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Environmental Quality Board
Rachel Carson State Office Building
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April 11, 2008

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APR 14 2008

re: Proposed Rulemaking, Radon Certification Fees

ENVIRONMENTAL QUALITY BOARD

To Whom It May Concern:

This is in response to the proposed increase in fees relative to 25 PA Code CHS 240, relative to radon certification fees. "radon industry" is essentially comprised of very small businesses, which perform radon testing and mitigation services. Most companies have less than 10 persons, often less than 5, with annual revenues less than \$250,000. They are truly "small businesses." While I understand that fees have not been increased for some time, the size of the increase and the basic concept of the fees concern me. First, I have a real problem with the imposition of fees on the radon industry. The Fee Objective that DEP uses in their proposal clearly states that the reason for the radon program is to protect property owners from unqualified and unscrupulous persons. That is a basic objective of the public health function of government, i.e., the protection of the public, and as such should be paid out of general tax revenues, not fees on the industry. I understand the reluctance of the Legislature to increase taxes and that levying user fees to business is an easier, albeit more cowardly approach.

My objections to the proposed fee schedule is as follows:

We, the affected industry really derive no real benefit from the fees. The DEP uses the argument that they protect us, the industry from unscrupulous persons. It is a rarity when the DEP stops an uncertified practitioner before economic harm has been rendered on those of us abiding by the requirements. Unscrupulous practitioners have come and gone, mostly without help from the DEP because their poor work has been shown up to their customers. Most of the radon testing and mitigation is driven by real estate transactions and it doesn't take too long for real estate agents to discover unscrupulous persons – whether they be termite inspectors, home inspectors or radon testing and mitigation firms.

Second, there is no control over the imposition of fees or the amount on the part of the affected industry. We have no real say in the development of the fee schedule until after it is decided upon by the group within DEP that benefits from the fees. This is something that should have been sent out

April 11, 2008

2

to all those affected as a "proposed notice of intent to raise fees," well before it was given to the DEP advisory group to vote on. We have no control over how the money is spent or misspent, including the use of our own fee money to compete with us, the testing industry when the DEP does follow-up tests for homes having high initial radon concentration. The DEP should remove itself from competing with the industry that it taxes!

The fee increases are exorbitant! Increases range from 40 to 70 percent and there are new fees imposed on testing employees, course providers, and primary device listings. The DEP should begin cutting costs instead of just jumping to a fee increase. The radon industry is not a highly profitable industry for most of the companies and individuals. We have had to find ways to cut our operating and overhead costs – the DEP should follow suit – develop a mindset of cost cutting instead of a knee jerk reaction of increasing taxes, because that's all fees are – taxes on the providers of services. It is suggested that DEP start looking at cutting its overhead, including the number of employees. Much of the work of the Radon Section can be done by the Regions, with the result of removing people from the payroll in the central office. We have had to lay off people when our business slows and when costs become too great to compete. The problem with government at all levels is that there is no incentive to cut costs! There is actually an incentive to increase costs, develop greater empires and spend more money! This results in increased budgets the following year.

The DEP requires continuing education on the certified individuals, yet the list of continuing education courses is poor – as real continuing education! Many of the courses are rehashing of the initial training, not real continuing education. I was considering adding some courses of my own to the list, but will not. Why should I offer a good course that I have spent time and effort to develop if I have no guarantee that I will recoup a \$375 fee and make a profit? This fee is likely to only reduce the already poor choices for continuing education. Not all of us are able to go away for a week to an annual conference. Besides, the DEP only assigns half the hours to conference time, compared to the "continuing education courses" when the information gained at a conference is likely to be actual new information. Their priorities are backwards! The DEP should encourage new courses and upgrade the credit for conferences and not retard course development by adding a new fee. In fact, the DEP should make that attendance at an approved annual conference meet the full 16 hours requirement.

Another newly imposed fee is to charge for each testing company employee. Why are only testing company now required to pay fees for their employees and not mitigation companies for their employees. The DEP does not insist on and assure that the certified mitigation person inspects each job and be present for a good part of each installation? As such, the mitigation employees on the job are the ones responsible for assuring that the job is done properly. Thus, they are just as responsible for performing well as are testing employees and should also be assessed a fee if the DEP is going to tax employees of testing firms. Along this same line of thought, the DEP has now added a difference to the fee charged for the certified testing individual compared to the certified mitigation individual. There is no logical reason for this other than there are more testing companies to hit and more money to be collected. If fees are charged, they ought to be uniform for the type of work expended by the DEP. Having different fees for testing and mitigation personnel does not meet any uniformity test.

April 11, 2008

3

These fees are going to drive experienced small individuals out of business and leave the field open to larger, better financed companies. The radon industry was started by small companies and individuals. Now DEP is guaranteeing that it will make it much more difficult for these individuals to survive. The DEP is fostering a move to eliminate the truly small businesses from the industry. At the same time, the new fees are likely to attract the "fast buck" operator, which will have the effect of lessening the assurance of meeting their Fee Objective, and also make more enforcement work for DEP, requiring more manpower. This is a foolish idea! In many cases it is difficult to pass along increased fees to customers because of the competitive nature of this industry, so all the increased fees will do is decrease profitability of small businesses and individuals involved. We already have to deal with increased business insurance and health insurance costs. This will be one more cost to drive us closer to the decision of leaving radon.

The DEP has a "small business" fee reduction in its radioactive material license fee schedule. The DEP should institute a similar reduction based on the income level of the taxed business – perhaps, keeping the fees the same if the company's income is less than \$300,000 per year.

Thank you for your consideration and attention in this matter. If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Anthony LaMastra".

A. LaMastra
Certified Health Physicist

