

## **EXECUTIVE SUMMARY**

### **RADIOLOGICAL HEALTH AND RADON CERTIFICATION FEES (Amendments to Chapters 218 and 240)**

The Radiation Protection Act (Act 147-1984) requires the Department to establish fees in amounts at least sufficient to cover the costs of the radiation protection program mandated by that Act. The Act also requires that the fees be reviewed every three years. The current fees in Chapter 218 were last revised in 2001, and the fees in Chapter 240 have not been revised since their inception in 1991, both despite a substantial increase in program expenses and personnel costs. The Radiation Protection Fund is seriously depleted in operating reserves and the Department is curtailing discretionary spending for much-needed equipment and infrastructure upgrades and personnel training. This proposal is independent of the recent increase in nuclear power plant fees brought in by the revision to the Act. Those revisions to the Act addressed money dedicated to the nuclear safety, emergency response and environmental monitoring programs which have no direct funding through these proposed regulations.

#### **Chapter 218 – Radiological Health Fees**

The programs funded through the permit fees of Chapter 218 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. Adequate funding of the latter is of particular importance as the Commonwealth will be assuming authority over most Nuclear Regulatory Commission (NRC) licensees in Pennsylvania under the Agreement State program. This will entail hiring up to 25 additional personnel and increasing the radioactive material program budget almost tenfold. An important component to the fees in Chapter 218 is the professional hourly rate fee that supports required full cost recovery for unique services, for which a standardized fee cannot be set. Examples include the evaluation, inspection and licensing of very high-energy accelerators and decommissioning activities at contaminated sites.

Fees are intended to be revenue neutral, which means that in the beginning revenues should exceed expenditures. However, as operating costs rise, revenues will become insufficient by an equivalent amount leading into the next fee review period. Proposed fees for radioactive material licenses are patterned after the NRC's fee structure and set equal to NRC's fees for FY2007. This actually results in lower user fees for former NRC licensees because these regulations do not have an additional charge for applications or multiple uses, and they are frozen for several years while NRC fees have gone up an average of 5% per year over the previous six years. In addition, many licensees that have both state and NRC licenses will have them combined, eliminating a fee. There will also be provision for reduced small business fees for radioactive material licensees. In either case, if Pennsylvania did not assume responsibility for NRC licenses, the NRC would be required to take over Department-issued radioactive material licenses in 2009 under the Energy Policy Act of 2005. State licensees would then have to pay according to the NRC's fee schedule.

There are about 11,000 permits issued for x-ray facilities, accelerators, radioactive material users and radiation-producing machine service providers, each with associated annual fees.

## **Chapter 240 - Radon Certification Fees**

There are about 750 certified radon services. They are subject to a biennial application fee for certification with add-on costs for certifying additional testers at a firm, use of primary testing devices and approval of training courses.

The radon program operates on matching general funds for grants received from the Environmental Protection Agency (EPA). However, EPA funding is not guaranteed. Minor revenue is also generated from permit application fees for certification of radon testers, mitigators and other services. The proposed permit fee increases are to ensure that the cost of permitting activity is borne by user fees rather than general fund monies as much as possible, without damaging the viability of this cottage industry.

Several new radon-related fees are proposed. There is a new late fee for failure to submit timely renewal applications for certification of radon-related services. This helps the Department ensure that individuals are properly credentialed. There is a new proposed late fee for failure to submit timely reports of radon-related services. This helps the Department ensure that it can maintain a comprehensive database of radon levels in the Commonwealth and perform quality assurance checks on those activities and data. If a firm wishes to have more than one certified radon tester, there is a new fee for each additional employee certified as a tester. There is also an additional new fee for each type of primary testing device the tester is certified to use and a new fee for certification of radon course providers and the course material they use to satisfy educational requirements. These fees help ensure the quality of radon services.

The draft proposed rulemaking was presented to the Radiation Protection Advisory Committee (RPAC) at its meeting on August 21, 2007. A letter from the RPAC, dated September 12, 2007, has been appended to this summary. The RPAC expressed two concerns in the attached letter. RPAC suggested that the Bureau consider indexing fees to an inflation measure. The Bureau considered this recommendation; however, it is DEP policy to adjust for inflation by reviewing fees every three years. The second recommendation was to phase in and/or scale the fee structure relative to business size for the radon fees in Chapter 240. The Bureau considered this suggestion, but maintains that although the radon fees are increasing by a large percentage, the dollar value of the increase is nominal. This nominal dollar-value increase does not necessitate a phased-in or scaled implementation approach.

There is no mandated deadline for this rulemaking. However, the Commonwealth is expected to assume Agreement State status on March 31, 2008. The final form of this regulation should be in place around that time to ensure that adequate revenues can be collected to fund the required Agreement State program expansion. If the new fees are not in place by the effective date of Agreement State, there is a provision for assessment of the fees retroactively to the effective date of agreement for licenses that are transferred from the NRC.

There will be a 30-day public comment period for the proposed rulemaking. No public meetings are planned.