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June 22, 17

Mr. David J. Allard, CHP, Director
Bureau of Radiation Protection
Environmental Quality Board
Rachel Carson State Office Building
16th Floor, 400 Market Street
Harrisburg, PA 17101-2301

RE: Proposed Rulemaking Notice: Radiological Health Regulations Chapter 240

Dear Mr. Allard,

As President of SWAT Environmental of Pennsylvania, I respectfully submit feedback and commentary on the proposed changes to the regulations concerning Radon Certification, Chapter 240. In addition, herein I have posed 4 questions that I request the EQB respond to specifically.

Scope

Paragraph 240.2 a (2) limits the scope of the department's oversight of radon practitioners and systems. Specifically, it provides an exception for new construction from conforming to the RMS. This exception would seem to be in direct violation of enabling ACT 147. Section 102 of the Radiation Protection Act of July 10, 1984 states:

*"The General Assembly hereby determines, declares and finds that, since radiation exposure has the potential for causing undesirable health effects, **the citizens of the Commonwealth should be protected from unnecessary and harmful exposure resulting from use of radioactive materials, radiation sources, accidents involving nuclear power and radioactive material transportation.**"*

The Act does not instruct the department to only protect citizens who are living in existing homes and fail to protect citizens living in newly constructed homes.

It is the case that major home construction companies install passive radon piping in many of the homes built throughout Pennsylvania. It is also the case that certified mitigation professionals regularly encounter passive piping installed by unskilled and untrained tradesmen that fails to function. This was found REPEATEDLY in the neighborhood in Center Valley that received much publicity for exhibiting the highest

residential radon levels ever recorded. Properly installed and functioning passive systems would have provided some degree of protection for these homeowners.

Thus the department is failing to protect the citizens of the state from exactly the behavior the statute was designed to prevent.

Question 1: Why don't citizens who buy new homes have the same protections as existing homeowners, namely, protection against radon systems that are installed by unlicensed mitigators and don't meet national or PA-DEP standards?

Question 2: How does the department reconcile its un-equal protection of PA citizens with the enabling statutory language reproduced above?

FIRM Size Limitation

Paragraph 250.112 (b)(5) stipulates that any mitigation FIRM can have no more than 5 employees. This is overly restrictive and arguably beyond the scope of the statute's intent. Limiting the size of a given business enterprise would seem to exceed the authority of the department.

Question 3. How are the citizens of the state better protected by limiting the size of a mitigation business enterprise given the ongoing obligation of the FIRM's certified individual to insure regulatory compliance ?

FIRM Employee Training

Paragraph 250.112 (b)(6)(iii) stipulates that any mitigation FIRM employee must provide "*Proof of passing a Department-approved course on radon mitigation or passing a Department-approved mitigation exam.*"

The FIRM structure is often utilized for mitigation "helpers" and apprentices. If the course is relatively basic and introductory, then it is most appropriate. In this case I endorse the department's change.

If however, the full radon mitigation certification course/exam must be completed, then this is a very expensive and unnecessary burden. The department needs to clarify its intentions.

Question 4. What training course/exam will the department require for new radon mitigation FIRM employees? Does it exist yet?

Warrantless Searches

Paragraph 240.203(2) stipulates, "*The certified person shall allow the Department, its agents and employees, without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay, to have access to the person's facilities, offices and files for inspection and examination of records.*"

This clause in the rulemaking document would seem to be based on section 305 of the Radiation Protection Act of July 10. In this section the ACT is clearly concerned with

radiation sources. Since radon mitigators and testers do not use such sources, it would seem to be inappropriate to maintain such an invasive policy. It would be more appropriate to specify a notification period. Note that the ACT does provide for the department to secure a search warrant should probable cause exist. That should be the mechanism for "surprise" searches.

Conclusion

The Commonwealth of Pennsylvania has one of the highest levels of citizen awareness in the country when it comes to radon. Most real estate transactions involve radon testing, and, if necessary, mitigation.

This document has highlighted several issues. In particular department needs to look very closely at the validity of providing un-equal protection to the citizens of the state based on the vintage of their home. This would seem to be in violation of the enabling language of ACT 147.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Aaron L. Fisher", with a stylized, flowing script.

Aaron L. Fisher
President and Owner
SWAT Environmental of Pennsylvania