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COMMENTS: RE: Proposed Rulemaking Notice: Radiological Health Regulations Chapter 240

Although not included with these proposed regulations, I strongly and respectfully recommend that the PA DEP Radon Section consider adopting the ANSI AARST standards in radon measurements and radon mitigation. Some of the PA DEP Radon Section staff participated on the standards committees, along with many other states radon programs and the EPA regions. The current standards being used, especially for radon mitigation are antiquated and have not been revised in years. The adoption of these ANSI standards would ensure Pennsylvania citizens are getting the most "current best practices" for measurement and mitigation services for second leading cause of lung cancer. The ultimate prime directive is to reduce risk, save lives and provide the professional and technical current services to all Pennsylvania citizens, workers and families. This shows that the Pennsylvania Radon Program is aligned with the current national radon standards.

Although not in the regulations: It is respectfully recommended that the PA DEP Radon Section consider requiring builders performing new construction of homes with RRNC, to at a minimum, follow the ANSI AARST RRNC standards for all new construction. The builders and responsible subcontractors would sign a statement that they have installed RRNC in accordance to the ANSI RRNC standards, or use a properly qualified and certified radon mitigator to perform the RRNC installation. The RRNC, even if installed by the builder and their associated subcontractors would have a qualified-certified AARST RRNC designated radon mitigator to inspect and sign off on all RRNC design and installations. There is already verified evidence of incorrectly installed RRNC and active ASD systems in newly constructed homes. This would ensure that homebuyers and their families are truly getting the protection against the second leading cause of lung cancer. It could even be considered as part of the occupancy requirement for new construction. Another path would be to provide a specified training and certification program for builders. Initially, it could be voluntary. This would be critical in high zone 1 radon counties. This is the real substance and "standard of care" in meeting ALARA and protection of the public and new construction.

Proposed amendments to § 240.102

Proposed amendments codify the limit on number of testing firm employees to a maximum of five to ensure adequate responsible charge by the certified individual.

This limit of 5 employees is arbitrary. There is no supporting data, papers or labor performance studies in coming up with the limit of 5 persons either for testing or mitigation. It is the responsibility of the certified radon testing individual and/or owner to ensure that all persons, whether 1, 2, 5, 10 or 20 adhere to PA DEP radon regulations, company approved quality assurance and sop program, including the EPA and AARST ANSI standards. If I have 20 radon testers working for me as the certified and responsible person, and I ensure through proper personnel training, structural management, internal communication systems, and QA/QC procedures and internal audits, then I should be able to properly monitor my people with good business and QA/QC practices. Why the limit of 5? Why not 3? Why 15? This is viewed as a restriction on business and on business growth. PA DEP should show the studies and data supporting the limit of 5 persons-firm employees or eliminate this unduly restrictive and unsupported number limit of firm employees (both radon testing and radon mitigation). There are hospitals and facilities with more than 5 X-Ray machines, can you limit them to only 5 persons running 5 machines, because you are concerned about if they have the mental and organization and performance base capabilities? PA DEP has decided that they are going to restrict your business growth, because they do not trust you to have more than 5 firm employees. Where did that 5 firm persons limit come from? There are large air conditioning HVAC companies with hundreds of technicians performing HVAC business services with no lessening or failure of management and quality in the execution of their business. Surely, it is not because of the immense complexity of doing HVAC installations, both residential and commercial. What about all of the technicians and repair men and women working for a cable or phone company. The complexity of their business is no less more complex than the radon business. They have 100s of technicians performing services with no threat to the public or system installations. What if there was a medical office that performed knee replacements with 10 doctors and 20 supporting personnel, then should they also be restricted to 5 doctors and 5 supporting persons? What about a large builder with 100 employees building homes? You cannot tell me that building a house is less complicated than the installation of a radon mitigation system or testing 10 schools in a school district. If this 5 firm person regulation for the targeted radon industry was challenged legally, the regulation would be overturned as "burdensome to the radon industry", a restriction of business growth and no supporting evidence. **THE WHOLE RULE STATEMENT SHOULD BE REMOVED.** THERE SHOULD BE NO PERSONNEL FIRM EMPLOYEE LIMIT. GOOD INTENTIONS AND CONCERNS BY THE PA DEP ARE NICE, BUT NOT WHEN THEY ARE PREVENTING CAPABLE, PROFESSIONAL COMPANIES FROM GROWING AND PERFORMING RADON SERVICES, WITH AN ARBITRARY NUMBER WITH NO SUPPORTING METRICS. IF THERE IS VIOLATION OR A FAILURE OF SERVICE IN THE PERFORMANCE OF RADON MEASUREMENTS OR MITIGATION WITH SAY, 20 FIRM PERSONS UNDER ONE CERTIFIED PERSON (RESPONSIBLE), THEN THE DESIGNATED CERTIFIED PERSON AND/OR OWNER TAKES RESPONSIBILITY, CONSEQUENCES AND PROPER ACTIONS TO CORRECT AND ENSURE THAT QUALITY AND VALID SERVICES ARE PROVIDED FOR THE PUBLIC AND THEIR CLIENTS. THAT IS PRIME DIRECTIVE OF ANY GROWING BUSINESS. THE RADON INDUSTRY IS NO DIFFERENT IN THAT PURSUIT.

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."

The radon industry, both radon testers and radon mitigators do not use or have possession of radioactive sources. There are radon measurement systems that do have radioactive check sources, but the majority, more than 99% of the radon industry do use these instruments. Some charcoal canister laboratories and radon chambers may have radioactive sources, but again, the majority of the radon industry does not. It seems, the standard audit process and violation process the PA DEP Radon Section has followed in notifying radon testing and mitigation firms should stay in place. There is no need for the PA DEP to draw a warrant to enter unannounced into a radon services firm. There is no threat to the public or surround environmental resources. THIS REGULATION SHOULD BE COMPLETELY REMOVED. The process of violations, audits and enforcement are very well defined already. This regulation is considered an extreme, unduly, and overbearing exercise of power. There is no threat to the public or danger to the environmental resources. This regulation borders on the violation of the 14th Amendment.

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.”*

I considered this proposed regulation unrealistic, burdensome, and a real threat to the radon mitigation industry business.

1. It is agreed that every mitigation installer worker should have proper training, including the safe operation of all equipment, proper use of PPE, OSHA health and safety practices, OSHA SDS education/awareness, and general education of radon risk and causal mechanics the radon lung cancer risk. This can be done in a 4-8 hour training and repeating training every 6 months. This course be NRPP approved and thus PA DEP approved. Each worker would provide signature of attendance, just like they do in the nuclear power industry.
2. Training every worker taking the full 3-5 day radon training provided by radon regional training centers and then each worker taking the exam and passing it is unnecessary.
3. The radon worker, radon gopher does not do radon design or select the fan size or determine the proper air flow. That is done by the certified radon mitigation “responsible person”. The radon mitigation worker(s) will core holes in the floor, dig out the appropriate amount dirt and rock for suction pit. They will cut PVC pipe, put together and route the pipe as directed. You do not need a full 3 day training course and passing exam to properly do these actions.
4. This would any radon mitigator with firm employee workers to invest huge amount of money into their personnel that is not needed. What would stop the that worker that was sent to the a 3-5 day training course and supporting costs (hotel, meals, transportation) from deciding to quit and start his own company? Nothing. Even non-compete agreements that a mitigation firm owner would have a worker sign are not really binding. This would be considered a major threat to his business to train all workers to the level of a PA DEP certified mitigation person. This goes against basic business principles.
5. This regulation is anti-business.
6. What about the radon mitigation company secretary? She or he is a firm employee. Would they also need to be fully trained and pass an exam?

Proposed amendments to § 240.113

(relating to radon mitigation application contents) clarify language, add identification photograph and date of birth to the application requirements to ensure proper identity tracking of the mitigators, and add the requirement to notify the Department of any changes to the application within 10 days of each change to ensure compliance with the requirement to perform all radon activities in accordance with the application.

COMMENT: First all notifications to the PA DEP should be 10 business days. This is more realistic and manageable for the radon firms with employees. An employee may leave during a Friday or holiday. With the leaving or hiring of employees, many times there are background checks, exit interviews, or even negotiation or discussion of employees returning. 10 business days give enough time for these sometimes emotional processes to occur.

1. The question comes up why is the date of birth required? PA DEP does not require it for the certified radon tester or the certified radon mitigator or the radon firm testing employees.
2. It is the responsibility of the radon mitigation firm to track their employees, including their WLM tracking, with an individual employee file.
3. If you are tracking the mitigators, why not track the radon testers. Each of these trained persons enters into homes and buildings. Where is security differential? There is none.
4. How is the PA DEP going to use the birth date, without the social security number?
5. The PA DEP needs to provide viable supporting logistics to request this information.
6. This regulation is inconsistent and discriminatory, besides being invasive.
7. It should be totally removed.