

PROPOSED RULEMAKING
25 Pa. Code, Chapters 218 and 240
Radiological Health and Radon Certification Fees; and
Pennsylvania Radon Mitigation System Tag and Fee

The Environmental Quality Board (Board) proposes to amend Chapter 218 (relating to fees) and Chapter 240 (relating to radon certification) to read as set forth in Annex A. The proposed amendments in Chapter 218 would 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 in Chapter 240 would 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.

This proposed rulemaking was adopted by the Board at its meeting on _____.

A. Effective Date

This proposed rulemaking will be effective upon final-form 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. Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) Web site at www.dep.state.pa.us (select Public Participation, then select eComment).

C. Statutory Authority

The proposed amendments to Chapter 218 are authorized under the following:

- Sections 301, 302 and 401 of the Radiation Protection Act, 35 P.S. §§ 7110.301, 7110.302 and 7110.401.
- Section 1920-A of the Administrative Code, 71 P.S. § 510-20.

The proposed amendments to § 240.303 are authorized under the following:

- Sections 301, 302 and 401 of the Radiation Protection Act, 35 P.S. §§ 7110.301, 7110.302 and 7110.401.
- Section 1920-A of the Administrative Code, 71 P.S. Sec. § 510-20.

- The Radon Certification Act, 63 P.S. §§ 2001—2014.

The proposed addition of § 240.309 and the proposed amendments to §240.3 and Chapter 240, Appendix A, are authorized under the following:

- Sections 12 and 13 of the Radon Certification Act, 63 P.S. §§ 2012 and 2013.
- Section 302 of the Radiation Protection Act, 35 P.S. §§ 7110.302.
- Section 1920-A of the Administrative Code, 71 P.S. § 510-20.

D. Background and Purpose

The Radiation Protection Act requires the Board to review the radiation protection fee structure every three years. 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 radon fees 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 will be required to curtail spending for needed equipment, infrastructure upgrades, training and hiring of qualified personnel. This rulemaking addresses these problems by proposing to increase the Chapter 218 and 240 fees to meet Radiation Protection Act and Radon Certification Act requirements to adequately fund the licensing and inspection of radioactive materials and the certification of individuals who perform radon-related activities.

In March 2008, then-Governor Rendell signed an agreement with the Chairman of the U.S. Nuclear Regulatory Commission (NRC) for the Commonwealth to become an Agreement State. This allows 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 Agreement State program. There are approximately 850 licenses 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 fee regulations.

The Chapter 240 fees collected biennially are used by DEP 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. There are about 720 certified radon service providers that are subject to the certification fees.

All proposed amendments to the radiological health regulations in Chapters 215 through 240 are 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 discussed the need for fee revisions to Chapters 218 and 240 with RPAC on June 12, 2014, and presented the draft proposed regulation to RPAC on October 16, 2014. At the October 16 meeting, RPAC endorsed moving forward with the proposed rulemaking.

E. Summary of Regulatory Requirements

The following discussion describes the proposed amendments.

Chapter 218 Appendix A - Fees for Radioactive Material Licenses

The materials fees were initially based upon the NRC's fee schedule for fiscal year 2010 to cover the Department's costs of implementing the new Agreement State program as required by the Radiation Protection Act. The Board now needs to adjust those radioactive materials fees.

With one exception, the Board is proposing to increase fees for radioactive material licenses by 50 percent based on the findings of the Report to assure adequate funding is available for the Commonwealth to carry out its duties under the Agreement State program. The exception is for license category 2A(2)(c) – Source Material – metal extraction, which is proposed to be reduced by 50 percent. There is currently no licensee in the Commonwealth of Pennsylvania in that Source Material category, and expected regulatory oversight required for this license activity is significantly less than anticipated at the time this fee was established.

RPAC requested that the Department review and compare the workload associated with the broad scope licensees in the 7B category versus comparable license categories. The Department is conducting this review and is asking for public comment on this license category.

The professional hourly rate fee, identified by the asterisk in Chapter 218, Appendix A, in the proposed rulemaking, is proposed for increase from \$150 per hour to \$225 per hour, which is below the NRC's current fiscal year 2015 hourly rate of \$277 per hour. This hourly rate is applicable to fee categories 4A (Waste Storage, Processing or Disposal), 5B (Well Logging Field Flood Tracer Studies) and 14 (Decontamination, Decommissioning, Reclamation or Site Restoration).

§ 240.3 Definitions

The Board is proposing to add definitions for “active radon mitigation system” and “passive radon mitigation system” to support the proposed addition of Chapter 240, Section 309 (relating to Pennsylvania Radon Mitigation System Tag).

§ 240.303 Reporting of Information

The Board is proposing to add the serial number of the Pennsylvania Radon Mitigation System Tag affixed to each system to the reporting requirements of § 240.303.

§ 240.309 Pennsylvania Radon Mitigation System Tags

The Board is proposing a new Pennsylvania Radon Mitigation System Tag and associated fee based on the findings of the Report to ensure that Chapter 240 fee revenue covers the Department’s Radon Program costs. Under the proposed rulemaking, a Tag would be required for each activation of an active or passive radon mitigation system in this Commonwealth. This proposed new section details the operational requirements of implementing the new tag and associated fee.

Chapter 240, Appendix A - Radon Certification Fee Schedule

The Department is proposing to increase radon certification fees based on the findings of the Report to assure that Chapter 240 fee revenue covers the Department’s Radon Program costs. The proposed rulemaking requires a \$50 fee for each Pennsylvania Radon Mitigation System Tag, and it requires that tags are purchased in multiples of five or more per transaction. Also included is a fee waiver provision for local government employees or school employees performing unit installations in a school or local government building if the installation is pursuant to his or her official duties and the employee is not compensated for this service except through the employee’s salary.

F. Benefits, Costs and Compliance

Benefits

The proposed 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 the Agreement State program and the Radiation Protection Act. 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 State program 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 the public receives services from qualified individuals when dealing with radon, the largest controllable source of unnecessary radiation exposure in Pennsylvania. The proposed Chapter 240 fee increases further that responsibility and will allow the Department to maintain a comprehensive database of radon

levels in the Commonwealth. Likewise, the proposed new Pennsylvania Radon Mitigation System Tag and associated fee helps assure the quality of radon services.

Compliance Costs

This proposal calls for increases in fees of approximately 50 percent for existing licensees and certified radon service providers, with the exception of license category 2A(2)(c) – Source Material – metal extraction, which is proposed to be reduced by 50 percent. The proposed increases are in line with inflation and are not unexpected. Other than the increase in fees, there are no additional costs associated with the radioactive materials license categories under Chapter 218 for maintaining compliance with the proposed regulations. Also, there are provisions for reduced materials fees for small businesses.

With respect to Chapter 240, there would be an additional charge of \$50 for each radon mitigation performed as a result of the proposed requirement for a Pennsylvania Radon Mitigation System Tag. There are roughly 8,000 to 10,000 new radon mitigation system activations in Pennsylvania each year and approximately 132 mitigators who would be affected by the proposed \$50 fee. A typical mitigation system costs between \$500 and \$2,000.

Compliance Assistance Plan

The Department will notify the regulated community to expect higher fees by informing the RPAC, issuing an Information Notice to relevant licensees, and publication in the *Pennsylvania Bulletin*.

Paperwork Requirements

The proposed rulemaking does not require additional recordkeeping or reporting requirements as a result of the Chapter 218 and Chapter 240 fee increases. The proposed amendments to Chapter 240 would require the individual certified to mitigate radon to report to the Department the serial number of the proposed Pennsylvania Radon Mitigation System Tag affixed to a newly activated mitigation system. This would occur simultaneously with current reporting requirements under existing § 240.303.

G. Pollution Prevention

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101-13109) established a national policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department 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 and 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 proposed 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. Failure to increase fees may have a direct effect on the Department's ability to implement radiological pollution prevention.

H. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. Regulatory Review

In accordance with Section 5(a) of the Regulatory Review Act (71 P.S. §§ 745.5(a)), on _____, the Department submitted a copy of the proposed amendments to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* and to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the House and Senate Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly, and the Governor prior to final publication of the regulations.

J. Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Board. Comments, suggestions or objections must be received by the Board by **DATE**. In addition to the submission of comments, interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by the Board by **DATE**. The one-page summary will be distributed to the Board and available publicly prior to the meeting when the final-form rulemaking will be considered.

Comments including the submission of a one-page summary of comments may be submitted to the Board online, by email, by mail or express mail as follows. If an acknowledgement of comments submitted online or by email is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Comments may be submitted to the Board by accessing eComment at <http://www.ahs.dep.pa.gov/eComment>.

Comments may be submitted to the Board by email at RegComments@pa.gov. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission.

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

JOHN QUIGLEY,
Chairperson