damage costs from boiler or pressure vessel incidents in Virginia during the past three years have ranged from \$300,000 to \$500,000. The proposed requirements would indemnify contract fee inspectors from potential lawsuits to the level of their coverage. The financial responsibility would also give contract fee inspectors a vested interest in the performance of the inspections they conduct.

V. Summary of Public Participation Efforts.

The Public Participation Guidelines of the Board in accordance with the Virginia Administrative Process Act (APA) require a 60-day public comment period which was held from December 26, 2005 through February 25, 2006. During this period, the Board also held a public hearing on the proposed regulation on January 31, 2006 in Richmond.

(The public comments received during the required 60-day comment period and the agency responses plus additional letters received by Department staff (previously reviewed by the Board at its March 7, 2006) are again provided (*Refer to Appendix "E" and "F"*) for the purposes of being entered into the record.

VI. Multi-media Presentation.

Contact Person:

Mr. Fred Barton
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(804) 786-3262
fpb@doli.state.va.us

RECOMMENDED ACTION

The Boiler Safety Compliance Program recommends that the Safety and Health Codes Board adopt the attached draft final language for contract fee inspector financial responsibility regulation as a final regulation of the Board, with an effective date of October 1, 2006 as authorized by ' ' 40.1-51.9:2 C. and 40.1-51.6.

The Department also recommends that the Board state in any motion it may make to promulgate this regulation that it will receive, consider and respond to petitions by any interested persons at any time to reconsider or revise the proposed regulation to be adopted in accordance with the Administrative Process Act.

**16 VAC 25-55, Financial Requirements for Boiler and Pressure Vessel Contract
Fee Inspectors**

As Adopted by the

Safety and Health Codes Board

Date: _____



BOILER SAFETY COMPLIANCE PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

16 VAC 25-55, Financial Requirements for Boiler and Pressure Vessel Contract Fee Inspectors

16 VAC - 25- CHAPTER 55
FINANCIAL REQUIREMENTS FOR BOILER AND PRESSURE VESSEL
CONTRACT FEE INSPECTORS

16 VAC 25-55-10. Definitions.

The following words and terms, when used in this chapter, “Board” “Boiler”, “Chief Inspector”, and “Pressure Vessel”, shall have the same meanings as defined in 16 VAC-25-50-10 unless the context clearly indicates otherwise.

“Contract fee inspector” means any certified boiler inspector contracted to inspect boilers or pressure vessels on an independent basis by the owner or operator of the boiler or pressure vessel.

“Market share” means a fraction, (a) the numerator of which is the total fees charged by the inspector or agency under 16 VAC 25-50-150 for conducting power boiler and high temperature water boiler, heating boiler, and pressure vessel inspections in the most recent calendar year and (b) the denominator of which is the total fees charged by all inspectors and agencies under 16 VAC 25-50-150 for conducting power boiler and high temperature water boiler, heating boiler, and pressure vessel inspections in the most recent calendar year.

“Contract fee inspection agency” means a company that directly employs contract fee inspectors or has contractual arrangements with other contract fee inspectors for the purpose of providing boiler and pressure vessel **certificate** inspections to the general public.

16 VAC 25-55-20. Financial Requirements.

A. Current certified contract fee inspectors shall provide documentation of financial responsibility to the Chief Inspector for approval within ninety days of the effective date of this regulation, in such form as required by the Chief Inspector.

Contract fee inspectors initially certified following the effective date of this regulation shall provide such documentation to the Chief Inspector within thirty days following the issuance of the certification of the contract fee inspector. The Chief Inspector may revoke a contract fee inspector's inspector identification card, as described in 16 VAC 25-50-70, for failure to provide documentation of financial responsibility within the required timeframe.

B. Financial responsibility of a contract fee inspector shall be demonstrated by maintenance of an instrument of insurance, guaranty, surety or by self-insurance, individually or in any combination thereof, for the purpose of compensation to third parties, for bodily injury and property damage resulting from, or directly relating to, an inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel:

1. An aggregate limit of \$500,000 or more for any contract fee inspector or contract fee inspection agency with less than 1% market share;
2. An aggregate limit of \$1 million or more for any contract fee inspector or contract fee inspection agency from 1% up to and including 10% market share; and
3. An aggregate limit of \$2 million or more for any contract fee inspector or contract fee inspection agency with more than 10% market share.

4. Contract fee inspectors may be covered under an instrument or instruments of insurance, guaranty, surety or the self-insurance of their employer or a company on behalf of which they have a contractual arrangement to provide boiler and pressure vessel inspections. To be acceptable as proof of financial responsibility for inspections not conducted for the benefit of their employer or company with which the inspector has a contractual arrangement such instrument, instruments or self-insurance must also cover the contract fee inspector for such inspections. Where contract fee inspectors are not covered for inspections conducted on their own behalf under the instrument of insurance, guaranty, surety or self-insurance of their employer or company with which they have a contractual arrangement, they must provide a separate instrument that covers such inspections.
5. Contract fee inspectors who elect to self-insure for the full amount of their financial responsibility under this regulation shall maintain assets of an amount sufficient to cover the full minimum liability amount in regulation for his level of market share and shall provide audited financial statements showing total assets and liabilities.
6. Contract fee inspectors who elect to partially self-insure shall maintain assets in an amount sufficient to cover the stated partial liability amount and shall provide audited financial statements showing their total assets and liabilities. Such assets shall be held in combination with an instrument or instruments of insurance, guaranty, or surety to provide a total amount sufficient to cover the minimum liability amount in regulation for his level of market share. They shall provide copies of such documents to the Chief Inspector.

7. Aggregate limits approved at such time shall remain in effect until the occurrence of an event described in 16 VAC 25-55-20(E).
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- C. Within thirty days of receipt of documentation of financial responsibility submitted by a contract fee inspector for the purpose of complying with these regulations, the Chief Inspector shall issue a determination to the contract fee inspector as to whether the documentation provided is acceptable. Documentation approval by the Chief Inspector is a requirement to operate as a contract fee inspector within the Commonwealth of Virginia.
 - D. A contract fee inspector shall notify the Chief Inspector at least thirty days before the effective date of any change in coverage, expiration, or cancellation of an instrument of insurance, guaranty or surety or self-insurance. In the case of self-insurance, the contract fee inspector shall notify the Chief Inspector immediately upon such time as he can no longer maintain self-insurance at the required limit and has not secured insurance, guaranty or a surety to cover his liability to the required limit.
 - E. Acceptance of proof of financial responsibility shall expire on the effective date of any change in the inspector's instrument of insurance, guaranty or surety, or the expiration date of the inspector's certification whichever is sooner. Application for renewal of acceptance of proof of financial responsibility shall be filed at least thirty days before.

APPENDIX “A”

Enabling Statute from the Code of Virginia
Authorizing Regulatory Action by the Board.

§ 40.1-51.9:2. Financial responsibility requirements for contract fee inspectors.

- A. Contract fee inspectors inspecting or certifying regulated boilers or pressure vessels in the Commonwealth shall maintain evidence of their financial responsibility, including compensation to third parties, for bodily injury and property damage resulting from, or directly relating to, an inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel.
- B. Documentation of financial responsibility, including documentation of insurance or bond, shall be provided to the Chief Inspector within thirty days after certification of the inspector. The Chief Inspector may revoke an inspector's certification for failure to provide documentation of financial responsibility in a timely fashion.
- C. The Safety and Health Codes Board is authorized to promulgate regulations requiring contract fee inspectors, as a condition of their doing business in the Commonwealth, to demonstrate financial responsibility sufficient to comply with the requirements of this chapter. Regulations governing the amount of any financial responsibility required by the contract fee inspector shall take into consideration the type, capacity and number of boilers or pressure vessels inspected or certified.
- D. Financial responsibility may be demonstrated by self-insurance, insurance, guaranty or surety, or any other method approved by the Board, or any combination thereof, under the terms the Board may prescribe. A contract fee inspector whose financial responsibility is accepted by the Board under this subsection shall notify the Chief Inspector at least thirty days before the effective date of the change, expiration, or cancellation of any instrument of insurance, guaranty or surety.
- E. Acceptance of proof of financial responsibility shall expire on the effective date of any change in the inspector's instrument of insurance, guaranty or surety, or the expiration date of the inspector's certification. Application for renewal of acceptance of proof of financial responsibility shall be filed thirty days before the date of expiration.
- F. The Chief Inspector, after notice and opportunity for hearing, may revoke his acceptance of evidence of financial responsibility if he determines that acceptance has been procured by fraud or misrepresentation, or a change in circumstances has occurred that would warrant denial of acceptance of evidence of financial responsibility under this section or the requirements established by the Board pursuant to this section.
- G. It is not a defense to any action brought for failure to comply with the requirement to provide acceptable evidence of financial responsibility that the person charged believed in good faith that the owner or operator of an inspected boiler or pressure vessel possessed evidence of financial responsibility accepted by the Chief Inspector or the Board. (1996, c. 294.)

APPENDIX “B”

Risk Management Plan

COMMONWEALTH OF VIRGINIA

RISK MANAGEMENT PLAN

Administered by

Department of the Treasury
Division of Risk Management

Commonwealth of Virginia

Risk Management Plan

The Commonwealth of Virginia, Department of the Treasury, Division of Risk Management, in accordance with §§ 2.2-1837 and 2.2-1838 of the *Code of Virginia*, as amended ("*Code*"), with the approval of the Governor, hereby establishes the terms and conditions of this Risk Management Plan (hereafter referred to as the "Plan") for the benefit of parties specified by statute.

The Division of Risk Management (DRM) is not an insurance company and this Plan is not insurance, as those terms are defined in §38.2-100 of the *Code*. DRM is, instead, a division of a state agency, the Department of the Treasury, that finds its authority to act from the statutory provisions of the *Code*.

DRM shall have final responsibility for interpretation and determination of coverage under the Plan.

I. COVERAGE

- A. This Plan will pay all sums, except as herein limited, or limited by the Code, that covered parties shall be obligated to pay by reason of liability imposed by law for damages resulting from any claim arising out of acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization.
- B. Coverage applies to incidental medical payments arising out of the official activities of any authorized volunteer in an amount not to exceed ten thousand dollars (\$10,000) per incident. This coverage does not increase the limits in Section II, Limits of Liability.

II. LIMITS OF LIABILITY

- A. The amount recoverable by any claimant with respect to the Commonwealth of Virginia, its departments, agencies, institutions, boards or commissions; local soil and water conservation districts; electoral boards or local school board selection commissions; or any director, officer, employee or agent thereof, shall not exceed seventy-five thousand dollars (\$75,000) per claim for events occurring prior to July 1, 1993. For events occurring on or after July 1, 1993, the limit is one hundred thousand dollars (\$100,000) per claim. These limits shall not be applicable to any claim or causes of action other than those established by Virginia law. For claims or causes of action other than those established by Virginia law, the amount recoverable shall not exceed two million dollars (\$2,000,000) per claim.

- B. The amount recoverable by any claimant with respect to officers, employees and agents of the Commonwealth of Virginia, including students while participating within the authorized scope of a clinical, internship, externship, or other educational program in order to meet pedagogical requirements; local soil and water district directors, officers, employees and agents; general registrars; electoral board members and local school board selection committee members shall not exceed two million dollars (\$2,000,000) per claim.
- C. For any claim against a health care provider as defined in §8.01-581.1 of the *Code*, the amount recoverable involving an act or acts of medical malpractice shall be limited to the amount provided in §8.01-581.15) of the *Code*.
- D. For any uninsured/underinsured motorist claim, the amount recoverable shall be limited to the amounts stated in §46.2-472 of the *Code*.
- E. Coverage applies to incidental medical payments in a motor vehicle accident in an amount not to exceed five thousand dollars (\$5,000) per person.
- F. Recovery is limited for loss of use of a motor vehicle to the limits provided in §8.01-66 of the *Code*.
- G. In the event the State Insurance Reserve Trust Fund is rendered or becomes insolvent, neither the Commonwealth of Virginia, the General Assembly of Virginia, nor any department, agency, institution, board, commission, official, agent or employee thereof shall be liable for any claim that would have been covered under this Plan but for such insolvency. The establishment of this Plan does not and shall not be deemed or construed to pledge or obligate the full faith and credit of the Commonwealth of Virginia.

III. EXCLUSIONS

This Plan does not cover:

- A. Health care providers eligible to charge through the University of Virginia Health Services Foundation or other similar or like organization.
- B. Health care providers eligible to charge through the Medical College of Virginia Associated Physicians, the Medical College of Virginia Authority or the Virginia Commonwealth University Health Systems Authority, or their successors.

- C. Any obligation for which a covered organization or individual or any insurance company thereof may be held liable under any workers' compensation, unemployment compensation, disability benefits law or any similar law.
- D. Liability assumed under any written contract or agreement.
- E. Any claim arising from malicious, willful, wanton, or criminal acts. In addition, the Plan will not defend a covered party where a court or other trier of fact has determined that the covered party has engaged in any of the aforementioned acts.
- F. Claims, demands or other actions seeking relief or redress in any form other than monetary damages, including, but not limited to injunctive relief (subject to the provisions of §2.2-1837 A. 4. of the *Code*). For the purposes of this exclusion, monetary damages does not include (1) costs due or alleged to be due, including interest, solely on account of goods or services contracted for or allegedly contracted for, or (2) expenses associated with complying with any injunction, or (3) salaries, wages or employment benefits owed or (4) any combination of (1), (2) or (3).
- G. Liability for punitive damages or liability in any suit or action in which by judgment or final adjudication it is determined that such liability was incurred by reason of (1) acts of fraud or dishonesty, (2) acts of intentional, malicious, willful or wanton misconduct, (3) criminal acts, or (4) any claim in which a covered party has gained any profit or advantage to which they are not otherwise entitled. The Plan may provide coverage for such acts or punitive damages if the Attorney General and the Governor determine that such coverage is in the public interest.
- H. Liability for the return of any remuneration paid if the payment of such remuneration shall be held to be in violation of the law by a court of competent jurisdiction.
- I. Indemnification on behalf of any judge that the Supreme Court of Virginia determines should be censured or removed from office pursuant to Section 10 of Article VI of the Constitution of Virginia or statutes enacted pursuant thereto.

IV. COVERAGE PERIOD

- A. This Plan, except for medical malpractice, applies only to a claim, suit, action or other proceeding arising on or after the time that the Governor or his designee approves and signs this Plan, provided the acts or omissions which give rise to such claim, suit, action or other proceeding did not occur prior to that approval and signature.

- B. Medical malpractice coverage applies to a claim, suit, action or other proceeding arising on or after the time that the Governor or his designee approves and signs this Plan, provided the acts or omissions which give rise to such claim, suit, action or other proceeding occurred subsequent to June 30, 1975.

V. OTHER INSURANCE OR SELF-INSURANCE

If at the time of loss, claim, suit, action or other proceeding there is insurance or self-insurance available to any organization or individual covered by this Plan, or which would have been available to cover such loss, claim, suit, action or other proceeding but for the existence of this Plan, the Plan shall not be liable for any amount collectable under such other coverage or self-insurance.

VI. NOTICE OF OCCURRENCE, CLAIM OR SUIT

A. All Claims Other Than Motor Vehicle

1. When an occurrence takes place which an organization or individual has reason to believe may result in a claim, suit, action or other proceeding, notice shall be given immediately to DRM. Failure to provide such notice will constitute a material breach of the Plan and could result in denial of coverage.
2. The affected employee shall immediately notify his or her agency of any accident or loss and forward all notice or legal papers received. The agency shall immediately notify and forward all information and documents to DRM or to the DRM designated and authorized third party claims administrator.
3. No person shall, except at individual expense, voluntarily make any payments, assume any obligation or incur any costs.
4. Notice shall be given immediately after the organization or individual has knowledge of the occurrence. It shall include all reasonably obtainable information about the time, place and circumstances of the occurrence as well as the names, addresses, telephone numbers and other pertinent information of all individuals involved.
5. If a claim, suit, action or other proceeding is made against an organization or individual, every demand, notice, summons or other process shall be immediately forwarded to DRM.

B. Motor Vehicle Claims

1. The vehicle operator must comply with state travel regulations, notify the State Police or other authorized law enforcement organization as well as the authorized claims administrator, and cooperate fully in the investigation, defense or settlement of any claim or suit. Failure to provide such notice or to comply with state travel regulations will constitute a material breach of the Plan and could result in denial of coverage.
2. The vehicle operator shall immediately notify his or her agency of any accident or loss and forward all notice or legal papers received. The agency shall immediately notify and forward all information and documents to the authorized third party claims administrator.
3. Such notice shall be given immediately after the organization or individual has knowledge of the occurrence. It shall include all reasonably obtainable information about the time, place and circumstances of the occurrence as well as the names, addresses, telephone numbers and other pertinent information of all individuals involved.
4. No person shall, except at individual expense, voluntarily make any payments, assume any obligation or incur any costs.
5. If a claim, suit, action or other proceeding is made against an organization or individual, every demand, notice, summons or other process shall be immediately forwarded to DRM.

VII. DEFENSE, ASSISTANCE AND COOPERATION

- A. Defense for claims, suits, actions or other proceedings covered by this Plan is provided under §2.2-507 *et al* of the *Code*. Unless otherwise approved in accordance with the *Code*, the Office of the Attorney General shall provide defense.
- B. As a condition of coverage, any organization or individual covered by the Plan must promptly notify DRM of any claim, suit, action or other proceeding and cooperate fully and completely in the investigation and defense of such claim, suit, action or other proceeding that may be covered by this Plan. Failure to promptly notify DRM or to cooperate, may, at the option of DRM, result in termination of coverage.

- C. Settlement of any claim, suit, action or other proceeding involving the interests of the Commonwealth shall be subject to §2.2-514 of the *Code*.

VIII. APPEALS

In the event an organization or individual elects not to appeal a judgment, DRM may elect to make such appeal at its own cost.

IX. SUBROGATION

The Plan shall be subrogated to all of an organization's or an individual's rights of recovery against any person or organization. Those organizations or individuals covered by the Plan shall fully cooperate with DRM to secure such recovery.

X. ACTION AGAINST THE PLAN

No action shall lie against the Plan or the Commonwealth of Virginia or any agency thereof, unless as a condition precedent thereto the covered organization or individual shall have fully complied with all terms, conditions and procedures of the Plan and until the amount of any obligation to pay shall have been finally determined either by judgment or written agreement.

X. DEFINITIONS

All terms, phrases and definitions used in the Plan shall be those used in the *Code*.

IN WITNESS THEREOF the Department of the Treasury, Division of Risk Management, with the approval of the Governor, has executed this Plan to be effective immediately upon the signature of the Governor or his designee.

BY: Don W. Lemond

Don W. LeMond, Director
Division of Risk Management

APPROVED

BY: Jody M. Wagner

Jody M. Wagner
State Treasurer

APPROVED

BY: John M. Bennett

John M. Bennett
Secretary of Finance

APPROVED BY THE GOVERNOR

Mark R. Warner

DATE: 1 / 6 / 05

Appendix “C”

**Excerpts from the Virginia
Agency Procurement
and
Surplus Property Manual**

SEPTEMBER 1998

AGENCY
PROCUREMENT
AND
SURPLUS PROPERTY
MANUAL



COMMONWEALTH OF VIRGINIA
Department of General Services
Division of Purchases and Supply
805 East Broad Street
Richmond, Virginia 23219

APPENDIX B

PIM 98-013

TERMS & CONDITIONS

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APPENDIX B

SECTION I

REQUIRED GENERAL TERMS AND CONDITIONS GOODS AND NONPROFESSIONAL SERVICES

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These General Terms and Conditions are required for use in written solicitations issued by state agencies for procurements that are subject to this manual unless changed, deleted or revised by the legal advisor to your agency. You should edit the wording to fit the type of solicitation (IFB or RFP) by either deleting or lining out the inappropriate words in all parenthesis. For service contracts clauses, Q, R, and S are normally not applicable and may be omitted. For goods contracts, omit clause T.

- Q. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.
(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)
- R. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/offerors) to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The (bidder/offeror) is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the (bidder/offeror) clearly indicates in its (bid/proposal) that the product offered is an equal product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.
(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)
- S. **TRANSPORTATION AND PACKAGING:** By submitting their (bids/proposals), all (bidders/offerors) certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)
- T. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.

2. Employer's Liability - \$100,000.

3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.

(Note to Agency/Institution: When the requirement is for parking facilities and garages for motor vehicle maintenance contracts, the forgoing sentence should be changed to read: These coverage should include Garage Owner's Liability. Contracts with movers or truck transporters should also require motor carrier's liability. When in the judgment of a procurement officer, these limits and coverage are not warranted for the goods and services being procured, the Division of Risk Management should be contacted.

4. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)

NOTE: In addition, various Professional Liability/Errors and Omissions coverages are required when soliciting those services as follows:

PIM 98-016

Profession/Service

Limits

Accounting	\$1,000,000 per occurrence, \$3,000,000 aggregate
Architecture	\$2,000,000 per occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	\$1,000,000 per occurrence, \$3,000,000 aggregate
Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.)	\$1,800,000 per occurrence, \$3,000,000 aggregate
Limits increase each July 1 through fiscal year 2008, as follows: July 1, 2007 - \$1,925,000, July 1, 2008 - \$2,000,000. This complies with §8.01-581.15 of the <i>Code of Virginia</i> .	
Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$1,000,000 per occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 per occurrence, \$5,000,000 aggregate
Professional Engineer	\$2,000,000 per occurrence, \$6,000,000 aggregate
Surveying	\$1,000,000 per occurrence, \$1,000,000 aggregate



*** When Used: FOR CONSTRUCTION, SERVICE CONTRACTS AND GOODS CONTRACTS WHEN INSTALLATION IS REQUIRED - Required in all solicitations where a contractor will perform work or services in or on state facilities. The limits are minimums and may be increased. The Department of Treasury, Division of Risk Management (804-786-3152) should be contacted when other types of coverage may be required or when in doubt as to the need for other limits. When soliciting one of the Professions/Services listed above include the Professional Liability/Errors and Omissions coverage and limits as shown. When not soliciting one of these Professions/Services, omit the required coverages section from the General Terms and Conditions boilerplate.**



U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site (www.eva.state.va.us) for a minimum of 10 days.

*** When Used:** Include in all solicitations over \$50,000.

V. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, “*drug-free workplace*” means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

*** When Used: This clause shall be included in every contract over \$10,000. If procuring by unsealed solicitation, the Commonwealth's General Terms and Conditions may be incorporated by reference.**

PIM 98-013

W. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual,

Appendix “D”

Summary of Public Comments And Agency Response

Summary of Public Participation Efforts.

The Public Participation Guidelines of the Board in accordance with the Virginia Administrative Process Act (APA) require a 60-day public comment period which was held from December 26, 2005 through February 25, 2006. During this period, the Board also held a public hearing on the proposed regulation on January 31, 2006 in Richmond.

The Public Participation Guidelines of the Board in accordance with the Virginia Administrative Process Act (APA) require a 60-day public comment period which was held from December 26, 2005 through February 25, 2006 and a public hearing which was held on January 31, 2006 in Richmond. There was one commenter at the public hearing:

Mr. Mark Anderson, of American Boiler Inspection Service, Inc., who provided a written copy of his comments. (*Attached as Appendix "A"*)

Three written comments received during the sixty day comment period have also been included in this package:

Mr. James Mannion of Valley Boiler Inspection, Inc., (*part of Appendix "last"*)
Mr. Kurt D. Crist of Tidewater Immediate Inspections, Inc.; (*Appendix "last"*)
and
Mr. John Pitman of Inspection Specialties, Inc. (*Appendix "last"*)

Where the separate commenters express similar concerns, the agency response is grouped.

Comment 1:

All commenters state that their firm has never had a claim as a result of the inspector's *negligent* inspection or recommendation for certification of a boiler or pressure vessel.

- Mr. Mark Anderson, of American Boiler Inspection Service, Inc.
- Mr. James Mannion of Valley Boiler Inspection, Inc.
- Mr. John Pitman of Inspection Specialties, Inc.

Agency Response:

DOLI agrees. However, there have been a few cases in the past where Inspectors have submitted inspection reports recommending certificates for boilers/pressure vessels that were no longer at the location which are referred to as "drive-by inspections". A negligent recommendation for a certification that is based upon a "drive-by inspection" is a potential risk from which the public needs protection.

Comment 2:

The proposed requirements appear to address an accident frequency problem.

- Mr. Mark Anderson, of American Boiler Inspection Service, Inc.

Agency Response:

Concern is exposure to severity based upon the statutes' (§40.1-50.9:2C) mandate: "Regulations governing the amount of any financial responsibility required by the contract fee inspector shall take into consideration the type, capacity and number of boilers or pressure vessels inspected or certified."

Comment 3:

DOLI's response to Mr. Anderson's FOIA request regarding this proposal did not contain any documents which provide factual support for the proposed insurance limits for Contract Fee Inspectors.

- Mr. Mark Anderson, of American Boiler Inspection Service, Inc.

- Mr. John Pitman of Inspection Specialties, Inc.

Agency Response:

In the year 2000 there were many meetings, memos, and discussions amongst Mr. Anderson, Mr. Barton, and then Director of State Programs, Mr. Robert (Mac) Krauss to allow for the adding of two companies, Inspection Specialties and Tidewater Immediate Inspections, Inc. under the insurance coverage of another company, American Boiler Inspection Services, Inc.

Initially, Inspection Specialties was added to the coverage of American Boiler Inspection Services, Inc. as everyone attempted to resolve the issues of the Virginia Code requiring the Safety and Health Codes Board having to be involved in providing any regulations and the fact that the statute did not address contract fee companies but only individuals. (*See Addendum 1 for letter dated 8/21/00*).

Later in 2000 Mr. Crist notified DOLI that a separate company that he had started, Virginia Tidewater Immediate Inspections, had ceased operation because of the cost of the policy for liability insurance (\$1,000,000 worth of coverage). Mr. Anderson advised he was adding the new company, Tidewater Immediate Inspections, Inc, to the same \$1,000,000 aggregate insurance policy as the previous two. There would now be four companies (Contract Fee Inspectors) under the same policy with a \$1,000,000 aggregate instead of four Contract Fee Inspectors with \$4,000,000 aggregate. Mr. Barton expressed strong concern for the lack of public protection with this arrangement.

Virginia is one of only two states that allow individuals to perform certificate inspections of boilers and pressure vessels. Therefore, there was no precedence to follow.

Consequently, Mr. Barton was directed to contact the boiler insurance industry and get their input. (*See Addendum 2 for Mr. Barton's notes of that meeting.*) On Oct. 30, 2000, the American Insurance Association sent an E-mail that read in part "that it would make sense to require fee-for-service inspectors to maintain a professional liability policy with at least \$2 million in coverage." (*See Addendum 3 for e-mail dated 10/30/00.*) Mr. Barton did not believe \$2,000,000 for all Contract Fee Inspectors was warranted.

Therefore, a three-tiered concept was developed: \$500,000 coverage for small businesses starting up, in order to resolve Mr. Crist's concern and as suggested by a representative of the

Bureau of Insurance to Mr. Dennis Merrill of the Department and reported to Mr. Robert Krauss. (*See Addendum 4 for an e-mail dated 2/23/01.*); and continuing upward for coverages of \$1,000,000; and then \$2,000,000 for companies with highest exposure.

Prior to the start of the current APA process, the Department dealt with this issue administratively.

Comment 4:

“Two incidents had estimated loss values of \$500,000 and one was for \$350,000. DOLI guessed to set these loss values.”

- Mr. Mark Anderson, of American Boiler Inspection Service, Inc.

Agency Response:

Three of the four worst incidents in the last five years had actual property damages values provided by the owner/users of approximately \$317,000, \$330,000, and \$626,000, respectively, excluding litigation costs. DOLI did not develop estimates.

Comment 5:

“There is no indication that DOLI has approached the primary Contract Fee Inspection companies for their input. ... DOLI should not ignore good administrative practice and due process, and try to slide this through unnoticed.”

- Mr. Mark Anderson, of American Boiler Inspection Service, Inc.

- Mr. James Mannion of Valley Boiler Inspection, Inc.

- Mr. John Pitman of Inspection Specialties, Inc.

- Mr. Kurt Crist of Tidewater Immediate Inspections, Inc.

Agency Response:

DOLI has followed the Administrative Process Act and all state regulations to involve all Contract Fee Inspectors in the process of rulemaking. On November 15, 2003, the Safety and Health Codes Board approved the Department’s request to initiate regulatory rulemaking procedures. The proper notice was published in The Virginia Register on January 12, 2004.

There were no comments received during the 30-day comment period which began on January 12, 2004 and ended on February 12, 2004. As there was no proposal or other comments offered by the public, DOLI prepared a proposal with required reviews from both the Department of Planning and Budget and the Office of the Attorney General. Once a public hearing date was known Mr. Barton notified Mr. Anderson by e-mail as a professional courtesy. During the regulatory process DOLI continued to remind Contract Fee Inspectors as their Certificate/Financial document came due. Note the last paragraph of memos dated 9/10/03 and 12/2/04 to Mr. Anderson. American Boiler Inspection Services, Inc. had been providing the Insurance Certificate for Inspection Specialties, Inc.; Tidewater Immediate Inspections, Inc; and Valley Boiler Inspection, Inc. (*See Addenda 5 & 6 for memos dated 9/10/03 and 12/2/04.*)

In addition, Mr. Barton reminded all Inspectors attending the Spring 2005 meeting of the Virginia Boiler and Pressure Vessel Inspectors Association that the proposed Regulation

Governing Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors was still progressing.

Comment 6:

“A tiered insurance requirement is not in the best interest of the businesses and citizens of Virginia.”
- Mr. Mark Anderson, of American Boiler Inspection Service, Inc.

Agency Response:

The statute, §40.1-50.9:2C, mandates otherwise: “Regulations governing the amount of any financial responsibility required by the contract fee inspector shall take into consideration the type, capacity and number of boilers or pressure vessels inspected or certified.”

Comment 7:

“Because all Contract Fee Inspectors will have the opportunity to inspect boilers with the same exposure to loss, they should be required to carry the same insurance limits.”
- Mr. Mark Anderson, of American Boiler Inspection Service, Inc.

Agency Response:

The statute, §40.1-50.9:2C, mandates otherwise: “Regulations governing the amount of any financial responsibility required by the contract fee inspector shall take into consideration the type, capacity and number of boilers or pressure vessels inspected or certified.”

Comment 8:

“Since the probability of a high frequency of the type of claim is very low, the Board should focus on the severity of a possible claim.”
-Mr. Mark Anderson, of American Boiler Inspection Service, Inc.

Agency Response:

DOLI agrees. Three of the four worst incidents in the last five years had actual property damages of approximately \$317,000, \$330,000, and \$626,000, excluding litigation costs.

Comment 9:

“My premium for 2006 will most likely exceed \$20,000 for the \$2,000,000 limits; not \$10,000 as DOLI sets forth.”
- Mr. Mark Anderson, of American Boiler Inspection Service, Inc.

“Our current policy premium for our \$2,000,000 limit significantly exceeds the DOLI maximum estimated figure of \$10,000.”

- Mr. James Mannion of Valley Boiler Inspection, Inc.

“The amount that we currently pay for our insurance of \$2,000,000 is well above the amounts reported in the Financial Impact Analysis that DOLI presents at \$10,000”

-Mr. Kurt Crist of Tidewater Immediate Inspections, Inc.

“What happens if \$2,000,000 limit is adopted, but later cannot be secured from a carrier? Does the affected company go out of business?”

- Mr. John Pitman of Inspection Specialties, Inc.

Agency Response:

A figure of \$10,000 was the approximate cost in mid 2004 when the estimate was obtained in preparation of the Aug. 3, 2004 Briefing Package. In response to Mr. Anderson’s memo of July 7, 2003, (*See Addendum 7*), Commissioner Ray Davenport had ordered the memorandum of March 9, 2001 that administratively required financial responsibility be suspended and replaced with communications requiring only documentation confirming each Inspector’s financial responsibility. Therefore, as of September, 2003 DOLI was no longer requiring any minimum financial limits for any Contract Fee Inspector. A memo was sent to each Contract Fee Inspector as their Certificate of Insurance expired. (*See Addenda 5 & 6 for memos dated 9/10/03 and 12/2/04.*)

It is important to emphasize that the proposal broadens the choices of instruments each Contract Fee Inspector or Contact Fee Agency can make. Professional Liability or Errors and Omission Insurance is just one avenue for financial responsibility. Alternatively, a guaranty, a surety, or self-insurance should be carefully considered as they also are allowable.

Comment 10:

“16 VAC 25-50-150 *Inspection certificate and inspection fees*. Does not mention fees charged by an inspector. This section pertains to fees charged by DOLI, not by the inspection company.”

- Mr. Mark Anderson, of American Boiler Inspection Service, Inc.

Agency Response:

DOLI agrees. However, this is considered to be modified risk assessment. No Contract Fee Inspector or Contract Fee Inspector Agency will have to provide any financial data to DOLI in order for DOLI to determine its market share. The market share is determined by multiplying registered objects with the inspection fee values which would have been used by the Department had it performed the inspections itself. (*See Addendum 8 for a sample of how the market shares for two Contract Fee Inspector Agencies will be determined.*)

Comment 11:

“In addition to the *nine* companies listed on the DOLI website as *Contract Fee Inspectors*, two companies, Seneca Insurance Company and XL Insurance America Incorporated, provide contracted inspections for the boiler or pressure vessels, thereby qualifying as *Contract Fee Inspectors*.”

- Mr. Mark Anderson, of American Boiler Inspection Service, Inc.

Agency Response:

Seneca Insurance Company and XL Insurance America have been listed on the DOLI website as insurance companies only. Management of Seneca Insurance Company and XL Insurance America have written letters that they do not perform any certificate inspections for a fee in Virginia. (See Addenda 9 & 10) XL Insurance America/ARISE does perform third party inspections for “R” Stamp holders performing repairs and alterations. To clarify that this proposal only applies to boilers and pressure vessels operating in Virginia, we have recommended that the new definition of a “Contract fee inspection agency” be modified as follows: “Contract fee inspection agency” means a company that directly employs contract fee inspectors or has contractual arrangements with other contract fee inspectors for the purpose of providing boiler and pressure vessel **certificate** inspections to the general public.

Comment 12:

“The proposed regulation treats companies, certified by DOLI, which have a substantial nationwide inspection business, differently than those which inspect only in Virginia.”

- Mr. Mark Anderson, of American Boiler Inspection Service, Inc.

Agency Response:

DOLI does not, nor has it ever, certified companies, only individuals. Virginia is one of only two states that allow individuals to perform certificate inspections of boilers and pressure vessels. One of the longstanding issues from other jurisdictions throughout the United States over allowing private individuals to perform boiler and pressure vessel inspections has been, and continues to be, that private individuals have no financial interest in the object as an insurance company inspector would.

Refer to “*Boiler Inspection Programs- A Question of Value*” published by the National Board of Boiler and Pressure Vessel Inspectors. As contract fee agencies expand to other states their financial responsibility will be closely scrutinized.

One major boiler insurer reports that they had nine (9) incidents nationwide over the last five years with losses over \$500,000, six (6) losses were over \$1,000,000 and two (2) were over \$2,000,000. High limits for whichever financial instrument the contract fee agency chooses most likely would satisfy a very real perspective.

Comment 13:

“Regarding my first concern, the FOIA package contained a DOLI March 9, 2001 Memorandum addressed to all Contract Fee Inspectors, stating that there was a change in the Financial Requirements. However, there was no indication of this Health and Safety Code Board’s approval, as required by Section 40.1-51.9.2-C.”

- Mr. Mark Anderson, of American Boiler Inspection Service, Inc.

Agency Response:

The Safety and Health Codes Board was appraised of this oversight under Purpose of the Proposed Rulemaking in the Briefing Package for the November 5, 2003 NOIRA. “This request

for proposed rulemaking is necessary as the guidelines for insurance coverage previously issued by the Department did not have the force of law. The Department therefore needs this rulemaking to comply with the mandate and intent of the governing statute, §40.1-51.9:2.”

Comment 14:

“Mr. Barton told me that he was going to retire in two years and set up a competing “contract fee inspection” company. I do not object to competition, however, it seems inappropriate for such a government employee to be charged with proposing regulations with unusually high limits for his future competition, which will have established clients, when Mr. Barton starts his business.”

- Mr. Mark Anderson, of American Boiler Inspection Service, Inc.

“This appears to be an old fashioned witch-hunt directed towards contract fee inspection companies that might be your competition in the future.”

- Mr. Kurt Crist of Tidewater Immediate Inspections, Inc.

Agency Response:

The comment about possibly retiring and starting a contract fee inspection company was made as a humorous aside during a telephone conversation with Mr. Anderson about the requirement for external inspections of high pressure boilers in addition to the required internal inspection. At first, Mr. Anderson stated that external inspections were not required for high pressure boilers. Later, he admitted he couldn't perform external inspections because his customers wouldn't pay for them. That's when Mr. Barton mentioned, with a humorous intent and to make a point, that he would retire in two years, start an inspection company and include external inspections in his fee structure. This is an example where a company has 270 high pressure boilers and doesn't perform necessary and informative external inspections on perhaps 180 of them because of economic reasons. It should be noted that the decision to have a \$2,000,000 limit came from a recommendation by the American Insurance Association in 2000. (*See Addendum 3.*)

Comment 15:

“Mr. Barton's DOLI memorandum of December 12, 2000 to Mac Krauss contains personal attacks on my integrity, and indicates restraint of trade actions directed towards me and Tidewater Immediate Inspections, Inc.”

- Mr. Mark Anderson, of American Boiler Inspection Service, Inc.

Agency Response:

The December 12, 2000 memo, (*See Addendum 11*), was an internal memo to Mr. Barton's supervisor, Mac Krauss, about different issues one of which related to the employment of a contract fee inspector. Mr. Krauss decided against one recommendation and no further action was taken. Furthermore, as soon as DOLI received a memo from the Bureau of Insurance of the State Corporation Commission, (*See Addendum 12*) stating that there was nothing in the insurance statute that prevented DOLI from requiring a certain limit of liability insurance. Mr. Krauss approved the signing of Mr. Barton's memo of 3/9/01. (*See Addendum 13.*)

Comment 16:

“Mr. Barton singles me out of all the Contract Fee Inspection Companies and personnel to provide a Certificate of Insurance with \$2,000,000. Aggregate limit...His memorandum infers a hidden punishment for some alleged and unidentified, violation. The Board should not endorse such unfair, and possibly defamatory and illegal behavior.”

- Mr. Mark Anderson, of American Boiler Inspection Service, Inc.

Agency Response:

The December 12, 2000 memo was an internal memo to Mr. Barton’s supervisor, Mac Krauss, about different issues one of which related to the employment of a contract fee inspector. The third paragraph of the first page (*See Addendum 11*) clearly stated the issue that was being brought to the attention of Mr. Barton’s supervisor for a decision. Mr. Krauss decided against this recommendation and no further action was taken. Further, the sixth and seventh paragraphs of this internal memorandum explain why Mr. Barton was recommending \$2,000,000 liability coverage for one company.

Comment 17:

“Paragraph II-H further states that the proposed changes would “give contract fee inspectors a vested interest in the performance of the inspections they conduct”. This statement is an unwarranted assault on the quality of the inspections we conduct...To insinuate that the quality of an inspection is going to change based on employer is absurd and offensive.”

-Mr. James Mannion of Valley Boiler Inspection, Inc.

Agency Response:

Virginia is one of only two states that allow individuals to perform certificate inspections of boilers and pressure vessels. One of the longstanding issues from other jurisdictions throughout the United States over allowing private individuals to perform boiler and pressure vessel inspections has been, and continues to be, that private individuals have no financial or other vested interest in the object as an insurance company inspector would. Refer to “Boiler Inspection Programs- A Question of Value,” published by the National Board of Boiler and Pressure Vessel Inspectors. As Contract Fee Agencies expand to other states their financial responsibility will be closely scrutinized.

Comment 18:

“Based on a July 28, 2005 email from Mr. John Crisanti to Mr. Fred Barton saying to limit contact and keep “our control” the input into “our regulation”, it seems that DOLI wanted to control and adopt this proposal without input.”

- Mr. John Pitman of Inspection Specialties, Inc.

Agency Response:

The comments made by Mr. Crisanti to Mr. Barton were germane to an internal discussion regarding steps in the APA regulatory adoption process and to clarifying that Crisanti was to

provide answers to the APA procedural questions and Barton was to respond to inquiries regarding the technical boiler issues.

Comment 19:

“Why are other states reportedly extending Sovereign Immunity to inspectors, while Virginia tries to burden them with dictates.”

- Mr. John Pitman of Inspection Specialties, Inc.

Agency Response:

An e-mail from Mr. Eric Goldberg of American Insurance Association dated 9/13/00 to Mr. Fred Barton, (*See Addendum 14*), wherein the concept of sovereign immunity was discussed was in reference to insurance inspectors not contract fee inspectors. The Commonwealth of Virginia does not offer sovereign immunity to any boiler inspectors.

Appendix “ E”

Department Correspondence Relating to Regulatory Development

INDEX TO Appendix "E"

- ADDENDUM 1 – Letter from Robert M. Krauss to Richard M. Anderson (2000)
- 2 – Scanned Notes from Mr. Barton
- 3 – Memoranda between Eric Goldberg and Fred Barton (10/30/00)
- 4 – Memorandum from Robert Kraus to Dennis Merrill (2/23/01)
- 5 – Memorandum from Fred Barton to Richard M. Anderson (9/10/03)
- 6 – Memorandum from Fred Barton to Richard M. Anderson (12/2/04)
- 7 – Letter from Mark Anderson to Fred Barton (7/7/03)
- 8 – Table of Active Objects (1/3/06)
- 9 – Letter to Fred Barton from Gary H. Cox (2/2/06)
- 10 – Letter to Fred Barton from Timothy B. Rhodes (2/3/06)
- 11 – Memorandum from Robert Krauss to Fred Barton (12/12/00)
- 12 – Letter from Mark Anderson to Fred Barton (9/29/00)
- 13 – Memorandum from Mark Anderson to Fred Barton (9/29/00)
- 14 – Letter from Tidewater Immediate Inspection Inc. (10/18/00)
- 15 – Letter from Ann Marie Brooks to Dennis G. Merrill (3/8/01)
- 16 – Letter from Fred Barton to all Contract Fee Inspectors (3/9/01)
- 17 – Memoranda between Eric Goldberg and Fred Barton (9/13/00)

ADDENDUM 1



COMMONWEALTH of VIRGINIA DEPARTMENT OF
LABOR AND INDUSTRY

JEFFREY D. BROWN
COMMISSIONER

August 21, 2000

POWERS-TAYLOR BUILDING
13 SOUTH THIRTEENTH STREET
RICHMOND, VA 23219
PHONE (804) 371-2327
FAX (804) 371-6524
TOO (804) 786-2376

Inspection
Specialties

Mr. Richard M. Anderson
American Boiler Inspection Service
12800 Saddleseat Place
Richmond, Virginia 23233

Dear Mr. Anderson:

This letter is in response to your letter of August 3, 2000. We have a different understanding of the meeting. They are as follows:

1. The "lost decals" in question happened in 1998 and 1999 during the "pilot" phase of the new certification process. The decisions were based on the best judgement of different situations by the Director of the Boiler Safety Compliance Program, Fred Barton. Fred stated that he had learned from these early experiences. "Lost decals" are still reported and handled on a case by case basis.
2. We agreed to list any American Boiler Inspection Service, Inc. Inspector, part time or full time, in areas where they are especially needed. We specifically agreed to list any Inspector employed by your company (ABI) in Roanoke or Northern Virginia.
3. We agreed to reassess adding Inspection Specialties to our list of companies having Inspectors with valid Virginia work cards provided all required and supporting documentation was submitted. To date we have not received the Certificate of Insurance nor Mr. Pittman's application for a Virginia work card under Inspection Specialties name. Is Mr. Pittman moving to Northern Virginia? Subsequent to receiving your letter, Fred has raised some questions with regard to your request and the statute, Section 40.1-51.9:2, covering your financial responsibility. The statute specifies that the Safety Health Codes Board to provide regulations. Statute references to individuals versus companies as well as amounts based on inspections needs some discussion.

Your plan for Inspection Specialties is consistent with present policy. However, we will not be taking on new companies under the new certification process until October, 2000 at the earliest.

Unfortunately, I cannot agree to Inspection Specialities be returned _
0 the Dept. of Labor and Industry (DOLI) list of qualified Inspectors
until all required documents are submitted.

If you have any questions, please contact Fred Barton.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert M. Krauss", followed by a horizontal flourish.

Robert M. Krauss
Director of State Programs

RMKjfs

Addendum 2

co vs individual - means company

inc or individual

make it guide

	min	1,000,000 total
	max	
min-max	1000 insp.	-300,000 - each
min-max	500 no of insp.	-500,000

professional liability
Errors & Omissions

ins. require contract fee inspector

Am. Ins. Assoc. - canvas members for
ins. of neg. inspector.

Keep this Notify G. H. C. B.
separate ~~with~~ we'll be making
from others a D

Addendum 3

Addendum 4

From: Robert Krauss
To: Dennis Merrill
Date: 2/23/01 10:50:17 AM
Subject: Re: SCC Ins. Question

Dennis: Thank you very much, Mac

»> Dennis Merrill 02/23/01 1 0:35AM »>

Mac; I called the SCC and was referred to the Bureau of Insurance, Consumer Services Division, spoke with Senior Insurance Market Examiner Rick Wright. I explained the question to him and he says they don't have anything that would affect the Board's decision on this. He said DMV called with the same question; they are planning to raise the required insurance levels for truckers. His answer to them was the same as to us. He also said that \$500,000 is a typical limit, and that the \$1M and \$2M limits were not unusual. He said that many companies will purchase a basic \$500,000 policy and an additional umbrella policy to cover them up to the higher limit. I'm not sure what the significance of the manner of purchasing the higher limit is, but thought I would pass it on for your interest. In summary, it seems clear that the Board is free to set the limits as it sees fit.

Addendum 5



COMMONWEALTH *of* VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

C. RAY DAVENPORT
COMMISSIONER

POWERS-TAYLOR BUILDING
13 SOUTH THIRTEENTH STREET
RICHMOND, VA 23219
PHONE (804) 371-2327
FAX (804) 371-6524
TOO (804) 786-2376

MEMORANDUM

TO: Richard M. Anderson
American Boiler Inspection
12800 Saddleseat Place
Richmond, Virginia 23233

FROM: Fred P. Barton, Chief Inspector
Boiler Safety Compliance Program *FPBarton*

SUBJECT: Documentation of Financial Responsibility

DATE: September 10, 2003

In 1996 a law was passed requiring each Contract Fee Inspector to acquire and maintain evidence of financial responsibility. Our memorandum of March 9, 2001 regarding financial requirements is replaced with the following:

Each Contract Fee Inspector must annually provide documentation to the Chief Inspector confirming the inspector's financial responsibility, including compensation to third parties, for bodily injury and property damage resulting from, or directly, relating to, an inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel.

A Certificate of Insurance is one acceptable means of documentation. Should you choose to provide a Certificate of Insurance the following levels of insurance are suggested.

Either professional liability or errors and omissions policy with an aggregate limit of \$500,000 for contract fee inspectors with less than 1% market share; \$1,000,000 for inspectors with 1% to less than 10% market share; or \$2,000,000 for a 10% or more market share. These are solely suggested amounts and are not required under the current law and regulations.

Please provide the documentation (certificate of insurance or other written documentation) within thirty (30) days after expiration of previous documentation as required by Section 40.1-51.9:2, B., D., and E. of the Virginia Code.

DOLI is in the process of requesting the Safety and Health Codes Board to develop specific rules governing demonstration of financial responsibility.

FPB/fs

Addendum 6



COMMONWEALTH *of* VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

C. RAY DAVENPORT
COMMISSIONER

POWERS-TAYLOR BUILDING
13 SOUTH THIRTEENTH STREET
RICHMOND, VA 23219
PHONE (804) 371-2327
FAX (804) 371-6524
TOO (804) 786-2376

MEMORANDUM

TO: Mr. Richard M. Anderson
American Boiler Inspection Service
12800 Saddleseat Place
Richmond, VA 23233

FROM: Fred P. Barton, Chief Inspector *FP BARTON*
Boiler Safety Compliance Program

SUBJECT: Documentation of Financial Responsibility

DATE: December 2, 2004

In 1996 a law was passed requiring each Contract Fee Inspector to acquire and maintain evidence of financial responsibility. Our memorandum of March 9, 2001 regarding financial requirements is replaced with the following:

Each Contract Fee Inspector must annually provide documentation to the Chief Inspector confirming the inspector's financial responsibility, including compensation to third parties, for bodily injury and property damage resulting from, or directly, relating to, an inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel.

A Certificate of Insurance is one acceptable means of documentation. Should you choose to provide a Certificate of Insurance the following levels of insurance are suggested:

Either professional liability or errors and omissions policy with an aggregate limit of \$500,000 for contract fee inspectors with less than 1% market share; \$1,000,000 for inspectors with 1% to less than 10% market share; or \$2,000,000 for a 10% or more market share. These are solely suggested amounts and are not required under the current law and regulations.

Please provide the documentation (certificate of insurance or other written documentation) within thirty (30) days after expiration of previous documentation as required by Section 40.1-51.9:2, B., O., and E of the Virginia Code.

DOLI is in the process of requesting the Safety and Health Codes Board to develop specific rules governing demonstration of financial responsibility.

FPB/fs

Addendum 7

American Boiler Inspection Service, Inc.
12800 Saddleseat Place
Richmond, Virginia 23233-7687

Office - (804) 364-8990
Toll Free -1-800-560-9958
Fax - (804) 364-3767
e-mail- AmerBoiler@AOL.com

Monday, July 07, 2003

Mr. Fred Barton
Virginia Department of Labor and
Industry Powers-Taylor Building
13 South Thirteenth Street
Richmond, VA 23219

Addendum 7

SUBJECT: Contract Fee Inspection Company Insurance Requirements

Dear Mr. Barton:

The purpose of this letter is twofold. The first is to request clarification of your Memorandum dated March 9, 2002 on the Subject of *Financial Requirements for Contract Fee Inspectors* (see the attached Memorandum). In that Memorandum, the requirements are specifically directed to "Contract Fee Inspectors" and not "Contract Fee Inspection Companies". As an individual Contract Fee Inspector, I do not inspect more than 10% of the market share and as an individual Contract Fee Inspector I do not employ or have an arrangement with three other Contract Fee Inspectors. Therefore, as an individual, I should not be held to the requirement of an aggregate limit of \$2,000,000 for insurance coverage.

However, it has always been my interpretation of that memo that you intended the insurance requirements to apply to Contract Fee Inspection Companies and not individual Contract Fee Inspectors. As a Corporation, American Boiler Inspection Service, Inc. inspects greater than 10% of the market share and employs seven inspectors. For these reasons we carry the aggregate insurance limit of \$2,000,000. If you intended for your insurance requirements to apply to individual Contract Fee Inspectors, I will be reducing the insurance coverage limits for American Boiler Inspection Service, Inc. If in fact, you intended for the Insurance Requirements to apply to Contract Fee Inspection Companies and not to an individual Contract Fee Inspector, I will proceed to the second purpose of this letter.

The second purpose is to request that DOLI review and make changes to the insurance requirements for the Contract Fee Inspection Companies. Currently, Contract Fee Inspection Companies with less than a 1 % market share are required to carry a minimum aggregate limit of \$500,000. Companies with greater than 1 % are required to carry a minimum aggregate limit of \$1,000,000 in applicable coverage. Companies with more than a 10% market share, or that employ or have an arrangement with three other Contract Fee Inspection Companies, are required to carry a minimum aggregate limit of \$2,000,000 in either Professional Liability or Errors and Omissions coverage.

American Boiler Inspection Service, Inc. supports the basic DOLI requirement for adequate insurance limits to be carried by all inspection companies. However, we question the risk management logic behind the requirement for a lower level of insurance limits for the "smaller" companies. The coverage requirements should not be based on the anticipation of protection for a lower claims *frequency* for the companies with a smaller market share and a higher *frequency* of claims for the inspection companies with a greater market share. The risk management logic should be based on an anticipated claims *severity* approach. Using the claim severity risk management logic, all contract inspection companies should be expected to encounter a possible claim of equal severity and should be required to carry the equivalent insurance limits. Additionally, the inspectors performing the least amount of inspections (i.e. the smaller companies) should be expected to have a lesser amount of inspection experience and knowledge as they are making fewer inspections and do not have the shared pool of experience upon which to draw guidance when making critical decisions. This lack of experience could lead to conditions producing a greater likelihood of claims experience and severity by the smaller inspection company carrying the lowest limits of insurance coverage.

(Additionally, if a review of the one Contract Fee Inspection Company that carries the \$500,000 limits were to be performed, it would be found that there is or has been an arrangement with two or three other inspection companies.)

We also have a concern about the Contract Fee Inspectors that have provided no proof of insurance. From my conversations with some of these inspectors, they carry no liability insurance coverage. These inspectors include, but may not be limited to, Roland O'Brien-Bills and Richard A. Pais. Although these inspectors may not be providing inspections in Virginia, they are using credentials provided by Virginia DOLI to perform inspections for Federal installations and other facilities. By definition, having a Virginia Contract Fee Inspectors Work Card requires that these inspectors meet Virginia's standards for financial responsibility. In the cases of these two inspectors they carry no professional liability coverage, they do not meet the Virginia DOLI minimum requirements for certification, yet they inspect boilers and pressure vessels using Virginia DOLI issued Work Cards. This is a misrepresentation of the facts by DOLI and the uninsured inspectors.

American Boiler Inspection Service, Inc. requests that all Contract Fee Inspection Companies be held to the same standard for the insurance coverage requirements and the same insurance limits. The \$2,000,000 limit currently required by DOLI is increasingly very difficult to secure and significantly more expensive at each renewal. We request that DOLI set the required limit at \$1,000,000 for all Contract Fee Inspection Companies, regardless of size and company association.


In support of our above position, American Boiler Inspection Service, Inc. has been a Contract Fee Inspection Company since July 1, 1995. During those eight (8) years, we have yet to be made aware of a single insurance claim against a Contract Fee Inspection Company. This absence of a history of claims supports our position that the DOLI insurance requirements should be focused on the need for protection against possible claims severity rather than a claims frequency need.

As for the financial impact on the Contract Fee Inspection Companies, only one (1) of the five (5) existing Contract Fee Inspection Companies carries less than the aggregate limit of \$2,000,000. This single Contract Fee Inspection Company carries the minimum aggregate limit of \$500,000. Therefore, any DOLI decision to set a single aggregate requirement would not have a significant impact on the majority of Contract Fee Inspection Companies.

The two inspectors without coverage should be made to comply with the Virginia DOLI insurance requirements, regardless of the number of inspections performed.

I look forward to your response.

Sincerely,



Mark Anderson

Cc: Mr. C. Ray Davenport,
Commissioner Commonwealth of
Virginia Department of Labor and
Industry
13 South Thirteenth Street
Richmond, VA 23219

Addendum 8

ACTIVE BOILERS AND PRESSURE VESSELS

SUMMARY BY OBJECT TYPE AND INSURANCE COMPANIES

Inspection Frequency	Type	COV	Other	Total	Percent Total	
1 Year Inspections	HIGH PRESSURE	139	2468	(135) 2607 = \$351,945	3.81%	
2 Year Inspections	LOW PRESSURE	1826	19803	(70) 21629 = \$757,015	31.64%	
2 Year Inspections	UNFIRED	2448	41679	(50) 44127 = \$1,103,175	54.55%	
		4413	63950	68363	\$2,212,135	MARKET SHARE
*****Total Active Objects Per Insurance Company*****						
Insurance Company Name	HP	LP	Unfired	Total Objects	Percent	
ACE American Insurance Company	17	945	61	23,950	388	1.68%
American Boiler Insp Svcs, Inc	135	(270)	50	9278	2,212,135	19.27%
Chubb	109	492	985	1586	2.32%	
Cincinnati Insurance Company	75	772	819	1666	2.44%	
CNA Insurance Company	97	726	1708	2531	3.70%	
Commonwealth of Virginia	139	1826	2448	4413	6.46%	
Dupont Spruance	1	0	0	1	.00%	
Federal Technical Associates	3	0	5	8	.01%	
FM Global	328	930	6158	7416	10.85%	
Hartford Steam Boiler	801	7880	10747	19428	28.42%	
Hartford Steam Boiler-CT	6	21	435	462	.68%	
National Union Fire Insurance	57	10	521	588	.86%	
Royal & Sunalliance	0	2	19	21	.03%	
Seneca Insurance	71	102	738	911	1.33%	
St Paul Travelers	282	3067	50	4141	10.96%	
Tech Marine Services	135	(17)	2	(368)	.89%	
Tidewater Immediate Insp.	9	118	463	590	.86%	
Valley Boiler Inspection	5	83	84	172	.25%	
XL Insurance America, Inc.	64	1273	2652	3989	5.84%	
Zurich American Insurance Co	256	413	2170	2839	4.15%	
	2607	21629	44127	68363		
Grand Total					0.88%	

Addendum 9



February 2, 2006

Fred P. Barton
Director/Chief Boiler Inspector
Department of Labor & Industry
Commonwealth of Virginia
Powers Taylor Building
13 South 13th Street
Richmond, VA 23219

Re: Seneca Insurance Company Jurisdictional Work In Virginia

Dear Mr. Barton:

To confirm our telephone conversation of February 1, 2006, the only Jurisdictional work Seneca performs in the State Of Virginia is in conjunction with an Insurance Policy. Also, we do not do any "R" Stamp work in the State Of Virginia.

Please call me if there is any additional information needed.

Thank you.

Sincerely,

Gary H. Cox
Gary Cox
Boiler & Machinery Department
Seneca Insurance Company

Addendum 10



Grand Bay I
7000 South Edgerton Suite 100
Brecksville, OH 44141-3172
Phone: (440) 740-0197
FAX: (440) 746-8957
www.ariseinc.com

February 3, 2006

Mr. Fred P. Barton
Director and Chief Inspector
Department of Labor and Industry
Boiler Safety Compliance Powers-
Taylor Building
13 South Thirteenth Street
Richmond, VA 23219

RE: ARISE Inspections

Dear Mr. Barton:

This letter is to further confirm our conversation of February 2, 2006. That to the best of our knowledge, no work is being performed in the Commonwealth of Virginia by XL Insurance America, Inc./ARISE unless a policy has been issued for that client.

If you should have any questions or comments, please contact me at (440) 740-0197.

Regards,

Timothy B. Rhodes/pm

Timothy B. Rhodes
President

TBR:pm

cc: File copy

Addendum 11

MEMORANDUM



To: Mac Krauss
From: Fred P. Barton *FPB*
Subject: Tidewater Immediate Inspections, Inc.
Date: December 12, 2000

On September 29, 2000 Mark Anderson requested that the Department of Labor and Industry add Tidewater Immediate Inspections, Inc. to our list of inspection companies. Tidewater Immediate Inspections, Inc. is one of three (3) companies which Mr. Anderson either owns or has a financial interest.

Upon receipt of the certificate of insurance, additional information was requested. The requested documents was submitted by Mr. Anderson and received in this office on December 1, 2000.

Contrary to Section 16 V AC 25-50-50, Kurt D. Crist, the Inspector for Tidewater Immediate Inspections, Inc. was not an employee of Tidewater Immediate Inspections, Inc. until October 18, 2000. On September 29, 2000 Mr. Anderson requested a Virginia Work Card for Kurt Crist 2 1/2 weeks before signing the employment papers.

American Boiler Inspection Services, Inc., Mr. Anderson's inspection company, currently has over 10% market share of certificate inspections within the commonwealth. As mentioned before our policy needs to be changed to cover contract fee inspectors with a large amount of objects. Reference Section 40.1-51.9:2 (A) and (C). Mr. Anderson has a policy covering three (3) companies that meets 40.1-51.9:2 (A).

Our current policy is that each contract fee inspector have \$1,000,000 aggregate limit and anywhere from \$300,000 to 500,000 each occurrence under a Professional Liability or Error and Omission Policy. During a meeting with Jay Withrow we discussed developing rules to recommend to the Safety Health Codes Board. I was requested to find out how insurance company inspectors are insured for similar exposures. Most insurance companies include "hold harmless" clauses in their policies. American Insurance Association has suggested a minimum \$2,000,000 for all contract fee inspectors.

It is my recommendation that only Mr. Anderson provide a certificate of insurance with \$2,000,000 aggregate limit because he has over 10% market share of objects, has financial interests in 3 companies, and employs or has arrangements with 4 inspectors (Tom Barron, Jim Mannion, John Pittman and Kurt Crist).

In summary, Mr. Anderson has more customers and therefore has more exposure to possible damages. I discussed this with Mr. Anderson on December 1, 2000 and he indicated that he already had coverage with \$2,000,000 aggregate limit.

The one barrier to resolving this issue is the violation of the Virginia Rules. This violation is yet another example of untrustworthiness on the part of Mr. Anderson. I believe there should be a 2-3 months delay of adding the name to the list after Mr. Anderson is advised of the violation.

Upon receipt of a certificate of insurance with \$2,000,000 limit and resolving the above mentioned barrier, we can issue a Work Card for Kurt Crist (and allow the present one under American Boiler Inspection Service, Inc. to expire) and add Tidewater Immediate Inspections Inc. to our inspection company list. _

ADDENDUM 12

/Mark Anderson
12800 Saddleseat Place
Richmond, Virginia 23233-7687

Office - (804) 364-8990
Fax - (804) 364-3767

September 29, 2000

Mr. Fred Barton
Department of Labor and Industry
Powers-Taylor Building
13 South Thirteenth Street
Richmond, VA 23219

Dear Fred:

As the industry is ever expanding, I am requesting that DOLI add Tidewater Immediate Inspections, Inc. to the list of inspection companies. Tidewater Immediate Inspections, Inc. is Virginia corporation and registered with the SCC. The company address and telephone number is as follows:

Tidewater Immediate Inspections,
Inc. 4735 Greenlaw Drive
Virginia Beach, Virginia 23464-6352

Person to contact: Mr. Kurt D. Crist
Telephone Number: (757) 495-5957
1-888-408-9980

Mr. Kurt D. Crist will apply for a Virginia work card for Tidewater Immediate Inspections, Inc. The inspection reports will be on Tidewater Immediate Inspections, Inc. report forms (samples are attached for your review and input). I would like for Tidewater Immediate Inspections, Inc. to issue the certificate decals and collect the DOLI fees, however, I do not believe the startup volume would be sufficient to make it cost effective for DOLI or Tidewater Immediate Inspections, Inc. at this time. As business develops down the road, this is an area I would like your input and guidance.

The insurance policy for Tidewater Immediate Inspections, Inc. will be the same as for American Boiler Inspection Service, Inc. I have contacted the insurance company and they have no problem with the arrangement and in fact states that this is a common practice for closely held corporations. A Certificate of Insurance for Tidewater Immediate Inspections, Inc. will be issued to your office (and to any customer that requests one).

If DOLI has written requirements for establishing an inspection company and having it added to the DOLI list of contract fee inspectors, I would appreciate the opportunity to receive a copy of that policy.

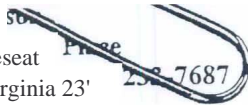
Should you have any questions with respect to the above, please contact me.

Sincerely,

Mark Anderson
Mark Anderson

ADDENDUM 13

1280(f Saddleseat
Richmond, Virginia 23'



Office - (804) 364-8990
Fax - (804) 364-3767

September 29, 2000

Mr. Fred Barton
Director/Chief Inspector
Boiler Safety Compliance Program
Department of Labor and Industry
Powers- Taylor Building
13 South Thirteenth Street
Richmond, Virginia 23219

Dear Fred,

Enclosed, please find \$20.00 for the Virginia Work Card for Kurt D. Crist in the name of Tidewater Immediate Inspections, Inc. For reference and work history, Mr. Crist's current American Boiler Inspection Service, Inc. inspectors ID number is 959.

Also, I have requested that a certificate of insurance for Tidewater Immediate Inspections, Inc. be forwarded to your office.

If additional information is required, please feel free to call me.

Thank you,

Mark Anderson

Mark Anderson

ADDENDUM 14

Tidewater Immediate Inspections, Inc.
4735 Greenlaw Drive
Virginia Beach, Virginia 23464-6352

Office - (757) 4n8-5397
Fa:s:: - (is'!) 49>5IJ57

October 18, 2000

Mr. Kurt Crist
4735 Greenlaw Drive
Virginia Beach, VA 23464

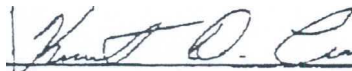
Dear Kurt:

This letter will confirm our offer of employment commencing during the month of October and your anticipated acceptance of the position of Boiler and Pressure Vessel inspector. In this position, you will perform authorized inspections and/or in-service boiler and pressure vessel inspections.

You will also be responsible for the billing of your completed inspections. You will be the only inspector employed by *Tidewater Immediate Inspections, Inc.* You will be an at-will employee and your pay rate is 50% of the billed inspection fee.

It is anticipated that operations will begin as soon as DOLI adds Tidewater Immediate Inspections, Inc. to the list of inspection companies.

Acceptance:



Date:

10/18/00

Addendum 15

ALFRED W. GROSS
COMMISSIONER OF INSURANCE



P.O. BOX 1157
RICHMOND, VIRGINIA 23218
TELEPHONE: (804) 371-9741
TDDNOICE: (804) 371-9206
<http://www.state.va.us/see>

STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

March 8, 2001

3/8/01
Mack
apps
ga

Dennis G. Merrill
Director, Labor Law Division
Commonwealth of Virginia
Department of Labor and Industry
13 South Thirteenth Street
Richmond, VA 23219

Dear Mr. Merrill:

This letter is in response to your inquiry of March 7, 2001 regarding your agency's consideration of adjusting your liability insurance requirements.

Although the Virginia Bureau of Insurance oversees insurance companies and agents, the Bureau does not set any insurance limits required by any other State agency. There is nothing in the insurance statute that prevents your agency from requiring a certain limit of liability insurance.

If you have any further questions, please contact me at the number listed below.

Very truly yours,

Anne Marie Brooks

Anne Marie Brooks
Senior Insurance Market Examiner
Consumer Services Section
Property & Casualty Division
(804) 371-9185

AMB/vms

Addendum 16

COMMONWEALTH of VIRGINIA
DEPARTMENT OF LABOR AND INDUSTRY

_D.RMN
ccwaeION5R

POWERS-TAYLOR BUILDING
13 SOUTH THIRTEENTH STREET
RICHMOND, VA 23219
PHONE (804) 371-2327
FAX (804) 371-6524
TDD (804) 371-276

TO: All Contract Fee Inspectors

FROM: Fred P. Barton, Director/Chief Inspector
Boil Bailer safety Compliance Program

FP Barton

SUBJECT: Financial Requirements

DATE: March 9, 2001

There is a change on the financial requirements for Contract Fee Inspectors. Effective immediately the minimum aggregate limit for all Contract Fee Inspectors is \$500,000 in either a professional liability or error omission type policy.

Any Contract Fee Inspector who has more than 1% market share per DOLI's records shall have an aggregate limit of \$1,000,000 in either a professional liability *or error* omission type policy.

Any Contract Fee who has more than 10% market share per DOLI records or employs or has an arrangement with at least three other Contract Fee Inspectors shall have an aggregate limit of \$2,000,000 in either a professional liability or error omission type policy.

If you have recently revised communications on this subject from us, please provide a revised Certificate of Insurance with the proper aggregate limit within 30 days.

Addendum 17

From: To: "Goldberg, Eric" <egoldberg@aiadc.org>
Date: 'Fred Barton' <FredBarton@doli.state.va.us> 9/13/00
Subject: 3:33PM
RE: Inspector's Protection for Negligent Inspection

Fred - I have forwarded your request to our Boiler & Machinery legislative Committee for their input. I observe that recently, several states have amended their laws to extend their sovereign immunity statutes to apply to insurance industry special inspectors, since they're essentially acting as' surrogate state inspectors looking for violations of state law. In addition, I would imagine that insurers are able to include "hold harmless" clauses or waivers in their contracts, although I'm not sure whether they're doing this as a matter of course.

I'll let you know what the Committee has to say. Regards, Eric.

---Original Message---

From: Fred Barton [mailto:FredBarton@doli.state.va.us]
Sent: Tuesday, September 12, 2000 5:27 PM
To: egoldberg@aiadc.org
Cc: Jay Withrow
Subject: Inspector's Protection for Negligent Inspection

Performance bond \$25,000.

Section 40.1-51.9:2 of the Virginia Code addresses the requirements for financial responsibility of Contract Fee Inspectors. We have started to prepare regulations to cover a range of requirements for minimum and maximum insurance coverage for inspections by Contract Fee Inspectors. We are wondering how boiler insurance Inspectors are protected from negligent inspections. Please survey your members to find out:

- 1 Which type of insurance are Inspectors protected with [E & O, professional liability or ??]?
- 2 What are the normal limits of coverage in \$ by type [each occurrence, general aggregate, etc]
- 3 Comments or suggestions on other ways to insure against negligent inspections or incorrect reports.

Thank you for surveying your members. We look forward to hearing from you on the results.

Fred P. Barton
Director/Chief Boiler Inspector
Department of labor & Industry
Commonwealth of Virginia Powers
Taylor Building
13 South 13th Street Richmond,
VA. 23219
Tel: [804]786-3262
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APPENDIX F

Additional Correspondence

INDEX TO

APPENDIX F

Additional Correspondence

- ITEM 1: Memo to Board from Mark Anderson (1/31/06)
with Attachments and 1/27/06 Letter
From James M. Mannion to Fred Barton
- ITEM 2: Letter From Kurt D. Crist to Fred Barton (1/27/06)
- ITEM 3: Letter from John R. Pittman to Commissioner C. Ray Davenport
with Amendments (2/10/06)

ITEM 1

American Boiler Inspection Service, Inc.
12800 Saddles eat Place
Richmond, Virginia 23233-7687

Office - (804) 364-8990
Toll Free -1-800-560-9958
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January 31, 2006

TO: SAFETY AND HEALTH CODES BOARD

FROM: Testimony of R. Mark Anderson,
President

RE: PROPOSED 16 V AC 25-55-10 and 16 V AC 25-55-20, CHAPTER 55. REGULATE
FINANCIAL RESPONSIBILITY OF BOILER AND PRESSURE CONTRACT FEE
INSPECTORS

Summary

I appear today to oppose the current proposal to regulate financial responsibility of boiler and pressure Contract Fee Inspectors. As a Contract Fee Inspector, I concur with the need for financial responsibility, however, I ask the Board to revise the regulations to better reflect the claim experience and realistic possibilities of risk exposure in Virginia. We recommend a \$1,000,000 aggregate and a minimum \$500,000 occurrence limit for all inspection companies.

Background

The claims history and loss exposure in Virginia do not justify the proposed regulation. Both my company's experience and the records of DOLI demonstrate that the proposed insurance requirements are unwarranted for companies which do business in the Commonwealth.

I. My company's experience does not justify such regulation.

In our 11 years as a *Contract Fee Inspection Company*, American Boiler Inspection Service, Inc., has never had a claim as a result of the inspector's *negligent* inspection or recommendation for certification of a boiler or pressure vessel. Further, I am not aware of a single claim against any Contract Fee Inspector since they were certified to inspect in Virginia on July 1, 1995. It is evident that there is no *frequency* problem with *negligent* inspections. However, the proposed requirements appear to address an accident frequency problem.

II. **DOLI** does. not justify this regulation.

DOLI's response to my FOIA request regarding this proposal did not contain any documents which provide factual support for the proposed insurance limits for Contract Fee Inspectors. *See* Attachment C. There was no evidence of background work, theories, relevant loss data, expert recommendations, studies, professional articles, meeting notes, industry consensus, actuarial analysis, homework, or any other supporting information. Nor is there any evidence of public demand for this proposed change. Without any such information or research how could DOLI reasonably arrive at the proposed limits?

Director/Chief Inspector Fred Barton states the 3 year property losses ranged from \$350,000 to \$500,000. This statement appears to be based on only 3 losses out of the 30 incidents reported to

DOLI involving Boilers and Pressure Vessels in the past 11 years. 1 Two incidents had estimated loss values of \$500,000 and one was for \$350,000. DOLI guessed to set these loss values. The next highest loss estimate for an incident was \$106,000, set by an insurance company, an independent entity. Significantly, 15 incidents had *no* loss value assigned and eight (8) are valued at *less than \$26,000*. Using even the unusually high DOLI loss values, the incident average loss value is \$61,233. If the DOLI "guesses" are excluded, the incident average loss value is \$18,038. This is far below the average of \$500,000 put forth by DOLI, and provides no realistic justification for the current proposed regulation.

There is no indication that DOLI has approached the primary Contract Fee Inspection companies for their input. A December e-mail from Mr. Barton about this proposal is the only notice which I received about this proposed change. DOLI says that only seven (7) companies are affected by this proposal. However, until I called Valley Boiler Inspection, Tidewater Immediate Inspection and Inspection Specialties, Inc., they had not heard of the proposal. DOLI should not ignore good administrative practice and due process, and try to slide this through unnoticed. It is unfair to the group which will be regulated.

A tiered insurance requirement is not in the best interest of the businesses and citizens of Virginia. A single insurance requirement for all inspection companies would best serve the public. The part-time and smaller companies complete fewer inspections and, therefore, have lower inspection experience level compared to the full-time and larger inspection companies.

The regulation proposes that the small companies should carry coverage with a \$500,000 and the larger companies should carry coverage with a \$2,000,000 limit. This presumes that the larger companies will have four times as many claims as the small companies. Yet there has not been a single claim of negligent inspection in Virginia in the past eleven years. In short, no frequency exists. Because all Contract Fee Inspectors will have the opportunity to inspect boilers and pressure vessels with the same exposure to loss, they should be required to carry the same insurance limits.

Since the probability of a high frequency of this type of claim is very low, the Board should focus on the severity of a possible claim. If DOLI has already determined that \$500,000 is adequate and a reasonable, as well as typical, limit for a Contract Fee Inspection company, as stated in a DOLI email from Robert Krauss to Dennis Merrill, dated 2/23/01, then \$500,000 should be the limit.

As I have on several occasions advised Mr. Barton, \$2,000,000 limits are hard to find and expensive to retain. My premium for 2006 will most likely exceed \$20,000.00 for the \$2,000,000 limits; not \$10,000 as DOLI sets forth. The letter from our insurance agent, as Attachment A, demonstrates these problems.

Specific errors and deficiencies to the DOLI proposal:

1 Some of these incidents involved furnace explosions and CO exposure, areas not covered by DOLI Boiler and Pressure Vessel Rules. The vast majority were a result of the failure of operating controls.

1. "*Market Share*" - the definition is flawed. ("*... the denominator of which is the total fees charged by the inspector and agency under 16 VAC 25-50-150 for conducting power boiler and high temperature water boiler, heating boiler, and pressure vessel inspections in the most recent calendar year...* ")
 - a. *16 VAC 25-50-150 Inspection certificate and inspection fees.* Does not mention fees charged by an inspector. This section pertains to fees charged by DOLI, not by the inspection company!
 - b. This does not allow DOLI to take the total number of inspections and multiply by the DOLI rates for inspection.
 - c. "*Fees charged by an inspector or inspection agency*" are impossible for DOLI to determine without financial data from the inspection agencies.
 - d. This will require the financial data to be provided by all of the 20 inspection agencies to DOLI for consideration, not just the *Contract Fee Inspectors*,
 - e. "*.. total fees charged..* " will be by the company's total fees charged, not just their Virginia operations,
 - f. There is no DOLI requirement for any inspection agency to provide financial data to DOLI,
 - g. American Boiler Inspection Service, Inc. will not provide any financial information to DOLI.

2. *Economic Impact Analysis obtained from DOLI website*
 - a. States that" . . . there are *seven* inspection companies that provide inspections in Virginia..." HOWEVER,
 - i. *9 Contract Fee Inspection Companies* are listed on the DOLI Web site, and there are 20 inspection companies in all. *See Attachment D* for summary.
 - ii. In addition to the *nine* companies listed on the DOLI web site as *Contract Fee Inspectors*, two other companies, Seneca Insurance Company and X L Insurance America Incorporated, provide contracted inspections for the boiler or pressure vessels, thereby qualifying as *Contract Fee Inspectors*.
 - iii. The pool of inspection companies is not stable as DOLI states. In the past year, three companies have joined the DOLI list. Additionally, 24 companies have ceased inspection activities since July 1, 1995.
 - b. States that the costs will range between \$2,500 and \$10,000. HOWEVER,
 - i. American Boiler Inspection Service, Inc., 2004 premium - \$13,383.
American Boiler Inspection Service, Inc., 2005 premium - \$11,104 pre-audit, plus an estimated additional \$4,000 audit premium.
 - ii. American Boiler Inspection Service, Inc., 2006 estimated premium - \$20,000.
 - iii. The cost of the insurance has increased each year, and will continue to do so.
 - iv. The availability of the insurance is questionable and, as stated in the Economic Impact Analysis, "*not well developed.* "

3. DOLI states the 3 year property loss ranged from \$350,000 to \$500,000. HOWEVER, (*See Attachment B*)
 - a. There were 5 loses reported during the past 3 years in the Commonwealth.
 - b. Using DOLI supplied loss data, the 3 year loss range is from \$0 to \$500,000.

- c. The 2 losses DOLI employees guessed to have a value of \$500,000 occurred after the \$2,000,000 limit was "proposed".
 - d. Not considering the very high DOLI guesses for losses, the range has been from \$0 to \$106,000.
 - e. Only 30 incidents have been reported to DOLI in the last 11 years.
 - f. Using DOLI supplied loss data, the 11 year average loss is \$61,233. If you do not use 3 very high DOLI loss guesses, the average is only \$18,000.
4. The proposed regulation treats companies, certified by DOLI, which have a substantial nationwide inspection business, differently than those which inspect only in Virginia. It proposes insurance limit requirements only based on Virginia business while their exposure to loss is on a national basis.

Concern about Personal Nature of the Proposed Regulation

Two other aspects related to the proposed regulation concern me. First, DOLI appears to have misrepresented its authority regarding Financial Requirements. Second and particularly troubling is that this regulation appears to be directed solely at my firm with no reasonable basis, as indicated by comments by Mr. Barton to me and documents provided in response to the FOIA.

Regarding my first concern, the FOIA package contained a DOLI March 9, 2001 Memorandum addressed to All Contract Fee Inspectors, stating that there was a change in the Financial Requirements. However, there was no indication of this Health and Safety Code Board's approval, as required by Section 40.1-51.9.2 - C. Therefore, there appears to be no basis for Mr. Fred Barton's opinions, beginning in 2001, about such a departmental policy. Mr. Barton has required the affected Contract Fee Inspectors to expend considerable money to obtain higher insurance limits than actually authorized by law.

With respect to my second concern, I spoke with Mr. Barton last week on an unrelated matter. Mr. Barton told me that he was going to retire in two years and set up a competing "contract fee inspection" company. I do not object to competition, however, it seems inappropriate for such a government employee to be charged with proposing regulations with unusually high limits for his future competition, which will have established clients, when Mr. Barton starts his business.

Mr. Barton's DOLI memorandum of December 12,2000 to Mac Krauss contains personal attacks on my integrity, and indicates restraint of trade actions directed towards me and Tidewater Immediate Inspections, Inc. An excerpt from this memorandum follows:

"It is my recommendation that *only* Mr. Anderson provide a certificate of insurance with \$2,000,000 aggregate limit because he has over 10% market share of objects, has financial interests in 3 companies, and employs or has arrangements with 4 inspectors (Tom Barron, Jim Mannion, John Pitman and Kurt Crist).

In summary, Mr. Anderson has more customers and therefore has more exposure to possible damages. I discussed this with Mr. Anderson on December 1, 2000 and he indicated that he Indicated that he already had coverage with \$2,000,000 aggregate limit.²

² This insurance was acquired solely because of Mr. Barton's statements in 2001, which appear to have no regulatory foundation.

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The one barrier to resolving this issue is the *violation of the Virginia Rules*. This violation is *yet another example of untrustworthiness on the part of Mr. Anderson*. I believe there should be a 2-3 months delay of adding the name to the list after Mr. Anderson is advised of the violation."
[Emphasis added.]

Mr. Barton singles me out of all of the Contract Fee Inspection companies and personnel to provide a Certificate of Insurance with \$2,000,000 aggregate limit. He did not recommend that American Boiler Inspection Service, Inc., or any other company provide the Certificate. His memorandum infers a hidden punishment for some alleged, and unidentified, violation. The Board should not endorse such unfair, and possibly defamatory and illegal behavior.

Conclusion

Succinctly, American Boiler Inspection Service, Inc. opposes the current proposal to regulate financial responsibility of boiler and pressure Contract Fee Inspectors. We concur with the need for financial responsibility. We ask the Board to revise the regulations to better reflect the claim experience and realistic possibilities of risk exposure in Virginia. Reasonable insurance limits will protect the public and also minimize the cost of inspections to our public and private clients in the Commonwealth. We recommend a \$1,000,000 aggregate and a minimum \$500,000 occurrence limit for all inspection companies.

I would be glad to work with the Board. Thank you for your anticipated serious review of this matter.

**Thompson
Insurance**
AGENCY

INCORPORATED "1971

1/9/2006

American Boiler Inspection Service, Inc.
12800 Saddleseat Pl.
Richmond, VA 23233-7687

Re: Errors & Omissions
GL1237341
08/08/2005 to 08/08/2006

Dear Mr. Anderson:

This letter is to confirm our phone conversation that your insurance cost has increased considerably since 1999. When we first wrote your insurance, your premiums were not quite \$3,000. Today, your premium for your Errors & Omissions insurance well exceeds \$10,000. For your 2004-2005 policy period, your premium exceeded \$13,000. For your 2004-2005 policy period, your *premium exceeded \$13,000. Your current premium exceeds \$11,000 and* per our conversation, we feel you will have a large increase due to audit, added to that figure.

I would like to remind you of the difficulty in obtaining insurance for a Boiler Inspection Service. We submitted your account to a number of companies and because of the type of the type of operation, we *found* only one carrier willing *to* offer you a quote. We feel fortunate that we are able to continue offering your protection. If you have any questions, please free in calling me again.

Cordially,

H. Freeman Thompson, III
H. Freeman Thompson, III

—

H. F. THOMPSON INSURANCE AGENCY, INC.

2515 WACO STREET RICHMOND, VA 23294-3750 TELEPHONE: (804) 672-3039
TOLL FREE: (800) 288-3039 FAX: (804) 672-1038

Incident reports and dollar losses from DOLI records

(compiled by Mark Anderson 01-26-2006 - American Boiler Inspection Service, Inc)

Date	Inspection Company	Incident Reported by	Cause	Negligence	\$ Loss	Determining loss
10/26/2005	Hartford Steam Boiler	DOLI - Mike Morgan	Operator Error	No	\$ 500,000.00	Guess
1/10/2005	C N A	CNA	Dry Fire	No	\$ 106,000.00	Insurance
3/8/2004		DOLI - Fred Barton	Furnace Explosion	No	\$ 500,000.00	Guess
5/31/2003		Chubb & Sons	Dry Fire	No	\$ 80,000.00	Insurance
2/15/2003		FM	Design Error	No	\$ -	Insurance
7/24/2002		Royal Sunalliance	Improper Repair	No	\$ 100,000.00	Insurance
5/14/2002	Cincinatti	DOLI - Ed Hilton	Faulty Safety Valve	No	\$ -	Guess
3/14/2001		DOLI - Steve Tynes	Improper Repair	No	\$ -	Guess
5/7/2001	Hartford Steam Boiler	Hartford Steam Boiler	Mechanical Malfunction	No	\$ 24,000.00	Insurance
7/17/2000		DOLI - Ed Hilton	Furnace Explosion	No	\$ -	350,000.00 Guess
7/8/1999		DOLI - Steve Tynes	Mechanical Malfunction	No	\$ -	3,000.00 Guess
7/1/1999		DOLI - Steve Tynes	Electrical	No	\$ -	500.00 Guess
5/1/1999		ABI - Mark Anderson	Manufactiruing Error	No	\$ -	25,000.00 Guess
1/4/1999	None	DOLI - Fred Barton	Installation	No	\$ -	Guess
11/25/1998		DOLI	Unknown	No	\$ -	Guess
1/6/1998		DOLI - Ed Hilton	Mechanical Malfunction	No	\$ 75,000.00	Guess
12/9/1997		Kemper - Jim Mannion	Mechanical Malfunction	No	\$ -	Insurance
11/15/1997		ISA - Jerry Eltzroth	None	No	\$ -	Plant
8/6/1997		DOLI - Ed Hilton	Mechanical Malfunction	No	\$ -	Guess
Unknown		DOLI- Tom Barron	Mechanrcal Malfunction	No	\$ 22,000.00	Guess
3/2/1997		Hartford Steam Boiler	Burner Failure	No	\$ 25,000.00	Insurance
Unknown		DOLI - Ed Hilton	Mechanical Malfunction	No	\$ -	500.00 Guess
2/13/1997		DOLI- Tom Barron	Mechanical Failure	No	\$ -	Guess
2/1/1997		Kemper - Eppa Winbish	Mechanical Malfunction	No	\$ -	Insurance
1/1/1997		Allied Signal - David Dewell	Mechanical Malfunction	No	\$ -	Plant
1/26/1995		DOLI - Will Long	Leaking Water	No	\$ -	Guess
1/9/1995		DOLI - George Eldridge	Furnace Explosion	No	\$ 26,000.00	Guess
8/25/1995		DOLI - Jim Mannion	Poor Maintenance	No	\$ -	Guess
12/1/1995		ABI - Mark Anderson	Mechanical Malfunction	No	\$ -	Plant
1/6/1995		DOLI - George Eldridge	Poor Maintenance	No	\$ -	Guess
				30 failures	\$ 1,837,000.00	
				Average Failure	\$ 61,233.00	

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ATTACHMENT B

Items, included in the package provided by DOLI in response to my FOIA, which appear to be relevant to this proposed regulation, are listed below:

- 1 internal DOLI email stating that \$500,000 is a typical limit (*No backup provided*)
- 3 e-mails from the Virginia Department of Planning and Budget, referencing Amy Wilson (DBP Economist) contacting an insurance agent and chastising DOLI for giving her my name as a person to contact.
- 9 emails to and from the Office of the Attorney General questioning procedural matters 1 letter to SCC asking if provisions of Virginia law would affect the Board's discretion 2 e-mails to and 2 return e-mails from Eric Goldberg, with the American Insurance Association. (dated 09/13/2000) *The AIA website states that the singular purpose of AIA is to advance their interests of their members before Congress and legislatures in every state. It does not mention the interests of Virginia.*
- 1 piece of scratch paper
- 30 Incident Reports for boiler or pressure vessel occurrences in Virginia (*No analysis*)
- 197 pages of various Certificates on Insurance (*NOTE - two current inspection companies do not provide a certificate for E & O or Professional Liability*)
- 1 DOLI Memorandum highly critical of my personal reputation and honesty (*See text*)
- 1 report with calculations for American Boiler Inspection Service, Inc., using imaginary DOLI inspection fees.

Importantly, no documents were provided in response to the following requests (so they must not exist):

- All documents pertaining to the establishment of the existing insurance requirements for contract fee inspection companies.
- All documents used to determine the proposed limits of insurance for contract fee inspection companies.
- All documents used in the development process of the proposed Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors (16 V AC 25-55) insurance requirements for contract fee inspection companies.
- All documents pertaining to the mechanics of how DOLI will determine the "market share" of the contract fee inspection companies.
- All documentation as to why insurance companies performing inspections for a fee will or will not be classified as a contract fee inspection company and are therefore included or excluded in this proposed regulation.
- A copy of the DOLI Economic Impact Analysis of this proposed regulations and all background documents relating to this analysis, including contract fee inspection companies contacted and their responses to the DOLI inquiry. (**My response and that of Kurt Crist, Tidewater Immediate Inspections, Inc., to Amy Wilson with Virginia DPB are not even included.**)

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ATTACHMENT C

January 24, 2006

Contract Fee Inspection Companies

Status

Accident Inspection Specialist	Not inspecting
American Boiler Inspection Service, Inc	Operating
Arise, Inc	Operating
Arise/Seneca Inc	Operating
Atlantic Services, Inc	Operating
B & M Inspection Service	Out of business
Boiler and Pressure Vessel Inspections, Inc Boiler Inspection Company, Inc	Out of business
CJIT Consulting, Inc	Out of business - 2 times
Hampton Roads Boiler Inspection, Inc	Operating
Hartford Steam Boiler Insurance	Out of business - 3 times
Kemper Insurance	Operating
Inspection Specialist Associates	Out of business
Inspection Specialties	Out of business
Integrity Assured Inspection Company, Inc	Not inspecting
Mid Atlantic Tank Inspection Service, Inc Pete's Boiler and Pressure Vessel Inspections Royal Insurance	Out of business
Royal Technical Services	Out of business
SfW Virginia Inspection Service	Out of business
Safety Consulting Services, Inc	Out of business
Seneca Insurance Company, Inc	Not inspecting
Southern Inspection Services, Inc	Operating
Tech Marine Services	Out of business - 2 times
Tenitram Company	Operating
Tidewater Immediate Inspections, Inc	Out of business - 2 times
Tn-State Testing Services	Operating
U S Marine Management	Not inspecting
Valley Boiler Inspection	Not inspecting
Virginia Steam Boiler	Operating
Virginia Statewide Boiler Inspection Services, Inc	Out of business
	Out of business

24 companies have ceased inspection services since 1995

11 Companies inspecting for a fee

11 Insurance Companies inspecting

**3 original companies - American Boiler Inspection Service,
Inc Arise / Seneca Insurance
Hartford Steam Boiler Insurance**

Valley Boiler Inspection, Inc.
PO Box 248
Harrisonburg, Virginia 22801-0248

Office – (540) 833-5548
Toll Free - 1-888-833-4155
e-mail- ValleyBoiler@ao1.com

January 27, 2006

Virginia Department of Labor and Industry
Mr. Fred Barton, Director, Boiler Safety Compliance
Powers Taylor Building
13 South Thirteenth Street
Richmond, VA 23219

Mr. Barton:

I am writing to you in reference to the DOLI proposal for Financial Requirements for Boiler and Pressure Vessel Contract Fee Inspectors. I have just learned that there is going to be a public hearing on this subject on January 31, 2005. Unfortunately this short notice does not allow enough time for me to re-arrange my inspection schedule for that day. There are a small number of Contract Fee Inspectors operating in Virginia, and we should all be informed of any proposed regulation that will affect us. Had I been informed of this hearing earlier, I could have made the following comments in person.

Valley Boiler Inspection, Inc. does not believe that it is in the best interest of Virginia to adopt a multi-level insurance requirement. We believe that a single \$1,000,000 aggregate limit would best serve the owners and users of the boilers and pressure vessels.

Further, Valley Boiler Inspection, Inc. does not intend to provide any financial data to DOLI to be used to calculate the required level of insurance as described under the definition of "Market Share" as stated in the proposal. Valley Boiler is not a publicly traded company and does not release any financial data.

Our current policy premium for our \$2,000,000 limit significantly exceeds the DOLI maximum estimated figure of \$10,000.

Paragraph "II- H" of the Public Hearing briefing package mentions boiler and pressure vessel incidents with property damage losses of \$300,000 to \$500,000. To the best of my knowledge, none of these incidents involved a negligent inspection by a Contract Fee Inspector, Insurance Inspector, or Commonwealth Inspector.

Paragraph "II-H" further states that the proposed changes would "give contract fee inspectors a vested interest in the performance of the inspections they conduct". This statement is an unwarranted assault on the quality of the inspections we conduct. I have been inspecting boilers and pressure vessels for over 25 years: 9 years as an Insurance Inspector, 10 years as a Commonwealth Inspector, and 6 years as a Contract Fee Inspector. I have had the same vested interest in my performance no matter who my employer was. I know of no boiler inspector who is making inspections for free. Every boiler inspector I know, including you, is in the business to earn a paycheck. **To insinuate that the quality of an inspection is going to change based on employer is absurd and offensive.**

Valley Boiler inspection, Inc.
PO Box 248
Harrisonburg, Virginia 22801-0248

Office-(540) 833-5548
Ton Free-1-888-833-4155
e-mail- ValleyBoiler@aol..com

For the record, we have not had a single claim, or reported accident involving any boiler *or* pressure vessel inspected in the Commonwealth of Virginia, or for that matter, anywhere in the United States.

Sincerely,

James M. Mannion

James M. Mannion

Copy:

Mr. C. Ray Davenport, . Commissioner
Commonwealth of Virginia Department
of Labor and Industry
13 South Thirteenth Street

ITEM 2

Tidewater Immediate Inspections, Inc.
4735 Greenlaw Drive
Virginia Beach, Virginia 23464-6352

Office (757) 495-5957
Fax (757) 495-3907

January' 27, 2006

Virginia Department of Labor and Industry
Mr. Fred Barton
Director, Boiler Safety Compliance
Powers Taylor Building
Thirteen South Thirteenth Street
Richmond, VA. 23 219

Mr. Fred Barton:

Concerning me new DOLI Insurance requirements. We do not believe that they are in the best interest of the Owner/Users of boilers and pressure vessels in and outside of Virginia (remember you are certifying inspectors to work outside of Virginia). Tidewater Immediate Inspections, Inc. proposes a single \$1,000,000 aggregate limit requirement. If a boiler or pressure vessels kills someone that was inspected by a company with less than 1 % market share, there child is only worth \$500,000. But on the other hand if it was a company wjth a larger market share then they would be compensated more. Also this requirement may appear to be using a government employee's position for future personal financial gain, which might violate ethics laws, if Mr. Barton intends to become a contract fee inspector when he retires from the state of Virginia he would be directly benefiting from, this change.

The Market Share proposal says that the amount of insurance we will be required to carry will be based on our inspection fees charged for inspections (in or outside of Virginia) to DOLI.

The amount that we currently pay for our insurance of \$2,000,000 is well above the amounts reported in the Financial Impact Analysis that DOLI presents at \$10,000.

We have not had a claim and we are not aware of a single claim against any inspector or inspection agency for negligent inspection in Virginia.

Why is it that I heard about this from a boiler- inspector, not the Office of Boiler Safety Compliance? There is only a hand full of contract fee inspectors, why couldn't you call me or send a letter? You have no problem contacting me for other issues by phone or mail. This appears to be an old fashion witch-hunt directed towards contract fee inspection companies that might be your competition in the future.

Sincerely,

Kurt D. Crist
Kurt D. Crist

Cc: Mr. C. Ray Davenport, Commissioner
Commonwealth of Virginia
Department of Labor and Industry
Thirteen South Thirteenth Street
Richmond, Virginia 23219

ITEM 3

Inspection Specialties, Inc 7932
Peyton Forest Trail Annandale,
Virginia 22003-1560

Toll Free - 1-888-408-7778
e-mail- InspectSpec@AOL.com

February 10, 2006

Mr. Ray Davenport
Commissioner,
Virginia Department of Labor and Industry
13 South Thirteenth Street
Richmond, VA 23219

Mr. Davenport:

I am writing in reference to the DOLI proposed regulation for Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors. I would have appeared in person to be heard by the Safety and Health Codes Board; however, I was unaware of any pending proposals that would directly impact contract fee inspectors.

I have significant concerns with the contents of this proposal and the way information concerning this proposal was kept from the companies most affected. My only notification came from Mr. Mark Anderson, American Boiler Inspection Service, Inc. Mr. Anderson also shared with me the DOLI response to his FOIA request made with respect to this proposal.

#1 - Based on the DOLI FOIA response, there is no factual evidence to justify this proposal. #2 - There has never been a recorded case of negligent inspection in the Commonwealth of Virginia.

#3 - The cost of insurance that is used by DOLI for this proposal is extremely low.

#4 - The unusually high loss ranges presented are based on DOLI guesses, not actual loss values.

#5 - Why were the affected Contract Fee Inspection Companies not consulted or informed of the DOLI proposal?

#6 - Did DOLI bother to check with the affected companies to see if a claim had ever been filed for a negligent inspection?

#7 - What happens if \$2,000,000 limit is adopted, but later cannot be secured from a carrier?

Does the affected inspection company go out of business?

#8 - Why are other states reportedly extending Sovereign Immunity to the inspectors, while Virginia tries to burden them with dictates.

I have been inspecting boilers for almost 22 years. I have never heard of a boiler occurrence due to a negligent inspection in Virginia. The records that DOLI provided to Mr. Anderson show that there have been NO boiler or pressure vessel occurrences in the past 11 years as a result of a negligent inspection.

There is not one piece of technical information in the DOLI FOIA response package to support the proposal. There is absolutely nothing to show that an engineering analysis, risk assessment, technical study, or a study of any kind was conducted to formulate the proposed insurance limits. The only information in the DOLI FOIA response that seems to have any relevance are several emails internal to the Commonwealth of Virginia, and 3 emails to AIA (an advocate of the inspectors employed by insurance companies). In fact, it appears that

Inspection Specialties, Inc
7932 Peyton Forest Trail
Annandale, Virginia 22003-1560

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only Mr. Barton's personal opinions and one piece of scratch paper (copy attached) have been used to establish the proposed insurance limits and this scratch paper specifies \$1,000,000 NOT \$2,000,000.

Why were the Contract Fee Inspection companies not informed of the proposal? Based on a July 28, 2005 email from Mr. John Crisanti to Mr. Fred Barton (copy attached) saying to limit contact and keep "our control" the input into "our regulation", it seems that DOLI wanted to control and adopt this proposal without input. This email from John Crisanti is quoted below:

"An additional concern I have is your facilitating her contacting Anderson. Having her contact Anderson is really inappropriate given her role in the process. You are supposed to be the tech expert on these issues and be the only touch point for tech issues for them if I can't answer them. Anderson should not have access in the process at her level In addition it effectively eliminates our control of input into our regulation. I strongly suggest calling her back after 3:30 when she is out of her meeting and answering her questions as best as you can and firmly dissuading her from contacting Anderson."

Why would DOLI not want input into a regulation from the affected parties? Quality regulations should not be pushed through without input! Input should be sought from all affected parties!

Further, Mr. Barton first made the requirements for \$2,000,000 limits in a 2001 Memorandum (copy attached). Apparently, this was without the Health and Safety Code Board action that is required under Boiler and Pressure Vessel Rules and Regulations, Section 40.1-51.9:2 Subsection C. DOLI did not provide any documentation to support the decision for the 2001 "requirement". This has required us to pay considerable higher insurance premiums for the unjustified insurance limits that were apparently not required.

As I stated above, DOLI has provided nothing other than unsubstantiated personal opinion to justify this proposal. We support requirements for financial responsibility for Contract Fee Inspectors. However, we cannot support the unjustifiable insurance limits in this proposal. We request that DOLI withdraw this proposal and work with the affected companies to establish justifiable limits.

Sinc:rely',

John R. Pitman
John R. Pitman

Cc:
Mr. Fred Barton
Virginia Department of Labor and Industry
13 South Thirteenth Street
Richmond, VA 23219

Safety and Health Codes Board Members

co vs individual - means company

inc or individual

make it guide

	min	1,000,000 total
	max	
min-max	1000 insp.	-300,000 - each
min-max	500 no of insp.	-500,000

professional liability
Errors & Omission

ins. require contract fee inspector

Am. Ins. Assoc. - canvas members for ins. of reg. inspectors

Keep this separate from others

Notify G. I. C. B.
we'll be making a D

From: John Crisanti
To: Barton, Fred
Date: Thu, Jul 28, 2005 1:42 PM
Subject: Re: DPB economist - additional followup Amy W.

Fred,

An additional concern I have is your facilitating her contacting Anderson. Having her contact Anderson is really inappropriate given her role in the process. You are supposed to be the tech expert on these issues and be the only touch point for tech issues for them if I can't answer them. Anderson should not have access in the process at her level. In addition, it effectively eliminates our control of input into our regulation. I strongly suggest calling her back after 3:30 when she is out of her meeting and answering her question as best as you can and firmly dissuading her from contacting Anderson.

John J. Crisanti
Virginia Dept. of Labor and Industry 13
South Thirteenth Street Richmond, VA
23219 804.786.4300
804.786.8418 fax
John.Crisanti@DOLI.virginia.gov

»> Fred Barton 7/28/2005 11:44 AM »>

John,

Only remaining question is: would a contract fee inspector be able to drop some insurance policies (general liability) to obtain an insurance policy that is more suited to inspections [professional liability or errors and omissions] and *consolidate* insurance costs. I gave her Mark Anderson's phone number so she could talk with his agent.

Fred Barton

»> John Crisanti 7/28/2005 9:50 AM »> Fred,

Please keep me in the loop till we put this thing to bed. Let me know all the topics she questions about and what your answers were.

thanks.

John

CC: Feild, Robert; Withrow, Jay

From: Fred Barton
To: John Crisanti
Date: 7/29/2005 8:37:27 AM
Subject: DPB Questions

I talked with Amy W this am. I gave her the following info from an agent I talked with yesterday:

Insurance policies with more specific coverage for persons performing inspections such as professional liability or errors and omissions cost a minimum of \$2500 depending on the business size and experience. If the person's only business is inspecting, the person could drop other liability insurance policies and have only the more specific coverage depending on the size of business and experience.

There are 7 organizations performing contract fee inspections. Two or three offer more than inspection services [NDTesting] to possibly have more than one type of insurance. Most companies are one person organizations performing just inspection services.

Fred P. Barton
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Department of labor & Industry
Commonwealth of Virginia
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email: Fred.Barton@dolLvirginia.gov

CC: Robert Feild; William Burge

