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Regulatory Analysis Form

(Completed by Promulgating Agency)

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency

Environmental Protection

(2) Agency Number:

Identification Number: 7-498

IRRC Number: 3153

(3) PA Code Cite: 25 Pa. Code Chapters 218 and 240

(4) Short Title: Radiological Health and Radon Certification Fees; and Pennsylvania Radon Mitigation System Tag

(5) Agency Contacts (List Telephone Number and Email Address):

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(6) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation

- Emergency Certification Regulation;
- Certification by the Governor
- Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

With one exception, which is identified in the response to (15), the proposed rulemaking would increase fees associated with the radioactive materials licensing and radon certification activities regulated by the Department's Radiation Protection Program by 50 percent. The proposed rulemaking would also add a requirement for a new Pennsylvania Radon Mitigation System Tag in order to help assure the quality of radon services.

(8) State the statutory authority for the regulation. Include specific statutory citation.

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

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

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

- Sections 301, 302 and 401 of the Radiation Protection Act, 35 P.S. §§ 7110.301, 7110.302 and 7110.401.
- Section 1920-A of the Administrative Code, 71 P.S. § 510-20.
- The Radon Certification Act, 63 P.S. §§ 2001—2014.

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

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

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No, the proposed regulation is not mandated by any federal or state law or court order, or federal regulation. There are no relevant state or federal court decisions.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

In March 2008, then Governor Rendell signed an Agreement with the Chairman of the U.S. Nuclear Regulatory Commission (NRC) for the Commonwealth to become an Agreement State. This allows the Commonwealth to oversee and regulate licensure of radioactive materials for Pennsylvania entities. These duties are funded through the Chapter 218 license fees and include registration and inspection of x-ray facilities, licensing and inspection of accelerators, registration of radiation-producing machine service providers and licensing and inspection of radioactive material users. As part of that Agreement, the Commonwealth committed to ensuring that its regulations are compatible with NRC regulations. The proposed amendments to the Chapter 218 fees for radioactive material licenses are necessary to assure adequate funding is available for the Commonwealth to carry out its duties under the Agreement State program. The professional hourly rate fee that supports required full cost recovery for unique services that cannot be standardized is an important component to the Chapter 218 fees. Examples of the professional hourly rate fee include the evaluation, inspection and licensing of high-energy accelerators and decommissioning activities at contaminated sites. If the Commonwealth was forced to cede its authority to regulate radioactive materials back to the NRC, they would impose higher fees on the regulated community.

The biennial Chapter 240 fees are used to ensure that radon testing, mitigation and laboratory work is done by individuals and firms qualified to perform those services. The biennial Chapter 240 fees are also used to perform outreach and to make public service announcements that encourage homeowners to test for and mitigate radon contamination. At this time, however, the Chapter 240 fee revenue does not cover the Department's Radon Program costs. Without a fee increase, it will be difficult to provide effective quality assurance for the statewide radon program and the effectiveness of radon mitigation services. The proposed new Pennsylvania Radon Mitigation System Tag fee will help ensure quality of radon services in the state.

The Department would benefit from the proposed rulemaking by having the needed additional revenue to cover the costs of the programs mandated by the Radiation Protection Act and Radon Certification Act. The general public would benefit from the proposed rulemaking by the continued safety with the use of radioactive materials, and additional quality assurance that would be provided as well as

continued outreach and public service announcements regarding indoor radon that will be supported by the increased fees.

(11) 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 regulations.

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

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

The same categories of fees apply to radioactive materials licensees whether they are based in Pennsylvania, some other Agreement State, or a state regulated by NRC. The NRC's fee category designations have been adopted by the Department and other states. Some additional common fee categories from the NRC's fee tables in 10 CFR Part 170 and 171 (relating to fees for federal facilities, special nuclear materials, import and export licenses, and other regulatory services under the Atomic Energy Act of 1954, as amended; annual fees for reactor licenses and fuel cycle licenses and materials licenses, including holders of certificates of compliance, registrations, and quality assurance program approvals and government agencies licensed by the NRC) have not been added because the Department is not authorized to regulate such operations.

In terms of fee categories, 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. The fees are set to cover the Department's costs of implementing the programs as required by the Radiation Protection Act and are substantially lower than NRC's current fee schedule for non-Agreement States by about 50 percent. The professional hourly rate fee identified by the asterisk in Chapter 218, Appendix A, of the proposed rulemaking is increased from \$150 per hour to \$225 per hour—below the NRC's fiscal year 2007 hourly rate of \$265 per hour. Reduced Chapter 218 fees are available for small businesses. (See question 24).

Similarly, the proposed new Pennsylvania Radon Mitigation System Tag fee and the increase to the biennial Chapter 240 fees would not affect Pennsylvania's ability to compete with other states. Radon is a geographically-specific issue, and competition with other states is not a factor. Elevated indoor radon is a serious public health threat, and levels above the EPA's 4 picocuries per liter 'action level' have been detected in all 67 counties. Other states, such as Illinois, Iowa and New Jersey, implement similar radon mitigation tag fees as proposed with the new Pennsylvania Radon Mitigation System Tag.

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

No other Pennsylvania regulations would be affected.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department discussed the need for regulatory revisions with its Radiation Protection Advisory Committee (RPAC) on June 12, 2014, and presented the proposed Annex A to RPAC on October 16, 2014. At the October 16 meeting, RPAC endorsed moving forward with the proposed rulemaking.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

All radioactive material licensees and radon service providers in the Commonwealth would be affected. There are approximately 850 specific and general radioactive material licensees, and approximately 720 certified radon service providers. There are 65 radioactive material licensees that qualify as small businesses under the definitions currently in use by the NRC and the Department (see question 24 for further explanation). Examples of radioactive materials licensees include hospitals (license category 7C “Human Use-Specific License) and possessors of nuclear density gauges (license category 3P “Other Byproduct Material”). The Department estimates that all certified radon service providers are likely to be small businesses. There would be increases in fees of approximately 50 percent for certified radon service providers and licensees with one exception. The exception is for license category 2A(2)(c) – Source Material – metal extraction, which is proposed to be reduced by 50 percent. There is currently no licensee in the Commonwealth of Pennsylvania in the Source Material category, and regulatory oversight required for this license activity is significantly less than anticipated at the time this fee was established. The increases are in line with inflation and increased personnel costs and the increases are not unexpected.

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

(16) List the persons, groups or entities, including small businesses that will be required to comply with the regulation. Approximate the number that will be required to comply.

All radioactive material licensees and radon service providers in the Commonwealth would be affected. There are approximately 850 specific and general radioactive material licensees, and approximately 720 certified radon service providers. There are 65 radioactive material licensees that qualify as small businesses under the definitions currently in use by the NRC and the Department (see question 24 for further explanation).

There are roughly 8,000 to 10,000 new radon mitigation system activations in Pennsylvania each year, and approximately 132 mitigators performing them who would be affected by the proposed \$50 fee.

See question (15) for additional information.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

See response for (15) for the financial, economic and social impacts of the proposed rulemaking. The proposed rulemaking would provide benefits to the Department's radioactive materials and radon programs funding and to the citizens of Pennsylvania.

The proposed increased to the Chapter 218 fees would allow the Department to continue to implement existing programs while assuring adequate funding is available for the Commonwealth to carry out its duties under NRC's Agreement State program.

The proposed increased biennial Chapter 240 fees ensure that the Department would be able to exercise effective quality assurance over statewide radon data and the effectiveness of radon mitigation services. The proposed increased biennial Chapter 240 fees and proposed Pennsylvania Radon Mitigation System Tag fee would also be used to ensure that individuals and firms performing radon testing and remedial work are qualified to perform those services, and would support the Department's efforts to perform outreach and to make public service announcements that encourage homeowners to test for and mitigate radon contamination.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

All radioactive material licensees and radon service providers in the Commonwealth would be affected. With the exception of one license category identified in the response to (15), there would be increases in fees of approximately 50 percent for existing licensees and certified radon service providers. There would also be an additional charge of \$50 per radon mitigation performed as a result of the proposed requirement for a Pennsylvania Radon Mitigation System Tag.

The increased fees would allow the Department to maintain existing programs at current levels of operation. This includes enabling the Department to continue to fund personnel, purchase upgrades to obsolete survey equipment, and make investments in new personnel training.

The increases are in line with inflation and not unexpected. For radioactive material licensees, Pennsylvania's increased Chapter 218 fee would still be below the amount that would have been charged by the NRC had Pennsylvania not become an Agreement State.

The benefits outweigh any cost and adverse effect because the proposed increased to the Chapter 218 fees would allow the Department to continue to implement existing programs while assuring adequate funding is available for the Commonwealth to carry out its duties under NRC's Agreement State program.

Also, the proposed increased biennial Chapter 240 fees ensure that the Department would be able exercise effective quality assurance over statewide radon data and the effectiveness of radon mitigation services. Likewise, the proposed Pennsylvania Radon Mitigation System Tag requirement and corresponding fee would help assure the quality of radon services. The proposed increased biennial Chapter 240 fees and proposed Pennsylvania Radon Mitigation System Tag fee would also be used to ensure that individuals and firms performing radon testing and remedial work are qualified to perform those services, and to perform

outreach and to make public service announcements that encourage homeowners to test for and mitigate radon contamination.

(19) 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. Explain how the dollar estimates were derived.

Costs to the regulated community associated with this proposed rulemaking are the proposed increase of the Chapter 218 and biennial Chapter 240 fees and the proposed Pennsylvania Radon Mitigation System Tag fee.

There is no other compliance, legal, accounting, or consulting procedure costs or savings required by this proposed rulemaking.

The proposed Chapter 218 fees vary by type and complexity and were calculated to cover the Department's costs of implementing the programs as required by the Radiation Protection Act. The anticipated increase in cost to the regulated community is approximately 50 percent. Overall, the proposed rulemaking would increase Chapter 218 fees paid to the Department to approximately \$5,225,000 per year. The Department multiplied the number of entities that would be subject to the increased fees by the dollar amounts of the increased fees to derive the overall estimate.

The proposed increase in the biennial Chapter 240 fees for certification of radon testers, mitigators and laboratories is 50 percent. The increase in cost to the regulated community, as a whole, would be approximately \$150,000 every two years. The Department multiplied the number of entities that would be subject to the increased fees by the dollar amounts of the increased fees to derive the overall estimate. Each primary radon testing device or additional employee certified to perform radon services would increase the application fee by \$150 which is 50 percent of the base fee for a firm and individual. The proposed Pennsylvania Radon Mitigation System Tag and corresponding \$50 fee would apply to the roughly 8,000 to 10,000 new radon mitigation system activations in Pennsylvania each year. An average of \$400,000 in annual revenue would be generated based on 8,000 installations per year. Overall, the proposed rulemaking would increase Chapter 240 fees paid to the Department by about \$525,500 per year.

(20) Provide a specific estimate of the costs and/or savings to the local governments associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Fees for local governments that use licensed radioactive material would increase by the amount specified in the proposed rulemaking. Approximately six local governments would experience radioactive material license fee increases. The total increase in fees paid to the Department by local governments is less than \$5,000 per year. The Department multiplied the number of local governments that would be subject to the increased fees by the dollar amounts of the increased fees to derive the overall estimate.

The proposed increased biennial Chapter 240 fees do not apply directly to local governments because no local government holds a radon services certificate. However, local governments seeking radon services may be affected if the increased fee is passed on to the local government as a consumer of the service.

The proposed rulemaking would expressly waive the Pennsylvania Radon Mitigation System Tag fee for local government employees who install radon mitigation systems pursuant to their official duties.

There is no other compliance, legal, accounting, or consulting procedure costs or savings required by this proposed rulemaking.

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

Fees for Commonwealth agencies that use licensed radioactive material would increase by the amount specified in the proposed rulemaking. Approximately four (4) Commonwealth agencies would experience radioactive material license fee increases. The total increase in fees paid to the Department by Commonwealth agencies is \$8,500 per year. Thus, there would be a slight cost to the Commonwealth since the monies received from other state agencies as fees are deposited to the Department's Radiation Protection Fund and utilized by the Radiation Protection Program.

The proposed increased biennial Chapter 240 fees do not apply directly to Commonwealth agencies, because the Commonwealth does not hold any radon services certificate. However, Commonwealth agencies seeking radon services may be affected if the increased fee is passed on to the agency as a consumer of the service.

There is no other compliance, legal, accounting, or consulting procedure costs or savings required by this proposed rulemaking.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

There would be no additional reporting or other procedure required for the implementation of the proposed Chapter 218 fee amendments.

The proposed amendments to Chapter 240 would require the individual certified to mitigate radon to report to the Department the serial number of the proposed Pennsylvania Radon Mitigation System Tag affixed to a newly activated mitigation system. This would occur simultaneously with current reporting requirements under existing § 240.303.

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

Costs represent the difference between the current costs and the future costs (proposed rulemaking) assuming the proposed rulemaking takes effect in 2016.

	Current FY Year	FY +1 2016/2017	FY +2 2017/2018	FY +3 2018/2019	FY +4 2019/2020	FY +5 2020/2021
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	0	0	0	0	0	0
COSTS:						
Regulated Community	0	2,153,000	2,153,000	2,153,000	2,153,000	2,153,000
Local Government	0	4,530	4,530	4,530	4,530	4,530
State Government	0	8,500	8,500	8,500	8,500	8,500
Total Costs	0	2,166,030	2,166,030	2,166,030	2,166,030	2,166,030
REVENUE LOSSES:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY -3 2012/2013	FY -2 2013/2014	FY -1 2014/2015	Current FY 2015/2016
Radiation Protection Fund	\$10,460,000	\$11,113,000	\$11,018,000	\$14,109,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.**
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.**
- (c) A statement of probable effect on impacted small businesses.**
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.**

See response for (15).

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

No special provisions were developed. Reduced Chapter 218 fees are already available for small businesses that would be impacted by the increased fees in the proposed rulemaking.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The Department did not consider and reject any alternative regulatory provisions, as there are no effective regulatory alternatives.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) **The establishment of less stringent compliance or reporting requirements for small businesses;**
- b) **The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;**
- c) **The consolidation or simplification of compliance or reporting requirements for small businesses;**
- d) **The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and**
- e) **The exemption of small businesses from all or any part of the requirements contained in the regulation.**

Less stringent compliance and reporting requirements are not necessary because the compliance requirements in the proposed rulemaking are minimal. The reporting of the serial number of the proposed Pennsylvania Radon Mitigation System Tag by the individual certified to mitigate radon would occur simultaneously with current reporting requirements under existing § 240.303.

Less stringent schedules or deadlines for and the consolidation or simplification of compliance or reporting are not necessary because the compliance and reporting requirements in the proposed rulemaking are minimal.

The proposed rulemaking does not require design or operation standards.

Reduced Chapter 218 fees are already available for small businesses that would be affected by the increased fees in the proposed rulemaking.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data is the basis for this proposed rulemaking. The Department prepared the “Three-Year Regulatory Fee and Program Cost Analysis Report” (Report) to summarize the Department’s fee collections and program costs by functional area for the past three fiscal years and the next three projected years. The functional areas for purposes of this proposed rulemaking are grouped into three categories: Radiation-producing machines (i.e., Accelerator, X-ray, and Vendors/Service Providers); Radioactive Materials and Decommissioning; and Radon. The conclusion of the Report is that Radioactive Materials (Chapter 218 fees) and Radon (Chapter 240 fees) require an increase to cover program costs. A copy of the Report is included with the rulemaking package.

(29) Include a schedule for review of the regulation including:

- | | |
|---|------------------------|
| A. The date by which the agency must receive public comments: | <u>Quarter 3, 2016</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>Quarter 2, 2017</u> |
| D. The expected effective date of the final-form regulation: | <u>Quarter 2, 2017</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>Quarter 2, 2017</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

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.

**RADIATION PROTECTION PROGRAM
THREE-YEAR REGULATORY FEE AND PROGRAM COST ANALYSIS REPORT TO THE
ENVIRONMENTAL QUALITY BOARD**

The Department of Environmental Protection's (DEP or Department) Radiation Protection Program (RPP) was created under Act 147 of 1984 to "establish and maintain a comprehensive program of radiation protection in the Department of Environmental Resources." For this broad purpose the Department has the power to "collect fees necessary to fund any and all other acts not inconsistent with any provision of this act which it may deem necessary or proper for the effective enforcement of this act." The RPP includes the functions of both the Central Office Bureau of Radiation Protection (BRP) and the Regional Offices.

As required by 25 Pa. Code Section 218.11(i) and Chapter 240, Appendix A, DEP prepared a Three-Year Regulatory Fee and Program Cost Analysis Report (Report) for the period of 2015-2018, which was presented to Environmental Quality Board (EQB) in August 2014. The three program areas this cost analysis addresses are Accelerator, X-ray and Vendors/Service Providers; Radioactive Materials and Decommissioning; and Radon. The last fee increase for these program areas was effective in 2009.

For purposes of this proposed rulemaking, this Report was amended to project program costs through 2020-2021. Following is a summary of the RPP fee collections and program costs by functional area.

ACCELERATOR, X-RAY AND VENDORS/SERVICE PROVIDERS

BACKGROUND:

Through a staff of 108 located in the central and regional offices, the RPP's Radiation Control Division administers the X-ray machine registration and inspection program, the Mammography Quality Standards Act program, the particle accelerator licensing and inspection program and the vendor/service provider registration program.

X-ray Registration and Inspection Program:

The Radiation Control Division is responsible for the registration and inspection of over 11,000 facilities possessing over 33,000 X-ray units.

In order to ensure that patients, personnel and the environment are protected, that operators are properly trained, and radiation equipment and facilities meet current protection standards, the department has a goal to routinely inspect all facilities at least once every four years or as necessary to ascertain compliance or non-compliance with applicable regulations. Major facilities may be inspected every two to three years. Approximately 2,800 site inspections are conducted each year.

Users of radiation-producing machines are required to register with the division, indicate the number and type of units possessed, and designate an individual responsible for radiation safety. Users pay registration fees based on the type of facility and the number of X-ray units they have. The division

oversees the production and issuance of associated registration certificates, renewal letters, and invoices and the collection of initial and annual fees.

Mammography Quality Standards Act Activities:

The Federal Mammography Quality Standards Act (MQSA) was signed into law on Oct. 27, 1992. The MQSA ensures that the public receives high-quality mammography services for early breast cancer detection through the establishment of a federal certification and inspection program. The Act authorizes the U.S. Food and Drug Administration (USFDA) to obtain state and local assistance in enforcing the MQSA requirements, including annual inspections of all certified mammography facilities. DEP, under a \$405,000 reimbursement contract with the USFDA, conducts inspections of each of the state's more than 300 facilities which perform mammographic X-ray procedures. These inspections are conducted on a schedule prescribed by the USFDA. This schedule calls for a facility to be inspected once every 12 months.

Accelerator Licensing and Inspection:

The Commonwealth of Pennsylvania requires licensing of all particle accelerators within the state for industrial use, research, or medical purposes. A person who intends to purchase, construct or acquire an accelerator shall notify the department of this intent by filing the appropriate application for a specific license within 30 days after the initial order is issued to obtain any or all parts of the accelerator. There are 152 facilities that have licensed accelerators within the Commonwealth.

Vendor/Service Provider Registration:

The Commonwealth of Pennsylvania administers a registration program for vendors/service providers who sell, lease, install and/or service radiation-producing machines. The state regulations require that each vendor/service provider doing business within the Commonwealth must be registered prior to providing such services. To register, each vendor/service provider must complete a registration application and return that application with the associated fee to BRP. The registration is renewable for 12-month periods following submission of the applicable fee.

REVENUE TREND AND PROJECTION:

The combined revenue from these program areas has been relatively stable. It should be noted, however, that implementation costs are expected to continue to increase. This analysis assumes a three percent increase in all costs annually for future years.

RECOMMENDATION AND COMMENT:

The RPP has conducted a detailed fiscal analysis of these program areas. Based on current fee collections and existing available funds in these program areas, there is sufficient revenue to cover expenses beyond FY 2019-20. Therefore, no fee increase is recommended for these programs at this time.

Accelerator, X-ray and Vendors/Service Providers

	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Fee Collection*	\$4,295	\$4,333	\$4,254	\$4,261	\$4,261	\$4,261	\$4,261	\$4,261	\$4,261
Fines and Penalties*	\$88	\$203	\$132	\$125	\$125	\$125	\$125	\$125	\$125
Total Revenue*	\$4,383	\$4,536	\$4,386	\$4,386	\$4,386	\$4,386	\$4,386	\$4,386	\$4,386
Program Costs*	\$3,332	\$3,426	\$4,061	\$4,156	\$4,280	\$4,409	\$4,541	\$4,677	\$4,818

*In thousands of dollars.

RADIOACTIVE MATERIALS & DECOMMISSIONING

BACKGROUND:

DEP's Radiation Control Division is also responsible for the licensing and inspection of radioactive material and, along with the Decommissioning Section of the Decommissioning and Surveillance Division, is responsible for regulation of radioactive material (e.g., by-product, source, and special nuclear material).

Radioactive Material Licensing and Inspection:

Users of all by-product, source and special nuclear material are required to obtain a license from DEP prior to obtaining those radioactive materials. This material is used in hospitals, colleges and industries for medical, research and industrial purposes. The department issues specific, general and reciprocity licenses for the use of radioactive material. The objective of the licensing program is to ensure radioactive material is used safely, disposed of properly, and facilities are free from contamination when licensed operations are terminated.

Decommissioning:

The Decommissioning Section performs technical reviews of decontamination and decommissioning activities for radioactive materials licensees and non-licensed radiologically contaminated sites in accordance with appropriate state and federal regulations. Typical reviews include site characterization plans, health and safety plans, decommissioning plans, survey reports and the evaluation of decommissioning funding plans and financial assurance mechanisms. The Decommissioning Section also performs on-site reviews and inspections of decontamination and decommissioning activities for occupational, public and environmental radiation protection concerns. These activities include performing confirmatory surveys and sampling to ensure the cleanup levels established for the site have been met.

REVENUE TREND AND PROJECTION:

Fee collections for radioactive material licensing have been trending down since the national economic recession of 2008. Universities and industries that use radioactive material have been consolidating or finding other operational methods that do not require a license, and many licensees have opted to be licensed under a small business fee category at a lower cost, which is specified in Chapter 218, Appendix A.

Actual RPP personnel costs (salaries and benefits) have increased approximately 45% since the last fee increase in 2009, while fees have remained fixed. This analysis assumes a three percent increase in all costs annually for future years.

Work in the Decommissioning Program is driven by industry trends, federal funding, and ongoing discovery of contaminated sites. Most work performed by the Decommissioning program is subject to full cost recovery from the facility owner. Currently the DEP hourly rate charge for these activities is \$150. Costs of decommissioning activities at sites where no responsible party exists are paid from the Radiation Protection Fund.

RECOMMENDATION AND COMMENT:

The RPP has conducted a detailed fiscal analysis of these program areas. With one exception, this analysis indicates that a 50 percent fee increase for license categories in the Radioactive Materials and Decommissioning areas effective in FY 2016-17, combined with existing reserve funds in the program, will provide sufficient revenue through 2020-21. It is also recommended that the DEP hourly rate for decommissioning activities be increased by 50% to \$225.

The fee increase exception is for license category 2A(2)(c) – Source Material – metal extraction, which is proposed to be reduced by 50 percent. There is currently no licensee in the Commonwealth of Pennsylvania in this Source Material category. If a facility were to register under this source category, DEP oversight costs would be minimal.

As indicated in the following table, without the proposed fee increases, there will not be sufficient revenue to cover expenses beyond FY 2017-18.

Radioactive Materials Licensing

	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Fee Collection*	\$3,343	\$3,326	\$3,325	\$3,325	--	--	--	--	--
Fee Coll. with proposed 50% increase beginning in 2016-17*	--	--	--	--	\$4,987	\$4,987	\$4,987	\$4,987	\$4,987
Fines and Penalties*	\$88	\$204	\$133	\$125	\$125	\$125	\$125	\$125	\$125
Total Revenue*	\$3,431	\$3,530	\$3,458	\$3,450	\$5,112	\$5,112	\$5,112	\$5,112	\$5,112
Program Costs*	\$3,819	\$3,931	\$4,693	\$4,807	\$4,951	\$5,099	\$5,252	\$5,410	\$5,572

*In thousands of dollars.

RADON

BACKGROUND:

Pennsylvania has some of the highest indoor air radon levels in the country. According to EPA, radon is the second leading cause of lung cancer. The Department's Radon Program is one of the most robust in the nation and provides a variety of regulatory and public service activities. These activities include:

- Implementing the EPA State Indoor Radon Grant (SIRG) (e.g., education and outreach through public service announcements (PSAs), and free test kits to mothers of newborns).
- Certifying radon laboratories, mitigators and testers.
- Performing routine inspections of mitigation installations, mitigation offices, testing, and laboratory facilities.
- Performing blind testing on radon-detection devices.
- Providing diagnostic services to homeowners and requesting mitigators on difficult-to-remediate houses.
- Providing "Hot Spot" surveys in areas of high radon activity.
- Providing free confirmatory testing to homeowners who have installed active mitigation systems and to homes with radon levels greater than 100 pCi/L.
- Developing and maintaining databases for calculations, tracking data, and surveys; maintaining and configuring DEP databases with BIS for certification tracking.

- Providing a wide variety of public information services to increase awareness of the radon issue and encouraging testing and mitigation.
- Providing unbiased and expert advice on all aspects of radon to the general public.
- Performing radon-related research projects and contributing technical information to the radon industry.
- Serving on radon-related national committees.

REVENUE TREND AND PROJECTION:

The Department performs significant outreach and PSAs that stimulate homeowners to test and mitigate. This creates interdependency between outreach and revenue, allowing the program to maintain stability in certification fee revenue from radon laboratories, mitigators and testers. Historically, certification fee revenue has not covered Radon Program costs. Grant funding from the EPA SIRG provides some offset of administrative costs, but the program is still not self-sustaining.

The SIRG has been reduced in recent years to \$429,000 annually, which is utilized for staff salaries and benefits, PSAs, equipment and supplies, and home shows. It also provides funds to the American Lung Association for radon outreach. With tight federal budgets, the SIRG funding cannot be relied upon as a stable funding source; it could be reduced further or cease altogether at any time.

RECOMMENDATION AND COMMENT:

The RPP has conducted a detailed fiscal analysis of this program area. This analysis indicates that a 50 percent radon certification fee increase effective in FY 2016-17, together with a new Radon Mitigation System Tag fee of \$50 per installation, augmented by the existing fund balance, will provide sufficient funds to maintain the current Radon Program through FY 2020-21. There are approximately 8,000 to 10,000 new installations each year in Pennsylvania, and this analysis assumes 8,000 installations annually for future years. DEP believes that the Radon Mitigation System Tag fee is less economically burdensome than a higher certification fee on the many small businesses that perform lower volumes of radon mitigation work.

The following table provides revenue and program cost projections:

Radon Program

	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Fee Collection *	\$172	\$162	\$182	\$182	--	--	--	--	--
Fee Coll. with proposed 50% increase beginning in 2016-17*	--	--	--	--	\$273	\$273	\$273	\$273	\$273
Tag Fee**	--	--	--	--	\$400	\$400	\$400	\$400	\$400
Fines and Penalties*	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50
SIRG ***	\$463	\$482	\$429	\$429	\$429	\$429	\$429	\$429	\$429
Total Revenue*	\$685	\$694	\$661	\$661	\$1,152	\$1,152	\$1,152	\$1,152	\$1,152
Program Costs*	\$1,111	\$1,159	\$1,177	\$1,190	\$1,226	\$1,262	\$1,300	\$1,339	\$1,380

*In thousands of dollars.

**\$50 fee for each mitigation installation; approx. 8,000 installations per year.

***State Indoor Radon Grant (SIRG)

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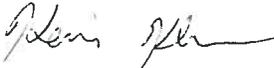
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Attorney General

By: 
(Deputy Attorney General)

5/20/16
DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and
correct copy of a document issued, prescribed or
promulgated by:

DEPARTMENT OF ENVIRONMENTAL
PROTECTION
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-498

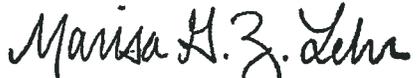
DATE OF ADOPTION APRIL 19, 2016

BY 

TITLE JOHN QUIGLEY
CHAIRMAN

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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BY 
5-06-2016
DATE OF APPROVAL

(Deputy General Counsel)
~~(Chief Counsel - Independent Agency)~~
(Strike inapplicable title)

Check if applicable. No Attorney General Approval
or objection within 30 days after submission.

NOTICE OF PROPOSED RULEMAKING

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD**

Radiological Health and Radon Certification Fees; and Pennsylvania Radon Mitigation System Tag

25 Pa. Code, Chapters 218 and 240

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

The Environmental Quality Board (Board) proposes to amend Chapter 218 (relating to fees) and Chapter 240 (relating to radon certification) to read as set forth in Annex A. The proposed amendments in Chapter 218 would increase the annual fees for radioactive material licenses and increase the hourly rate professional fee associated with certain full cost recovery licenses. The proposed amendments in Chapter 240 would increase the application fees for certification of radon services and add a new requirement and fee for a Pennsylvania Radon Mitigation System Tag for new mitigation systems installed.

This proposed rulemaking was adopted by the Board at its meeting on April 19, 2016.

A. Effective Date

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

B. Contact Persons

For further information, contact Joseph Melnic, Chief, Division of Radiation Control, P.O. Box 8469, Rachel Carson State Office Building, Harrisburg, PA 17105-8469, (717) 783-9730, or Keith Salador, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 783-8075. Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) Web site at www.dep.pa.gov (select Public Participation, then select eComment).

C. Statutory Authority

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

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

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

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

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

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

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

D. Background and Purpose

The Radiation Protection Act requires the Board to review the radiation protection fee structure every three years. On August 19, 2014, the Department presented its Three-Year Regulatory Fee and Program Cost Analysis Report (Report) to the Board. The Report indicated that, despite substantial increases in personnel and program costs, the Chapter 218 fees, which support the licensing and inspection of radioactive materials, and the Chapter 240 radon fees have not been revised since 2009. As a result, the Radiation Protection Fund is decreasing annually in operating reserves. Without a fee increase, the Department will be required to curtail spending for needed equipment, infrastructure upgrades, training and hiring of qualified personnel. This rulemaking addresses these problems by proposing to increase the Chapter 218 and 240 fees to meet Radiation Protection Act and Radon Certification Act requirements to adequately fund the licensing and inspection of radioactive materials and the certification of individuals who perform radon-related activities.

In March 2008, then-Governor Rendell signed an agreement with the Chairman of the U.S. Nuclear Regulatory Commission (NRC) for the Commonwealth to become an Agreement State. This allows the Commonwealth to oversee and regulate licensure of radioactive materials for Pennsylvania entities. These duties are funded through the Chapter 218 license fees and include registration and inspection of X-ray facilities, licensing and inspection of accelerators, registration of radiation-producing machine service providers and licensing and inspection of radioactive material users. As part of that Agreement, the Commonwealth committed to implementing a radiation protection program comparable to NRC's program and ensured that its regulations would be compatible with NRC regulations.

The proposed amendments to the Chapter 218 fees for radioactive material licenses are necessary to assure adequate funding is available for the Commonwealth to carry out its duties under the Agreement State program. There are approximately 850 licenses issued for radioactive material users that have associated annual fees. The professional hourly rate fee that supports required full cost recovery for unique services that cannot be standardized is an important component to the Chapter 218 fees. Examples of the professional hourly rate fee include the evaluation, inspection and licensing of high-energy accelerators and decommissioning activities at contaminated sites. If the Commonwealth was forced to cede its authority to regulate radioactive materials back to the NRC, the regulated community would experience higher costs per NRC's fee regulations.

The Chapter 240 fees collected biennially are used by DEP to ensure that contractors and firms performing radon testing and remedial work are qualified to perform those services. The Chapter 240 fees are also used to perform outreach and to provide public service announcements to encourage homeowners to test for and mitigate radon contamination. Currently, the Chapter 240 fee revenue does not fully cover the Department's Radon Program costs. Without a fee increase, it will be difficult to provide effective quality assurance for the statewide radon program, data reporting, and quality of radon mitigation. There are about 720 certified radon service providers that are subject to the certification fees.

All proposed amendments to the radiological health regulations in Chapters 215 through 240 are reviewed by the Department's Radiation Protection Advisory Committee (RPAC). The committee represents various stakeholders, including radioactive materials licensees and radon service providers, as well as the general public. The Department discussed the need for fee revisions to Chapters 218 and 240 with RPAC on June 12, 2014, and presented the draft proposed regulation to RPAC on October 16, 2014. At the October 16 meeting, RPAC endorsed moving forward with the proposed rulemaking.

E. Summary of Regulatory Requirements

The following discussion describes the proposed amendments.

Chapter 218 Appendix A - Fees for Radioactive Material Licenses

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

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

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

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

§ 240.3 Definitions

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

§ 240.303 Reporting of Information

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

§ 240.309 Pennsylvania Radon Mitigation System Tags

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

Chapter 240, Appendix A - Radon Certification Fee Schedule

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

F. Benefits, Costs and Compliance

Benefits

The proposed Chapter 218 fees for radioactive material licenses are necessary to ensure that adequate funding is available for the Commonwealth to carry out its duties under the Agreement State program and the Radiation Protection Act. If the Commonwealth was forced to cede its authority to regulate radioactive materials back to the NRC, the regulated community would be subject to higher NRC fees. Radioactive material controls under the Agreement State program guard against the potential for unnecessary public radiation exposure from the use of radioactive material. With regard to Chapter 240, the Radon Program ensures that the public receives services from qualified individuals when dealing with radon, the largest controllable source of unnecessary radiation exposure in Pennsylvania. The proposed Chapter 240 fee increases further that responsibility and will allow the Department to maintain a comprehensive database of radon

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

Compliance Costs

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

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

Compliance Assistance Plan

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

Paperwork Requirements

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

G. Pollution Prevention

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101-13109) established a national policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

The proposed rulemaking is designed to support the safe and effective use of licensed radioactive materials and promote proper radon testing and mitigation procedures to protect the health and safety of Pennsylvania residents. Failure to increase fees may have a direct effect on the Department's ability to implement radiological pollution prevention.

H. *Sunset Review*

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

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 16, 2016, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Department, the General Assembly and the Governor.

J. *Public Comments*

Interested persons are invited to submit written comments, suggestions, support or objections regarding the proposed rulemaking to the Board. Comments, suggestions, support or objections must be received by the Board by August 30, 2016. In addition to the submission of comments, interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by the Board by August 30, 2016. The one-page summary will be distributed to the Board and available publicly prior to the meeting when the final-form rulemaking will be considered.

Comments including the submission of a one-page summary of comments may be submitted to the Board online, by e-mail, by mail or express mail as follows.

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

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

If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

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

PATRICK MCDONNELL,
Acting Chairperson

PROPOSED RULEMAKING
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

APPENDIX A

Fees for Radioactive Material Licenses

<i>Fee Category^{5,6}</i>	<i>Description</i>	<i>Annual Fee (\$)^{1,2,3,4,7}</i>
1C	Special Nuclear Material Sealed Source Gauges (X-Ray Fluorescence)	[2,100] <u>3,150</u>
1D	Special Nuclear Material—Other	[5,800] <u>8,700</u>
2A(2)(c)	Source Material—metal extraction	[90,200] <u>45,100</u>
2A5	Removal of Radioactive Contaminants from Drinking Water	[11,200] <u>16,800</u>
2B	Source Material as Shielding	[750] <u>1,125</u>
2C	Source Material—Other (not 11e2)	[13,400] <u>20,100</u>
3A	Manufacturing & Distribution Commercial Broad Scope—10 CFR 30, 33	[29,100] <u>43,650</u>
3B	Manufacturing, Refurbishing & Distribution Commercial Specific License—10 CFR 30	[8,300] <u>12,450</u>
3C	Manufacturing & Distribution Pharmaceuticals—10 CFR 32.72—32.74	[11,900] <u>17,850</u>
3D	Pharmaceuticals— Distribution Only—10 CFR 32.7x	[6,800] <u>10,200</u>
3E	Irradiator—Shielded Source	[4,200] <u>6,300</u>
3F	Irradiator—Unshielded < 10kCi	[7,800] <u>11,700</u>
3G	Irradiator—Unshielded >= 10kCi	[31,200] <u>46,800</u>

3I	Distribution As Exempt—No Review of Device	[10,700] <u>16,050</u>
3J	Distribution—SSD Devices to Part 31 GLs	[2,500] <u>3,750</u>
3K	Distribution—No Review-Exempt Sealed Source	[1,900] <u>2,850</u>
3L	Research & Development Broad Scope	[15,100] <u>22,650</u>
3M	Research & Development	[5,600] <u>8,400</u>
3N	Services other than Leak Testing, Waste Disposal or Calibration	[8,500] <u>12,750</u>
3O	Radiography	[14,100] <u>21,150</u>
3P	Other Byproduct Material	[2,700] <u>4,050</u>
3Q	Generally licensed devices under § 217.143 (relating to certain measuring, gauging or controlling devices)	[320] <u>480</u>
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] <u>3,150</u>
3R2	Greater than ten times the General License Limits in 10 CFR 31.12(a)(3), (4) or (5)	[2,700] <u>4,050</u>
3S	Manufacturing & Distribution Pharmaceuticals—Accelerator Produced Only	[11,800] <u>17,700</u>
4A	Waste Storage, Processing or Disposal	Full Cost *
4B	Waste Packaging or Repackaging	[12,000] <u>18,000</u>
4C	Waste Receipt of Prepackaged for Disposal	[9,200] <u>13,800</u>
5A	Well Logging & Non Field Flood Tracers	[4,400] <u>6,600</u>
5B	Well Logging Field Flood Tracer Studies	Full Cost *
6A	Nuclear Laundry	[28,800] <u>43,200</u>
7A	Human Use—Teletherapy	[13,700] <u>20,550</u>
7B	Human Use—Broad Scope (except Teletherapy)	[29,000] <u>36,250</u>

7C	Human Use—Specific License (except Teletherapy)	[4,900] <u>7,350</u>
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] <u>3,150</u>
14	Decontamination, Decommissioning, Reclamation or Site Restoration	Full Cost *
16	Reciprocity (180 days/year)	[1,500] <u>2,250</u>
SB1 ⁵	Small Business— Category 1	[2,300] <u>3,450</u>
SB2 ⁶	Small Business— Category 2	[500] <u>750</u>

¹ 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.

² All fees will be effective upon publication of the final rules in the *Pennsylvania Bulletin*. Existing NARM licenses will be changed to the corresponding category of byproduct material license in Appendix A upon publication of the final rule.

³ 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).

⁴ 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.

⁵ 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.

⁶ 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.

⁷ 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**] **\$225** 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

§ 240.3. Definitions.

* * * * *

Active radon mitigation system—A radon mitigation system with an electric vent fan.

* * * * *

Passive radon mitigation system—A radon mitigation system without an electric vent fan.

* * * * *

Subchapter D. OPERATION REQUIREMENTS

Sec.

- 240.301. Advertising.
- 240.302. Notice to clients.
- 240.303. Reporting of information.
- 240.304. Quality assurance program.
- 240.305. Health and safety program.
- 240.306. Continuing education program.
- 240.307. EPA Radon Measurement Proficiency Program.
- 240.308. Testing and mitigation protocols.
- 240.309. Pennsylvania Radon Mitigation System Tag.**

* * * * *

§ 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 shall inform the Department of same in writing. Anyone required to provide this 45-day reporting who 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 must include:

- (1) The name of the person providing service.
- (2) The name and address of the owner or occupant of the building involved.
- (3) The address and location of the building involved, including street and number, post office, full zip code and county.
- (4) The end date of each measurement was taken, or the mitigation performed.
- (5) The type of house or building, the types of measurements, location within the building of specific measurements, and the results in picocuries per liter or in working levels.
- (6) The type and price of mitigation system installed.
- (7) The serial number of the Pennsylvania Radon Mitigation System Tag installed on the system.**

(b) * * *

(c) * * *

§ 240.309. Pennsylvania Radon Mitigation System Tag

(a) Upon activation of a new active radon mitigation system located in this Commonwealth or upon activation of a passive radon mitigation system located in this Commonwealth, the person conducting radon mitigation shall place a Pennsylvania Radon Mitigation System Tag on the vent pipe next to the manometer. If there is no visible vent pipe, the person conducting radon mitigation shall place the tag on the electric utility panel. The person conducting radon mitigation shall record the following information on the Pennsylvania Radon Mitigation System Tag:

- (1) The name, phone number, and certification number of the individual who is certified to mitigate. If the radon mitigation is conducted by a firm, the name, phone number, and certification number of the individual who is certified to mitigate radon and who is in responsible charge of the firm's mitigation activities shall be recorded.**

(2) The date of the radon mitigation system activation.

(b) Upon postmitigation testing of an active radon mitigation system, the person conducting the postmitigation radon testing shall record the end date of the postmitigation test on the Pennsylvania Radon Mitigation System Tag.

(c) A Pennsylvania Radon Mitigation System Tag must be purchased from the Department as set forth in Appendix A (relating to radon certification fee schedule).

(1) Only an individual who is certified to mitigate radon may purchase a Pennsylvania Radon Mitigation System Tag from the Department.

(2) A Pennsylvania Radon Mitigation System Tag may only be transferred with prior written approval from the Department.

(d) The Department will assign each Pennsylvania Radon Mitigation System Tag a unique serial number.

* * * * *

APPENDIX A

Radon Certification Fee Schedule

Testing Individual	[\$350] <u>\$525</u> every 2 years
Testing Employee	[\$100] <u>\$150</u> every 2 years
Testing Firm	[\$700] <u>\$1050</u> every 2 years
Mitigation Individual	[\$300] <u>\$450</u> every 2 years
Mitigation Firm	[\$700] <u>\$1050</u> every 2 years
Laboratory Individual	[\$400] <u>\$600</u> every 2 years
Laboratory Firm	[\$750] <u>\$1125</u> every 2 years
Primary Testing Device Listing	[\$100] <u>\$150</u> every 2 years (1)
Course Provider	[\$375] <u>\$565</u> every 2 years (2)
Late Application Renewal	[\$100] <u>\$150</u>
Late 45-Day Reporting	[\$100] <u>\$150</u> (3)
<u>Pennsylvania Radon Mitigation System Tag</u>	<u>\$50 per tag</u> (4)

The Department will review the adequacy of the fees established in this schedule at least once every 3 years and provide a written report to the EQB. The report must identify any disparity between the amount of program income generated by the fees and the costs to administer these

programs, and must contain recommendations to increase fees to eliminate the disparity, including recommendations for regulatory amendments to increase program fees.

(1) Primary radon testers shall submit the Primary Testing Device Fee as specified in the Radon Certification Fee Schedule for each device they read or analyze, or both.

(2) A person approved by the Department to provide initial or continuing, or both, education courses shall submit the Course Provider Fee as specified in this appendix.

(3) Anyone not submitting the required 45-day testing or mitigation, or both, reporting within 90 days of the completion of the testing or mitigation, or both, activity (or if no activities have been performed during this period of informing the Department of same in writing) will be subject to the Late 45-Day Reporting Fee as specified in this appendix.

(4) Pennsylvania Radon Mitigation System Tags must be purchased in amounts of 5 or more per transaction. The Department will waive the fee for a local government employee or school employee who installs an active radon mitigation system in a school or local government building or activates a passive radon mitigation system in a school or local government building if the employee installs or activates the system pursuant to his official duties and the employee is not compensated for this service except through the employee's salary.

June 16, 2016

David Sumner
Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17120

Re: Proposed Rulemaking: Radiological Health and Radon Certification Fees; and
Pennsylvania Radon Mitigation System Tag (#7-498)

Dear Mr. Sumner:

Pursuant to Section 5(a) of the Regulatory Review Act, please find enclosed a copy of a proposed regulation for review and comment by the Independent Regulatory Review Commission (Commission). This proposal is scheduled for publication in the *Pennsylvania Bulletin* on July 2, 2016 with a 60-day public comment period. The Environmental Quality Board (EQB) adopted this proposal on April 19, 2016.

The enclosed proposed rulemaking would revise fees associated with the licensing and certification activities regulated by the Department of Environmental Protection's (DEP) Radiation Protection Program. The Radiation Protection Act (RPA), 35 P.S. §§ 7110.101-7110.703, requires the EQB to establish fees in amounts at least sufficient to cover the costs of the radiation protection programs mandated by the RPA. The Radon Certification Act (RCA), 63 P.S. §§ 2001-2014, requires DEP to establish fees to cover the costs of the certification programs established by the RCA. The proposed rulemaking would also add a requirement for use of a Pennsylvania Radon Mitigation System Tag, with a corresponding fee, for mitigation system installations to ensure the quality of radon services.

With one exception, the proposed rulemaking would increase the Chapter 218 and 240 fees to meet RPA and RCA requirements to adequately fund the licensing and inspection of radioactive materials, and the certification of individuals who perform radon-related activities. The exception is for license category 2A(2)(c) – Source Material – metal extraction, which is proposed to be reduced. There is currently no licensee in Pennsylvania in the Source Material category.

The proposed fee increases are independent of the recent nuclear power plant fees increase that was implemented as a result of legislative revisions to the RPA in 2014. Those fees cover costs related to nuclear safety, radiological emergency response and environmental surveillance program areas. Despite increases in program costs, the Chapter 218 fees (which support the licensing and inspection of radioactive materials) and the Chapter 240 radon fees have not been revised since 2009. As a result, the Radiation Protection Fund is decreasing annually in

operating reserves. Without a fee increase, DEP will be required to curtail spending for needed equipment, infrastructure upgrades, training and hiring of qualified personnel in Fiscal Year 2018/2019.

All Pennsylvania radioactive material licensees and radon testers and mitigators will be required to comply with this proposed rulemaking. There are approximately 850 specific and general licensees and approximately 720 radon certificate holders.

For radioactive material licensees, Pennsylvania's increased Chapter 218 fee would still be below the amount that would have been charged by the NRC had Pennsylvania not become an Agreement State. For the increased radon fees and new tag fee, these costs would ultimately be borne by the homeowner who decides to test and/or mitigate radon contamination. This increase would be a small percentage of the total cost of radon testing and mitigation.

DEP presented its Three-Year Regulatory Fee Program Cost Analysis Report to the EQB on August 19, 2014 and presented the report as well as the proposed Annex A to the Radiation Protection Advisory Committee (RPAC) on October 16, 2014, for discussion. RPAC endorsed moving forward with the proposed rulemaking.

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 made by the Commission, as well as the Committees and public commentators, prior to final adoption of this rulemaking.

Please contact me by e-mail at ledinger@pa.gov or by telephone at 717.783.8727 if you have any questions or need additional information.

Sincerely,



Laura Edinger
Regulatory Coordinator

Enclosures

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

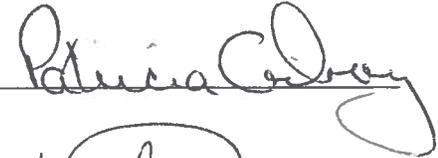
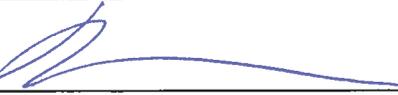
I.D. NUMBER: 7-498 *Radiological Health and Radon Certification Fees and*
 SUBJECT: *Pennsylvania Radon Mitigation System Tag*
 AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
6-16-16		Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY <i>Representative John Maher</i>
6-16-16		Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY <i>Representative Greg Vitali</i>
6-16-16		Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY <i>Senator Gene Yaw</i>
6/14/16		Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY <i>Senator John Yudichak</i>
6/15/16		INDEPENDENT REGULATORY REVIEW COMMISSION <i>David Sumner</i>
		ATTORNEY GENERAL (for Final Omitted only)
6.16.16		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

