

**Title 25 – ENVIRONMENTAL PROTECTON
ENVIRONMENTAL QUALITY BOARD
[25 PA. CODE CHS. 218 AND 240]**

Radiological Health and Radon Certification Fees; and Radon Mitigation System Fee

The Environmental Quality Board (Board) by this order amends 25 Pa. Code Chapter 218 (relating to fees) and Chapter 240 (relating to radon certification) to read as set forth in Annex A. The amendments in Chapter 218 will increase the annual fees for radioactive material licenses, with one exception, and increase the hourly rate professional fee associated with certain full cost recovery licenses. The amendments in Chapter 240 will increase the application fees for certification of radon services and add a new requirement and fee for active mitigation systems installed or passive mitigation systems converted to active mitigation systems in this Commonwealth.

This order was adopted by the Board at its meeting of _____.

A. *Effective Date*

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information contact Joseph Melnic, Chief, Division of Radiation Control, P.O. Box 8469, Rachel Carson State Office Building, Harrisburg, PA 17105-8469, (717) 783-9730, or Keith Salador, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 783-8075. This final-form rulemaking is available on the Department of Environmental Protection's (Department) web site at www.dep.pa.gov (Select "Public Participation," then "Environmental Quality Board (EQB)").

C. *Statutory Authority*

The final-form rulemaking is being made under the authority of section 301, 302 and 401 of the Radiation Protection Act (RPA) (35 P.S. §§ 7110.301, 7110.302 and 7110.401), which directs the establishment of fees in amounts at least sufficient to cover the costs of the radiation protection programs mandated by the RPA and review of those fees every three years; Section 1920-A of the Administrative Code (71 P.S. § 510-20), which directs the Environmental Quality Board to formulate, adopt and promulgate such rules and regulations as may be determined by the board for the proper performance of the work of the Department; and sections 8, 12 and 13 of the Radon Certification Act (RCA) (63 P.S. §§ 2008, 2012 and 2013), which directs the Department to establish fees in amounts sufficient to cover the costs of the certification programs established by the RCA.

D. Background and Purpose

On August 19, 2014, the Department presented its Three-Year Regulatory Fee and Program Cost Analysis Report (Report) to the Board. The Report indicated that, despite substantial increases in personnel and program costs, the Chapter 218 fees, which support the licensing and inspection of radioactive materials, and the Chapter 240 fees, which support radon testing and mitigation certification, have not been revised since 2009. As a result, the Radiation Protection Fund is decreasing annually in operating reserves. Without a fee increase, the Department would be required to curtail spending for needed equipment, infrastructure upgrades, training and hiring of qualified personnel. This rulemaking addresses these problems by increasing the Chapter 218 and 240 fees to meet RPA and RCA requirements to adequately fund the licensing and inspection of radioactive materials and the certification of individuals who perform radon-related activities.

In March 2008, the Governor signed an agreement with the Chairman of the U.S. Nuclear Regulatory Commission (NRC) for the Commonwealth to oversee and regulate licensure of radioactive materials for Pennsylvania entities. These duties are funded through the Chapter 218 license fees and include registration and inspection of X-ray facilities, licensing and inspection of accelerators, registration of radiation-producing machine service providers and licensing and inspection of radioactive material users. As part of the agreement with NRC, the Commonwealth implements a radiation protection program comparable to NRC's program and ensured that Commonwealth regulations are compatible with NRC regulations.

The amendments to the Chapter 218 fees for radioactive material licenses are necessary to assure adequate funding is available for the Commonwealth to carry out its duties under the agreement with NRC. Approximately 850 licenses have been issued for radioactive material users that have associated annual fees. The professional hourly rate fee that supports required full cost recovery for unique services that cannot be standardized is an important component to the Chapter 218 fees. Examples of the professional hourly rate fee include the evaluation, inspection and licensing of high-energy accelerators and decommissioning activities at contaminated sites. If the Commonwealth was forced to cede its authority to regulate radioactive materials back to the NRC, the regulated community would experience higher costs per NRC's fees codified in its regulations, which are approximately 50 percent higher than the Department's current fees. Further, the NRC's fees typically increase by six to eight percent annually. The NRC's fees currently are approximately 24 percent higher than the fees included in this final-form rulemaking.

The Chapter 240 fees collected biennially are used by the Department to ensure that contractors and firms performing radon testing and remedial work are qualified to perform those services. The Chapter 240 fees are also used to perform outreach and to provide public service announcements to encourage homeowners to test for and mitigate radon contamination. Currently, the Chapter 240 fee revenue does not fully cover the Department's Radon Program costs. Without a fee increase, it will be difficult to provide effective quality assurance for the statewide radon program, data reporting, and quality of radon mitigation. Approximately 720 certified radon service providers are subject to the certification fees.

All amendments to the radiological health regulations in Chapters 218 and 240 were reviewed by the Department’s Radiation Protection Advisory Committee (RPAC). The committee represents various stakeholders, including radioactive materials licensees and radon service providers, as well as the general public. The Department presented the final-form regulation to RPAC on November 17, 2016. RPAC endorsed moving forward with the final-form rulemaking.

E. Summary of Changes to the Proposed Rulemaking

Chapter 218, Appendix A – Fees for Radioactive Material Licenses

No changes have been made to the fees included in the proposed rulemaking. The term “specific license” was removed from fee category 7C based on feedback from the RPAC. RPAC noted that no general licenses are covered by this category and therefore the inclusion of the term “specific license” was not necessary.

Section 240.303 – Reporting of Information

The proposed rulemaking added subsection 240.303(a)(7) to include the serial number of the Pennsylvania Radon Mitigation System Tag as a reporting requirement. This subsection has been deleted from the final-form rulemaking due to the removal of the proposed requirement of a Pennsylvania Radon Mitigation System Tag to be placed on any newly installed or converted radon mitigation system in this Commonwealth.

Section 240.309 – Pennsylvania Radon Mitigation System Tag

The proposed rulemaking included new §240.309 that contained the requirements for Pennsylvania Radon Mitigation System Tags to implement the new \$50 radon mitigation system fee. The Board received several comments that raised concern over the logistical and administrative burdens that the tags would place on both the Department and the regulated community. This section has been revised in the final-form rulemaking to remove the use of a mitigation tag for payment of the \$50 fee. The final-form regulation requires payment of the fee to the Department using a form created for this purpose. The Department must receive the fee and the form within 10 business days of the end of the quarter in which an active mitigation system is installed or a passive mitigation system is converted to an active system. This change to the final-form regulation reduces the logistical and administrative burdens that would have been posed by requiring a mitigation tag while retaining the \$50 mitigation system fee needed to adequately fund the radon certification program.

Chapter 240, Appendix A – Radon Certification Fee Schedule

No changes have been made to the fees included in the proposed rulemaking. The radon mitigation fee no longer includes the mitigation tag and has been revised consistent with the change to § 240.309.

F. Summary of Comments and Responses on the Proposed Rulemaking

The proposed rulemaking was approved by the Board on April 19, 2016, and published at 46 Pa.B. 3509 (July 2, 2016). Public comments on the proposed rulemaking were accepted through August 30, 2016. No public meetings or hearings were held. The Board received comments from 40 commentators during the public comment period and the Independent Regulatory Review Commission (IRRC). These comments were considered and are addressed in the comment and response document that accompanies this final-form rulemaking.

Most commentators were opposed to the Chapter 240 radon fee increase. A few commentators raised concerns about the effect of the fee increases for Chapter 218 radioactive material licenses on competition within the industry and on small businesses. While the Chapter 218 fees are increasing, most fee categories are significantly lower than the corresponding NRC fees. In addition, the fee categories SB1 and SB2 are available for small businesses to obtain a radioactive materials license at a reduced cost. Lastly, Section 401 of the RPA requires license fees to be established “in an amount at least sufficient to cover the department’s costs of administering the programs.” 35 P.S. § 7110.401.

As to the Chapter 240 fees, commentators raised concerns over the fee increase and new radon mitigation fee’s impact on real estate transactions and on the regulated community itself. Section 8 of the RCA requires the establishment of “a fee schedule to cover the costs of the certification programs.” 63 P.S. § 2008. Additionally, the cost of testing for radon and installing a mitigation system, if needed, is a small percentage of the overall costs of real estate transactions and should not be an impediment to homeownership. Radon testing and radon mitigation systems provide significant benefits to the health and safety of homeowners. By testing for radon, a serious health concern can be identified. The U.S. EPA, as well as other national and international health and radiation safety organizations, have declared radon to be the second leading cause of lung cancer after smoking, and the leading cause of lung cancer in non-smokers. Pennsylvania residents are at risk because the radon levels in this State are much higher than most other parts of the country. If a mitigation system is needed and installed, the health concern can be mitigated. This benefit to the purchaser and any future occupants of the home outweighs the cost of the increased fee.

Several commentators were concerned about the logistics and benefit of the new radon mitigation tag. The requirement for a radon mitigation system tag has been deleted and the final-form regulations requires the certified mitigator to pay the \$50 fee when each active mitigation system is installed or when each passive mitigation system is converted to an active mitigation system. Payments must be made within 10 business days of the end of the quarter in which the installation or conversion was performed.

Several commentators and IRRC were concerned that the increase in costs associated with testing for and mitigating radon exposure would discourage the public from seeking those services. The Department did not experience a decrease in the amount of reported mitigation installations and tests after the last radon certification fee increase in 2009. This fee increase is not expected to discourage testing and mitigation and will continue to be monitored.

Several commentators and IRRC asked what the Department has done to reduce costs and improve efficiency of the program. Based on the Department's fee analysis, personnel costs (salaries and benefits) are the largest cost item and have increased approximately 45% since 2009. The Department is continually analyzing its administrative processes, equipment, and technology to identify areas to improve efficiency, but the current staffing levels are necessary for the Department to carry out its obligations under the RPA and RCA. It is important to note that the U.S. Nuclear Regulatory Commission performs routine audits to ensure the Department is maintaining adequate staffing levels to perform the required radioactive materials licensing actions and facility inspections. To date, this has not been a concern to NRC. However, training new employees in this highly technical work can take up to two years. Therefore, it is prudent to add new staff before too many current staff retire, which is foreseeable due to the demographics of the Bureau. Though not subject to audit, the radon program is required to certify over 700 radon testers, mitigators and laboratories. Efficiencies have recently been gained using new online radon data reporting, allowing a respective reduction in clerical staff, but the certification aspect still requires several trained and experienced radiological health physics staff.

IRRC noted that the Fee Report shows that proposed increased fees were expected to begin in 2016-17, but that the anticipated effective date for this regulation is the second quarter of 2017. Given this discrepancy, IRRC asked the Board to provide updated information in the Preamble of the final-form regulation regarding projected program costs and revenue. The following tables show projected program costs and revenue for Radioactive Materials Licensing and Radon Programs. This increase in fees along with existing program funds will provide sufficient revenue through FY 2020-2021 for radioactive materials licensing and FY 2019-2020 for the radon program.

Radioactive Materials Licensing Program

	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
Fee Collection*	\$3,343	\$3,538	\$3,364	\$3,097	\$3,400	--	--	--	--	--
Fee Coll. with 50% increase beginning in 2017-18*	--	--	--	--	--	\$5,100	\$5,100	\$5,100	\$5,100	\$5,100
Fines and Penalties*	\$71	\$215	\$143	\$145	\$125	\$125	\$125	\$125	\$125	\$125
Total Revenue*	\$3,414	\$3,753	\$3,507	\$3,242	\$3,550	\$5,250	\$5,250	\$5,250	\$5,250	\$5,250
Program Costs*	\$4,121	\$4,329	\$4,260	\$4,306	\$5,042	\$5,193	\$5,349	\$5,510	\$5,675	\$5,845

*In thousands of dollars.

Radon Program

	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
Fee Collection *	\$172	\$164	\$170	\$181	\$182	--	--	--	--	--
Fee Coll. with 50% increase beginning in 2017-18*	--	--	--	--	--	\$273	\$273	\$273	\$273	\$273
Installation Fee**	--	--	--	--	--	\$400	\$400	\$400	\$400	\$400
Fines and Penalties*	\$85	\$28	\$59	\$60	\$50	\$50	\$50	\$50	\$50	\$50
SIRG ***	\$482	\$482	\$428	\$428	\$429	\$429	\$429	\$429	\$429	\$429
Total Revenue*	\$739	\$674	\$657	\$669	\$661	\$1,152	\$1,152	\$1,152	\$1,152	\$1,152
Program Costs*	\$1,527	\$1,751	\$1,640	\$1,582	\$1,312	\$1,351	\$1,392	\$1,434	\$1,477	\$1,521

*In thousands of dollars.

**\$50 fee for each mitigation installation; approx. 8,000 installations per year.

***State Indoor Radon Grant (SIRG)

G. Benefits, Costs and Compliance

Benefits

The Chapter 218 fees for radioactive material licenses are necessary to ensure that adequate funding is available for the Commonwealth to carry out its duties under its agreement with NRC and the RPA. If the Commonwealth was forced to cede its authority to regulate radioactive materials back to the NRC, the regulated community would be subject to higher NRC fees. Radioactive material controls under the agreement with NRC guard against the potential for unnecessary public radiation exposure from the use of radioactive material. With regard to Chapter 240, the Radon Program ensures that homeowners receive services from qualified individuals when testing for and mitigating the presence of radon, the largest controllable source of unnecessary radiation exposure in Pennsylvania. The Chapter 240 fee increases and the new radon mitigation system fee further will allow the Department to maintain adequate funding to carry out its duties under the RCA.

Compliance Costs

This final-form rulemaking calls for increases in fees of approximately 50 percent for most existing radioactive material licensees and certified radon service providers. Other than the increase in fees, no additional costs are associated with the radioactive materials license categories under Chapter 218 for maintaining compliance with the final regulations and provisions for reduced materials fees for small businesses remain.

With respect to Chapter 240, an additional \$50 for each radon mitigation performed will be charged as a result of the new radon mitigation system fee. Approximately 8,000 to 10,000 new radon mitigation system installations or conversions occur in Pennsylvania each year and approximately 132 certified mitigators would be required to submit the \$50 fee to the Department. A typical mitigation system costs between \$800 and \$1,200.

Compliance Assistance Plan

The Department will notify the regulated community of the higher fees through this notice, by informing the RPAC, and by issuing an Information Notice to relevant licensees.

Paperwork Requirements

The final-form rulemaking does not require additional recordkeeping or reporting requirements as a result of the Chapter 218 fee increases. The amendments to Chapter 240 will require certified individuals who install active radon mitigation systems or convert passive radon mitigation systems to active radon mitigation systems to submit a Department-approved form along with the appropriate fee on a quarterly basis.

H. Pollution Prevention

The Federal Pollution Prevention Act of 1990 established a national policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. DEP encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials, or the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

The final-form rulemaking is designed to support the safe and effective use of licensed radioactive materials and promote proper radon testing and mitigation procedures to protect the health and safety of Pennsylvania residents. The increased fees will ensure the Department maintains its ability to implement radiological pollution prevention.

I. Sunset Review

The Board is not establishing a sunset date for these regulations because they are needed for the Department to carry out its statutory authority. The Department will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

J. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 16, 2016, the Department submitted a copy of the notice of proposed rulemaking, published at 46 Pa.B. 3509 (July 2, 2016), to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act, on _____ (blank)_____, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____ (blank)_____ and approved the final-form rulemaking.

K. Findings of the Board

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law, and all comments were considered.
- (3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 46 Pa.B. 3509 (July 2, 2016).
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

L. Order of the Board

The Board, acting under the authorizing statutes, orders that:

- (a) The regulations of the Department, 25 Pa. Code Chapters 218 and 240, are amended by adding § 240.309 and amending §§ 240.3, 240.303, Chapter 218 Appendix A, and Chapter 240 Appendix A to read as set forth in Annex A.
- (b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.
- (c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act (71 P.S. §§ 745.1—745.14).
- (d) The Chairperson of the Board shall certify this order and Annex A, as approved to legality and form, and deposit them with the Legislative Reference Bureau, as required by law.
- (e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

Patrick McDonnell
Chairperson