

# Regulatory Analysis Form

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(1) Agency

ENVIRONMENTAL PROTECTION

2008 MAR -4 PM 2: 37

INDEPENDENT REGULATORY  
REVIEW COMMISSION

(2) I.D. Number (Governor's Office Use)

7-423

IRRC Number: 2681.

(3) Short Title

RADIOLOGICAL HEALTH AND RADON CERTIFICATION FEES

(4) PA Code Cite

25 Pa. Code Chapters 218 and 240

(5) Agency Contacts & Telephone Numbers

Primary Contact: Michele Tate, 783-8727

Secondary Contact: Kelly Heffner, 783-8727

(6) Type of Rulemaking (Check One)

- Proposed Rulemaking  
 Final Order Adopting Regulation  
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No  
 Yes: By the Attorney General  
 Yes: By the Governor

(8) Briefly explain the regulation in clear and non-technical language.

The Department of Environmental Protection proposes to amend the permit fees in 25 Pa. Code Chapter 218 that are associated with radioactive materials, radiation-producing machines, accelerators and radiation-producing machine service providers as well as the fees for radon service providers in 25 Pa. Code Chapter 240. New penalties have been proposed in Chapter 240 in the form of a late fee for any person failing to submit a renewal application for certification of radon services at least 30 days prior to the expiration date and any person subject to the 45 day reporting requirement who fails to provide the Department with a report of radon services within 90 days of the completion of the activity. A new fee is proposed for the certification of radon courses used to satisfy educational requirements. There is also a new fee for each type of radon testing device a certified radon tester utilizes and a fee for each additional employee if a firm chooses to have more than one certified tester.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

1. Radiation Protection Act, act of July 10, 1984 (P.L. 688, No. 147), 35 P.S. Sec. 7110.101, et seq.
2. The Radon Certification Act, 63 P.S. §§20001, et seq.
3. Section 1920-A of the Administrative Code, April 9, 1929 (P.L. 177, No. 175), as amended, 71 P.S. Sec. 510-20.

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

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No. However, the fees for radioactive material licenses proposed in Chapter 218 are necessary to assure adequate funding for program expansion that will occur under the Agreement State program with the U.S. Nuclear Regulatory Commission (NRC). There is provision to support up to 25 new staff on or about April 1, 2008 when the NRC is expected to transfer its licensing authority to the Commonwealth for most radioactive materials.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

If lack of adequate funding jeopardizes becoming an Agreement State, the Commonwealth may lose its licensing/inspection program and all authority to regulate dangerous radioactive materials in 2009 due to the Energy Policy Act of 2005. If fees for radiation-producing machines are not increased, oversight of safety related activities may be curtailed and the replacement of obsolete survey equipment may be delayed reducing the assurance that regulated activities are being conducted safely.

If the fees for certification of radon services are not increased, the increased cost to the Department will have to be made up through General Fund tax money. Without the new penalty fee for timely submittal of reports of radon service activities, compliance with reporting will not be effective making it more difficult to maintain a comprehensive database of radon levels around the state and it will be more difficult to exercise effective quality assurance over the data measuring Radon levels across the state and the effectiveness of radon mitigation services. Likewise the new requirement to certify radon courses helps assure the quality of radon services.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

Failure to approve these fee-related amendments will result in a general degradation and possible cutbacks in the regulatory programs overseeing radiation safety. The use of late fees for ensuring compliance with radon reporting requirements is more efficient than invoking the civil penalty process.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

All people in the Commonwealth are affected by activities conducted under the oversight of the Radiation Protection Programs either directly as part of the regulated community or users of services provided by the regulated community. These might be patients receiving medical x-rays or homeowners who have radon removal systems installed. For example, any regulatory activity like radon certification entails a cost, but the certificate holder benefits through marketability of their services while the recipient is assured of a higher quality of service.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely affected.)

All x-ray registrants, accelerator licenses, radiation-producing machine service providers, radioactive material licensees and radon related service providers in the Commonwealth are affected. There will be across the board increases in fees of about 40 percent for existing permit and certificate holders. However, no one should be adversely affected by the regulation. The increases are in-line with inflation and are not unexpected. That is part of the normal cost of business that should be recoverable if the business is viable. The new late reporting fees for radon are small and totally avoidable by the

## Regulatory Analysis Form

regulated community by merely complying with reporting requirements in a timely manner. The \$375 biennial radon course provider fee affects about 20 certificate holders. There will be an additional charge of \$100 every two years for each of 92 additional employees certified as testers for firms. There will be a separate charge of \$100 every two years for each of about 310 primary radon testing device use certifications.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Those persons to be affected by the regulation include any individual, corporation, institution, group, agency or other entity that uses radioactive materials and radiation-producing machines or is engaged in services related to radon measurement or mitigation. There are approximately 480 current radioactive material licensees (about 950 after Agreement State is in effect) who will be required to comply with this regulation, some 10,800 X-ray registrants, 150 accelerator facilities, 220 radiation-producing machine service providers and about 750 entities engaged in regulated radon services.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

A draft of the proposed regulations was reviewed by the Radiation Protection Advisory Committee (RPAC) on August 21, 2007. The RPAC includes representatives from the PA Dental Association, the PA Medical Society, the PA Chiropractic Association, the PA Podiatric Society, the PA Veterinary Society, the PA Osteopathic Society, the Pennsylvania Society of Radiologic Technologists, the Western Pennsylvania Chapter of the Health Physics Society, the Susquehanna Valley Chapter of the Health Physics Society, the Delaware Valley Society for Radiation Safety, the Penn-Ohio Chapter of the American Association of Physicists in Medicine, the Delaware Valley Chapter of the American Association of Physicists in Medicine, the university, nuclear medicine, non-destruct testing and radon services communities, the public and others. The RPAC made recommendations to index fees to a measure of inflation, and to phase in and/or scale fees according to the size of each radon business. The comments were addressed and responses were incorporated. The proposed regulation was endorsed by the RPAC in a letter dated September 12, 2007.

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(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Fees for registration of x-ray machines and licenses for accelerators vary by type and complexity. The proposed increase in cost for annual fees is about 40% of the current applicable fees or \$1,209,000. The annual fee increase for radiation producing machine service providers is \$40 (40%) which will increase costs by about \$9,000. The annual fees for radioactive material licenses vary by type and complexity and the increase is not the same for all types of licenses. The anticipated increase in annual revenue is about \$957,000 which averaged over all license types is about a 30% increase. This increase is lower than 40% because the current Agreement State fee categories had not been planned to be effective for a couple of years after the last fee rulemaking in 2001. Overall, the proposed regulations increase Chapter 218 fee revenues by about \$2,175,000 per year, which includes total costs that are expected to be assumed by the regulated community, including select state government agencies and local governments.

The increase in the biennial base fees for certification of radon testers and mitigators range from \$100 to \$250 or 50-75% for individuals and 40-50% for firms. The increase in cost is about \$114,000 every two years. The new late application and late reporting fees are also a nominal \$100 but these occurrences are infrequent and not predictable. The new biennial course provider certification fee of \$375 applies to about twenty certifications and will generate about \$7,500 every two years. The cost of the requirement to submit 45 day reports for periods of radon service inactivity is expected to be negligible. Each primary testing device or additional employee certified increases the radon services application fee by \$100 which is about 15% of the base fee for a firm or about 30% for an individual. About 92 additional employees will be listed at a cost to the radon regulated community of about \$9,200 every two years. About 310 primary devices will be listed at a cost to the radon regulated community of about \$31,000 every two years. Overall, the proposed regulations increase Chapter 240 fee revenues by about \$81,000 per year, which includes total costs that are expected to be assumed by the regulated community, including select state government agencies and local governments.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Local governments who use licensed radioactive material or radiation-producing machines have in the past been exempt from the fees in Chapters 218 and 240. They are not exempt from the fee increases included in this proposed rulemaking, because to do so would shift their costs to the rest of the regulated community similar to the imposition of a tax and the Department is not a taxing authority. Less than about 16 local governments will see radioactive material license fees increase. The total cost of the increase in revenue is less than \$17,000. There are about 46 entities who use radiation-producing machines who will see their average annual fee increase about \$133.

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(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting or consulting procedures which may be required.

In the past, state agencies, other than the Department of Environmental Protection's Bureau of Radiation Protection, that use licensed radioactive material or radiation-producing machines have not been exempt from the fees imposed in Chapters 218 and 240. They are not exempt from the fee increases included in this proposed rulemaking, because to do so would shift their costs to the rest of the regulated community similar to the imposition of a tax and the Department is not a taxing authority. State agencies impacted by the proposed fee increase include the Departments of Health, Corrections, General Services, State Police, State System of Higher Education, Agriculture, Transportation, Conservation and Natural Resources, and Environmental Protection (Bureau of Laboratories). Costs are expected to collectively increase for these agencies by approximately \$20,000.

(20) In the table below, provide an estimate of the fiscal savings and cost associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
<b>Total Savings</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>
<b>COSTS:</b>						
Regulated Community	None	\$2,219,000	\$2,219,000	\$2,219,000	\$2,219,000	\$2,219,000
Local Government	None	\$17,000	\$17,000	\$17,000	\$17,000	\$17,000
State Government	None	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000
<b>Total Costs</b>	<b>None</b>	<b>\$2,256,000</b>	<b>\$2,256,000</b>	<b>\$2,256,000</b>	<b>\$2,256,000</b>	<b>\$2,256,000</b>
<b>REVENUE LOSSES:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Revenue Losses</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>

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(20a) Explain how the cost estimates listed above were derived.

Costs represent the difference between the current costs (i.e. no change in regulation) and the future costs (proposed regulation) assuming the proposed regulation takes effect the beginning of the next fiscal year and Agreement State is in effect.

(20b) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY-3	FY-2	FY-1	Current FY
Environmental Protection Operations (#10381)	\$85,898,000	\$87,897,000	\$89,847,000	\$98,582,000
Environmental Program Management (#10382)	\$37,594,000	\$37,049,000	\$36,868,000	\$39,909,000
Radiation Protection Fund (#60070)	\$5,630,000	\$6,159,000	\$5,855,000	\$7,932,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

There are no adverse effects. The increased fees will allow existing programs to be maintained at current levels while providing for program and personnel expansion under Agreement State. This includes replacing obsolete survey equipment, investments in infrastructure and training that had been curtailed due to lack of funding, and rebuilding depleted operating reserves.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

There are no equivalent nonregulatory alternatives to reduce costs other than a cutback in oversight activities which would reduce safety.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

There are no effective regulatory alternatives.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no provisions that are more stringent than the federal standards.

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(25) How does the regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The same fees apply to entities whether they operate out of Pennsylvania or some other state so there is no advantage or disadvantage associated with business location. For the type of entities that are regulated, the proposed costs are negligible compared to utilities and other common overhead costs of doing business. The fees should not lead to a reduction in availability of service providers. Small businesses in the radon community could be negatively impacted by the increase in fees. Although the percentage increase in radon fees is large, the actual dollar value of the increase is nominal. Additional accommodation in radioactive material license fees is provided for small business concerns.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The proposed regulation will not create new paperwork requirements but it will expand upon one. Persons who perform radon measurements, mitigations or other related services are required to periodically report the results of those activities to the Department. There is a new requirement to report periods of inactivity as well to ensure the lines of communication are open. There is no change in the reporting format. The null report could be simply the cover letter to the form used with the periodic report or the form with the words "no activity from \_\_ to \_\_" written on it.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses and farmers.

No special provisions needed to be developed.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The final rulemaking will become effective upon publication in the *Pennsylvania Bulletin*, which is anticipated to occur in late 2008. Immediate compliance is expected. No additional permits or approvals are required.

(31) Provide the schedule for continual review of the regulation.

This regulation will be reviewed in accordance with the sunset review schedule published by the

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Department to determine whether the regulation effectively fulfills the goals for which it was intended. In addition, with specific reference to the proposed changes to the radiological health and radon certification fees in Chapters 218 and 240, the Department will review the adequacy of the fees at least once every three years and provide a written report to the Environmental Quality Board. The report will identify any disparities between the amount of program income generated by the fees and the costs to administer the Radiological Health and Radon Certification programs. If disparities exist, the Department will include fee adjustment recommendations in the report, including recommendations for regulatory amendments to increase program fees.

FACE SHEET  
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WITH THE LEGISLATIVE REFERENCE  
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INDEPENDENT REGULATORY  
REVIEW COMMISSION

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Attorney General

By:   
(Deputy Attorney General)

FEB 22 2008

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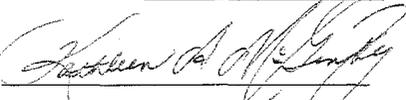
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DOCUMENT/FISCAL NOTE NO. 7-423

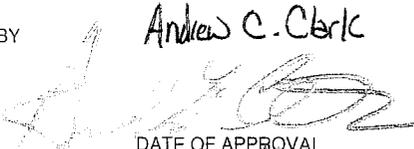
DATE OF ADOPTION December 18, 2007

BY: 

TITLE KATHLEEN A. MCGINTY  
CHAIRPERSON

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality  
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BY: 

DATE OF APPROVAL  
JAN 25 2008

(Deputy General Counsel)  
(~~Chief Counsel - Independent Agency~~)  
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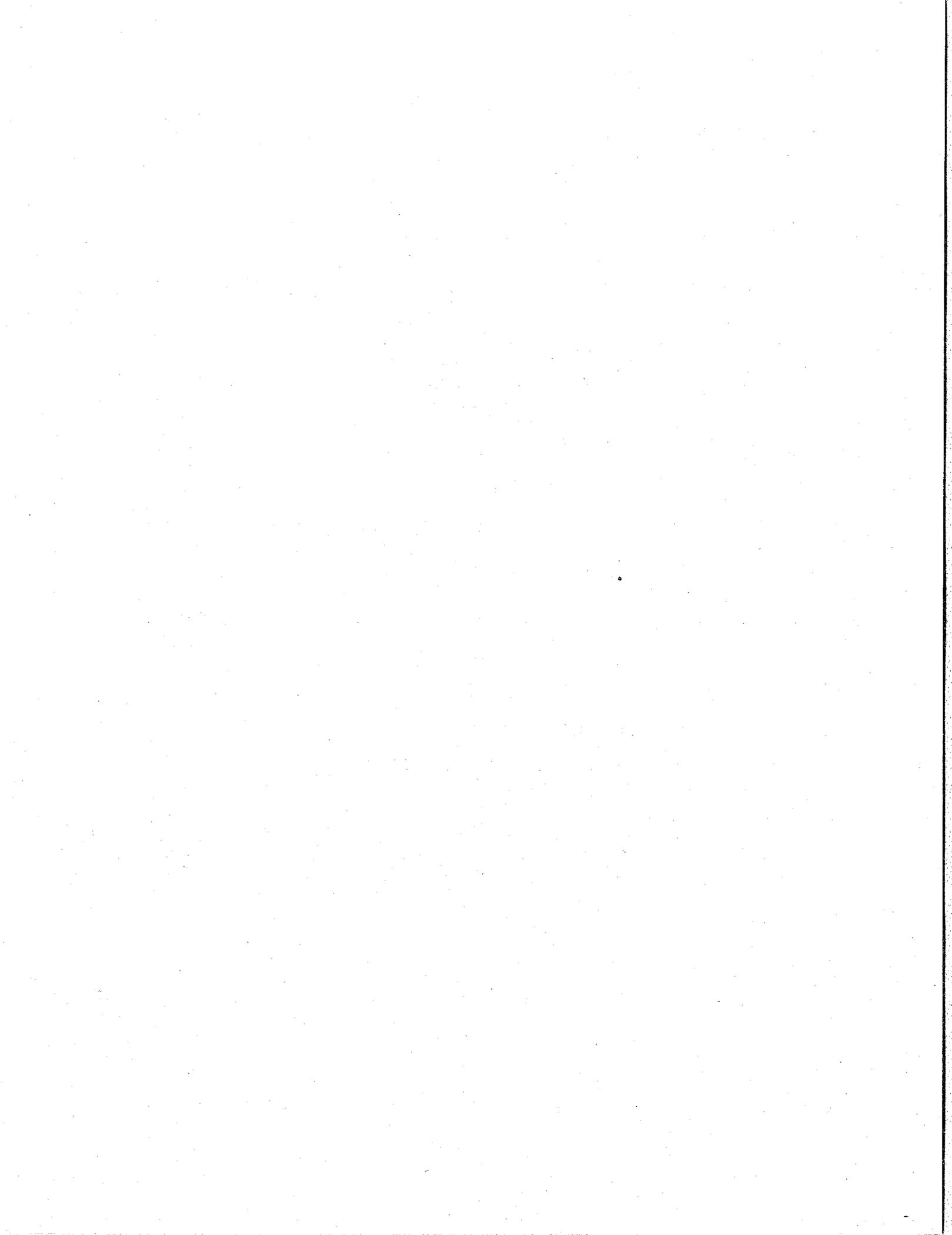
Check if applicable. No Attorney General Approval  
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NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD

Radiological Health and Radon Certification Fees

25 Pa. Code, Chapters 218 and 240



**Notice of Proposed Rulemaking**  
**Department of Environmental Protection**  
**Environmental Quality Board**  
**(25 Pa. Code, Chapters 218 and 240)**  
**(Radiological Health and Radon Certification Fees)**

**Preamble**

The Environmental Quality Board (Board) proposes to amend 25 Pa. Code, Chapter 218 (relating to fees) and Chapter 240 (relating to radon certification.) The amendments in Chapter 218 will increase the annual fees for registration of radiation-producing machines, radiation-producing machine service providers, accelerator licenses and radioactive material licenses as well as 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.

This proposal was adopted by the Board at its meeting of December 18, 2007.

**A. Effective Date**

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

**B. Contact Persons**

For further information contact Louis Ray Urciuolo, Chief, Division of Radiation Control, P.O. Box 8469, Rachel Carson State Office Building, Harrisburg, PA 17105- 8469, (717) 787-3720, or Richard Morrison, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. 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 DEP Web site (<http://www.depweb.state.pa.us>).

**C. Statutory Authority**

These amendments are proposed under the authority of the following statutes:

Sections 301, 302 and 401 of the Radiation Protection Act (35 P.S. §§ 7110.301, 7110.302, 7110.401) direct the Department to develop and conduct comprehensive programs for the registration, licensing, control, management, regulation and inspection of radiation sources and radiation source users, collect fees adequate to recover program costs and delegate to the Environmental Quality Board the power to adopt the regulations of the Department to implement the Act.

Sections 4, 5 and 8 of the Radon Certification Act, (63 P.S. §§ 2004, 2005, 2008), which direct the Department to establish radon certification programs and to establish a fee schedule to cover the costs of the certification programs.

Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20), which authorizes and directs the Environmental Quality Board to adopt regulations necessary for the proper performance of the work of the Department.

#### **D. Background and Purpose**

The Radiation Protection Act (Act 147-1984) requires that the fees be reviewed for adequacy 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 significant increase in personnel costs and the need to make a substantial investment in upgrading specialized technical equipment and program infrastructure. Programs can no longer be sustained at current levels as required. In addition, major program expansion is planned for April 1, 2008. At that time due to an upcoming agreement with the U.S. Nuclear Regulatory Commission, the radioactive material licensing and inspection program will expand by up to 25 people resulting in up to a tenfold increase in that component of the Radiation Protection Program's budget. The Agreement is necessary as a result of the Energy Policy Act of 2005 and is mandated by Act 147-1984. Otherwise, around August 2009 the Department would forfeit its regulatory authority to the NRC and lose its current program for licensing and inspecting the use of radioactive material.

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

The programs funded through Chapter 218 permit fees 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. An important component to the fees in Chapter 218 is the professional hourly rate fee that supports required full cost recovery for unique services that cannot be standardized. Examples include the evaluation, inspection and licensing of very high-energy accelerators and decommissioning activities at contaminated sites.

There are approximately 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*

Chapter 240 contains biennial application fees for the certification of radon services such as radon testing and mitigation. There are about 750 certified radon services that are subject to the certification fees and late penalties. The proposed permit fee increases are to ensure that the cost of permitting is borne by user fees rather than general fund monies as much as possible without damaging the viability of this marginal industry. New penalties have also been proposed in Chapter 240 in the form of a "late fee" for anyone failing to submit a renewal application for

certification of radon testing services at least 30 days prior to the expiration date or failing to provide the Department with a report of radon services or absence of activity within 90 days of the completion of the activity. If a firm wishes to have more than one certified radon tester, there is a new fee for certification of each additional employee. In addition, there is a new fee for each type of primary testing device the tester is certified to use. There is also a new fee for certification of radon courses used to satisfy educational requirements.

All proposed changes to the radiological fees regulations in Chapters 218 and 240 were reviewed by the Department's Radiation Protection Advisory Committee (RPAC). The Committee represents various stakeholder interests and the general public. The proposed rule was presented to the Committee and reviewed in detail at its meeting on August 21, 2007. The RPAC submitted a letter, dated September 12, 2007, recommending the draft proposed regulations be forwarded to the EQB.

The letter from the Committee also expressed two concerns. The Committee suggested that all fees be indexed to a measure of inflation, and that fees be phased in and/or scaled to the relative size of each radon business. The Bureau considered the concerns expressed by the RPAC, but maintains that it is DEP policy to adjust for inflation through a three-year regulatory review process. Regarding the second concern, the Bureau notes that although the percentage increase in radon-related fees is large, the actual dollar amount of the increase is nominal. Therefore, a phased-in or scaled approach has been deemed unnecessary.

#### **E. Summary of Regulatory Requirements**

**§ 218.11. Registration, renewal of registration and license fees.** The annual registration fees in subsection (a) for radiation-producing machines, other than accelerators, have been increased by approximately 40 percent across the board. The same applies to accelerator license fees in subsection (d) and radiation-producing machine service provider registrations in subsection (h). The only exception is the supplemental hourly rate professional fee in subsection (d)(iii) that increases from \$50 an hour to \$150 an hour. A major component of these increases are attributed to contractual obligations for salaries and benefits under collective bargaining since 2001 projected through 2010. Subsection (i) is a requirement levied on the Department to assist the Environmental Quality Board in the Board's obligation under the Act to review and set sufficient fees every three years.

**§ 218.11a. Special provisions for calculating fees during Agreement State transition period.** This new regulation is needed to adjust annual fees for radioactive material licenses transferred from the NRC under Agreement State during the first year to transition them from invoicing on the NRC's fiscal year schedule to a license anniversary schedule described in subsection (a). The Department will adjust the annual invoice to include the time from the effective date of the agreement to the anniversary month of the license issuance as indicated in subsection (b). Should the Agreement State program become effective before this regulation takes effect, the transition fee will be collected retroactively under subsection (c).

**Appendix A Fees for Radioactive Material Licenses.** As Agreement State will occur before or shortly after the final-form rule and Naturally Occurring and Accelerator-Produced

Radioactive Material (NARM) is now considered byproduct material under the jurisdiction of the NRC by the Energy Policy Act of 2005, the NARM fee categories have been deleted. The fee category designations of the NRC have been adopted. Some additional common fee categories from the NRC's fee tables in 10 CFR Parts 170 and 171 have been added. The fees have in general been set equal to the NRC's fee for FY2007. The formula in Footnote 3 for fee categories not listed has been changed to slightly more than 100 percent of the corresponding NRC fee because personnel will not be familiar with those categories and they will require extra effort in licensing and inspection. The professional fee component (Hourly Rate) identified by the asterisk is increased from \$50 per hour to \$150 per hour. This fee is substantially below the NRC's FY2007 Hourly Rate of \$265 per hour.

**§ 240.3. Definitions.** Definitions of "Primary Device" and "Primary Tester" have been added to support references in regulations such as the radon certification fee table.

**§ 240.102. Prerequisites for radon testing certification.** Subsection (a)(3) clarifies that the Department will accept equivalent testing experience in lieu of 1 year professional experience toward individual tester certification. Subsection (b) clarifies that if a testing firm wishes to have more than one certified person, there will be a separate fee for each additional employee of the testing firm who is certified.

**§ 240.103. Radon testing application contents** reflects that the application fee has been moved to a new consolidated fee table.

**§ 240.104. Application filing deadline.** This section imposes a new Late Application Fee for radon testers who fail to reapply for certification at least 30 days prior to either the expiration of their certificate or the anticipated starting date of performing radon testing.

**§ 240.113. Radon mitigation application contents** reflects that the application fee has been moved to a new consolidated fee table.

**§ 240.124. Application filing deadline.** This section imposes a new Late Application Fee for radon laboratories who fail to reapply for certification at least 30 days prior to either the expiration of their certificate or the anticipated starting date of performing laboratory analysis.

**§ 240.303(a). Reporting of information.** This subsection expands upon the existing requirement that radon-related service providers furnish a report of activities to the Department within 45 days to also submit a report even if there is no activity for the time period. A new Late Reporting Fee is also applied to any report subject to the 45-day reporting rule that is not submitted within 90 days of being due.

**§ 240.306. Continuing education program.** Training and continuing education for radon-related services must be approved by the Department. A new Course Provider Fee for persons providing these services is created within the Radon Certification Fee Schedule.

**Radon Certification Fee Schedule.** Fees have been consolidated into a single new table. Existing fees are increased by approximately 40-50%. The table also includes new penalty fees

for late reporting of radon services data as well as late submission of renewal applications, a charge for certification of additional employees as testers under a firm and an additional charge for each type of primary testing device a tester is certified to use. Footnote 4 sets forth a task which the Department will perform, to assist the Environmental Quality Board in the Board's obligation under the Act to review and set sufficient fees every three years.

## **F. Benefits, Costs and Compliance**

### **Benefits**

Periodic adjustment of program fees is necessary to maintain a viable radiation protection program. The programs covered by these fees include oversight of accelerators, which are some of the most dangerous but also beneficial radiation-producing machines that the general public encounters. There is an x-ray safety program that includes medical computed tomography which is the largest source of deliberate exposure to the general public. The radon program involves the largest controllable source of unnecessary exposure to the public. One of the benefits of supporting a radioactive material control program is to guard against the potential for wide spread contamination from the use of radioactive material. The benefit of radon's new late application and reporting penalty fees is to help ensure that anyone providing radon-related services is properly credentialed, and so the Department can maintain a comprehensive database of radon levels in the Commonwealth and follow up on the quality of the services and data. The new Radon Course Provider Fee, additional employee tester fee for firms and separate type primary testing device certification fees are to defray the additional effort the Department expends in certification.

### **Compliance Costs**

The cost of compliance with the new fee regulation for radiation-producing machines has gone up about 40 percent in absolute dollars since the fees were last adjusted in 2001. The radon certification fees have increased by a similar amount for the same reasons. The extension of the requirement to report radon-related activities within 45 days, even during periods of no activity, is negligible since the reporting mechanism is already in place and no specific data needs to be assembled for periods of inactivity. The new late fees can be avoided simply by complying with the regulations for timely submittals. The new radon course certification fee could be recovered by the certificate holder through charges levied on individuals who use the course. In regards to the additional personnel certification fee for firms, it is not mandatory to have more than one certified tester in the firm or to utilize any primary testing devices. Radioactive material licensees will also pay more in absolute dollars.

### **Compliance Assistance Plan**

The Department will put the regulated community on notice to expect higher fees so it will not come as a surprise, particularly the provision for the possible collection of retroactive transition fees for NRC licenses. However, the lead time may be short since much of the invoicing is done 60 days in advance. The reporting of radon data to the Department will be facilitated in the future by the development of a web-based reporting system.

## **Paperwork Requirements**

There are no additional reporting forms as a result of fee increases. The null reporting requirement in writing for periods of no radon-related service activity can be accomplished through a letter or the service provider's normal report form. The Department is working on expanding the range of acceptable media that can be used for communications with the regulated community. This is expected to include a web-based reporting option. In any case, the requirement of reporting periods of no service activity and the submittal of radon course material for certification is viewed as a negligible burden.

### **G. Pollution Prevention (if applicable)**

Any increase in fees has an indirect effect on pollution prevention. Where potentially polluting activities have an associated user fee and are of marginal value, the impact of the fee may result in a decision to discontinue the activity if the benefit is not justified by the cost, thereby reducing the potential pollution. The proposed application of late fees to required radon data submittals helps to ensure that the Department is made aware of the activities and can perform any necessary quality assurance checks on the activities. The certification of radon educational courses helps ensure the quality of radon services, the primary aim of which is to reduce exposure to radon in contained building structures.

### **H. Sunset Review**

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

### **I. Regulatory Review**

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 4, 2008, the Department submitted a copy of these proposed amendments 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 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 regulations 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 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.

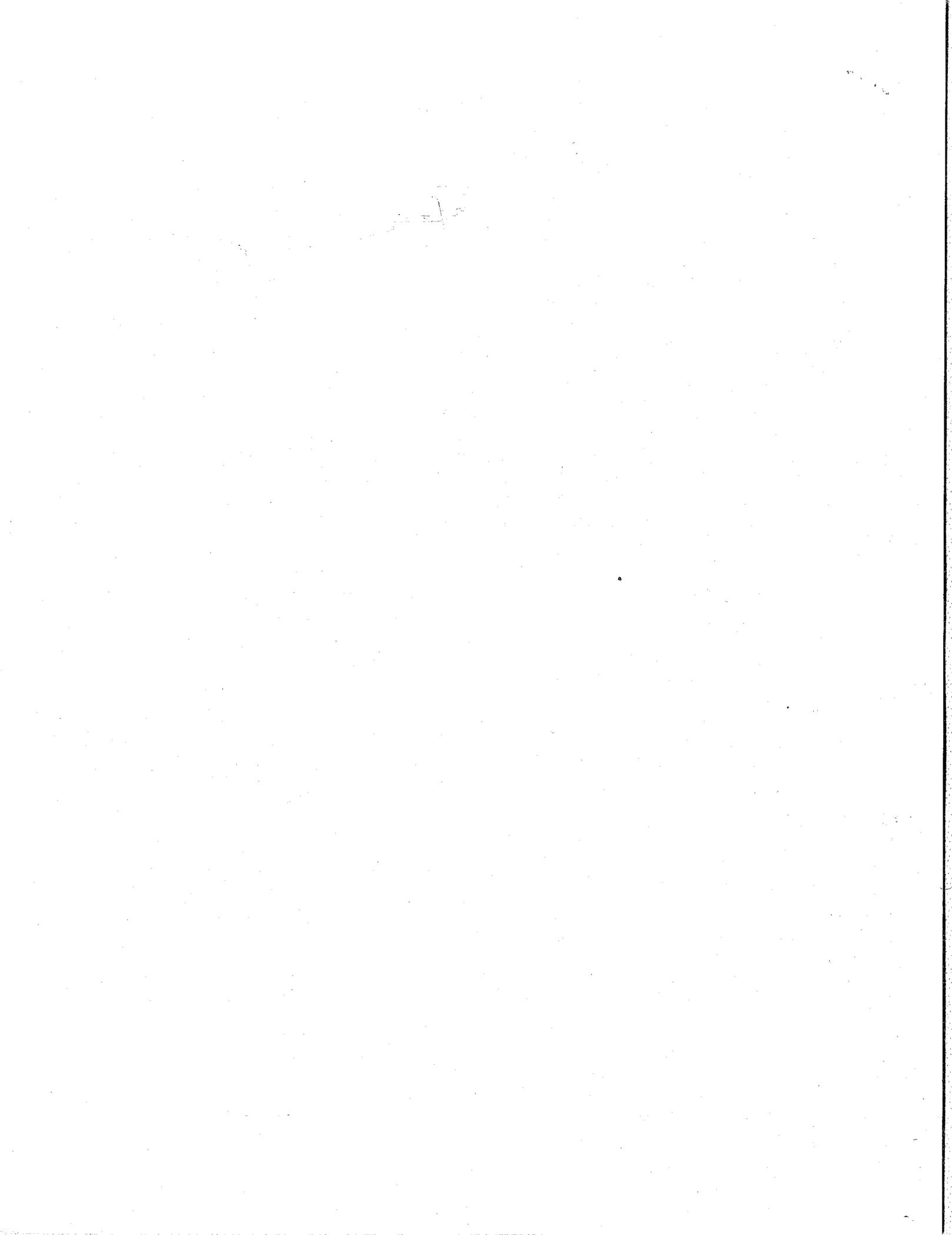
## **J. Public Comments**

**Written Comments** - Interested persons are invited to submit comments, suggestions, or objections regarding the proposed regulation to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by April 14, 2008. 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 April 14, 2008. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

**Electronic Comments** - Comments may be submitted electronically to the Board by completing and submitting the appropriate online form at [www.depweb.state.pa.us/RegComments](http://www.depweb.state.pa.us/RegComments) (select "Radiological Health and Radon Certification Fees (#7-423)" from the Proposed Rulemaking drop down box). Comments submitted electronically must be received by the Board by April 14, 2008. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to the Environmental Quality Board to ensure receipt.

BY:

KATHLEEN A. MCGINTY  
Chairperson



Annex A  
**TITLE 25. ENVIRONMENTAL PROTECTION**  
**PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Subpart D. ENVIRONMENTAL HEALTH AND SAFETY**  
**ARTICLE V. RADIOLOGICAL HEALTH**

**CHAPTER 218. FEES**

**PAYMENT OF FEES**

**§ 218.11. Registration, renewal of registration and license fees.**

(a) Annual registration fees for radiation-producing machines, other than accelerators, are the sum of an annual administrative fee and an annual fee for each X-ray tube or radiation generating device as follows:

<i>Type Facility</i>	<i>Annual Administrative Fee</i>	<i>Annual Fee per X-ray Tube or Radiation Generating Device</i>
Dentists, podiatrists, veterinarians	[ <del>\$ 70</del> ] <b>\$100</b>	[ <del>\$35</del> ] <b>\$50</b>
Hospitals	[ <del>\$520</del> ] <b>\$725</b>	[ <del>\$35</del> ] <b>\$50</b>
Other Facilities	[ <del>\$250</del> ] <b>\$350</b>	[ <del>\$35</del> ] <b>\$50</b>

\*\*\*\*\*

(c) Annual license fees for radioactive material are set forth in Appendix A (relating to fees for radioactive material licenses).

- (1) No refund will be made for termination of a license.
- (2) If, by amendment or otherwise, a license changes to another fee category, the fee for the new category will take effect on the anniversary date of the license.

(d) Particle accelerators are licensed under Chapter 228 (relating to radiation safety requirements for particle accelerators). Annual fees are as follows:

(i) Accelerators, below 50 MeV, other than for ion implantation—[~~\$1,500~~] **\$2100** for the first accelerator at the facility plus [~~\$500~~] **\$700** for each additional unit at that facility.

(ii) Accelerators used for ion implantation—[~~\$500~~] **\$700** plus [~~\$50~~] **\$70** for each additional unit at the same facility.

(iii) Accelerators [~~above~~] 50 MeV **and above**—full cost of staff time to review license applications and conduct inspections as needed. (Hourly rate is [~~\$50~~] **\$150** per hour). For the purpose of anticipating costs and compliance with subsections (e) and (f), a minimum annual fee of [~~\$1,500~~] **\$2100** for the first accelerator at the facility plus [~~\$500~~] **\$700** for each additional unit is established. Additional invoices will be issued by the Department at regular intervals at least quarterly when net costs are incurred above the minimum annual fee.

\*\*\*\*\*

(h) A radiation-producing machine service provider shall pay an annual registration fee of [~~\$100~~] **\$140**.

(i) The Department will review the adequacy of the fees established in this section at least once every three years and provide a written report to the Environmental Quality Board. The report must identify any disparity between the amount of program income generated by the fees and the costs to administer these programs, and it must contain recommendations to increase fees to eliminate the disparity, including recommendations for regulatory amendments to increase program fees.

§ 218.11a. Special provisions for calculating fees during Agreement State transition period.

(a) The fees for the NRC licenses that are transferred to the Commonwealth on the date the Commonwealth becomes an Agreement State will be invoiced on the license's next anniversary date.

(b) During the first year after the date the Department attains Agreement State status, the annual fee for each NRC license transferred to the Commonwealth will include a proportional amount, based on the schedule of fees in Appendix A, for the period from the date Agreement State status is attained until the license's next anniversary date, in addition to the amount assessed for the year following the license's anniversary date.

(c) In the event that the Commonwealth attains Agreement State status prior to \_\_\_\_\_ (Editor's Note: The blank refers to the date of adoption of this proposal.), the provisions of § 218.11, § 218.11a and Appendix A will be applied retroactively to NRC licenses transferred to the Commonwealth.

**§ 218.12. Failure by registrant or licensee to pay required fee.**

(a) A registrant or licensee who fails to pay an annual fee required under this chapter shall be subject to the civil and criminal penalties provided under the act.

(b) Nonpayment of fees required by this chapter shall be cause for revocation of licenses or registrations issued by the Department under the act.

*(Editor's Note: For context, Appendix A is displayed in its entirety.)*

**APPENDIX A**

**Fees for Radioactive Material Licenses**

<i>Fee Category<sup>5,6</sup></i>	<i>Description</i>	<i>Annual Fee (\$) <sup>1,2,3,4,7</sup></i>
1C	Special Nuclear Material Sealed Source Gauges (X-Ray Fluorescence)	[875] <b>2,100</b>
1D	Special Nuclear Material—Other	[2,475] <b>5,800</b>
<b>2A(2)(c)</b>	<b>Source Material – metal extraction</b>	<b>90,200</b>
<b>2A5</b>	<b>Removal of Radioactive Contaminants from Drinking Water</b>	<b>11,200</b>
2B	Source Material as Shielding	[450] <b>750</b>
2C	Source Material—Other (not 11e2)	[8,650] <b>13,400</b>
[3A1] <b>3A</b>	Manufacturing & Distribution Commercial Broad Scope—10 CFR 30, 33	[19,875] <b>29,100</b>
[3A2]	Manufacturing & Distribution Commercial Broad Scope—NARM Only	4,000]

[3B1] 3B	Manufacturing, <u>Refurbishing &amp; Distribution Commercial Specific License—10 CFR 30</u>	[4,650] <u>8,300</u>
[3B2]	<b>Manufacturing &amp; Distribution Commercial Specific License—NARM Only</b>	2,000]
[3C1] 3C	Manufacturing & Distribution Pharmaceuticals—10 CFR 32.72—32.74	[11,650] <u>11,900</u>
[3C2]	<b>Manufacturing &amp; Distribution Pharmaceuticals— Accelerator Produced Only</b>	4,000]
[3D1] 3D	Pharmaceuticals—Distribution Only—10 CFR 32.7x	[2,825] <u>6,800</u>
[3D2]	<b>Pharmaceuticals—Distribution Only—NARM Only</b>	2,000]
3E	Irradiator—Shielded Source	[2,575] <u>4,200</u>
3F	Irradiator—Unshielded < 10kCi	[4,300] <u>7,800</u>
3G	Irradiator—Unshielded >= 10kCi	[10,750] <u>31,200</u>
3I	Distribution As Exempt—No Review of Device	[3,525] <u>10,700</u>
3J	Distribution—SSD Devices to Part 31 GLs	[1,550] <u>2,500</u>
3K	Distribution—No Review-Exempt Sealed Source	[1,300] <u>1,900</u>
[3L1] 3L	Research & Development Broad Scope	[8,300] <u>15,100</u>
[3L2]	<b>Research &amp; Development Broad Scope—NARM Only</b>	2,000]
[3M1] 3M	Research & Development	[3,650] <u>5,600</u>
[3M2]	<b>Research &amp; Development—NARM Only</b>	750]
3N	Services other than Leak Testing, Waste Disposal or Calibration	[3,875] <u>8,500</u>
3O	Radiography	[10,850] <u>14,100</u>
[3P1] 3P	Other Byproduct Material	[1,900] <u>2,700</u>
[3P2]	<b>NARM Licenses not covered elsewhere</b>	750]
3Q	Generally Licensed Devices under § 217.143 (relating to certain measuring, gauging or controlling devices)	[315] <u>320</u>
3R1	<b><u>Greater than the General License Limits in 10 CFR 31.12(a)(3), (4) or (5) but not more than ten times those Limits</u></b>	<u>2,100</u>
3R2	<b><u>Greater than ten times the General License Limits in 10 CFR 31.12(a)(3), (4) or (5)</u></b>	<u>2,700</u>
3S	<b><u>Manufacturing &amp; Distribution Pharmaceuticals— Accelerator Produced Only</u></b>	<u>11,800</u>
4A	Waste Storage, Processing or Disposal	Full Cost *

4B	Waste Packaging or Repackaging	[8,175] <u>12,000</u>
4C	Waste Receipt of Prepackaged for Disposal	[6,125] <u>9,200</u>
5A	Well Logging & Non Field Flood Tracers	[7,500] <u>4,400</u>
5B	Well Logging Field Flood Tracer Studies	Full Cost *
6A	Nuclear Laundry	[14,250] <u>28,800</u>
7A	Human Use—Teletherapy	[11,275] <u>13,700</u>
[7B1] <u>7B</u>	Human Use—Broad Scope (except Teletherapy)	[19,975] <u>29,000</u>
[7B2]	<b>Human Use—Broad Scope (except Teletherapy)— NARM Only</b>	2,000]
[7C1] <u>7C</u>	Human Use—Specific License (except Teletherapy)	[4,300] <u>4,900</u>
[7C2]	<b>Human Use—Specific License (except Teletherapy)— NARM Only</b>	750]
[8A1] <u>8A</u>	Specifically licensed sources used in static eliminators, nonexempt smoke detectors, fixed gauges, dew pointers, calibration sources, civil defense uses or in temporary (2 years or less) storage	[875] <u>2,100</u>
[8A2]	<b>Specifically licensed NARM sources used in static eliminators, nonexempt smoke detectors, fixed gauges, dew pointers, calibration sources, civil defense uses or in temporary (2 years or less) storage</b>	200]
14	Decontamination, Decommissioning, Reclamation or Site Restoration	Full Cost *
[16A] <u>16</u>	Reciprocity (180 days/year)	[900] <u>1,500</u>
[16B]	<b>Reciprocity—NARM (180 days/year)</b>	300]
SB1 <sup>5</sup>	Small Business—Category 1	[2,100] <u>2,300</u>
SB2 <sup>6</sup>	Small Business—Category 2	[400] <u>500</u>

<sup>1</sup> A license may include as many as four noncontiguous sites at the base fee. Sites that are within 5 miles of the main Radiation Safety Office where the license records are kept will be considered contiguous. An additional fee of 25% of the base fee will be added for each noncontiguous site above four.

<sup>2</sup> All fees [for NARM licenses] will be effective upon publication of the final rules in the *Pennsylvania Bulletin*. [The fees for NRC licenses that are transferred to the Commonwealth will be effective on the next license anniversary date.] Existing NARM licenses will be changed to the corresponding category of byproduct material license in Appendix A upon publication of the final rule [on the next license anniversary date after achievement of Agreement State status and fees adjusted at that time. The NARM license categories will cease to exist one year after Agreement State status is

achieved].

<sup>3</sup> Annual fees for categories of NRC licenses that are not included in this table will be calculated as follows: PA Fee = [0.7] (NRC Annual Fee + 0.10 NRC Application or Renewal fee).

<sup>4</sup> Annual fees charged to holders of transferred NRC licenses with multiple sites will not exceed the fees charged by the NRC for the same licenses that are in effect in the year of transfer, provided the number of noncontiguous sites [remains constant] does not increase.

<sup>5</sup> Small Businesses Not Engaged in Manufacturing, and Small Not-For-Profit Organizations with Gross Annual Receipts of more than \$350,000 and less than \$5 million; Manufacturing Entities that have an average of 35—500 employees with Gross Annual Receipts of more than \$350,000 and less than \$5 million; Small Government Jurisdictions (including publicly supported, nonmedical educational institutions) with a population between 20,000 and 50,000; and nonmedical Educational Institutions that are not state or publicly supported and have 35—500 employees.

<sup>6</sup> Small Businesses Not Engaged in Manufacturing, and Small Not-For-Profit Organizations with Gross Annual Receipts of less than \$350,000; Manufacturing Entities that have an average of less than 35 employees and less than \$350,000 in Gross Annual Receipts; Small Government Jurisdictions (including publicly supported nonmedical educational institutions) with a population less than 20,000; and nonmedical Educational Institutions that are not state or publicly supported and have less than 35 employees.

<sup>7</sup> Full cost recovery licensees and licensees required to provide financial assurance for decommissioning are not eligible for reduced fees under category SB1 or SB2.

\* Full cost recovery consists of a professional fee, to cover the activities and support of Department personnel, and any other additional incidental charges incurred, such as related contracted services or laboratory costs. The professional fee component (Hourly Rate) is [~~\$50~~] **\$150** per hour. Other costs are recovered at 100% of actual cost. Invoices shall be issued by the Department at regular intervals but at least quarterly when net costs are incurred.

## CHAPTER 240. RADON CERTIFICATION

### Subchapter A. GENERAL PROVISIONS

#### GENERAL

##### § 240.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\*\*\*\*\*

**Primary Device- Continuous monitors and/or electrets read and/or analyzed by a primary tester.**

**Primary Tester- A tester who reads and/or analyzes the continuous monitors and/or electrets that he places and/or retrieves.**

### Subchapter B. CERTIFICATION

#### CERTIFICATION FOR RADON TESTING

##### § 240.102. Prerequisites for radon testing certification.

(a) *Individual certification for radon testing.* An Individual will not be certified to test unless the individual has done the following:

\*\*\*\*\*

(3) Had 1 year of professional experience in performing radon measurements or equivalent as determined by the Department.

\*\*\*\*\*

(b) *Firm certification for radon testing.* If the applicant for testing certification is a firm, it shall employ at least one individual who is certified to test and who is in responsible charge of the firm's testing activities. If the firm loses its certified individual, the certification automatically lapses and is void until the firm has notified the Department of employment of another certified individual. Within 5 days the firm shall notify the Department in writing when it loses its certified individual. Each testing firm employee, after the first initial testing firm employee, will be charged a fee as set forth in Appendix A (relating to radon certification fee schedule).

#### § 240.103. Radon testing application contents.

An application for radon testing certification, by both individual and firm, shall be submitted to the Department in writing on forms provided by the Department and shall contain:

\*\*\*\*\*

(2) A nonrefundable fee [of \$200 for individuals, \$500 for firms] as set forth in Appendix A (relating to radon certification fee schedule).

#### § 240.104. Application filing deadline.

A person who expects to conduct radon testing shall file a complete application for certification a minimum of 30 days prior to the anticipated starting date of testing activity and any application postmarked after the certification expiration date will be charged a late application fee as set forth in Appendix A (relating to radon certification fee schedule).

### CERTIFICATION FOR RADON MITIGATION

#### § 240.113. Radon mitigation application contents.

An application for radon mitigation certification, by both individual and firm, shall be submitted to the Department in writing on forms provided by the Department and shall contain:

\*\*\*\*\*

(2) A nonrefundable fee [of \$200 for individuals, \$500 for firms] as set forth in Appendix A (relating to radon certification fee schedule).

### CERTIFICATION FOR RADON LABORATORY

#### § 240.124. Application filing deadline.

A person who anticipates performing laboratory analysis of samples to determine radon concentrations

shall file a complete application for laboratory analysis certification a minimum of 30 days prior to the anticipated starting date of laboratory analysis **and any application postmarked after the certification expiration date will be charged a late application fee as set forth in Appendix A (relating to radon certification fee schedule).**

## Subchapter D. OPERATION REQUIREMENTS

### § 240.303. Reporting of information.

(a) Within 45 days after testing, mitigation or other radon-related service is provided, the person providing the service shall submit to the Department in a format approved by the Department the results of testing, including screening measurements, follow-up measurements, premitigation measurements, postmitigation measurements and the method used to mitigate against radon contamination. **If no testing, mitigation or radon-related service has been provided during this 45-day period that person must inform the Department of same in writing. Anyone required to provide this 45-day reporting and does not report within 90 days of the completion of the activity will be subject to the Late 45-Day Reporting Fee as set forth in Appendix A (relating to radon certification fee schedule).** At a minimum, these results will be retained for 2 years. The information shall include:

\*\*\*\*\*

### § 240.306. Continuing education program.

A person conducting radon-related activities shall have a radon education program to assure that the applicant and all employees have a minimum of 4 hours initial training, and the certified person shall participate in a continuing education program consisting of a minimum of 8 hours of Department-approved courses or seminars on radon testing or mitigation each year. **All course providers are required to submit course information as requested by the Department and the Course Provider Fee as set forth in Appendix A (relating to radon certification fee schedule) prior to DEP approval of any course.**

## APPENDIX A

*Editor's Note:* The following table is new and printed in regular text to enhance readability.

### Radon Certification Fee Schedule

Testing Individual	\$350 every two years
Testing Employee	\$100 every two years
Testing Firm	\$700 every two years
Mitigation Individual	\$300 every two years
Mitigation Firm	\$700 every two years
Laboratory Individual	\$400 every two years
Laboratory Firm	\$750 every two years
Primary Testing Device Listing	\$100 every two years (1)
Course Provider	\$375 every two years (2)
Late Application Renewal	\$100
Late 45-Day Reporting	\$100 (3)

1. Primary radon testers must submit the Primary Testing Device fee as specified in the Radon Certification Fee Schedule for each device they read and/or analyze.
2. A person approved by the department to provide initial and/or continuing education courses shall submit the Course Provider fee as specified above

3. Anyone not submitting their required 45-day testing and/or mitigation reporting within 90 days of the completion of the testing and/or mitigation activity (or if no activities have been performed during this period of informing us of same in writing) will be subject to the Late 45-Day Reporting Fee as specified above.
4. The Department will review the adequacy of the fees established in this schedule at least once every three years and provide a written report to the Environmental Quality Board. The report must identify any disparity between the amount of program income generated by the fees and the costs to administer these programs, and it must contain recommendations to increase fees to eliminate the disparity, including recommendations for regulatory amendments to increase program fees.

**FEE REPORT FORM**  
**Annual Registration of Radiation-Producing Machines**

Environmental Protection / Radiation Protection  
Agency

November 13, 2007  
Date

Louis Ray Urciuolo  
Contact Person

( 717) 783-9730  
Phone Number

2006                      2007 est.                      2008                      2009

**FEE COLLECTIONS:**

Current	\$2,794,937	\$2,631,755		
Proposed			\$3,731,475	\$3,731,475

**FEE TITLE AND RATE:**

Current	25 PA Code 218.11(a), Annual registration fees for radiation-producing machines.
Proposed	25 PA Code 218.11(a), Annual registration fees for radiation-producing machines.

**See attached summary table for fee details for rates.**

**FEE OBJECTIVE:** Per the Radiation Protection Act of 1984, establish and collect fees sufficient to cover costs of registering and periodically inspecting radiation-producing machines and establishing, reviewing, and revising regulations for the safe use of such equipment within the context of a comprehensive program.

**FEE RELATED ACTIVITIES AND COSTS**

1. Department has to operate a management system registration of about 30,000 X-ray machines in 11,000 facilities.
2. Establish appropriate regulations for use of X-ray machines including recommended radiation safety procedures.
3. Periodically and on demand inspect facilities for compliance with regulations.
4. Technical and legal investigation of violations and allegations as needed.
5. Special staff training and equipment.
6. Supervisory and management time.

**ANALYSIS:**

The use of X-ray machines is ubiquitous and expanding in technical complexity thereby taxing the regulators' ability to keep regulations and specialized inspector training and survey equipment and procedures up to date. The current fees are no longer adequate to support the level of inspection program needed. Based on a comprehensive workload analysis of the Radiation Control Program, the Department is proposing increases to the Radiation Control fees to cover program costs, including

increases in salaries, benefits and operational expenses (including information technology, training, lab services and equipment costs). The figures below set forth the costs that are associated with the Radiation Control Program's annual registration and inspection of radiation-producing machines from the present date until 2011. The personnel costs are representative of the staff needed to register and inspect approximately 30,000 X-ray units in 11,000 facilities. Salary, benefit, operational expenses have been totaled and noted below. Personnel costs reflect a 30% increase from 2001 to 2007, and a mandated increase per the recent union contract of about 20% over the next four years.

As indicated in the table below, total costs associated with the Bureau of Radiation Protection's annual registration of radiation-producing machines for the next four years ranges from \$3,580,000 to \$3,940,000 per year. The projected revenue of \$3,730,000 per year, beginning in 2008, will cover these costs.

**Annual Registration of Radiation-Producing Machines - Anticipated Expenses**

<b>Anticipated Expenses</b>	<b>\$ Applicable to FY 07/08</b>	<b>\$ Applicable to FY 08/09</b>	<b>\$ Applicable to FY 09/10</b>	<b>\$ Applicable to FY 10/11</b>
Personnel Costs	\$ 2,929,290	\$ 3,084,900	\$ 3,249,155	\$ 3,455,270
IT Charges (Including Computer Maintenance, eFACTS upgrades, etc.)	177,450	200,200	147,875	159,250
Specialized Equipment (Including Barracuda, Calibration Costs, etc.)	241,150	129,775	182,000	186,550
Specialized Training	154,700	154,700	91,000	64,000
Lab Services/Consultants	79,625	79,625	79,625	79,625
<b>TOTAL</b>	<b>\$ 3,582,215</b>	<b>\$ 3,649,200</b>	<b>\$ 3,749,655</b>	<b>\$ 3,944,695</b>

**RECOMMENDATION AND COMMENT:** Approve the proposed regulations. Advances in technology require continuing upgrade of expensive specialized survey instrumentation and continuing training of personnel. The Radiation Protection Advisory Committee (RPAC), which includes practitioners of medical disciplines that use X-ray machines, medical physicists, health physicists, medical technologists and industrial users, was consulted in the development of this regulation, and they recommend the proposed fee increase moving forward.

For simplicity, the regulation, 25 PA Code 218.11(a), summarizes the fee structure as follows;

**Current:**

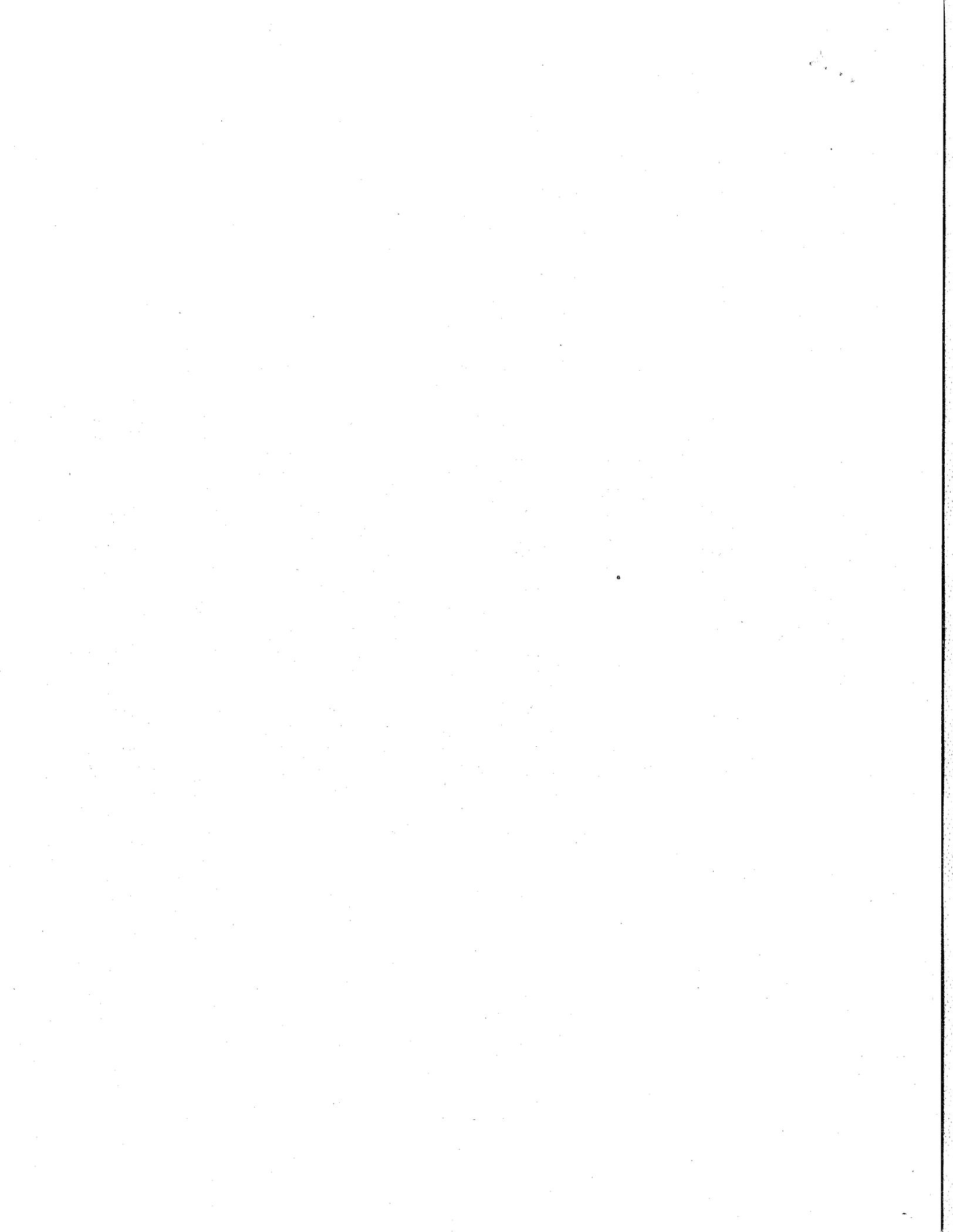
<b>Type of Facility</b>	<b>Annual Administrative Fee</b>	<b>Annual Fee per X-ray Tube or radiation generating Device</b>
<b>Dentists, podiatrists, veterinarians</b>	\$70	\$35
<b>Hospitals</b>	\$520	\$35
<b>Other Facilities</b>	\$250	\$35

Proposed:

Type of Facility	Annual Administrative Fee	Annual Fee per X-ray Tube or radiation generating Device
Dentists, podiatrists, veterinarians	\$100	\$50
Hospitals	\$725	\$50
Other Facilities	\$350	\$50

**Detailed Summary of Current and Proposed Annual Fees for Registration of X-Ray Machines**

Type of Facility	Current Annual Registration Fees	Current Annual Fee for Each Tube	Current Number of Facilities	Number of Tubes	Estimated CY2007 Fee Collection W/O Fee Increase	Prop. Annual Admin. Fee	Prop. Annual Fee Per Tube	Estimated Annual Fee Collection with Proposed Fees
Chiropractor	\$250	\$35	1234	1248	\$352,180	\$350	\$50	\$494,300
Clinic	\$250	\$35	515	1197	\$170,645	\$350	\$50	\$240,100
Dentist	\$70	\$35	5849	19820	\$1,103,130	\$100	\$50	\$1,575,900
Home	\$250	\$35	16	29	\$5,015	\$350	\$50	\$7,050
Hospital	\$520	\$35	239	5139	\$304,145	\$725	\$50	\$430,225
Industry	\$250	\$35	554	1516	\$191,560	\$350	\$50	\$269,700
Medical Doctor	\$250	\$35	747	1195	\$228,575	\$350	\$50	\$321,200
Osteopath	\$250	\$35	67	102	\$20,320	\$350	\$50	\$28,550
Other Medical	\$250	\$35	41	263	\$19,455	\$350	\$50	\$27,500
Other Non-Med	\$250	\$35	46	102	\$15,070	\$350	\$50	\$21,200
Podiatrist	\$70	\$35	639	692	\$68,950	\$100	\$50	\$98,500
Prison	\$250	\$35	42	159	\$16,065	\$350	\$50	\$22,650
School	\$250	\$35	85	748	\$47,430	\$350	\$50	\$67,150
Veterinarian	\$70	\$35	788	973	\$89,215	\$100	\$50	\$127,450
<b>TOTALS</b>					<b>\$2,631,755</b>			<b>\$3,731,475</b>



FEE REPORT FORM

DEP, BRP, Radon Division  
Agency

November 13, 2007  
Date

Michael Pyles  
Contact Person

783-9485  
Phone Number

FEE COLLECTIONS:

	<u>Current Year</u>	<u>First Future Year Projected</u>
Current	\$96,000	
Proposed		\$177,875

FEE TITLE AND RATE:

**Current:**

25 PA 240.103(2) Certified radon tester application fee, \$200 for Individuals, \$500 for firms

25 PA 240.113(2) Certified radon mitigator application fee, \$200 for Individuals, \$500 for firms

25 PA 240.123(2) Certified radon laboratory application fee, \$250 for Individuals, \$500 for firms

**Proposed:** Fees above are replaced by the following fee schedule located in a new table in a new "Appendix A" at the end of Chapter 240.

**Radon Certification Fee Schedule**

Testing Individual	\$350 every two years
Testing Employee	\$100 every two years
Testing Firm	\$700 every two years

Mitigation Individual	\$300 every two years
Mitigation Firm	\$700 every two years
Laboratory Individual	\$400 every two years
Laboratory Firm	\$750 every two years
Primary Testing Device Listing	\$100 every two years (1)
Course Provider	\$375 every two years (2)
Late Application Renewal	\$100
Late 45-Day Reporting	\$100 (3)

1. Primary radon testers must submit the Primary Testing Device fee as specified in the Radon Certification Fee Schedule for each device they read and/or analyze.
2. A person approved by the department to provide initial and/or continuing education courses shall submit the Course Provider fee as specified above.
3. Anyone not submitting their required 45-day testing and/or mitigation reporting within 90 days of the completion of the testing and/or mitigation activity (or if no activities have been performed during this period of informing us of same in writing) will be subject to the Late 45-Day Reporting Fee as specified above.

#### **FEE OBJECTIVE:**

Per the Radon Certification Act, establish and collect fees sufficient to cover the costs of the Radon Certification Program to protect property owners from unqualified and unscrupulous persons.

#### **FEE RELATED ACTIVITIES AND COSTS:**

1. Review of applications and certifying persons for radon testing, mitigation and laboratory analysis.
2. Establish and enforce radon certification regulations.
3. Technical and legal investigation as needed.
4. Supervisory and management time.
5. Staff training.
6. Tracking of certified persons and required reporting.
7. Review of radon courses.
8. Provide certification information.
9. Amend existing certifications.

#### **ANALYSIS:**

To equalize the expense for all persons receiving services

- Course provider fees were never received previously even though they require review and approval.
- Primary devices were never charged more even though they required more technical review and are allowed the additional ability to analyze their own devices.

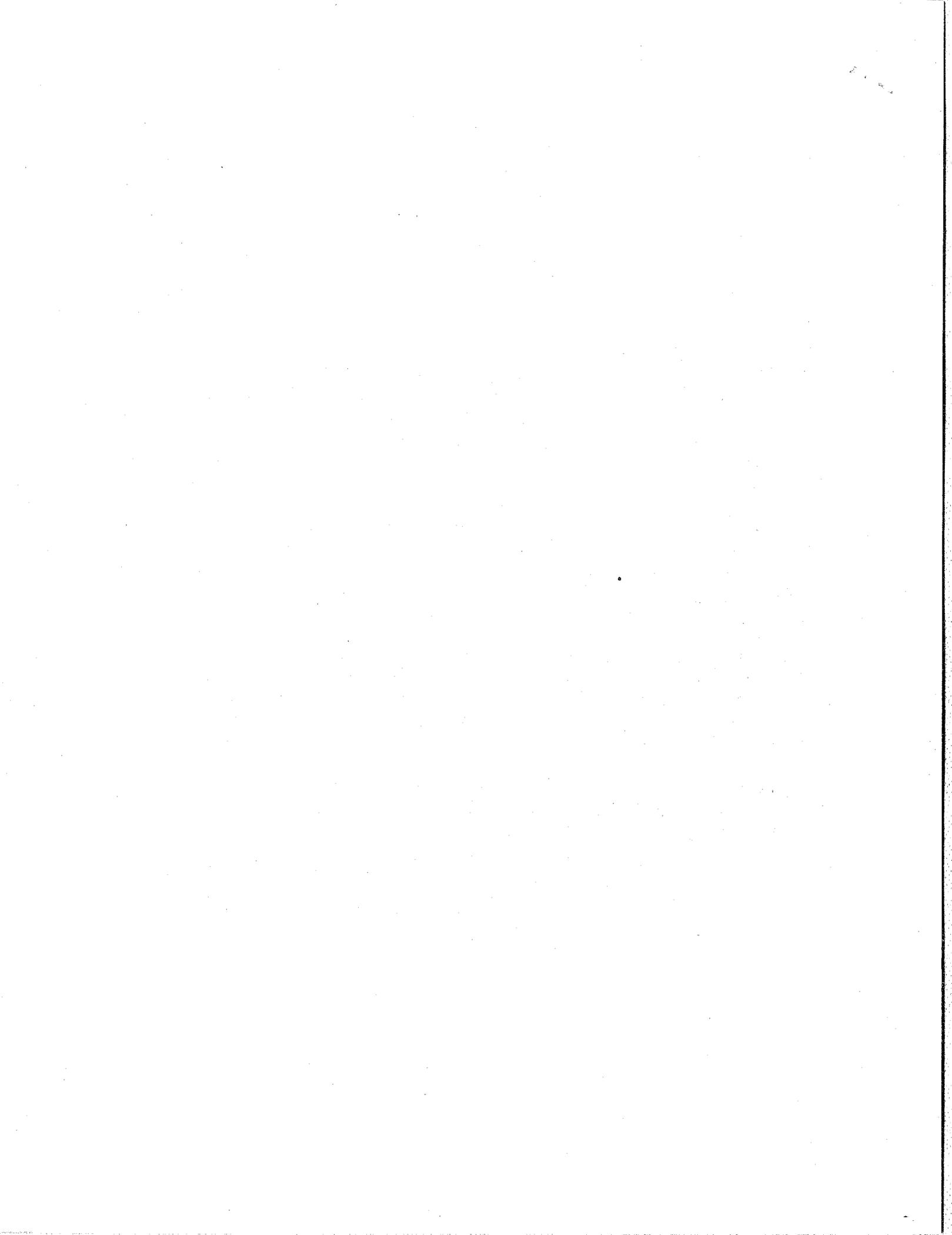
- To off-set time spent on ensuring persons who allow their certifications to lapse are not still performing radon-related services we are instituting a Late Application Fee.
- To discourage the use of the firm certification to prevent paying for individual certification and to ensure that firm employees are kept to a manageable number we are instituting a Firm Employee fee for all additional testing employees after the first one.

#### **RECOMMENDATION AND COMMENT:**

The current fees have not been increased since they were initially adopted in January of 1991. Salaries and program expenses have risen at the rate of approximately 5% per year which would be a minimal increase of 80% to bring income up to current expenses. Since 2001, salaries, benefits and operational costs have actually increased by about 30%. Also, the current union contract mandates an additional 20% increase in salary and benefit costs over the next four years.

A review and analysis of current Radon Certification Section personnel costs, with 50% of time for the Radon Division Chief, and 100% of the time for the Section Chief, a Radiological Health Physicist and one Clerical Typist, notes an actual cost of about \$289,000. Thus, even with the fee increases, the EPA Radon Grant and required matching funds, state General Fund monies will continue to under-write the cost of the Radon Certification Program. In calculating the revised fees, the Department has attempted to spread the increases in proportion to the amount of services received and the regulated community's ability to absorb the additional expense. Radon testing is almost exclusively a small "mom and pop" business and therefore it is even more important to consider this factor.

The Radiation Protection Advisory Committee recommended this proposed fee be moved forward with a review of this small business nature of the radon testing industry.



**FEE REPORT FORM**  
**Hourly Rate Professional Fee Used For Full Cost Recovery**

Environmental Protection / Radiation Protection  
 Agency

November 13, 2007  
 Date

David Allard, CHP  
 Contact Person

( 717) 787-2480  
 Phone Number

	<u>2006</u>	<u>2007 est.</u>	<u>2008</u>	<u>2009</u>
<b>FEE COLLECTIONS:</b>				
Current	\$ 62,407	\$ 62,407		
Proposed			\$ 137,295	\$ 137,295

**FEE TITLE AND RATE:**

Current	25 PA Code 218 Appendix A footnote* - Full cost recovery licenses – the Professional Component (Hourly Rate) is \$50 per hour.
	25 PA Code 218.11(d)(iii) Accelerators above 50 MeV – full cost of staff time to review license applications and conduct inspections as needed. (Hourly rate is \$50 per hour).
Proposed	25 PA Code 218 Appendix A footnote* - Full cost recovery licenses – the Professional Component (Hourly Rate) is \$150 per hour.
	25 PA Code 218.11(d)(iii) Accelerators above 50 MeV – full cost of staff time to review license applications and conduct inspections as needed. (Hourly rate is \$150 per hour).

**FEE OBJECTIVE:** To recover the Department's actual costs in oversight of decommissioning projects and high-energy accelerators.

**FEE RELATED ACTIVITIES AND COSTS**

1. Technical review of decommissioning funding plans required in certain license applications.
2. Technical review of license termination plans and data submittals.
3. Onsite inspections of license termination and decommissioning activities.
4. Independent surveying, data and sample collection to verify compliance with decommissioning standards.
5. Specialized staff training in sampling procedures and environmental modeling software.
6. Review, approval and inspection of high-energy accelerators above 50 million electron volts (MeV).
7. Central Office / Regional Office Supervisory and management oversight.

**ANALYSIS:** The cleanup of sites contaminated with radioactive material is very complicated and Department costs cannot be accurately predicted. Similarly, the complexity and rate of evolution in the use of particle accelerators in medicine, especially cancer treatment, has been increasing rapidly in recent years. Customized and very high-energy

research and therapy accelerators may be coming into the mainstream. In radiation therapy, operation is becoming computer driven and problems with the interrelation of human, hardware and software failure is more complex to regulate. Unlike X-ray machines which in general are standardized in design, installation, and operation, due to the potential for serious harm to patients, accelerators require more regulatory attention during the design and pre-operational and early post-operational stages, require more attention to shielding design, performance testing and safeguards, with the need for more frequent inspection. Regulatory oversight requires maintaining up-to-date knowledge of the technology, specialized training and equipment; thus, the need for an hourly rate for cost recovery with high-energy accelerator and decommissioning projects.

Based on a comprehensive workload analysis of the Radiation Control Program, including the additional responsibilities associated with achieving and maintaining Agreement State Status, the Department is proposing an increase to allow for full cost recovery of the hourly Professional Fee rate for positions associated with performing greater than 50 MeV accelerator license review, inspections and decommissioning activities. The Department's proposal is based on an hourly rate necessary to cover program costs, including increases in actual salaries, with fractional supervisor and administrative support time, benefits and operational expenses (including information technology, training, lab services, equipment costs, and source disposal costs), all of which have increased about 30% since 2001. Consideration has also been given to the current union contract, which will result in an additional increase in personnel costs of 20% over the next four years.

As background, formerly the Professional Fee rate (\$50/hour) was based solely on the recovery of straight radiological health physicist (RHP) personnel salaries, on a part-time basis, and did not include extraneous costs associated with program management. The proposed fee (\$150/hour) is based on the expansion of the Decommissioning Program, as a condition for Agreement State status, and will cover full-time RHP personnel costs, including program management and administrative staff. It should be noted that the program's hourly rate calculation was validated by the Bureau of Fiscal Management using standard federal grant methods. In comparison, the proposed rate of \$150/hour is over one-third less than the 2007 NRC hourly rate of \$256 for these decommissioning activities.

**RECOMMENDATION AND COMMENT:** Approve the proposed regulations. The Radiation Protection Advisory Committee (RPAC), which includes representatives from medical, industrial and research facilities that have decommissioning sites and use accelerators, were included in the review of the proposed fees, and they recommended moving the proposed fees forward. The source of revenue for this program is a user license fee. The fee has not been adjusted to compensate for changes in program costs since November 2001.

**FEE REPORT FORM**  
**Radioactive Material Licenses**

Environmental Protection / Radiation Protection  
 Agency

November 13, 2007  
 Date

Louis Ray Urciuolo  
 Contact Person

( 717) 783-9730  
 Phone Number

<b>FEE COLLECTIONS:</b>	<u>2006</u>	<u>2007 est.</u>	<u>2008 est.</u>	<u>2009 est.</u>
Current Fee Structure <sup>1</sup>	\$407,290	\$425,865	\$ 425,865	\$ 425,865
Current Fee Structure <sup>2</sup>			\$ 3,125,965	\$ 3,125,965
Proposed Fee Structure <sup>2</sup>			\$ 4,082,620	\$ 4,082,620

<sup>1</sup> Without Agreement State

<sup>2</sup> With Agreement State

**FEE TITLE AND RATE:**

Current      25 PA Code 218.11(c), Annual license fees for radioactive material. See Appendix A attached.

Proposed      The fee title remains the same. The current fee structure is two tiered to accommodate the current licensing program which is for naturally occurring and accelerator produced radioactive material (NARM-Only) and additional fee categories that would be needed for the licensing of byproduct, source and special nuclear material under Agreement State in the future. Footnote 2 of Appendix A of the current regulation provides for the NARM fee categories to be terminated within one year of becoming an Agreement State and be replaced by the equivalent byproduct material fee category. As this transition was expected to have been completed by 2004 and will be in place by March 31, 2008, the current NARM-Only fee categories have been removed from the proposed fees in Appendix A and the corresponding byproduct fee categories and some of their names have been abbreviated to better match their counterparts in 10 CFR Part 170. Four new categories proposed for 10 CFR Part 170 have been added, 2A5, 3R1, 3R2 and 3S. The Hourly Rate for Full Cost\* licenses has been revised as well as the NRC weighting factor (footnote <sup>3</sup>) for fees not listed. The Radiation Protection Act 1984-147 (Act 147) now directs that fees be reviewed every three years. These fees, to be effective July 2008, were last revised in 2001. The proposed fees reflect increases in program costs and expenses from program expansion.

**FEE OBJECTIVE:** Completely cover the costs of licensing and inspecting about 925 radioactive materials licenses for the use of NARM and, upon attaining Agreement State status, byproduct materials. The program elements requiring support are the Radioactive Materials Licensing Section and Decommissioning Section of BRP, which are located in the Rachel Carson Building, Harrisburg, and inspection staff in the DEP Regional Offices. The current materials program will at a minimum double in size and complexity. Staff will increase

proportionally and require specialized training to meet agreement State requirements. The program has to maintain an inventory of specialized radiation survey and analytical equipment for fieldwork, and utilize a sophisticated radiation laboratory to support environmental surveillance and decommissioning surveys of licensed locations and other sites contaminated by radioactive materials.

## FEE RELATED ACTIVITIES AND COSTS

1. Detailed review of license proposals including facility design, operating procedures and radiation safety procedures.
2. Inspections of the facility within the first year of licensing to ensure that the design and procedures are followed.
3. Periodic and on-demand inspections throughout operational life. Normal intervals are 1-5 years.
4. Technical and legal investigation of the basis for violations, overexposures and contamination as needed.
5. Special staff training, periodic retraining.
6. Additional specialized technical equipment, calibrations and radiation laboratory sample analysis.
7. Augmentation of technical, management, administrative and clerical staff.
8. Support for augmented staff (computers, cars, work stations, file keeping etc.)

**ANALYSIS:** The Energy Policy Act of 2005 gave the Nuclear Regulatory Commission (NRC) authority over accelerator produced radioactive material and discrete sources of radium formerly under the control of state programs. NRC already regulates most radioactive material (byproduct, source and special nuclear.) State programs have until August of 2009 to enter into an agreement to take over NRC's responsibility for licensing radioactive material or else lose the state's NARM licensing program. The Department expects to have a signed agreement by March 2008. The Department's Bureau of Radiation Protection (BRP) presently has about 480 NARM licenses. These licenses are renewed on a 10-year cycle and inspected at 4-year intervals. As an Agreement State, after combining state and NRC licenses, this number will double.

The state radioactive material license fee categories have been patterned after the NRC so as to facilitate assimilation of the NRC licenses and make transition easier for the licensees who are already familiar with the NRC system. NRC is in the process of adding additional license fee categories to their regulations to go along with their newly acquired authority to exclusively regulate accelerator produced radioactive material and radium. Many licensees of the NRC currently have licenses from the BRP for those materials. Where those licenses are of the same category, it is our intention to combine them. Unlike licenses of the Nuclear Regulatory Commission that are charged an application fee or renewal fee and an annual fee, licenses issued by BRP have only an annual fee. These fees will also be fixed for at least three years.

Based on a comprehensive workload analysis of the Radiation Control Program, including the additional responsibilities associated with achieving and maintaining Agreement State Status, the Department is proposing increases to the Radiation Control fees to cover program costs, including increases in salaries, benefits and operational expenses (including information technology, training, lab services and equipment costs). The figures below set forth the costs that are associated with the Radiation Control Program from the present date until 2011. The personnel costs are representative of the staff (pay grade specific salary + benefits/per position) needed to perform radioactive material licensing and inspection work to achieve and maintain Agreement State status (i.e., radioactive materials licensing and inspection of approximately 925 facilities). Given the current mandated union contract, these personnel costs are expected to increase about 20% over the next four years. Salary, benefits and operational expenses itemized below reflect a 30% increase since 2001.

As indicated in the table below, the estimated costs for the Bureau of Radiation Protection staff to perform radioactive material licensing and inspection work is \$4,103,520, assuming the finalization of Agreement State Status. In FY 08/09, accounting for the assumed effectuation of the proposed fee increase and Agreement State Status, total revenue is expected to be \$4,082,620. Therefore, the projected amount collected in revenue is estimated to cover the costs of the program.

**Radioactive Material Licenses - Anticipated Expenses**

<b>Anticipated Expenses</b>	<b>\$ Applicable to FY 07/08</b>	<b>\$ Applicable to FY 08/09</b>	<b>\$ Applicable to FY 09/10</b>	<b>\$ Applicable to FY 10/11</b>
Personnel Costs	\$ 3,206,124	\$ 3,376,440	\$ 3,556,218	\$ 3,781,812
IT Charges (Including Computer Maintenance, eFACTS upgrades, etc.)	194,220	219,120	161,850	174,300
Specialized Equipment (Including Calibration Costs, etc.)	263,940	251,490	199,200	104,180
Specialized Training	169,320	169,320	99,600	99,600
Lab Services/Consultants	87,150	87,150	87,150	87,150
<b>TOTAL</b>	<b>\$ 3,920,754</b>	<b>\$ 4,103,520</b>	<b>\$ 4,104,018</b>	<b>\$ 4,247,042</b>

**RECOMMENDATION AND COMMENT:** Approve the proposed regulations. The Radiation Protection Advisory Committee (RPAC), which includes representatives of medical, research and industrial licensees reviewed the proposed regulations and recommended they be proposed. If Agreement State is not achieved by August of 2009, the NRC assumes authority of NARM licenses and NARM licensees will be subject to the NRC's license fee schedule in 10 CFR Part 170.

Current:

## APPENDIX A

## Fees for Radioactive Material Licenses

<i>Fee Category<sup>5,6</sup></i>	<i>Description</i>	<i>Annual Fee (\$)<sup>1,2,3,4,7</sup></i>
1C	Special Nuclear Material Sealed Source Gauges (X-Ray Fluorescence)	875
1D	Special Nuclear Material—Other	2,475
2B	Source Material as Shielding	450
2C	Source Material—Other (not 11e2)	8,650
3A1	Manufacturing & Distribution Commercial Broad Scope—10 CFR 30, 33	19,875
3A2	Manufacturing & Distribution Commercial Broad Scope—NARM Only	4,000
3B1	Manufacturing & Distribution Commercial Specific License—10 CFR 30	4,650
3B2	Manufacturing & Distribution Commercial Specific License—NARM Only	2,000
3C1	Manufacturing & Distribution Pharmaceuticals—10 CFR 32.72—32.74	11,650
3C2	Manufacturing & Distribution Pharmaceuticals—NARM Only	4,000
3D1	Pharmaceuticals—Distribution Only—10 CFR 32.7x	2,825
3D2	Pharmaceuticals—Distribution Only—NARM Only	2,000
3E	Irradiator—Shielded Source	2,575
3F	Irradiator—Unshielded < 10kCi	4,300
3G	Irradiator—Unshielded >= 10kCi	10,750
3I	Distribution As Exempt—No Review of Device	3,525
3J	Distribution—SSD Devices to Part 31 GLs	1,550
3K	Distribution—No Review-Exempt Sealed Source	1,300
3L1	Research & Development Broad Scope	8,300
3L2	Research & Development Broad Scope—NARM Only	2,000
3M1	Research & Development	3,650
3M2	Research & Development—NARM Only	750
3N	Services other than Leak Testing, Waste Disposal or Calibration	3,875
3O	Radiography	10,850
3P1	Other Byproduct Material	1,900
3P2	NARM Licenses not covered elsewhere	750

3Q	Generally Licensed Devices under § 217.143 (relating to certain measuring, gauging or controlling devices)	315
4A	Waste Storage, Processing or Disposal	Full Cost *
4B	Waste Packaging or Repackaging	8,175
4C	Waste Receipt of Prepackaged for Disposal	6,125
5A	Well Logging & Non Field Flood Tracers	7,500
5B	Well Logging Field Flood Tracer Studies	Full Cost *
6A	Nuclear Laundry	14,250
7A	Human Use—Teletherapy	11,275
7B1	Human Use—Broad Scope (except Teletherapy)	19,975
7B2	Human Use—Broad Scope (except Teletherapy)— NARM Only	2,000
7C1	Human Use—Specific License (except Teletherapy)	4,300
7C2	Human Use—Specific License (except Teletherapy)— NARM Only	750
8A1	Specifically licensed sources used in static eliminators, nonexempt smoke detectors, fixed gauges, dew pointers, calibration sources, civil defense uses or in temporary (2 years or less) storage	875
8A2	Specifically licensed NARM sources used in static eliminators, nonexempt smoke detectors, fixed gauges, dew pointers, calibration sources, civil defense uses or in temporary (2 years or less) storage	200
14	Decontamination, Decommissioning, Reclamation or Site Restoration	Full Cost *
16A	Reciprocity (180 days/year)	900
16B	Reciprocity—NARM (180 days/year)	300
SB1 <sup>5</sup>	Small Business—Category 1	2,100
SB2 <sup>6</sup>	Small Business—Category 2	400

<sup>1</sup> A license may include as many as four noncontiguous sites at the base fee. Sites that are within 5 miles of the main Radiation Safety Office where the license records are kept will be considered contiguous. An additional fee of 25% of the base fee will be added for each noncontiguous site above four.

<sup>2</sup> All fees for NARM licenses will be effective upon publication of the final rules in the *Pennsylvania Bulletin*. The fees for NRC licenses that are transferred to the Commonwealth will be effective on the next license anniversary date. NARM licenses will be changed to the corresponding category of byproduct material license on the next license anniversary date after achievement of Agreement State status and fees adjusted at that time. The NARM license categories will cease to exist one year after Agreement State status is achieved.

<sup>3</sup> Annual fees for categories of NRC licenses that are not included in this table will be calculated as follows: PA Fee = 0.7 (NRC Annual Fee + 0.10 NRC Application or Renewal fee).

<sup>4</sup> Annual fees charged to holders of transferred NRC licenses with multiple sites will not exceed the fees charged by the NRC for the same licenses in the year of transfer, provided the number of noncontiguous sites remains constant.

<sup>5</sup> Small Businesses Not Engaged in Manufacturing, and Small Not-For-Profit Organizations with Gross Annual Receipts of more than \$350,000 and less than \$5 million; Manufacturing Entities that have an average of 35—500 employees with

Gross Annual Receipts of more than \$350,000 and less than \$5 million; Small Government Jurisdictions (including publicly supported, nonmedical educational institutions) with a population between 20,000 and 50,000; and nonmedical Educational Institutions that are not state or publicly supported and have 35—500 employees.

<sup>6</sup> Small Businesses Not Engaged in Manufacturing, and Small Not-For-Profit Organizations with Gross Annual Receipts of less than \$350,000; Manufacturing Entities that have an average of less than 35 employees and less than \$350,000 in Gross Annual Receipts; Small Government Jurisdictions (including publicly supported nonmedical educational institutions) with a population less than 20,000; and nonmedical Educational Institutions that are not state or publicly supported and have less than 35 employees.

<sup>7</sup> Full cost recovery licensees and licensees required to provide financial assurance for decommissioning are not eligible for reduced fees under category SB1 or SB2.

\* Full cost recovery consists of a professional fee, to cover the activities and support of Department personnel, and any other additional incidental charges incurred, such as related contracted services or laboratory costs. The professional fee component (Hourly Rate) is \$150 per hour. Other costs are recovered at 100% of actual cost. Invoices shall be issued by the Department at regular intervals but at least quarterly when net costs are incurred.

Proposed:

APPENDIX A  
Fees for Radioactive Material Licenses

<i>Fee Category</i> 1,5,6	<i>Description</i>	<i>Annual Fee (\$)</i> 1,2,3,4,7
1C	Special Nuclear Material Sealed Source Gauges (X-Ray Fluorescence)	2,100
1D	Special Nuclear Material—Other	5,800
2A(2)(c)	Source Material – Metal Extraction	90,200
2A5	Removal of Radioactive Contaminants from Drinking Water	11,200
2B	Source Material as Shielding	750
2C	Source Material—Other (not 11e2)	13,400
3A	Manufacturing & Distribution Commercial Broad Scope—10 CFR 30, 33	29,100
3B	Manufacturing, Refurbishing & Distribution Commercial Specific License—10 CFR 30	8,300
3C	Manufacturing & Distribution Pharmaceuticals— 10 CFR 32.72—32.74	11,900
3D	Pharmaceuticals—Distribution Only—10 CFR 32.7x	6,800
3E	Irradiator—Shielded Source	4,200
3F	Irradiator—Unshielded < 10kCi	7,800
3G	Irradiator—Unshielded $\geq$ 10kCi	31,200
3I	Distribution As Exempt—No Review of Device	10,700
3J	Distribution—SSD Devices to Part 31 GLs	2,500
3K	Distribution—No Review-Exempt Sealed Source	1,900
3L	Research & Development Broad Scope	15,100
3M	Research & Development	5,600
3N	Services other than Leak Testing, Waste Disposal or Calibration	8,500
3O	Radiography	14,100
3P	Other Byproduct Material not covered elsewhere	2,700
3Q	Generally Licensed Devices under § 217.143 (relating to certain measuring, gauging or controlling devices)	320
3R1	Greater than the General License Limits in 10 CFR 31.12(a)(3), (4) or (5) but not more than ten times those Limits	2,100
3R2	Greater than ten times the General License Limits in 10 CFR 31.12(a)(3), (4) or (5)	2,700
3S	Manufacturing & Distribution Pharmaceuticals— Accelerator Produced Only	11,800
4A	Waste Storage, Processing or Disposal	Full Cost *
4B	Waste Packaging or Repackaging	12,000

4C	Waste Receipt of Prepackaged for Disposal	9,200
5A	Well Logging & Non Field Flood Tracers	4,400
5B	Well Logging Field Flood Tracer Studies	Full Cost *
6A	Nuclear Laundry	28,800
7A	Human Use—Teletherapy	13,700
7B	Human Use—Broad Scope (except Teletherapy)	29,000
7C	Human Use—Specific License (except Teletherapy)	4,900
8A	Specifically licensed sources used in static eliminators, nonexempt smoke detectors, fixed gauges, dew pointers, calibration sources, civil defense uses or in temporary (2 years or less) storage	2,100
14	Decontamination, Decommissioning, Reclamation or Site Restoration	Full Cost *
16	Reciprocity (180 days/year)	1,500
SB1 <sup>5</sup>	Small Business—Category 1	2,300
SB2 <sup>6</sup>	Small Business—Category 2	500

<sup>1</sup> A license may include as many as four noncontiguous sites at the base fee. Sites that are within 5 miles of the main Radiation Safety Office where the license records are kept will be considered contiguous. An additional fee of 25% of the base fee will be added for each noncontiguous site above four.

<sup>2</sup> All fees will be effective upon publication of the final rules in the *Pennsylvania Bulletin*. The fees for NRC licenses that are transferred to the Commonwealth at the time of the Agreement will be invoiced on the licenses' next anniversary date and include a pro-rata adjustment for the interval between the effective date of the Agreement and the license anniversary date. Existing NARM licenses will be changed to the corresponding category of byproduct material license in Appendix A upon publication of the final rule.

<sup>3</sup> Annual fees for categories of NRC licenses that are not included in this table will be calculated as follows: PA Fee = NRC Annual Fee + 0.10 NRC Application or Renewal fee.

<sup>4</sup> Annual fees charged to holders of transferred NRC licenses with multiple sites will not exceed the fees charged by the NRC for the same licenses that are in effect in the year of transfer, provided the number of noncontiguous sites does not increase.

<sup>5</sup> Small Businesses Not Engaged in Manufacturing, and Small Not-For-Profit Organizations with Gross Annual Receipts of more than \$350,000 and less than \$5 million; Manufacturing Entities that have an average of 35—500 employees with Gross Annual Receipts of more than \$350,000 and less than \$5 million; Small Government Jurisdictions (including publicly supported, nonmedical educational institutions) with a population between 20,000 and 50,000; and nonmedical Educational Institutions that are not state or publicly supported and have 35—500 employees.

<sup>6</sup> Small Businesses Not Engaged in Manufacturing, and Small Not-For-Profit Organizations with Gross Annual Receipts of less than \$350,000; Manufacturing Entities that have an average of less than 35 employees and less than \$350,000 in Gross Annual Receipts; Small Government Jurisdictions (including publicly supported nonmedical educational institutions) with a population less than 20,000; and nonmedical Educational Institutions that are not state or publicly supported and have less than 35 employees.

<sup>7</sup> Full cost recovery licensees and licensees required to provide financial assurance for decommissioning are not eligible for reduced fees under category SB1 or SB2.

\* Full cost recovery consists of a professional fee, to cover the activities and support of Department personnel, and any other additional incidental charges incurred, such as related contracted services or laboratory costs. The professional fee component (Hourly Rate) is \$150 per hour. Other costs are recovered at 100% of actual cost. Invoices shall be issued by the Department at regular intervals but at least quarterly when net costs are incurred.

**FEE REPORT FORM**  
**Radiation-Producing Machine Service Provider**

Environmental Protection / Radiation Protection  
Agency

November 13, 2007  
Date

Louis Ray Urciuolo  
Contact Person

( 717) 783-9730  
Phone Number

	<u>2006</u>	<u>2007 est.</u>	<u>2008</u>	<u>2009</u>
<b>FEE COLLECTIONS:</b>				
Current	\$19,400	\$19,700		
Proposed			\$30,800*	\$30,800

**FEE TITLE AND RATE:**

Current	25 PA Code 218.11(h), A radiation-producing machine service provider shall pay an annual registration fee of \$100.
Proposed	25 PA Code 218.11(h), A radiation-producing machine service provider shall pay an annual registration fee of \$140.

**FEE OBJECTIVE:** Persons who distribute, assemble or install radiation-producing machines or equipment are currently required to register their activities with the Department under 25 PA Code 216.2a and report certain information regarding their activities relating to installation, repair and distribution of radiation-producing machines under 25 PA Code 216.2b. The purpose of this fee is to recover costs associated with the radiation-producing machine service provider program.

**FEE RELATED ACTIVITIES AND COSTS:**

1. Technical and Information Technology support to maintain a registration and records system to collect, record and review service activity data.
2. Clerical and automated processing of applications, annual invoicing, annual issuance of registration certificates.
3. Perform inspections by field staff as needed (about every 1 to 5 years).
4. Clerical review of data supplied on service provider activities to cross-reference installation reports against the database of registered X-ray facilities

**ANALYSIS:** Registration of service providers is handled by the same Central Office staff and infrastructure that register x-ray equipment and facilities. Registration is performed by clerical staff, and assembly reports are

reviewed by technical staff. The Regional Office staff that inspect X-ray facilities perform any necessary inspection of service provider site records and perform tests to verify registered service providers are assembling x-ray equipment properly.

Based on a comprehensive workload analysis of the Radiation Control Program, the Department is proposing increases to the Radiation Control fees to cover program costs, including increases in salaries, benefits and operational expenses (including information technology, training, lab services and equipment costs) associated with the Department's registration of radiation-producing machine service providers. The figures below set forth the costs that are associated with these program activities from the present date until 2011. The personnel costs are representative of the staff (pay grade specific salary + benefits/per position) needed to maintain registration of about 220 x-ray machine service providers. Operational expenses itemized below reflect a 30% increase since 2001. The current mandated union contract will cause an additional 20% increase in personnel costs over the next four years.

As indicated in the table below, the estimated annual costs associated with the Bureau of Radiation Protection's registration of radiation-producing machine service providers will range from \$27,752 to \$33,376. The projected revenue for the program, assuming the effectuation of the proposed fee increase, is \$30,800 in 2008. This will cover the cost of the program.

**Radiation-Producing Machine Service Providers – Anticipated Expenses**

<b>Anticipated Expenses</b>	<b>\$ Applicable to FY 07/08</b>	<b>\$ Applicable to FY 08/09</b>	<b>\$ Applicable to FY 09/10</b>	<b>\$ Applicable to FY 10/11</b>
Personnel Costs	\$ 25,752	\$ 27,120	\$ 28,564	\$ 30,376
IT Charges (Including Computer Maintenance, eFACTS upgrades, etc.)	2,000	2,000	3,000	3,000
Specialized Equipment (Including Barracuda, Calibration Costs, etc.)	0	0	0	0
Specialized Training	0	0	0	0
Lab Services/Consultants	0	0	0	0
<b>TOTAL</b>	<b>\$ 27,752</b>	<b>\$ 29,120</b>	<b>\$ 31,564</b>	<b>\$ 33,376</b>

**RECOMMENDATION AND COMMENT:**

Approve the proposed regulations.

Radiation-producing machine services providers have two important functions.

1. They must accurately report their activities. This information is compared to an existing database of registered X-ray equipment to ensure that all X-ray equipment is properly registered and inspected if necessary.
2. The regulated community of X-ray facilities and the general public rely on service providers to provide and install X-ray equipment that meets applicable code and can be operated safely.

The Department is required to provide oversight of radiation-producing machine services described in 25 PA Code 216.6(a) and (c). The source of revenue for this program is a user registration fee. The fee has not been adjusted to compensate for changes in program costs since July 2004.

**FEE REPORT FORM  
Accelerator Licensing**

Environmental Protection / Radiation Protection  
Agency

November 13, 2007  
Date

Louis Ray Urciuolo  
Contact Person

( 717 ) 783-9730  
Phone Number

	<u>2006</u>	<u>2007 est.</u>	<u>2008</u>	<u>2009</u>
<b>FEE COLLECTIONS:</b>				
Current	\$255,200	\$255,200		
Proposed			\$ 355,110	\$ 355,110

**FEE TITLE AND RATE:**

- |          |  |
|----------|--|
| Current  | <p>25 PA Code 218.11(i), Accelerators below 50 MeV other than for ion implantation - \$1500 for the first accelerator at the facility plus \$500 for each additional unit at that facility.</p> <p>25 PA Code 218.11(ii) Accelerators used for ion implantation - \$500 plus \$50 for each additional unit at the same facility.</p> <p>25 PA Code 218.11(iii) Accelerators above 50 MeV – full cost of staff time to review license applications and conduct inspections as needed. (Hourly rate is \$50 per hour). A minimum annual fee of \$1500 for the first accelerator at a facility plus \$500 for each additional unit is established.</p>    |
| Proposed | <p>25 PA Code 218.11(i), Accelerators below 50 MeV other than for ion implantation - \$2,100 for the first accelerator at the facility plus \$700 for each additional unit at that facility.</p> <p>25 PA Code 218.11(ii) Accelerators used for ion implantation - \$700 plus \$70 for each additional unit at the same facility.</p> <p>25 PA Code 218.11(iii) Accelerators above 50 MeV – full cost of staff time to review license applications and conduct inspections as needed. (Hourly rate is \$150 per hour). A minimum annual fee of \$2,100 for the first accelerator at a facility plus \$700 for each additional unit is established.</p> |

**FEE OBJECTIVE:** To recover the Department's costs in reviewing new license applications and renewals, inspect the facilities and conduct necessary compliance activities.

## FEE RELATED ACTIVITIES AND COSTS

1. Detailed review of proposed design, operating procedures and radiation safety procedures for the proposed installation by Central and Region Offices.
2. Inspections of the facility before, during, and after construction to ensure that the design and procedures are followed.
3. Periodical and on demand inspections throughout operational life.
4. Technical and legal investigation of overexposures and medical events as needed
5. Specialized staff training and/or use of consultants if needed.
6. Central Office / Regional Office Supervisory and management oversight.

**ANALYSIS:** The complexity and rate of evolution in the use of particle accelerators in medicine, especially cancer treatment, has been increasing rapidly in recent years. Novel uses in proton and neutron therapy may soon be coming into the mainstream. Operation in radiation therapy is becoming computer driven and problems with the interrelation of human, hardware and software failure is more complex to regulate. Unlike X-ray machines which in general are standardized in design, installation and operation, and because of the potential for serious harm to patients, accelerators require more regulatory attention during the design and pre-operational and early post-operational stages, require more attention to shielding design, performance testing, and safeguards with a need for more frequent inspection. Regulatory oversight requires maintaining up to date knowledge of the technology, specialized training and equipment.

Based on a comprehensive workload analysis of the Radiation Control Program, including the additional responsibilities associated with achieving and maintaining Agreement State Status, the Department is proposing increases to the Radiation Control fees to cover program costs, including increases in salaries, benefits and operational expenses (including information technology, training, lab services and equipment costs). The figures below set forth the costs that are associated with the accelerator licensing activities of the Radiation Control Program from the present date until 2011. The personnel costs are representative of the staff (pay grade specific salary + benefits/per position) needed to maintain accelerator licensing and inspections of approximately 250 complex, high-energy x-ray machines. Salary, benefits and operational expenses itemized below reflect a 30% increase since 2001. The current mandated union contract will cause an additional 20% increase in personnel costs over the next four years.

As indicated in the table below, the total estimated annual costs associated with the accelerator licensing program activities of the Bureau of Radiation Protection ranges from \$338,000 to \$375,000. The projected revenue for the program, assuming the effectuation of the proposed fee increase, is \$355,100 for 2008. Thus, the projected amount collected in revenue covers the estimated costs of the program.

### Accelerator Licensing – Anticipated Expenses

Anticipated Expenses	\$ Applicable to FY 07/08	\$ Applicable to FY 08/09	\$ Applicable to FY 09/10	\$ Applicable to FY 10/11
Personnel Costs	\$ 276,834	\$ 291,540	\$ 307,063	\$ 326,542
IT Charges (Including Computer Maintenance, eFACTS upgrades, etc.)	16,770	18,920	13,975	15,050
Specialized Equipment (Including Calibration Costs, etc.)	22,790	21,715	17,200	17,630
Specialized Training	14,620	14,620	8,600	8,600
Lab Services/Consultants	7,525	7,525	7,525	7,525
<b>TOTAL</b>	<b>\$ 338,539</b>	<b>\$ 354,320</b>	<b>\$ 354,363</b>	<b>\$ 375,347</b>

**RECOMMENDATION AND COMMENT:** Approve the proposed regulations. The Radiation Protection Advisory Committee (RPAC), which includes representatives from medical, industrial and research facilities that use accelerators, have been included in the review of the proposed fees, and they support moving forward with the proposed fee increase. The source of revenue for this program is a user license fee. The fee has not been adjusted to compensate for changes in program costs since November 2001.



Pennsylvania Department of Environmental Protection

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Rachel Carson State Office Building  
P.O. Box 2063  
Harrisburg, PA 17105-2063  
March 4, 2008

Policy Office

717-783-8727

Kim Kaufman, Executive Director  
Independent Regulatory Review Commission  
14th Floor  
333 Market Street  
Harrisburg, PA 17101

Re: Proposed Rulemaking: Radiological Health and Radon Certification Fees  
(25 Pa. Code, Chapters 218 and 240) (#7-423)

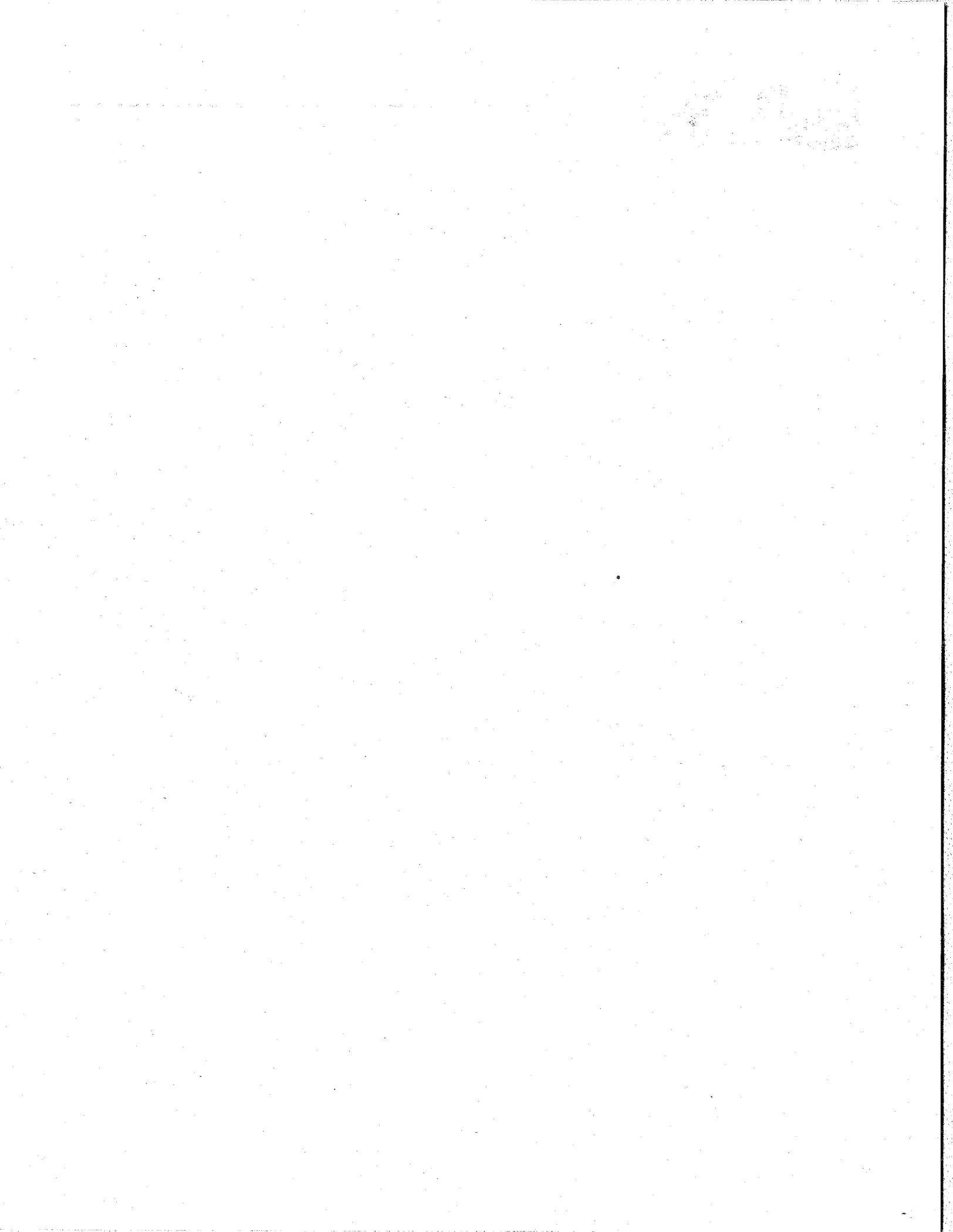
Dear Mr. Kaufman:

Enclosed is a copy of a proposed regulation for review and comment by the Independent Regulatory Review Commission pursuant to Section 5(a) of the Regulatory Review Act. This proposal is scheduled for publication as a proposed rulemaking in the *Pennsylvania Bulletin* on March 15, 2008, with a 30-day public comment period, that will conclude on April 14, 2008. The Environmental Quality Board (EQB) adopted this proposal on December 18, 2007.

The proposed rulemaking addresses fees associated with the registration of radiation-producing machines; radiation-producing machine service providers; accelerator licenses and radioactive material licenses, as well as the hourly rate professional fee associated with certain full cost recovery licenses. The rulemaking also addresses application fees for the certification of radon services.

The Radiation Protection Act (Act 147 of 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. This has resulted in serious depletions of operating reserves within the Radiation Protection Fund which has curtailed the expenditure of necessary equipment and infrastructure upgrades, including personnel training. This regulatory proposal is independent of the recent increase in nuclear power plant fees brought about by revisions to Act 147. 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.

The draft proposed rulemaking was presented to the Radiation Protection Advisory Committee (RPAC) at its meeting on August 21, 2007. The RPAC suggested that the Department consider adjusting fees according to inflation and to phase-in and/or scale the fee structure relative to business

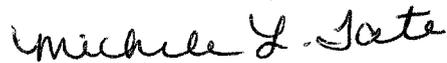


size for the radon fees in Chapter 240. The Department prefers to provide the EQB with a written analysis of the adequacy of the fees at least once every three years.

The Department will provide the Commission with the assistance required to facilitate a thorough review of this proposal. Section 5(g) of the Regulatory Review Act provides that the Commission may, within 30 days of the close of the comment period, convey to the agency its comments, recommendations and objections to the proposed regulation. The Department will consider any comments, recommendations or suggestions submitted by the Commission, as well as the Committees and public commentators, prior to final adoption of the regulation.

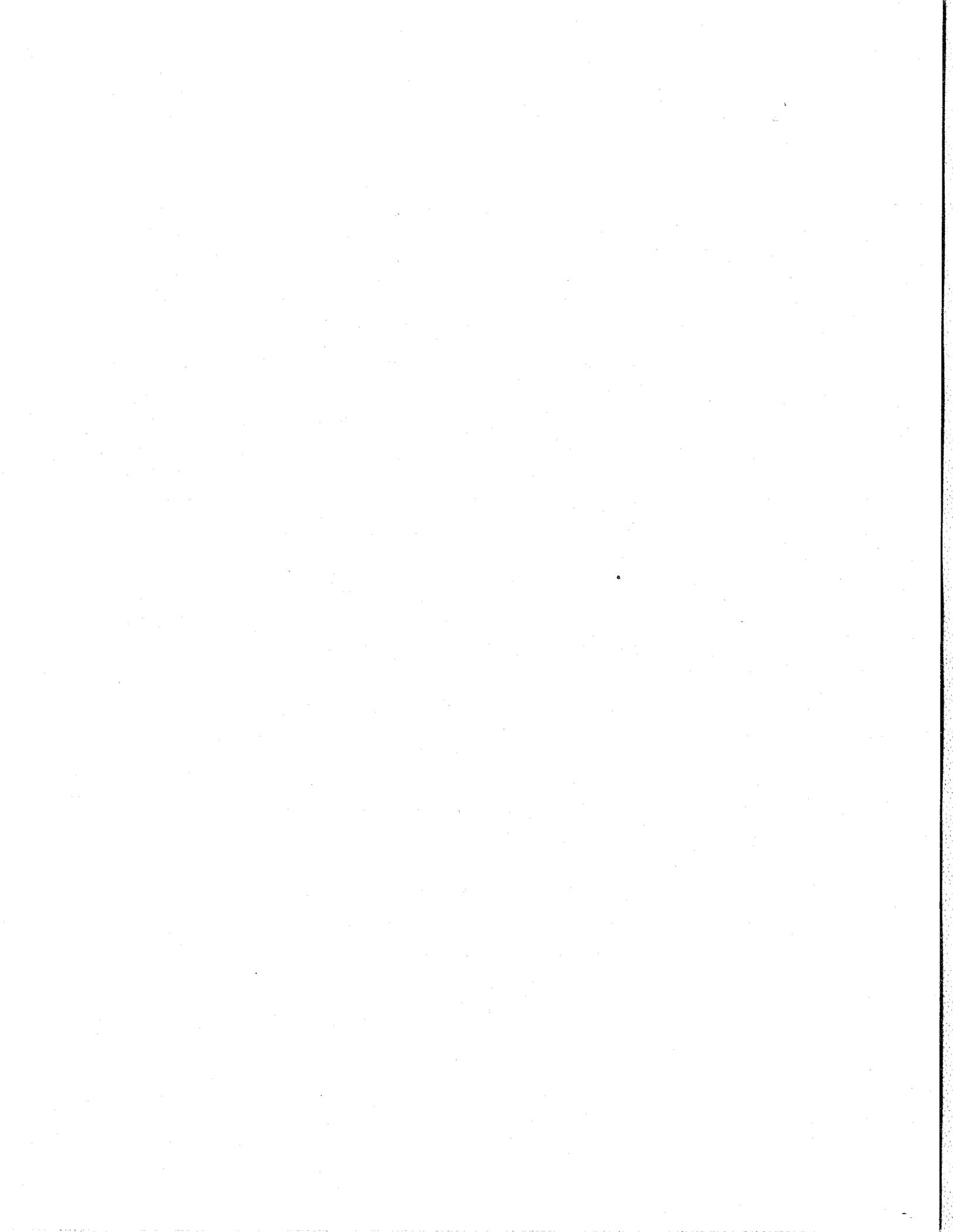
Please contact me at the number above if you have any questions or need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Michele L. Tate".

Michele L. Tate  
Regulatory Coordinator

Enclosures





**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO  
 THE REGULATORY REVIEW ACT**

I.D. NUMBER: 7-423

SUBJECT: Radiological Health and Radon Certification Fees

AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

**TYPE OF REGULATION**

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a.  With Revisions
  - b.  Without Revisions

RECEIVED  
 2008 MAR -4 PM 2:37  
 INDEPENDENT REGULATORY  
 REVIEW COMMISSION

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
3-4-08	<u>D Neuf</u>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
3-4-08	<u>x A Boonin</u>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
3-4-08	<u>bcastell</u>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
3-4-08	<u>x A Rybarczyk</u>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
3-4-08	<u>Kathy Cooper</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
3-4-08	<u>C. DeFronzo</u>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

