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Environmental Quality Board June 25, 2017
Rachel Carson State Office Building
16th floor
400 Market Street
Harrisburg, PA 17101-2301
Comments on Proposed Rulemaking, 25 PA Code Chapter 240

Comments Submitted by:

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Owner: Radon Detection & Control, a Radon Services Company serving Western Pennsylvania.
Member of: Radon Industry Assistance Sub-Committee to Radiation Protection Advisory Committee (Chairman Dr. Paul Houle RPAC Representative)
Chairperson AARST ANSI Radon Mitigation Standard for Multifamily Buildings
Member AARST ANSI Radon Mitigation Standard for Schools and Large Buildings
National Board Member AARST / NRPP
Pennsylvania Board Member AARST
Midwest Universities Radon Consortium (MURC) Instructor

The Proposed Amendments to the Regulations as Written:

"Proposed amendments to § 240.111 (relating to requirements for radon mitigation certification) clarify that a certified firm may only have one certified individual in responsible charge of a firm at a time to ensure clear lines of responsibility for accountability. Proposed amendments also clarify that prior to performing radon mitigation activities a person shall obtain either a radon mitigation individual certification or Department listing as an employee of a mitigation firm."

"Proposed amendments to § 240.112 (relating to prerequisites for radon mitigation certification) clarify this section, adding that it is the firm owner and the certified individual's responsibility to notify the Department of the loss of the certified individual. Proposed amendments codify the limit on the number of mitigation firm employees to a maximum of five to ensure adequate responsible charge by the certified individual. Proposed amendments specify the requirements for mitigation firm employee applications to include a completed application form, an identification card photograph and proof of passing an approved exam or course"

Comments:

So, the proposed regulations require that:

"a certified firm may only have one certified individual in responsible charge of a firm at a time" and "codify the limit on the number of mitigation firm employees to a maximum of five"

I strenuously object to this regulation.

The proposed regulation precisely as written, and as explained by the PADEP Radon Division, limits the size of a Radon Mitigation Company to six people and restricts five of the mitigation employees from full Certification. If more than 6 individuals, a Mitigation Company must be divided into two independent, self-governing Companies. (these are separate Companies not a ratio of Certified to General Workers in a Company) It is apparent that this is unworkable.

A Company with 12 mitigation individuals, must divide into 2 companies with 2 Certified Individuals. Neither Certified Individual is permitted to direct any activities of the other Certified Company's workers. This means a large project (School, Hospital, Church, Multifamily) that requires more than 5 or 6 installers must be done by 2 independent companies. This is unworkable even before accounting for illness, vacations, other commitments, etc. If any of the

Companies employees miss work, they cannot be replaced by the other Company's Workers. If a Certified individual is absent for a time the other Certified Individual cannot direct both sets of Individuals.

I have experience with the rule, our Company was placed under this directive and was fined for noncompliance. The 6-person-company directive has created a series of complications and caused added costs and difficulties in meeting our commitments.

Our mission is to reduce naturally occurring radiation in homes and buildings but this has entangled us with compliance complications. We have 4 Certified Individuals and 3 eligible (NRPP Tests passed and substantial experience). We would like to Certify all and organize them as distinctive department heads. Not only is the regulation unworkable but per our legal advisors may also be unconstitutional. We did not have the will or the money to fight this.

The intent to provide an organizational structure to Radon Mitigation Companies, balancing Certified to Listed Individuals is commendable but as written, these Regulations are unnecessarily, unworkable. Arbitrarily breaking up Companies in this manner is a Restraint of Trade.

The Proposed Amendments to the Regulations as Written:

"Proposed amendments to § 240.112 (relating to prerequisites for radon mitigation certification) clarify this section, adding that it is the firm owner and the certified individual's responsibility to notify the Department of the loss of the certified individual. Proposed amendments codify the limit on the number of mitigation firm employees to a maximum of five to ensure adequate responsible charge by the certified individual. Proposed amendments specify the requirements for mitigation firm employee applications to include a completed application form, an identification card photograph and proof of passing an approved exam or course"

Comments:

So, the proposed regulations require that:

"Mitigation Firm Employee applications ... include... proof of passing an approved exam or course"

Since this regulation has changed for Mitigation Firm Employees, shouldn't there be more information on the newly required "exam or test".

General Comment on the Proposed Amendments to the Regulations:

All deadlines should be at least 10 days and delineated as working days.

The Proposed Amendments to the Regulations as Written:

"215.12. Inspections and investigations.

(b) *Rights of the Department.* The Department and its agents and employees will:

- (1) Have access to, and require the production of, books, papers, documents and other records and physical evidence pertinent to a matter under investigation.
- (2) Require a registrant or licensee to make reports and furnish information as the Department may prescribe.
- (3) Enter the premises of a licensee or registrant for the purpose of making an investigation or inspection of radiation sources and the premises and facilities where radiation sources are used or stored, necessary to ascertain the compliance or noncompliance with the act and this chapter and to protect health, safety and the environment."

Comments:

So, the regulations allow the Department access to home, workplace or other premises.

“The Department and its agents and employees will... Enter the premises of a licensee or registrant for the purpose of making an investigation...”

Radon Companies are reducing naturally occurring radiation levels in homes but do not use devices that incorporate radioactive sources such as other Companies regulated by the Bureau of Radiation Protection. Allowing searches that waive the Fourth Amendment of the U.S. Constitution (A search or seizure is generally unreasonable and illegal without a warrant). This seems unnecessary for Radon Companies so if it is deemed necessary by the Department, the regulation should note the rational.

Current Regulation

§ 240.2. Scope.

“(a) This chapter applies to all persons except a person... Using measures designed to prevent radon contamination in newly constructed buildings. This exemption does not apply to radon testing or installation of radon mitigating devices in these buildings following occupancy”

The Proposed Amendments to the Regulations as Written:

“Proposed amendments to § 240.2 (relating to scope) revise certification exceptions...”

Comment

In other words, a Builder, Developer or Architect / Engineer is exempt from any regulations for RRNC (Radon-Resistant New Construction) in new homes or buildings.

This is the time and place to amend what has been missing since the original regulations.

Our tallies and other's comparative tallies show a 40% failure rate when builder RRNC prepiped is activated. Why does this happen? Because the builders are under no laws nor obligation to get the RRNC Installation correctly done. The pass, seemingly, was given to allow Builders to install their own system as owners of the structures. This view is distorted but understandable. Reality is that Builders (or their employees) do not install this pipe! It is primarily installed by plumbers that are Subcontractors. The plumbers do not have any mandates (nor guidelines) to follow.

A Builder is not allowed to have the plumber do the electric in a home. If Subcontractors do the RRNC installation they should be Certified Radon Mitigation Individuals following AARST/ANSI RRNC 2.0.

Homeowners very often believe that the RRNC prepiped (regardless of how it is installed or vented) means they are safe and never have to test. We Mitigation Companies see firsthand the anger and worry these duped homeowners have when they later (usually when selling) find levels of radon that are dangerously high! Builders are long gone but we see this weekly. It's years later and may have tragic consequences.

Seems rather absurd to regulate the size and structure of a Mitigation Company. To allow unrestricted home and office searches, mandate Radon Mitigator training, exams, fees continuing education and reporting all in the name of Radiation Protection. At the same time allow Builders, Plumbers and Designers to have no rules at all!!!! Bad policy! Not Radiation Protection.

If a Certified Mitigation Individual subcontracts from a builder can he install anything he likes as the plumber can? Can a mitigation company have a Non-Certified Company that only does Builder work? Several Class action lawsuits have been brought and won against Builders and Developers over poor radon systems and deception involving radon system installations. Unfortunately, settlements have been sealed. This oversight is a ticking bomb and Pennsylvanians most likely have died! The time is long overdue to correct this and fulfill the mandate of Radiation Protection!