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re: Comments on Proposed Rulemaking, 25 PA Code Chapter 240

Gentlemen:

The following are comments on the proposed rulemaking relative to Chapter 240, Radon Certification. Thank you for your consideration of these comments. One of my main concerns is that the Radon Section has inserted itself into what are business decisions that should be made solely by the company. They have done this without any justification.

Comments On Proposed PA DEP Revision of Chapter 240 – Radon Certification

Effective date – Regulations normally have an effective date of so many days following publication to allow the affected community time to make changes. Why is this effective upon publishing? Does that mean the DEP has no intention of changing it's proposed regulations. That appears to be making a joke of the whole process of publishing proposed regulations for comment.

General radon– We are often asked to bid on large jobs (schools, nursing homes, condos, etc. where the client specifies the number of tests. We provide two bids: one for the number of tests specified in the specs, and two for what would meet EPA criteria, explaining that this is what is required. If the client specifically wants us to only test what was specified, are you saying we cannot test the number of locations specified on the purchase order? This is another form of interference in a legitimate business decision between a client and a provider of a service, where the client specifies what they want, knowing what the DEP requirements are.

240.2(a)(4) – It adds, "Department approved." The Radon Section is attempting to control research. There is no reason they should have to approve research as long as the conditions in the original wording are satisfied. The Department has not provided justification as to why this is necessary. The original wording should remain.

240.2(a)(4)(ii) – The results may very well be valid. Validity is a function of accuracy. The original wording, that the results ".. are not certified." Should remain.

240.2(a)(5) –(1) Does this mean a real estate agent who buys and gives out, but does not place or retrieve secondary devices is exempt from the regulations? (2) Does this mean a home inspector placing and retrieving secondary devices and getting the lab's report is not exempt?

240.2(a)(5)(ii) – The dictionary defines purvey as to provide or supply, as in sell. What are you really trying to say? This section seems confusing.

240.3 – ALARA – If the Radon Section wants to define ALARA, they should further refine "economic considerations." The US NRC uses $1000 per person-rem. Does the DEP subscribe to this same evaluation criteria? And if not, what is their economic criteria? It should be stated in the regulations.

240.3 Measurement – Your definition appears to exclude actual test results in a structure. Is this your intent?

240.101(b), 240.102(b), 240.121(b), and 240.122(b) – The change in language seems to prohibit having more than one certified individual, which was clearly permissible in the old regulations. A business may want to have more than one certified individual for various reasons, such as, someone planning to retire, numerous testers being supervised by more than one certified individual, the certified person may be sick and die, in which case the company is out of business until another person is certified by the DEP, or, if the certified person is planning to retire and the company attempts to have someone certified while the first employee is still present so that experience can be transferred – this would not be permitted. There is no valid reason why "at least" should be deleted. The Radon Section is getting into business decisions that do not impact on the purpose of these regulations. The wording, "at least one person certified to test" should be retained or added to all four sections.

240.102(b)(2) also 240.122(b)(2) – Why can a certified individual not also be a firm employee? I am the certified individual and also an employee of my company! Again, the Radon Section is micromanaging on business decisions that have no impact on the purpose of these regulations, without any justification. If you are a corporation and not an employee, you are not covered under many insurance policies.

240.102(b)(4) – There is absolutely no justification for this. This is strictly a business decision and no concern of the Radon Section as to how many employees a company hires. This section should be deleted.

240.103(a)(3) also 240.123(a)(3) – Why is the date of birth needed? Again, the Radon Section is trying to interfere with a company's business decisions without any justification. If the Radon Section is concerned that minor's are attempting to obtain employment, simply state that no one under 18 years of age may work in this field. Why can't a 16 or 17 year old work part time as a lab technician analyzing charcoal? I certainly hope they are not trying to set a maximum age. There are Federal laws that prohibit age discrimination.

240.122(b) – The work experience should be spelled out. This would prevent the Radon Section from making up the requirements at their whim. It appears the Radon Section wants to tie everything down as it applies to the radon testing and mitigation industry but doesn't like to be tied down so that they are forced to follow strict requirements.

240.303(3) – "If a secondary tester…" Which certified individual – the secondary tester or the certified individual of the laboratory? This should be clearly spelled out.

240.305 – This appears to indicate that only mitigators have to evaluate the radon exposure, as it should be since it is extremely unlikely that any tester would exceed 1, let alone 4 WLM/year. Is that the case?

240.306 – What does the last sentence mean? If a person is certified as both a tester and a laboratory, are 16 or 32 hours required?

240.309(a)(4)(iv)(G) – Testing companies have no control over whether the mitigation system is operating or not, and we are typically under a time limit to test. If the system is not operating, it will usually result in an elevated measurement, thereby requiring additional remedial action or, at least having the person responsible for the house turning it back on. We are there to test under current conditions.

240.309(a)(4)(viii) – In many cases in real estate transactions, the property is vacant and we are retained by a third party national organization in another state, by a home inspector, or by a real estate agent. We have no control over whether the instructions are given to the person controlling the building. The sentence should end with, "… control the building."

240.309(a)(6)(i) – "…secured against movement..." You cannot secure something against movement! The most you can do is employ an anti-tampering device that shown the device was moved. Most homeowners do not like driving nails and screws into their furniture. And even that does not secure it from movement unless you nail the furniture to the floor. The sentence should be rewritten to reflect reality.

240.309(a)(6)(iv) – What if the building owner refuses to have these notices posted – what do we do?

240.309(b)(1)(vi) also 240.309(b)(2)(vi) – Does this apply to charcoal canisters with respect to the manufacturer and model? The manufacturer and model of the radon canister is of minimal interest to the client, especially if only one type of canister is used.

240.309(b)(1)(xiii) – "…severe weather conditions" needs to be defined.

240.309(b)(2)(v and viii) – As an analyzing lab, we can only provide the information back to the client if the client provides the information to us. Some clients want to keep some of this information private for legal reasons.

Thank you for the opportunity to provide these comments.

Sincerely,

A La Mastra

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