



**pennsylvania**  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

**Bureau of Radiation Protection**

# **COMMENT AND RESPONSE DOCUMENT**

## **RADIOLOGICAL HEALTH AND RADON CERTIFICATION FEES; PENNSYLVANIA MITIGATION SYSTEM TAG AND FEE**

25 Pa. Code Chapters 218 and 240

46 Pa.B. 3509 (July 2, 2016)

Environmental Quality Board Regulation #7-498

(Independent Regulatory Review Commission #3153)

## **Introduction**

### **Radiological Health and Radon Certification Fees; Pennsylvania Mitigation System Tag and Fee**

On July 2, 2016, the Environmental Quality Board (Board, EQB) published a notice of public comment period for a proposed rulemaking concerning revisions to 25 Pa. Code Chapters 218 and 240 (relating to fees; and radon certification).

With one exception, the proposed amendments to Chapter 218 increase the annual fees for radioactive material licenses and increase the hourly rate professional fee associated with certain full cost recovery licenses. The proposed amendments to Chapter 240 increase the application fees for certification of radon services and add a new requirement and fee for a Pennsylvania Radon Mitigation System Tag for new mitigation systems installed.

The proposed rulemaking will be effective upon publication in the *Pennsylvania Bulletin* as a final-form regulation.

### **Public Comment Period and Public Hearings**

Notice of the public comment period on the proposed fee amendments was published in the *Pennsylvania Bulletin* on July 2, 2016 (46 Pa.B. 3509). The EQB's public comment period opened on July 2, 2016, and closed on August 30, 2016.

This document summarizes the comments received during the Board's public comment period. Each public comment is listed with an identifying commentator number for each commentator that made the comment. A list of the commentators, including name and affiliation (if any) can be found on pages 3–6 of this document. The House and Senate Environmental Resources and Energy Committees did not submit comments on the proposal.

Copies of all comments received by the Board are posted on the web site of the Independent Regulatory Review Commission (IRRC) at <http://www.irrc.state.pa.us> Search by Regulation # 7-489 or IRRC # 3153; and on e-Comment page of the website for the Department at <http://www.dep.pa.gov>.

**Table of Commentators for the Environmental Quality Board**  
**Proposed Rulemaking for**  
**Radiological Health and Radon Certification Fees; Pennsylvania Mitigation System Tag**  
**and Fee**  
**Environmental Quality Board # 7-489**  
**(IRRC # 3153)**

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<b>16.</b>	Douglas Carlson 616 Hillcrest Court Media, PA 19063
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<b>32.</b>	Daniel Young 316 Mill Street, Suite 1 Danville, PA 17821
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<b>37.</b>	Maria Stinger 1936 Park Manor Blvd., 15811 Pittsburgh, PA 15244
<b>38.</b>	Bruce Thomas 17 Fosterville Road Greensburg, PA 15601

<b>39.</b>	Nathaniel Burden 2221B Pillegi Road Warrington, PA 18976
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### **Acronyms used in this Comment/Response Document**

EPA – U.S. Environmental Protection Agency  
EQB – Environmental Quality Board  
IRRC – Independent Regulatory Review Commission  
NRC – U.S. Nuclear Regulatory Commission  
RPA – Radiation Protection Act  
RPAC – Radiation Protection Advisory Committee

## COMMENTS AND RESPONSES

- 1. Comment:** According to recent census data, Pennsylvania home ownership is at a record low and adding costs to the transaction is not the way to help increase it. This fee increase is viewed as an impediment to homeownership. The majority of radon tests and mitigation system installations are associated with a real estate transaction. Continued increases in cost will cause buyers already under significant financial pressure to reduce their costs by opting out of radon testing, since it is not a required test. Because this cost is incurred during the transfer of real property, it is believed this increased fee is a tax on and barrier to homeownership. Taxes in this state are some of the highest in the country and adding another one, even as small as \$50 for radon mitigation is not acceptable. (3, 7, 11, 12, 15, 16, 17, 18, 20, 21, 27, 30, 31, 32, 34, 37, 39)

**Response:** Section 8 of the Radon Certification Act requires the Department to “establish a fee schedule to cover the costs of the certification programs.” 63 P.S. § 2008. This rulemaking is needed to meet that statutory requirement. 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. Additionally, radon testing and radon mitigation systems add significant benefits to the transaction process and to the home itself. By testing for radon, a serious health concern can be identified. If a mitigation system is needed and installed, the health concern can be corrected and removed. This benefit to the purchaser and any future occupants of the home outweighs the cost of the increased fee.

- 2. Comment:** This country, state, and state agencies overspend. Hard working citizens and businesses already pay enough fees and taxes. The ability to raise prices or assess fees to offset costs is not there for the public and businesses. Personal and business sacrifices are made. Longer working hours, more work days, and no vacations or paid holidays. A stated need for this increase is to cover costs of training, equipment, and adding new personnel. The Department should cut expenses, work longer hours, more work days to train, and cut back staff instead of increasing it, as the private sector does. Government needs to work within their budget. The state always wants more money, taxes, and fees, and the public does not have more to give. (1)

**Response:** Section 401 of the Radiation Protection Act requires the Department to establish license fees “in an amount at least sufficient to cover the department’s costs of administering the programs.” 35 P.S. § 7110.401. Likewise, Section 8 of the Radon Certification Act requires the Department to “establish a fee schedule to cover the costs of the certification programs.” 63 P.S. § 2008. These fee increases are needed to meet these statutory requirements. The Department’s radon program is responsible for the certification and oversight of over 700 radon testers, mitigators and laboratories, as well as state-wide public outreach. The duties are performed primarily by the radon division consisting of eight staff members. We are continually evaluating our program for efficiencies to implement a more effective radon program. For example, for many years reported radon test data required manual entry into our database. Several years ago the Department developed a ‘green-port’ website where testers, mitigators and labs could directly enter that information, and our staff



would then perform a quality control check on the information. That reduced our need for 2 full time clerical staff in the radon program.

The Department is cognizant of the hardship increased fees can cause for businesses and is therefore committed to continued improvement of program efficiency and keeping costs to a minimum while continuing to provide a quality radon certification program.

- 3. Comment:** A formal request is issued to the Commonwealth to subsidize radon testing firms. The cost of performing a radon test not only includes the actual test, but also covers the mileage, travel time, turnpike fees, parking fees, etc. A small percentage of homes that are inspected are tested for radon. Common perception of the public is radon is nonsense. Given the low profit margin or loss, home inspectors performing radon tests is more a public service. The majority of the public can't or won't afford higher costs for radon testing.

Elevated radon is a serious health concern and every home should be tested. Reducing radon levels saves lives and lowers health care costs for citizens who fund state and federal social programs through taxes. (2)

**Response:** Subsidizing radon testing firms is outside the scope of this rulemaking. However, the EPA awards a State Indoor Radon Grant to Pennsylvania and other states that subsidizes public outreach. This public outreach helps increase awareness of the dangers of radon which, in turn, can lead to homeowners reaching out to certified individuals for radon services.

Section 8 of the Radon Certification Act requires the Department to “establish a fee schedule to cover the costs of the certification programs.” 63 P.S. § 2008. This rulemaking is needed to meet that statutory requirement.

The Department understands that radon is a serious personal and public health concern. The Department performed a fee analysis in 2014 that identified the need to increase radon certification fees. This rulemaking ensures that the Department has adequate funding to assure the public that the individuals who perform radon-related activities are properly qualified to address radon exposure in residential and nonresidential structures.

- 4. Comment:** Fee increases are not in the public's best interests. Radon testing and mitigation business costs are already high and certification fees are just a small part of the costs incurred. Additional fees will need to be passed to the consumers and this will lead to less radon testing being performed. There is no benefit other than a short-term increase in funds. There is no economic, health, or environmental benefit. More home should be tested, not less. (3, 4)

**Response:** The Department did not experience a decrease in the number of tests and mitigation installations reported after the last radon certification fee increase in 2009 and does not expect this increase to have an effect in that regard. The Department will continue to monitor the number of tests and mitigations performed. The purpose of the fee increase is not a short-term increase in funds. Section 2 of the Radon Certification Act states that the purpose of the act is to “protect property owners from unqualified or unscrupulous consultants and firms by requiring the Department of Environmental Resources to establish and carry out a

program of certification of persons who perform radon progeny testing or carry out remedial radon measures.” 63 P.S. § 2002. This increase will help carry out this intent long-term and ensure quality testing and mitigations in Pennsylvania.

- 5. Comment:** The Department should look at its own infrastructure costs and efficiency. While the Department feels their internal controls protects the consumer, they are focused on what they think they can control instead of consumer protection. There are requirements that are not necessary, but are time consuming. For instance, the process to add or remove monitors from inventory. It may be more appropriate to consult with an unbiased source to review the Department’s operational costs and procedures to identify cost saving measures instead of passing the burden to the public. If the result of higher costs reduces the number of radon tests, less protection is a result. (3, 7)

**Response:** The Department is always looking to improve efficiencies and eliminate unnecessary regulations. The issue of adding or removing monitors from inventory is outside the scope of this rulemaking. The Department is undertaking a separate rulemaking to address issues like these.

- 6. Comment:** The proposal does not taken into account financial realities. The economy is depressed and the real estate market is at a low. There are a number of competitors in the market and raising fees to consumers will result in losing a portion of business. Certification renewal fees were doubled a few years ago, and now the department wants to increase them again. The Department has a negative attitude towards the regulated community and punishes for reporting improper practices by others. (5)

**Response:** The radon certification fees have not been increased since 2009. At that time, the Department did not experience a decrease in reported mitigation installations and tests and does not expect that this fee increase will have a different effect. The Department will continue to monitor the number of tests and mitigations performed. The Department strives to implement its regulations in an unbiased manner that achieves compliance through education and values feedback from the regulated community through the Radiation Protection Advisory Committee or case-specific discussions.

- 7. Comment:** The proposed tax will may put an end to testing or lead to inaccurate, poorly managed testing devices used by owners and buyers. There are other costs that go into testing, additional fees, taxes or service charges could cause the industry to decline in quality, accuracy and competency. The need to regulate quality control is understood, however, this could put an end to awareness and testing programs. Buyers are already discouraged from testing from agents due to mitigation processes that need to be done prior to closing. (8)

**Response:** The cost of testing for radon and installing a mitigation system, if needed, should be a small percentage of the overall costs of real estate transactions. This benefit to the purchaser and any future occupants of the home outweighs the cost of the increased fee. Pennsylvania is one of the few states that perform blind tests on radon measuring devices used in the Commonwealth. For blind testing, the Department may anonymously purchase secondary radon devices from PA Certified laboratories or testers and expose them to known

concentrations of radon in a radon chamber. After the exposures, the devices are sent back to the lab for analysis. A comparison is done between the lab reported results and the radon chamber value. The “passing” criterion is that each device must have a relative percent error of +/- 25% or less.

**8. Comment:** I am opposed to Radon fee of \$50.00. (9)

**Response:** Section 8 of the Radon Certification Act (RCA) requires the Department to “establish a fee schedule to cover the costs of the certification programs.” 63 P.S. § 2008. The \$50 fee in this rulemaking is needed for the Department to continue to perform the work required by the RCA.

**9. Comment:** Seriously, you are trying to add an additional \$50 fee for Radon Mitigation installation? I am disappointed that this is another fee that sellers and buyers will have to absorb to purchase a home. Why do regulations have to always have a negative effect on buyers and sellers? (10)

**Response:** Section 8 of the Radon Certification Act requires the Department to “establish a fee schedule to cover the costs of the certification programs.” 63 P.S. § 2008. This rulemaking is needed to meet that statutory requirement. 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. Additionally, radon testing and radon mitigation systems add significant benefits to the transaction process and to the home itself. By testing for radon, a serious health concern can be identified. If a mitigation system is needed, the health concern can be corrected and removed. This benefit to the purchaser and any future occupants of the home outweighs the cost of the increased fee. 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 particular risk since the radon levels in this state are much more significant than most other parts of the country.

**10. Comment:** Radon mitigation is voluntary and should not be part of government or state legislature. (12)

**Response:** The choice of whether to test and mitigate radon exposure in homes or prospective homes remains voluntary.

**11. Comment:** It feels as if this is a double dip. License fees, taxes being collected already on the transaction and now trying to add this? Not fair to the consumer at all. (16)

**Response:** Section 8 of the Radon Certification Act requires the Department to “establish a fee schedule to cover the costs of the certification programs.” 63 P.S. § 2008. The \$50 fee in this rulemaking is needed to meet that statutory requirement. The Radiation Protection Program receives no other revenue from real estate transactions.

**12. Comment:** Radon, a known safety concern, is prevalent in Pennsylvania. Why make it more of a hardship to remediate? (17)

**Response:** The Department did not experience a decrease in the amount of mitigation installations and tests reported after the last radon certification fee increase in 2009. The Department does not expect this increase to have an effect in that regard. The Department will continue to monitor the number of tests and mitigations performed.

**13. Comment:** Please do not go forward with this \$50 fee for radon mitigation certification. Your agency has a history of reckless rule making creating tens of millions of dollars of expense to consumers. Think that's an exaggeration? Consider the reckless changes and expenses associated with NPDES permitting associated with storm water management. Nobody wants more government interaction. (19)

**Response:** The increase in fees support the continuation of the existing radon program that has been positively commended by many citizens of the Commonwealth as well as the EPA. Several other states use a similar fee to fund radon programs. Pennsylvania has a unique geologic setting such that it has some of the highest radon levels in the country. In fact, a private home in Pennsylvania has recently been measured with the highest radon value in the country at 3,750 pCi/L. This value is over 900 times greater than the U.S. EPA recommended action level of 4 pCi/L. Pennsylvania also has a wide geographic distribution of radon occurrence, and with the population of 12.5 million people, has a great potential for radon exposure. While there are nine other states that have licensing or certification programs for radon testing, mitigation, and laboratory analysis; given Pennsylvania's unique geology, strong radon regulation is necessary. 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 particular risk since the radon levels in this state are much more significant than most other parts of the country.

**14. Comment:** Why aren't funds from general revenue used to support this need? This is a community health issue, not necessarily a personal or property issue and so should be supported by the whole Commonwealth. (21)

**Response:** General Fund tax revenue has not been directed to the Radiation Protection Program. The current statutory and fiscal structure of the Radiation Protection Program is for fees to support the respective program areas. This is true for nuclear power plants, radioactive materials and X-ray equipment users.

**15. Comment:** What could be the purpose of taxing a service that mitigates radon. Radon is not present in every home. It's bad enough to find radon in your home let alone discovering that the DEP will now tax you on it. Radon, I'm sure you know, causes cancer. are we really going to take advantage of people who might suffer the consequences of radon by charging them more money? What will this tax be used for? Sorry, I'm not a fan of this tax. (13, 14, 22, 24, 25)

**Response:** Section 8 of the Radon Certification Act requires the Department to “establish a fee schedule to cover the costs of the certification programs.” 63 P.S. § 2008. This rulemaking is needed to meet that statutory requirement in order to continue the existing radon program.

- 16. Comment:** Other government officials are discussing a tax on unhealthy items, such as cigarettes. This Department is proposing a tax on a remediation system that is supposed to protect children from something that causes cancer. Find another way to raise money. (23)

**Response:** Section 8 of the Radon Certification Act requires the Department to “establish a fee schedule to cover the costs of the certification programs.” 63 P.S. § 2008. The statute does not allow for any other method to generate revenue to pay for the existing program.

- 17. Comment:** One of the reasons given for this fee increase was the government would have to decrease spending without an increase in fees. This should have already happened prior to proposing a fee increase. The DEP is already over-staffed. The DEP should not allow employees to drive Commonwealth vehicles home for their personal transportation to and from work. The \$50 tag fee will not benefit any consumers. It is just another tax they will have to pay. It decrease the desire to have a radon mitigation system. Radon is naturally occurring and is not an environmental concern being caused, and does not need regulated. The government should just be informing the public of the dangers. The Department should be decreasing the cost of regulation instead of adding more to the public. (26)

**Response:** The Department is always looking to improve efficiencies and eliminate unnecessary regulations. The Department has revised the proposed approach in the final rulemaking to remove the mitigation tag requirement and instead requires the mitigator pay the \$50 fee when an active mitigation system is installed and when a passive mitigation system is converted to an active mitigation system per quarter.

- 18. Comment:** Stating the Radiation Protection Fund is dwindling sounds like poor management and doesn't justify increasing fees. Someone doesn't go to their boss and ask for a raise because they can't balance their checkbook. The proposed radon mitigation system tag does not help protect consumers. It does nothing for the functionality of the system and doesn't make a poorly installed one work better. Another reason for the fee is for outreach and public service announcements. These announcements are not reaching across the state and anyone can use Google to get information for free. The Boards approach to encouraging more radon mitigation systems to be installed is to make it harder and more expensive? This industry's profit margins are already low. Any lower, and it will cause noncompliance on other costs the Department forces on the industry in unnecessary continuing education. There is no new information on radon. The continuing education requirement does not gain anything for the industry and public except for cost. Countless hours are used to monitor this unnecessary requirement and could be used as a cost cutting measure. It is understood the licensing requirement protects consumers from less reputable providers, but the initial license is sufficient for this. The audits are also an unnecessary costs. It doesn't protect the public, it just causes the business to cease operations for a day and ends up adding cost onto the consumer. Added costs decreases the public's desire to test for or mitigate radon. These cost

cutting measures also help with the Board's energy efficiency goals. The rulemaking states; "The report must identify any disparity between the amount of program income generated by the fees and the costs to administer these programs, and must contain recommendations for regulatory amendments to increase program fees." Why does it need recommendations to increase fees? Why doesn't it need recommendations for decreasing costs, or streamlining processes? (29)

**Response:** The Department has revised the proposed approach in the final rulemaking to remove the mitigation tag requirement and instead requires the mitigatory to pay the \$50 fee based on the number of active mitigation systems installed and when a passive mitigation system is converted to an active mitigation system per quarter. The Department's public service announcements are publicized through various media outlets such as radio stations and television stations throughout the Commonwealth. While outside the scope of this rulemaking, the continuing education requirements have been decreased in past rulemakings. The Department has a statutory obligation to ensure testing and mitigation system installations are conducted properly. In order to satisfy that obligation, inspections are conducted. The Department is always looking to improve efficiencies and eliminate unnecessary regulations.

Section 8 of the Radon Certification Act requires the Department to "establish a fee schedule to cover the costs of the certification programs." 63 P.S. § 2008. This rulemaking is needed to meet that statutory requirement to continue the existing radon program. The Department is continually analyzing its administrative processes, equipment, and technology to identify areas to improve efficiency, but the increase in personnel costs cannot be mitigated.

**19. Comment:** Radon testing in Pennsylvania is voluntary. The number of tests performed is related to the cost of testing. Until testing is required, raising fees will endanger public health because it will result in less tests being performed. Does the "continued outreach and public service announcements regarding indoor radon" include the free tests given to the public? If so, our certification fees are being used to directly compete against industry providers. This promotes the idea that we are overcharging our consumers and should be giving away tests. The U.S. EPA tried to have a program funded by radon testers, but since it was so expensive to administer, the program disappeared. This could definitely happen here too. Most radon testing companies do testing as an add-on service. (30)

**Response:** The certification fees are not used to provide free radon test kits to the public. The Department receives a grant from the EPA for that portion of the radon program. The Department did not experience a decrease in the amount of mitigation installations and tests reported after the last radon certification fee increase in 2009 and therefore does not expect this increase to have an effect in that regard. The Department will continue to monitor the number of tests and mitigations performed.

**20. Comment:** Smaller testers and mitigators may not find this feasible. It is not in the public's interest to have a smaller pool of radon professionals, especially in rural areas. What measures has the Department taken to secure funding for its activities without further burdening the radon test and mitigation industry with higher fees? (33)

**Response:** The Department understands the concerns the regulated community has regarding this fee increase. The Department did not experience a decrease in the amount of mitigation installations and tests reported after the last radon certification fee increase in 2009 and therefore does not expect this increase to have an effect in that regard. The Department will continue to monitor the number of tests and mitigations performed. Additionally, the Department is always looking to improve efficiencies and eliminate unnecessary regulations.

**21. Comment:** The proposed tag fee as an added cost gives a disincentive to the public to protect themselves from radon by mitigating their homes. This is contradictory to the Department's mission. Added mitigation costs and potential other increases in costs from further regulatory changes that are already in process, could delay or derail home closings. Departmental policies can negatively impact the market. (33)

**Response:** The cost of 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. Additionally, radon mitigation systems add significant benefits to the transaction process and to the home itself. If a mitigation system is needed, the health concern caused by radon exposure can be corrected and removed. This benefit to the purchaser and any future occupants of the home outweighs the cost of the increased fee.

**22. Comment:** What research has the department conducted to understand the tradeoff between cost of mitigation/test and the willingness of the citizens of the Commonwealth to do so? How expensive can mitigation become before we experience a dramatic drop in activity? (33)

**Response:** The Department did not experience a decrease in the amount of mitigation installations and tests reported to the Department after the last radon certification fee increase in 2009. The Department does not expect this fee increase to have an effect in that regard. The Department will continue to monitor the number of tests and mitigations performed.

**23. Comment:** Implementing the radon mitigation system tag requirement will make the DEP part of the supply chain. Supply chain issues such as online ordering, order acknowledgment, payment methods, and on-time delivery will need to be addressed. This is not typical of a regulatory agency and may not be supported by IT systems. What are the plans for tag ordering? (33)

**Response:** The Department has revised the proposed approach in the final-form rulemaking to remove the mitigation tag requirement and instead requires the mitigator to pay the \$50 fee when an active mitigation system is installed and when a passive mitigation system is converted to an active mitigation system per quarter.

**24. Comment:** Payment options need to include credit cards, which is not available now. Small businesses may not have the ability to pay cash upfront to order these tags. What are the plans for tag payment options? (33)

**Response:** The Department has revised the proposed approach in the final-form rulemaking to remove the mitigation tag requirement and instead requires the mitigator to pay the \$50 fee when an active mitigation system is installed and when a passive mitigation system is converted to an active mitigation system per quarter. The Department is assessing the availability of credit card payment systems for radon certification fees.

**25. Comment:** DEP will need a tracking system for the packages of tags it will send out and a means to guarantee on-time delivery to support industry schedules. A lost package of tags could impact dozens of mitigators, and the liability could be costly for DEP. What are the plans for tag delivery? (33)

**Response:** The Department has revised the proposed approach in the final-form rulemaking to remove the mitigation tag requirement and instead requires the mitigator to pay the \$50 fee when an active mitigation system is installed and when a passive mitigation system is converted to an active mitigation system per quarter.

**26. Comment:** This will require more time-consuming paperwork for companies with multiple certified mitigators as they will need to manage multiple pools of tags, and guessing how many each mitigator may need in a given week and tracking what tags go with which certified mitigator. This provide a disincentive to having a fully certified workforce, since Firm employees do not require this. Having less certified individuals is not in the best interest of the public. Will the Department consider allowing certified individuals to share a common pool of tags IF THEY HAVE THE SAME EMPLOYER? (33)

**Response:** The Department has revised the proposed approach in the final-form rulemaking to remove the mitigation tag requirement and instead requires the mitigator to pay the \$50 fee when an active mitigation system is installed and when a passive mitigation system is converted to an active mitigation system per quarter.

**27. Comment:** Public outcry usually directs regulatory oversight, but there is no public outcry on radon exposure. The public has little knowledge of radon, and radon is not even included in rad-workers annual exposure since it's not caused by licensed material. There is no federal or state regulatory limit for radon in air or water. There are no requirements to test for radon other than for HUD Multifamily mortgage transactions, but DEP wants to overregulate the radon service professionals. It is understand there are those individuals who do not follow regulations. The Department should look to expand the program or run it more efficiently. (35)

**Response:** Radiation worker's exposure to radon from licensed material is included in 10 CFR 20 Appendix B, incorporated by reference in 25 Pa. Code Chapter 219. While no regulatory limit exists for radon in indoor air or water; the Commonwealth follows the action level recommended by the EPA. The Department is not adding requirements for radon certification in this rulemaking. The Department analyzes its administrative processes, equipment, and technology to identify areas to improve efficiency.



**28. Comment:** The mitigation system tags are an excellent idea because they inform the consumer that the state is involved however the tags should be provided free to mitigators upon certification. After all what do they get for their certification fee other than the right to have a small business in this state? (35)

**Response:** The Department has decided to withdraw the radon mitigation tag approach; however, a label is currently required to be attached to the system. The radon certification program assures building owners that radon testers, mitigators, and laboratories have the required qualifications.

**29. Comment:** Most radon service providers have been able to increase their prices because of losing referrals from it. There are uncertified people, other than homeowners or occupants, that are placing and retrieving devices and enforcement is not taken against them. (35)

**Response:** When the Department becomes aware of any uncertified individual performing radon testing, the Department takes enforcement actions against those individuals pursuant to the Department's authority under the Radon Certification Act, 63 P.S. §§ 2001—2014, and the Radiation Protection Act, 35 P.S. §§ 7110.101-7110.704. Anyone wishing to report an uncertified person, other than homeowners or occupants, performing radon-related services can call the Radon Division at 717.783.3594.

**30. Comment:** Home builders are exempt from radon regulations, yet they install radon mitigation systems. These mitigation systems would not have this radon mitigation system tag, but the Department should think about requiring it if they need additional revenue. These builders also should be required to have training just like certified mitigators, since most are not installed correctly. (35)

**Response:** Section 6 of the Radon Certification Act exempts builders from the certification requirements. 63 P.S. § 2006. Appendix F in the Uniform Construction Code has instructions for proper installation of radon resistant new construction. The Department of Labor and Industry oversees and implements the Uniform Construction Code.

**31. Comment:** The Department should consider requiring radon resistant new construction when building new homes. It is less costly and helps to reduce radon. (35)

**Response:** While this comment is outside the scope of this rulemaking, the Department agrees that radon resistant new construction (RRNC) is an important part of minimizing radon exposure. The Department has and continues to work with individual municipalities to encourage them to adopt RRNC standards in local building codes.

**32. Comment:** Laboratories that do testing on radioactive material pay one fee regardless of how many employees it has. Radon laboratories that have more than one employee performing analysis are considered firms and are charged more. There are seven radon labs in Pennsylvania and they are small businesses that will suffer from increased fees. The Radon Certification Act and Radiation Protection Act should not be grouped together. Customers have said they will go to out of state larger companies if the prices were raised. It is difficult

to get homeowners and buyers to test for radon due to so many other expenses they have. Have the EQB members tested their homes, workplace or child's school? If the industry can't cover their expenses they will simply no longer off the services and the Department will need to perform the outreach on its own. (35)

**Response:** The Department understands the concern raised by the commentator. While this rulemaking does address fees for individuals and firms, the Department is pursuing a separate rulemaking that will address substantive issues in 25 Pa. Code Chapter 240, such as what constitutes a firm. The Department encourages the commentator to submit a comment in that regard during the public comment period for that rulemaking. The Department urges everyone in the Commonwealth to test homes, workplaces, and schools.

**33. Comment:** Since the last fee increase and over the past several years the actions of the DEP Radon Division have created an atmosphere of distrust of the Radon Division among radon service providers. Overregulation of radon service providers has already caused radon service fees to consumers to increase. Many Pennsylvania residents opt out of radon testing when purchasing a home due to the cost to test. The radon services industry in Pennsylvania is the most regulated in the nation and it has become more difficult for new radon service providers to enter the radon services field. Further fee increases and a continuance of the excessive regulations and oppressive enforcement tactics of the Radon Division is counterproductive and will leave more residents of the Commonwealth exposed to the harmful effects of radon. (36)

**Response:** The Department strives to implement regulatory programs in a cooperative, uniform and fair manner. The Department is always interested in receiving feedback in the context of case-specific discussions. The Department implements its enforcement authority pursuant to the Radon Certification Act, 63 P.S. §§ 2001—2014, the Radiation Protection Act, 35 P.S. §§ 7110.101-7110.704, the regulations promulgated thereunder, and the agreed-to conditions contained in each radon certification application. The Department's data shows that there has not been a decrease in testing or mitigations performed have not decreased since the last fee increase in 2009. In 2009, 42,817 radon tests were performed and that number has increased to as many as 65,488 through the years. In 2009, 9,195 mitigation services were performed and that number has increased to as many as 13,114. While outside the scope of this rulemaking, regarding the regulatory requirements applicable to the radon services industry in Pennsylvania, the General Assembly recognized the unique public health issue radon presents in the Commonwealth. 63 P.S. § 2002(a)(1). 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 particular risk since the radon levels in this Commonwealth are much higher than most other parts of the country. As such, Pennsylvania's Radon Certification Act requires that radon service providers are qualified to perform mitigation services. 63 P.S. § 2002(a)(5). Qualifications include minimum experience requirements, proficiency testing, periodic recertification, measures for decertification, and truth in advertising requirements. 63 P.S. § 2013 (1)-(5).

**34. Comment:** Testers and mitigators can't continue to absorb the increasing fees for radon testing and mitigation with all other operating costs also continuing to increase. This will have a great impact on Pennsylvania's economy. A proper analysis should be done with Department representatives and industry professionals before increasing fees. How are the additional funds going to be allocated? More public outreach is needed. Increased fees will reduce tests, decrease home sales, and reduce the number of radon professionals. (37)

**Response:** Certification fees will continue to support the radon certification program and public outreach. The Department has not seen any evidence of decreased tests and home sales due to the prior fee increase; and the Department will continue to monitor the number of tests and mitigation installations performed in the Commonwealth by certified testers and mitigators. The Department recently performed a fee analysis for the functional areas of X-ray Machines / Accelerators, Radioactive Materials / Decommissioning, Nuclear Power Plants (NPP) / Environmental Surveillance and Radon. We reviewed the results of that analysis with the NPP operators and Environmental Quality Board. This information was also reviewed with our RPAC, which has a radon representative. That individual reached out to other radon industry professionals as these fee increases were proposed.

**35. Comment:** I did a cost-benefit analysis of my radon testing and found that it costs more to test than what is charged to the consumer. I already charge the maximum of what I think the public care afford. I am less inclined to promote testing now. The Department could help by reducing the confusion in its regulations, promoting a helping attitude instead of a punishing one, and asking our opinion instead of a Board of people who are not radon professionals. Radon and radioactive materials are two different things. Companies that handle radioactive materials should need every employee certified like the radon industry if they are put into the same package. (38)

**Response:** The Department is undertaking a separate rulemaking to address substantive issues. The Department implements its enforcement authority pursuant to the Radon Certification Act, 63 P.S. §§ 2001—2014, the Radiation Protection Act, 35 P.S. §§ 7110.101-7110.704, the regulations promulgated thereunder, and the agreed-to conditions contained in each radon certification application.

The radon certification and radioactive materials license fees were included in the same regulatory package to promote administrative efficiency. The need for each respective fee increase was analyzed individually for this rulemaking package. On July 2, 2016 the Department published the proposed fee increase in the *Pennsylvania Bulletin*, and then sent a letter on July 11<sup>th</sup> to all the certified radon testers, mitigators and laboratories to formally notify the regulated community of the proposed action.

The Department values the radon industry's input into the regulatory process. The Radiation Protection Advisory Committee (RPAC), which has a representative from the radon industry, endorsed moving forward with this rulemaking. To increase participation from the regulated community, the Department plans to conduct a webinar, and the RPAC created a Radon Subcommittee at its November 17, 2016, meeting in order to better facilitate input from the radon industry.

**36. Comment:** Many radon testers are home inspectors. These inspectors will discontinue providing this service if the fees increase. This fee increase provides no value to the industry or the public. It is felt this increase is for more audit and fining actions. Other states such as Ohio and Illinois provide value-added services and technical assistance programs. Pennsylvania does not. It seems like taxing home buyers and seller's through pass-through secondary taxation. The outreach service of the industry is threatened by the increasing costs. The DEP does not reach out to minority and low-income communities for radon outreach. The increase impedes the mission of the PA AARST Chapter in radon outreach and education and testing encouragement. The DEP did not have proper radon representation when considering this fee increase. The AARST represents the radon industry and was not asked to participate in these discussions. One person does not speak for the entire industry. The increased cost to the industry's overhead could be a \$200 plus increase for the consumer. That will make the consumer weigh the affordability of mitigating. The fee increase could impact the quality and features of mitigation systems due to trying to keep costs to the consumer down. It is considered improper due diligence to not conduct a cost/economic impact study. Radon and Radioactive Materials fees should not be in the same package. They are completely different in their missions and business structures. (39)

**Response:** The Department assists the industry by performing blind testing on certified individual's passive testing devices to ensure these devices are working correctly, and performing diagnostics in difficult-to-mitigate homes. For blind testing, the Department may anonymously purchase secondary radon devices from PA Certified laboratories or testers and expose them to known concentrations of radon in a radon chamber. After the exposures, the devices are sent back to the lab for analysis. A comparison is done between the lab reported results and the radon chamber value. The "passing" criterion is that each device must have a relative percent error of  $\pm 25\%$  or less. The Department values the radon industry's input into the regulatory process. The Radiation Protection Advisory Committee (RPAC), which has a representative from the radon industry, endorsed moving forward with this rulemaking. The representative from the radon industry reached out to various industry professionals in order to gain more than one person's input into this rulemaking. The RPAC is also forming a Radon Subcommittee in order to gain additional input from the industry regarding its radon regulations.

The Department does not specifically target minority and low-income communities for radon testing; however, it implements a broad and uniform outreach program to all communities throughout the Commonwealth in order to raise awareness about the dangers of radon and encourage testing.

The radon certification and radioactive materials license fees were included in the same regulatory package to promote administrative efficiency. The need for each respective fee increase was analyzed individually as demonstrated in the 2014 fee analysis.

**37. Comment:** Annual radioactive material license fees would increase by \$6,700 and X-ray certificate would increase by \$300 under this new fee structure. It is understood that the radiation protection fund is entirely funded by these fees. It is also understood that the

increase is intended to assure enough funding to carry out Pennsylvania's Agreement State and Radiation Protection Act duties. However, the increase exceeds the Consumer Price Index inflation rate since 2009 and the projected inflation rate for 2009-2022. The proposed new Source Material-Other license fee of \$20,100 greatly exceeds the current U.S. Nuclear Regulatory Commission equivalent fee, which is \$6,800. The radioactive license fees should not be increased more than 20%. This increase can affect the competitiveness in the market. Increased costs affect the ability to maintain manufacturing. A more reasonable fee helps the industry invest in the economy and provide more jobs. (40)

**Response:** The Department determines fee amounts through comprehensive expense and workload analysis studies. The expense and workload analysis studies were incorporated into the 2014 fee analysis presented to the EQB. These analyses help quantify funding necessary to support the duties specific to radiation protection program areas. Also, though this is called a license fee, the fee supports more than just the tracking of radiation sources and the issuance of a license. It includes all program oversight elements, the most important of which is periodic on-site inspection to ensure compliance so that the public and the environment is adequately protected. This requires the maintenance and support of special equipment and trained technical/professional personnel who must make time-intensive visits to the facilities involved. The fees are set in consideration of the technical complexity of the level of oversight and inspection required. Only radioactive material licensing fees have been determined to necessitate a fee increase. The evaluation of X-ray fees has resulted in no increase.

Regarding the comparison of certain fee categories to the current 2016 NRC fee schedule, the Department performs its own workload analysis. The majority of fee categories resulted in much lower fees compared to current NRC fees. For example, portable gauge operators (Fee Category 3P) and medical human use (Fee Category 7C) are 49% and 44%, respectively, lower than the NRC. The few categories that are higher are primarily the result of a limited number of licensees NRC currently has for those specific areas. For example, in 2010 the NRC fee category for Source Material (2C) was \$21,100. At that time, the NRC regulated numerous licenses with that type of fee category. Since then, the NRC's numbers have dropped due to states taking over responsibilities for these types of licensing operations. The Department's proposal of \$20,100 will still be almost 5% lower than the NRC's 2010 fee.

- 38. Comment:** Many firms that use portable nuclear density gauges are small. The proposed fee increase may result in firms discontinuing the use of these gauges as the profit margin is low and there are other costs in order to maintain these gauges as well as paying the license fee. The government needs to work within its budget and cut costs instead of increasing fees. An information notice that was sent out stated the department's operating reserves was decreasing, which suggests that there is a surplus of funds. Small firms do not have a surplus to use. More consideration is needed for small businesses paying these fees. A sliding scale increase based on number of employees could assist small businesses with this change. (6, 28)

**Response:** DEP is the primary Commonwealth agency charged under the Radiation Protection Act with protecting Commonwealth citizens from harmful and unnecessary

exposure to sources of radiation. 35 P.S. § 7110.301(a). Under Section 401, the Department is charged with collecting fees sufficient to support program activities from licensed radiation sources so as not to require support from general fund revenues. 35 P.S. § 7110.401. Maintaining appropriate reserves is necessary for sustaining these program activities.

Furthermore, in March 2008, the Governor signed an agreement with 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 that agreement, the Commonwealth committed to implementing a radiation protection program comparable to NRC's program and ensured that its regulations would be compatible with NRC regulations.

The proposed 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 RPA and the Agreement State program.

As for small business concerns as they relate to radioactive materials licensing, the Department provides the opportunity for small business to use the small business fee categories under Chapter 218, Appendix A, if certain requirements are met.

**40. Comment:** While we recognize that Section 8 of the Radon Certification Act (act) (63 P.S. § 2008) requires that the Department of Environmental Protection (Department) establish a fee schedule to cover the costs of the certification programs established in the act, and Section 401 of the Radiation Protection Act (35 P.S. § 7110.401) contains a similar requirement, commentators oppose the significant fee increases proposed in this regulation. Several commentators suggest that the Department should minimize expenses before imposing higher costs on the regulated community. Others indicate that the industry's increased costs will be passed on to consumers, which may result in fewer people testing and mitigating their homes.

Has EQB evaluated whether increased costs for radon testing and mitigation could lead to a decline in radon testing and/or mitigation overall? We ask EQB to address in the Preamble of the final regulation its consideration of any negative impact that increased fees could have on efforts to protect the public from radon. Also, EQB should explain what has been done to reduce expenses and improve efficiency to the greatest extent possible in order to reduce the fiscal impact on the regulated community.

Additionally related to fees, in response to Regulatory Analysis Form question #29, EQB anticipates the promulgation, effective and compliance dates for the final-form regulation to be Quarter 2, 2017. We note that the Radiation Protection Program Three-Year Regulatory Fee and Program Cost Analysis Report to the EQB shows that proposed increased fees were expected to begin in 2016-17. Given the discrepancy between these dates, we ask EQB to provide updated information in the Preamble of the final-form regulation regarding projected program costs and revenue. (41)

**Response:** The Department did not experience a decrease in the amount of mitigation installations and tests reported to the Department after the last radon certification fee increase in 2009. The Department does not expect this fee increase to have an effect in that regard, but will continue to monitor the number of tests and mitigations performed. According to the Department's fee analysis of the radon program, the biggest cost factor is personnel. Personnel costs (salaries and benefits) have increased approximately 45% since the last fee increase in 2009 while fees have remained static. Expense and workload analysis studies were incorporated into the 2014 fee analysis presented to the EQB.

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.

Please refer to Section F of the Order to this final rulemaking for tables that show projected program costs and revenue for Radioactive Materials Licensing and Radon due to the discrepancy between the 2014 fee analysis and the current anticipated effective date for the final rulemaking. 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.