

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p> <div style="border: 2px solid black; padding: 10px; text-align: center;"> <p>RECEIVED</p> <p>JUL 19 2017</p> <p>Independent Regulatory Review Commission</p> </div> <p>IRRC Number: 3153</p>	
<p>(1) Agency</p> <p>Environmental Protection</p>			
<p>(2) Agency Number:</p> <p>Identification Number: 7-498</p>			
<p>(3) PA Code Cite: 25 Pa. Code Chapters 218 and 240</p>			
<p>(4) Short Title: Radiological Health and Radon Certification Fees; and Radon Mitigation System Fee</p>			
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Laura Edinger, 783-8727, ledinger@pa.gov Secondary Contact: Jessica Shirley, 783-8727, jessshirley@pa.gov</p>			
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation <input checked="" type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General</p>	
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>With two exceptions, which are identified in the response to (15), the final-form rulemaking increases fees associated with the radioactive materials licensing and radon certification activities regulated by the Department's Radiation Protection Program by 50 percent. The final-form rulemaking also adds a requirement for a new radon mitigation system fee in order to help assure the quality of radon services.</p>			
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>The amendments to Chapter 218 are authorized under the following:</p> <ul style="list-style-type: none"> 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. <p>The amendments to § 240.3 and Chapter 240, Appendix A, are authorized under the following:</p> <ul style="list-style-type: none"> Sections 8, 12 and 13 of the Radon Certification Act, 63 P.S. §§ 2008, 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.

Yes, section 401 of the Radiation Protection Act requires the Department to establish license fees “in an amount at least sufficient to cover the department’s costs of administering the programs.” 35 P.S. § 7110.401. Likewise, Section 8 of the Radon Certification Act requires the Department to “establish a fee schedule to cover the costs of the certification programs.” 63 P.S. § 2008. These fee increases are needed to meet these statutory requirements. Section 302 of the Radiation Protection Act requires the Environmental Quality Board to review the fee structure every three years. 35 P.S. § 7110.302

(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 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 goal of the program is to keep the public’s exposure to radioactive materials as low as reasonably achievable and to help prevent radiation injury from the use of licensed sources.

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 new radon mitigation system fee will help ensure quality of radon services in the state.

Pennsylvania leads the nation in radon oversight, primarily since the Commonwealth has the highest potential for harm from radon in the country. Pennsylvania has a unique geologic setting such that it has some of the highest radon levels in the country. In fact, a private home in Pennsylvania has recently been measured with the highest radon value in the country at 3,750 picocuries per liter (pCi/L). This value is over 900 times greater than the U.S. EPA recommended action level of 4 pCi/L. Pennsylvania also has a wide geographic distribution of radon occurrence and with the population of 12.5 million people, has a great potential for radon exposure.

The U.S. EPA as well as other national and international health and radiation safety organizations have declared radon to be the second leading cause of lung cancer after smoking, and the leading cause of lung cancer in non-smokers. Pennsylvania residents are at particular risk since the radon levels in this Commonwealth are much more significant than most other parts of the country.

The Department will benefit from the final-form 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 will benefit from the final-form rulemaking by the continued safety with the use of radioactive materials, and additional quality assurance that will 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.

No provisions 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, no advantage or disadvantage is associated with business location. For the type of entities that are regulated, the 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 new radon mitigation system fee and the increase to the biennial Chapter 240 fees will 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 pCi/L 'action level' have been detected in all 67 counties. Other states, such as Illinois, Iowa and New Jersey, implement similar radon mitigation system fees.

Nine other states have licensing or certification programs for radon testing, mitigation, and laboratory analysis.

(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 will 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.)

All amendments to the radiological health and radon fee regulations in Chapters 218 and 240 were 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 presented the draft final regulation and a summary of the comments received to RPAC on November 17, 2016. RPAC endorsed moving forward with the final-form rulemaking.

The proposed rulemaking was approved by the EQB on April 19, 2016, and published in the *Pennsylvania Bulletin* on July 2, 2016, with a 60-day public comment period. No public meetings or hearings were held. The EQB received comments from 40 commentators during the public comment period and from the Independent Regulatory Review Commission. These comments were considered and are addressed in the comment and response document that accompanies this final-form 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 will be affected, which includes approximately 850 specific and general radioactive material licensees, and approximately 720 certified radon service providers. 65 radioactive material licensees 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. Across-the-board increases in fees of approximately 50 percent will occur for certified radon service providers and licensees with two exceptions. The first exception is for license category 2A(2)(c) – Source Material – Metal Extraction, which is proposed to be reduced by 50 percent. No one is currently licensed 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 second exception is for category 7B—Human Use—Broad Scope (except Teletherapy). Based on feedback from RPAC, this fee category will only be increased by 25% to avoid licensees in this category from "downgrading" their licenses and placing additional administrative burdens on the Department. The increases are in line with increased personnel costs.

An additional charge of \$50 will be required for each radon mitigation performed as a result of the new radon mitigation system fee. Approximately 8,000 to 10,000 new active radon mitigation system

installations or passive radon mitigation systems conversions in Pennsylvania occur each year and approximately 132 mitigators will be affected by the \$50 fee. A typical mitigation system costs between \$800 and \$1,200.

See response to (10) for the benefits to the public from this regulation.

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

Approximately 8,000 to 10,000 new active radon mitigation system installations or passive radon mitigation systems conversions in Pennsylvania occur each year and approximately 132 mitigators will be affected by the \$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 final-form rulemaking. The final-form rulemaking will provide benefits to the Department's radioactive materials and radon programs funding and to the citizens of Pennsylvania.

The increase to the Chapter 218 fees will allow the Department to continue to implement existing programs under the Radiation Protection Act and assure adequate funding is available for the Commonwealth to carry out its duties under NRC's Agreement State program.

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

See response to (10) for the benefits to the public from this regulation.

(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 will be affected. With the exception of two license categories identified in the response to (15), an across-the-board increase in fees of approximately 50 percent will be required for existing licensees and certified radon

service providers. An additional charge of \$50 per radon mitigation performed will also be required as a result of the new radon mitigation system fee.

The increased fees will 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.

For radioactive material licensees, Pennsylvania's increased Chapter 218 fee will 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 increase to the Chapter 218 fees will allow the Department to continue to implement existing programs required by law and assure adequate funding is available for the Commonwealth to carry out its duties under NRC's Agreement State program.

Also, the increased biennial Chapter 240 fees ensure that the Department will be able to exercise effective quality assurance over statewide radon data and the effectiveness of radon mitigation services. Likewise, the new radon mitigation system fee will help assure the quality of radon services. These fees will 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.

See response to (10) for the benefits to the public from this regulation.

(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 final-form rulemaking are the increase of the Chapter 218 and biennial Chapter 240 fees and the new radon mitigation system fee.

No other compliance, legal, accounting, or consulting procedure costs or savings are required by this final-form rulemaking.

The Chapter 218 radioactive material licensing 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 increase in cost to the regulated community is approximately 50 percent. Overall, the final-form rulemaking will increase Chapter 218 fees paid to the Department to approximately \$5,225,000 per year. The Department multiplied the number of entities that will be subject to the increased fees by the dollar amounts of the increased fees to derive the overall estimate.

The 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, will be approximately \$150,000 every two years. The Department multiplied the number of entities that will 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 will pay an application fee of \$150, which is 50 percent more than the current base fee for a firm and individual. The additional new radon mitigation system fee will apply to the approximately 8,000 to 10,000 new active

radon mitigation system installations or passive radon mitigation system conversions in Pennsylvania each year. An average of \$400,000 in annual revenue will be generated based on 8,000 installations per year. Overall, the final-form rulemaking will 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 will increase by the amount specified in the final-form rulemaking. Approximately six local governments will 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 will be subject to the increased fees by the dollar amounts of the increased fees to derive the overall estimate.

The 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.

(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, a slight cost increase to the Commonwealth would occur since the monies received from other Commonwealth agencies as fees are deposited to the Department's Radiation Protection Fund and utilized by the Radiation Protection Program.

The 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.

No other compliance, legal, accounting, or consulting procedure costs or savings are required by this final-form 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.

The final-form rulemaking does not require additional recordkeeping or reporting requirements as a result of the Chapter 218 fee increases. The amendments to Chapter 240 will require certified individuals who install an active radon mitigation system or convert a passive radon mitigation system to an active radon mitigation system to submit a Department-approved form on a quarterly basis along with

the appropriate fee based on the number of mitigation installations or conversions performed in the previous quarter.

(22a) Are forms required for implementation of the regulation?

Yes.

(22b) If forms are required for implementation of the regulation, attach copies of the forms here. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.

The form required by the new radon mitigation system installation fee is attached to this Regulatory Analysis Form.

(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.

	Current FY 2016/2017	FY +1 2017/2018	FY +2 2018/2019	FY +3 2019/2020	FY +4 2020/2021	FY +5 2021/2022
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		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 2013/2014	FY -2 2014/2015	FY -1 2015/2016	Current FY 2016/2017
Radiation Protection Fund	\$11,113,000	\$11,018,000	\$11,628,000	\$14,953,000

(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.**

Reduced radioactive material license fees are available for small businesses (see Chapter 218 Appendix A, categories SB1 and SB2). The Department assumes a portion of radioactive material licensees are small businesses, as defined in Section 3 of the Regulatory Review Act, 71 P.S. § 745.3. This definition references the Code of Federal Regulations (13 CFR Part 121), which defines a small business based on the dollar amount of gross annual receipts generated by the business or the number of employees based upon employment. The gross annual receipts or number of employees required to qualify as a small business is different for each type of entity.

In implementing the program, the Department uses a different definition of “small business” than the CFR definition. Specifically, the Department uses a small business form to collect annual information from licensees to verify whether they qualify for the reduced Chapter 218 fees. The small business form, which was modeled after NRC’s Form 526 (Certification of Small Entity Status), requires the submission of copies of business organization forms and categorizes business as follows:

- Small Business \$350,000 to \$5,000,000
Less than \$350,000
- Manufacturing Industry 35 to 500 Employees
Less than 35 Employees
- Small Organization \$350,000 to \$5,000,000
Less than \$350,000
- Small Governmental Jurisdiction 20,000 to 50,000 Population
Less than 20,000 Population
- Small Education Institution 35 to 500 Employees
Less than 35 Employees

As an example, a recent Certification of Small Entity Status form submitted by a radiographic laboratory would have qualified under both the CFR definition of a small business and the Department's definition. This particular lab would qualify under the CFR because its annual gross income was less than \$15,000,000 (see 13 CFR § 121.201 (NAICS Code 541380)) and qualified under the Department's definition because its average gross income over its last 3 years was between \$350,000 and \$5,000,000.

Based upon the Department's definitions, 65 radioactive material licensees in Pennsylvania qualify as small businesses. The Department does not believe that the final-form rulemaking will have any adverse impact on small businesses, beyond the increased fees discussed in the response to question 15.

The Department estimates that all radon service providers are likely to be small businesses.

No projected reporting, recordkeeping, or other administrative costs are required for compliance with the final-form rulemaking, except for the form that accompanies the corresponding radon mitigation system activation or conversion fee.

The Department did consider regulatory alternatives to the proposed rulemaking requirement of a Pennsylvania Radon Mitigation System tag and corresponding \$50 fee. The Board received several comments that raised concern over the logistical and administrative burden that the tags would place on both the Department and the regulated community. Based on those comments, the Board is replacing the tag system with a per-system \$50 fee in this final-form rulemaking. Instead of purchasing five tags at a time, certified mitigation individuals will pay a fee of \$50 per active mitigation system installed or passive mitigation system converted to an active mitigation system. Fees will be paid on a quarterly basis based on the number of mitigation installations and conversions performed in the previous quarter. This change to the final-form rulemaking reduces the logistical and administrative burdens posed by the Pennsylvania Radon Mitigation System Tag while retaining the \$50 mitigation system fee needed to adequately fund the radon certification program.

(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 will be affected 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 consider regulatory alternatives to the proposed rulemaking requirement of a Pennsylvania Radon Mitigation System tag and corresponding \$50 fee. The Board received several comments that raised concern over the logistical and administrative burden that the tags would place on both the Department and the regulated community. Based on those comments, the Board is replacing the tag with a per-system \$50 fee in this final-form rulemaking. Instead of purchasing five tags at a time, certified mitigation individuals will pay a fee of \$50 per mitigation system installed or converted. Fees will be paid on a quarterly basis based on the number of mitigation installations and conversions performed in the previous quarter. This change to the final-form rulemaking reduces the logistical and administrative burdens posed by the Pennsylvania Radon Mitigation System Tag while retaining the \$50 mitigation system fee needed to adequately fund the radon certification program.

(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 performance 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 final rulemaking are minimal. The amendments to Chapter 240 will require certified individuals who install an active radon mitigation system or convert a passive radon mitigation system to an active radon mitigation system to submit a Department-approved form on a quarterly basis along with the appropriate fee based on the number of mitigation installations or conversions performed in the previous quarter.

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

The final-form rulemaking does not require design or operation standards.

Reduced Chapter 218 fees are already available for small businesses that will be affected by the increased fees in the final-form 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 final-form 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 final-form 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 provided with this final-form rulemaking.

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

- | | |
|---|---|
| A. The length of the public comment period: | <u>60 days</u> |
| B. The date or dates on which any public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of delivery of the final-form regulation: | <u>Quarter 3, 2017</u> |
| D. The expected effective date of the final-form regulation: | <u>Quarter 3 2017</u> |
| E. The expected date by which compliance with the final-form regulation will be required: | <u>Effective on the date of publication</u> |
| F. The expected 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.

The Board is not establishing a sunset date for these regulations, since they are needed for the Department to carry out its statutory authority. The Department will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

Pennsylvania Department of Environmental Protection (DEP) Radon Mitigation Active System Fee Form

As required by 25 Pa. Code § 240 Appendix A, each PA DEP-Certified Mitigation Individual who installs or who is in responsible charge of DEP-listed Mitigation Firm employees that install an Active Radon Mitigation System or who convert a passive mitigation system converted to an active system in Pennsylvania shall submit to DEP the following items:
(An Active Radon System is defined as a radon mitigation system with an electric vent fan.)

- An active radon mitigation system fee payment of \$50.00 per system installed or converted, by check or money order only, payable to: *Commonwealth of Pennsylvania*

- AND -

- The information requested below.

DEP-Certified Mitigation Individual's Information:

Last Name: _____ **First Name:** _____

DEP Certification #: _____ **Business Phone #:** _____

Business mailing address: _____

Number of Active Mitigation Systems installed or converted last quarter _____ **x \$50.00 =**
\$ _____

(Total Amount Enclosed)

Check/Money Order # _____ **Circle Calendar Quarter Submission: Q1 Q2 Q3 Q4 Year:** _____

- **Mail this completed form with all checks/money orders to:**
Pennsylvania Department of Environmental Protection
Bureau of Radiation Protection - Radon Division
P.O. Box 8469
Harrisburg, PA 17105-8469

Shipping address: PA DEP/BRP - Radon Division (13th FL), RSCOB, 400 Market Street, Harrisburg, PA 17101.
Fee payments shall be submitted quarterly and received by DEP no later than 10 days after the end of each quarter.

IMPORTANT NOTE: *This fee submittal does not affect the regulatory requirement that a record of each installed radon mitigation system be submitted to DEP every 45 days via DEP's Greenport interface.*

WARNING: THE STATEMENTS CONTAINED OR REFERENCED HEREIN ARE MADE SUBJECT TO THE PROVISIONS OF 18 PA. CONSOLIDATED STATUTES, SECTION 4904 (Relating to Penalties for Unsworn False Statements to Governmental Authorities).

The person signing this form attests that they have the authority to submit this form on behalf of the certified individual, and that the information is true and accurate to the best of their knowledge.

Type or Printed Name:	Signature
Title:	Date:

**RADIATION PROTECTION PROGRAM
THREE-YEAR REGULATORY FEE AND PROGRAM COST ANALYSIS REPORT
(Amended August 2015 and March 2017)**

The Department of Environmental Protection (DEP or Department) Radiation Protection Program (RPP) was created to carry out the comprehensive program of radiation protection in the Commonwealth of Pennsylvania (Commonwealth) required by the Radiation Protection Act, 35 P.S. §§ 7110.101 – 7110.703 (RPA). Section 401 of the RPA (35 P.S. § 7110.401) and Section 8 of the Radon Certification Act, 63 P.S. § 2008) require that fees be established to cover DEP's RPP program costs. 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 rulemaking, this Report was amended to project program costs through 2021-2022. 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 Commonwealth'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 requires licensing of all particle accelerators within the Commonwealth 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. 152 facilities have licensed accelerators within the Commonwealth.

Vendor/Service Provider Registration:

The Commonwealth administers a registration program for vendors/service providers who sell, lease, install and/or service radiation-producing machines. Commonwealth 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, sufficient revenue is available 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	2021-22
Fee Collection*	\$4,295	\$4,511	\$4,260	\$4,439	\$4,400	\$4,400	\$4,400	\$4,400	\$4,400	\$4,400
Fines and Penalties*	\$71	\$214	\$143	\$140	\$125	\$125	\$125	\$125	\$125	\$125
MQSA Contract*	\$368	\$368	\$391	\$400	\$380	\$380	\$380	\$380	\$380	\$380
Total Revenue*	\$4,734	\$5,093	\$4,794	\$4,979	\$4,905	\$4,905	\$4,905	\$4,905	\$4,905	\$4,905
Program Costs*	\$4,240	\$4,551	\$4,508	\$4,678	\$4,588	\$4,726	\$4,867	\$5,013	\$5,164	\$5,319

*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 Commonwealth 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 to be reduced by 50 percent. No one is licensed 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 fee increases, sufficient revenue will not be available 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	2021-22
Fee Collection*	\$3,343	\$3,538	\$3,364	\$3,097	\$3,400	--	--	--	--	
Fee Coll. with 50% increase beginning in 2017-18*	--	--	--	--	--	\$5,100	\$5,100	\$5,100	\$5,100	\$5,100
Fines and Penalties*	\$71	\$215	\$143	\$145	\$125	\$125	\$125	\$125	\$125	\$125
Total Revenue*	\$3,414	\$3,753	\$3,507	\$3,242	\$3,550	\$5,250	\$5,250	\$5,250	\$5,250	\$5,250
Program Costs*	\$4,121	\$4,329	\$4,260	\$4,306	\$5,042	\$5,193	\$5,349	\$5,510	\$5,675	\$5,845

*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 the Bureau of Information Technology 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 fee of \$50 per installation, augmented by the existing fund balance, will provide sufficient funds to maintain the current Radon Program through FY 2019-20. 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 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	2021-22
Fee Collection*	\$172	\$164	\$170	\$181	\$182	--	--	--	--	--
Fee Coll. with 50% increase beginning in 2017-18*	--	--	--	--	--	\$273	\$273	\$273	\$273	\$273
Installation Fee**	--	--	--	--	--	\$400	\$400	\$400	\$400	\$400
Fines and Penalties*	\$85	\$28	\$59	\$60	\$50	\$50	\$50	\$50	\$50	\$50
SIRG ***	\$482	\$482	\$428	\$428	\$429	\$429	\$429	\$429	\$429	\$429
Total Revenue*	\$739	\$674	\$657	\$669	\$661	\$1,152	\$1,152	\$1,152	\$1,152	\$1,152
Program Costs*	\$1,527	\$1,751	\$1,640	\$1,582	\$1,312	\$1,351	\$1,392	\$1,434	\$1,477	\$1,521

*In thousands of dollars.

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

***State Indoor Radon Grant (SIRG)



Department of Radiology
Office of Radiation Safety
919 Walnut Street, Suite 820
Philadelphia, PA 19107
T 215-955-7813
F 215-923-9039
john.keklak@jefferson.edu

December 01, 2016

The Honorable Patrick McDonnell, Acting Secretary
Department of Environmental Protection
P. O. Box 2063
Harrisburg, PA 17105-2063

Dear Secretary McDonnell:

I am writing to inform you of actions taken by the Radiation Protection Advisory Committee (RPAC) at its November 17, 2016 meeting.

At the RPAC meeting, the Department presented information following the public comment period after publication in the Pa. Bulletin of the proposed Radiological Health Regulation for draft fee changes as provided for in Radiological Health Regulations Chapter 218 and 240 – Fees.

The Committee voted unanimously to concur with the Department's recommendation to present the proposed rulemaking amendment to the Environmental Quality Board, for consideration for adoption and publication as final rulemaking.

Please call me at 215.955.7813 or email me at John.Keklak@jefferson.edu with any questions regarding this action

Sincerely,

John Keklak, CHP
Chair

c: George Hartenstein, PA DEP
David Allard, PA DEP
Joseph Melnic, PA DEP RPAC Liaison

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU**

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Copy below is hereby approved as to form and legality.
Attorney General

By: _____
(Deputy Attorney General)

DATE OF APPROVAL

☒ Check if applicable
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promulgated by:

**DEPARTMENT OF ENVIRONMENTAL
PROTECTION
ENVIRONMENTAL QUALITY BOARD**

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-498

DATE OF ADOPTION JUNE 20, 2017

BY


TITLE **PATRICK MCDONNELL
CHAIRMAN**

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality
Executive or Independent Agencies

BY 

JUL 10 2017

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 FINAL RULEMAKING

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD**

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

25 Pa. Code, Chapters 218 and 240

**Title 25 – ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD
[25 PA. CODE CHS. 218 AND 240]**

Radiological Health and Radon Certification Fees; and Radon Mitigation System Fee

The Environmental Quality Board (Board) by this order amends 25 Pa. Code Chapter 218 (relating to fees) and Chapter 240 (relating to radon certification) to read as set forth in Annex A. The amendments in Chapter 218 will increase the annual fees for radioactive material licenses, with one exception, and increase the hourly rate professional fee associated with certain full cost recovery licenses. The amendments in Chapter 240 will increase the application fees for certification of radon services and add a new requirement and fee for active mitigation systems installed or passive mitigation systems converted to active mitigation systems in this Commonwealth.

This order was adopted by the Board at its meeting of June 20, 2017.

A. Effective Date

This final-form rulemaking will be effective upon 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. This final-form rulemaking is available on the Department of Environmental Protection's (Department) web site at www.dep.pa.gov (Select "Public Participation," then "Environmental Quality Board (EQB)").

C. Statutory Authority

The final-form rulemaking is being made under the authority of section 301, 302 and 401 of the Radiation Protection Act (RPA) (35 P.S. §§ 7110.301, 7110.302 and 7110.401), which directs the establishment of fees in amounts at least sufficient to cover the costs of the radiation protection programs mandated by the RPA and review of those fees every three years; Section 1920-A of the Administrative Code (71 P.S. § 510-20), which directs the Environmental Quality Board to formulate, adopt and promulgate such rules and regulations as may be determined by the board for the proper performance of the work of the Department; and sections 8, 12 and 13 of the Radon Certification Act (RCA) (63 P.S. §§ 2008, 2012 and 2013), which directs the Department to establish fees in amounts sufficient to cover the costs of the certification programs established by the RCA.

D. Background and Purpose

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 fees, which support radon testing and mitigation certification, 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 would be required to curtail spending for needed equipment, infrastructure upgrades, training and hiring of qualified personnel. This rulemaking addresses these problems by increasing 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.

In March 2008, the Governor signed an agreement with the Chairman of the U.S. Nuclear Regulatory Commission (NRC) for 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 the agreement with NRC, the Commonwealth implements a radiation protection program comparable to NRC's program and ensured that Commonwealth regulations are compatible with NRC regulations.

The 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 with NRC. Approximately 850 licenses have been 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 fees codified in its regulations, which are approximately 50 percent higher than the Department's current fees. Further, the NRC's fees typically increase by six to eight percent annually. The NRC's fees currently are approximately 24 percent higher than the fees included in this final-form rulemaking.

The Chapter 240 fees collected biennially are used by the Department 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. Approximately 720 certified radon service providers are subject to the certification fees.

All amendments to the radiological health regulations in Chapters 218 and 240 were 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 presented the final-form regulation to RPAC on November 17, 2016. RPAC endorsed moving forward with the final-form rulemaking.

E. Summary of Changes to the Proposed Rulemaking

Chapter 218, Appendix A – Fees for Radioactive Material Licenses

No changes have been made to the fees included in the proposed rulemaking. The term “specific license” was removed from fee category 7C based on feedback from the RPAC. RPAC noted that no general licenses are covered by this category and therefore the inclusion of the term “specific license” was not necessary.

Section 240.303 – Reporting of Information

The proposed rulemaking added subsection 240.303(a)(7) to include the serial number of the Pennsylvania Radon Mitigation System Tag as a reporting requirement. This subsection has been deleted from the final-form rulemaking due to the removal of the proposed requirement of a Pennsylvania Radon Mitigation System Tag to be placed on any newly installed or converted radon mitigation system in this Commonwealth.

Section 240.309 – Pennsylvania Radon Mitigation System Tag

The proposed rulemaking included new §240.309 that contained the requirements for Pennsylvania Radon Mitigation System Tags to implement the new \$50 radon mitigation system fee. The Board received several comments that raised concern over the logistical and administrative burdens that the tags would place on both the Department and the regulated community. This section has been revised in the final-form rulemaking to remove the use of a mitigation tag for payment of the \$50 fee. The final-form regulation requires payment of the fee to the Department using a form created for this purpose. The Department must receive the fee and the form within 10 business days of the end of the quarter in which an active mitigation system is installed or a passive mitigation system is converted to an active system. This change to the final-form regulation reduces the logistical and administrative burdens that would have been posed by requiring a mitigation tag while retaining the \$50 mitigation system fee needed to adequately fund the radon certification program.

Chapter 240, Appendix A – Radon Certification Fee Schedule

No changes have been made to the fees included in the proposed rulemaking. The radon mitigation fee no longer includes the mitigation tag and has been revised consistent with the change to § 240.309.

F. Summary of Comments and Responses on the Proposed Rulemaking

The proposed rulemaking was approved by the Board on April 19, 2016, and published at 46 Pa.B. 3509 (July 2, 2016). Public comments on the proposed rulemaking were accepted through August 30, 2016. No public meetings or hearings were held. The Board received comments from 40 commentators during the public comment period and the Independent Regulatory Review Commission (IRRC). These comments were considered and are addressed in the comment and response document that accompanies this final-form rulemaking.

Most commentators were opposed to the Chapter 240 radon fee increase. A few commentators raised concerns about the effect of the fee increases for Chapter 218 radioactive material licenses on competition within the industry and on small businesses. While the Chapter 218 fees are increasing, most fee categories are significantly lower than the corresponding NRC fees. In addition, the fee categories SB1 and SB2 are available for small businesses to obtain a radioactive materials license at a reduced cost. Lastly, Section 401 of the RPA requires license fees to be established “in an amount at least sufficient to cover the department’s costs of administering the programs.” 35 P.S. § 7110.401.

As to the Chapter 240 fees, commentators raised concerns over the fee increase and new radon mitigation fee’s impact on real estate transactions and on the regulated community itself. Section 8 of the RCA requires the establishment of “a fee schedule to cover the costs of the certification programs.” 63 P.S. § 2008. Additionally, the cost of testing for radon and installing a mitigation system, if needed, is a small percentage of the overall costs of real estate transactions and should not be an impediment to homeownership. Radon testing and radon mitigation systems provide significant benefits to the health and safety of homeowners. By testing for radon, a serious health concern can be identified. The U.S. EPA, as well as other national and international health and radiation safety organizations, have declared radon to be the second leading cause of lung cancer after smoking, and the leading cause of lung cancer in non-smokers. Pennsylvania residents are at risk because the radon levels in this State are much higher than most other parts of the country. If a mitigation system is needed and installed, the health concern can be mitigated. This benefit to the purchaser and any future occupants of the home outweighs the cost of the increased fee.

Several commentators were concerned about the logistics and benefit of the new radon mitigation tag. The requirement for a radon mitigation system tag has been deleted and the final-form regulations requires the certified mitigator to pay the \$50 fee when each active mitigation system is installed or when each passive mitigation system is converted to an active mitigation system. Payments must be made within 10 business days of the end of the quarter in which the installation or conversion was performed.

Several commentators and IRRC were concerned that the increase in costs associated with testing for and mitigating radon exposure would discourage the public from seeking those services. The Department did not experience a decrease in the amount of reported mitigation installations and tests after the last radon certification fee increase in 2009. This fee increase is not expected to discourage testing and mitigation and will continue to be monitored.

Several commentators and IRRC asked what the Department has done to reduce costs and improve efficiency of the program. Based on the Department's fee analysis, personnel costs (salaries and benefits) are the largest cost item and have increased approximately 45% since 2009. The Department is continually analyzing its administrative processes, equipment, and technology to identify areas to improve efficiency, but the current staffing levels are necessary for the Department to carry out its obligations under the RPA and RCA. It is important to note that the U.S. Nuclear Regulatory Commission performs routine audits to ensure the Department is maintaining adequate staffing levels to perform the required radioactive materials licensing actions and facility inspections. To date, this has not been a concern to NRC. However, training new employees in this highly technical work can take up to two years. Therefore, it is prudent to add new staff before too many current staff retire, which is foreseeable due to the demographics of the Bureau. Though not subject to audit, the radon program is required to certify over 700 radon testers, mitigators and laboratories. Efficiencies have recently been gained using new online radon data reporting, allowing a respective reduction in clerical staff, but the certification aspect still requires several trained and experienced radiological health physics staff.

IRRC noted that the Fee Report shows that proposed increased fees were expected to begin in 2016-17, but that the anticipated effective date for this regulation is the second quarter of 2017. Given this discrepancy, IRRC asked the Board to provide updated information in the Preamble of the final-form regulation regarding projected program costs and revenue. The following tables show projected program costs and revenue for Radioactive Materials Licensing and Radon Programs. This increase in fees along with existing program funds will provide sufficient revenue through FY 2020-2021 for radioactive materials licensing and FY 2019-2020 for the radon program.

Radioactive Materials Licensing Program

	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
Fee Collection*	\$3,343	\$3,538	\$3,364	\$3,097	\$3,400	--	--	--	--	--
Fee Coll. with 50% increase beginning in 2017-18*	--	--	--	--	--	\$5,100	\$5,100	\$5,100	\$5,100	\$5,100
Fines and Penalties*	\$71	\$215	\$143	\$145	\$125	\$125	\$125	\$125	\$125	\$125
Total Revenue*	\$3,414	\$3,753	\$3,507	\$3,242	\$3,550	\$5,250	\$5,250	\$5,250	\$5,250	\$5,250
Program Costs*	\$4,121	\$4,329	\$4,260	\$4,306	\$5,042	\$5,193	\$5,349	\$5,510	\$5,675	\$5,845

*In thousands of dollars.

Radon Program

	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
Fee Collection *	\$172	\$164	\$170	\$181	\$182	--	--	--	--	--
Fee Coll. with 50% increase beginning in 2017-18*	--	--	--	--	--	\$273	\$273	\$273	\$273	\$273
Installation Fee**	--	--	--	--	--	\$400	\$400	\$400	\$400	\$400
Fines and Penalties*	\$85	\$28	\$59	\$60	\$50	\$50	\$50	\$50	\$50	\$50
SIRG ***	\$482	\$482	\$428	\$428	\$429	\$429	\$429	\$429	\$429	\$429
Total Revenue*	\$739	\$674	\$657	\$669	\$661	\$1,152	\$1,152	\$1,152	\$1,152	\$1,152
Program Costs*	\$1,527	\$1,751	\$1,640	\$1,582	\$1,312	\$1,351	\$1,392	\$1,434	\$1,477	\$1,521

*In thousands of dollars.

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

***State Indoor Radon Grant (SIRG)

G. Benefits, Costs and Compliance

Benefits

The 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 its agreement with NRC and the RPA. 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 with NRC 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 homeowners receive services from qualified individuals when testing for and mitigating the presence of radon, the largest controllable source of unnecessary radiation exposure in Pennsylvania. The Chapter 240 fee increases and the new radon mitigation system fee further will allow the Department to maintain adequate funding to carry out its duties under the RCA.

Compliance Costs

This final-form rulemaking calls for increases in fees of approximately 50 percent for most existing radioactive material licensees and certified radon service providers. Other than the increase in fees, no additional costs are associated with the radioactive materials license categories under Chapter 218 for maintaining compliance with the final regulations and provisions for reduced materials fees for small businesses remain.

With respect to Chapter 240, an additional \$50 for each radon mitigation performed will be charged as a result of the new radon mitigation system fee. Approximately 8,000 to 10,000 new radon mitigation system installations or conversions occur in Pennsylvania each year and approximately 132 certified mitigators would be required to submit the \$50 fee to the Department. A typical mitigation system costs between \$800 and \$1,200.

Compliance Assistance Plan

The Department will notify the regulated community of the higher fees through this notice, by informing the RPAC, and by issuing an Information Notice to relevant licensees.

Paperwork Requirements

The final-form rulemaking does not require additional recordkeeping or reporting requirements as a result of the Chapter 218 fee increases. The amendments to Chapter 240 will require certified individuals who install active radon mitigation systems or convert passive radon mitigation systems to active radon mitigation systems to submit a Department-approved form along with the appropriate fee on a quarterly basis.

H. Pollution Prevention

The Federal Pollution Prevention Act of 1990 established a national policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. DEP 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, or 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 final-form 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. The increased fees will ensure the Department maintains its ability to implement radiological pollution prevention.

I. Sunset Review

The Board is not establishing a sunset date for these regulations because they are needed for the Department to carry out its statutory authority. The Department will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

J. 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 the notice of proposed rulemaking, published at 46 Pa.B. 3509 (July 2, 2016), to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act, on DATE, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on DATE and approved the final-form rulemaking.

K. Findings of the Board

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law, and all comments were considered.
- (3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 46 Pa.B. 3509 (July 2, 2016).
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

L. *Order of the Board*

The Board, acting under the authorizing statutes, orders that:

- (a) The regulations of the Department, 25 Pa. Code Chapters 218 and 240, are amended by adding § 240.309 and amending §§ 240.3, 240.303, Chapter 218 Appendix A, and Chapter 240 Appendix A to read as set forth in Annex A.
- (b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.
- (c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act (71 P.S. §§ 745.1—745.14).
- (d) The Chairperson of the Board shall certify this order and Annex A, as approved to legality and form, and deposit them with the Legislative Reference Bureau, as required by law.
- (e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

Patrick McDonnell
Chairperson



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Bureau of Radiation Protection

COMMENT AND RESPONSE DOCUMENT

RADIOLOGICAL HEALTH AND RADON CERTIFICATION FEES; PENNSYLVANIA MITIGATION SYSTEM FEE

25 Pa. Code Chapters 218 and 240
46 Pa.B. 3509 (July 2, 2016)
Environmental Quality Board Regulation #7-498
(Independent Regulatory Review Commission #3153)

Introduction

Radiological Health and Radon Certification Fees; Pennsylvania Mitigation System Fee

On July 2, 2016, the Environmental Quality Board (Board, EQB) published a notice of public comment period for a proposed rulemaking concerning revisions to 25 Pa. Code Chapters 218 and 240 (relating to fees; and radon certification).

With one exception, the proposed amendments to Chapter 218 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 to Chapter 240 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.

The proposed rulemaking will be effective upon publication in the *Pennsylvania Bulletin* as a final-form regulation.

Public Comment Period and Public Hearings

Notice of the public comment period on the proposed fee amendments was published in the *Pennsylvania Bulletin* on July 2, 2016 (46 Pa.B. 3509). The EQB's public comment period opened on July 2, 2016, and closed on August 30, 2016.

This document summarizes the comments received during the Board's public comment period. Each public comment is listed with an identifying commentator number for each commentator that made the comment. A list of the commentators, including name and affiliation (if any) can be found on pages 3–6 of this document. The House and Senate Environmental Resources and Energy Committees did not submit comments on the proposal.

Copies of all comments received by the Board are posted on the web site of the Independent Regulatory Review Commission (IRRC) at <http://www.irc.state.pa.us> Search by Regulation # 7-489 or IRRC # 3153; and on e-Comment page of the website for the Department at <http://www.dep.pa.gov>.

Table of Commentators for the Environmental Quality Board
Proposed Rulemaking for
Radiological Health and Radon Certification Fees; Pennsylvania Mitigation System Tag
and Fee
Environmental Quality Board # 7-489
(IRRC # 3153)

ID	Name/Address
1.	Greg Hancock 147 Mountainstone Trail Lock Haven, PA 17745
2.	Glen Beveridge 409 Sewickley Street Greensburg, PA 15601
3.	Raymond Fonos 1216 Edgewood Drive West Homestead, PA 15120
4.	Adam Ginocchi 407 Jenny Lane New Castle, PA 16101
5.	Dave Koloskee Erie, PA 16506
6.	David Foster 311 Ruth Road Harleysville, PA 19438
7.	Michael Ashburn 3296 Tarr Hollow Road Murrysville, PA 15668
8.	Ryan Lingold 63 S 7 th Street Emmaus, PA 18049
9.	Mary Phelps 968 Postal Road, Suite 210 Allentown, PA 18109
10.	Bonnie Halinka 433 Broad Avenue Belle Vernon, PA 15012
11.	Jeffery Nearhoof

12.	Rose Gerhard 307 Million Dollar Hwy Bangor, PA 18013
13.	Joseph Lane 1630 Washington Road Pittsburgh, PA 15241
14.	Sebastian Amico 1080 Schadt Avenue Whitehall, PA 18052
15.	Edward Cole 1055 E Baltimore Pike Media, PA 19063
16.	Douglas Carlson 616 Hillcrest Court Media, PA 19063
17.	Susan Ondrey 5036 Hamilton Blvd Allentown, PA 18106
18.	Marybeth Mack 834 E. Maple Drive Southampton, PA 18966
19.	Doug Frederick 3500 Winchester Road Allentown, PA 18104
20.	Joseph Mazzola 126 Beaver Slide Drive Drums, PA 18222
21.	James McGowan 5059 Rosewood Drive Doylestown, PA 18902
22.	Charles Haley 3500 Winchester Road, Ste. 201 Allentown, PA 18104
23.	Daniel Raneri 5607 Meadow Drive Orefield, PA 18069
24.	Michael Weinstein 5036 Hamilton Boulevard Allentown, PA 18104
25.	Lisa Rice 4165 Cartier Drive Allentown, PA 18104

26.	William L. Henry 10189 RT 322 Shippensburg, PA 16254
27.	Elizabeth Hensil 500 North 12 th Street Lemoyne, PA 17043
28.	M.A. Iqbal, Ph.D., P.E. 150-C Love Road Reading, PA 19607
29.	Justin Ake 2309 13 th Street Altoona, PA 16601
30.	Richard Stump II 4600 Kutztown Road Temple, PA 19560
31.	Lynn Zimmerman 1930 Harrington Drive Lancaster, PA 17601
32.	Daniel Young 316 Mill Street, Suite 1 Danville, PA 17821
33.	Aaron L. Fisher 201 Penn Center Blvd., Ste 400 Pittsburgh, PA 15235
34.	Wesley T. Stefanick 2201 Ridgewood Road, Ste. 350 Wyomissing, PA 19610
35.	Celia Rajkovich 122 W. 5 th Avenue Derry, PA 15627
36.	David Glick 2061 Kenbrook Road Lebanon, PA 17046
37.	Maria Stinger 1936 Park Manor Blvd., 15811 Pittsburgh, PA 15244
38.	Bruce Thomas 17 Fosterville Road Greensburg, PA 15601

39.	Nathaniel Burden 2221B Pillegi Road Warrington, PA 18976
40.	Jason Tennant 375 Saxonburg Road Saxonburg, PA 16056
41.	David Sumner Independent Regulatory Review Commission (IRRC)

Acronyms used in this Comment/Response Document

EPA – U.S. Environmental Protection Agency
EQB – Environmental Quality Board
IRRC – Independent Regulatory Review Commission
NRC – U.S. Nuclear Regulatory Commission
RPA – Radiation Protection Act
RPAC – Radiation Protection Advisory Committee

COMMENTS AND RESPONSES

- 1. Comment:** According to recent census data, Pennsylvania home ownership is at a record low and adding costs to the transaction is not the way to help increase it. This fee increase is viewed as an impediment to homeownership. The majority of radon tests and mitigation system installations are associated with a real estate transaction. Continued increases in cost will cause buyers already under significant financial pressure to reduce their costs by opting out of radon testing, since it is not a required test. Because this cost is incurred during the transfer of real property, it is believed this increased fee is a tax on and barrier to homeownership. Taxes in this state are some of the highest in the country and adding another one, even as small as \$50 for radon mitigation is not acceptable. (3, 7, 11, 12, 15, 16, 17, 18, 20, 21, 27, 30, 31, 32, 34, 37, 39)

Response: Section 8 of the Radon Certification Act requires the Department to “establish a fee schedule to cover the costs of the certification programs.” 63 P.S. § 2008. This rulemaking is needed to meet that statutory requirement. The cost of testing for radon and installing a mitigation system, if needed, is a small percentage of the overall costs of real estate transactions and should not be an impediment to homeownership. Additionally, radon testing and radon mitigation systems add significant benefits to the transaction process and to the home itself. By testing for radon, a serious health concern can be identified. If a mitigation system is needed and installed, the health concern can be corrected and removed. This benefit to the purchaser and any future occupants of the home outweighs the cost of the increased fee.

- 2. Comment:** This country, state, and state agencies overspend. Hard working citizens and businesses already pay enough fees and taxes. The ability to raise prices or assess fees to offset costs is not there for the public and businesses. Personal and business sacrifices are made. Longer working hours, more work days, and no vacations or paid holidays. A stated need for this increase is to cover costs of training, equipment, and adding new personnel. The Department should cut expenses, work longer hours, more work days to train, and cut back staff instead of increasing it, as the private sector does. Government needs to work within their budget. The state always wants more money, taxes, and fees, and the public does not have more to give. (1)

Response: Section 401 of the Radiation Protection Act requires the Department to establish license fees “in an amount at least sufficient to cover the department’s costs of administering the programs.” 35 P.S. § 7110.401. Likewise, Section 8 of the Radon Certification Act requires the Department to “establish a fee schedule to cover the costs of the certification programs.” 63 P.S. § 2008. These fee increases are needed to meet these statutory requirements. The Department’s radon program is responsible for the certification and oversight of over 700 radon testers, mitigators and laboratories, as well as state-wide public outreach. The duties are performed primarily by the radon division consisting of eight staff members. We are continually evaluating our program for efficiencies to implement a more effective radon program. For example, for many years reported radon test data required manual entry into our database. Several years ago the Department developed a ‘green-port’ website where testers, mitigators and labs could directly enter that information, and our staff

would then perform a quality control check on the information. That reduced our need for 2 full time clerical staff in the radon program.

The Department is cognizant of the hardship increased fees can cause for businesses and is therefore committed to continued improvement of program efficiency and keeping costs to a minimum while continuing to provide a quality radon certification program.

3. **Comment:** A formal request is issued to the Commonwealth to subsidize radon testing firms. The cost of performing a radon test not only includes the actual test, but also covers the mileage, travel time, turnpike fees, parking fees, etc. A small percentage of homes that are inspected are tested for radon. Common perception of the public is radon is nonsense. Given the low profit margin or loss, home inspectors performing radon tests is more a public service. The majority of the public can't or won't afford higher costs for radon testing.

Elevated radon is a serious health concern and every home should be tested. Reducing radon levels saves lives and lowers health care costs for citizens who fund state and federal social programs through taxes. (2)

Response: Subsidizing radon testing firms is outside the scope of this rulemaking. However, the EPA awards a State Indoor Radon Grant to Pennsylvania and other states that subsidizes public outreach. This public outreach helps increase awareness of the dangers of radon which, in turn, can lead to homeowners reaching out to certified individuals for radon services.

Section 8 of the Radon Certification Act requires the Department to "establish a fee schedule to cover the costs of the certification programs." 63 P.S. § 2008. This rulemaking is needed to meet that statutory requirement.

The Department understands that radon is a serious personal and public health concern. The Department performed a fee analysis in 2014 that identified the need to increase radon certification fees. This rulemaking ensures that the Department has adequate funding to assure the public that the individuals who perform radon-related activities are properly qualified to address radon exposure in residential and nonresidential structures.

4. **Comment:** Fee increases are not in the public's best interests. Radon testing and mitigation business costs are already high and certification fees are just a small part of the costs incurred. Additional fees will need to be passed to the consumers and this will lead to less radon testing being performed. There is no benefit other than a short-term increase in funds. There is no economic, health, or environmental benefit. More home should be tested, not less. (3, 4)

Response: The Department did not experience a decrease in the number of tests and mitigation installations reported after the last radon certification fee increase in 2009 and does not expect this increase to have an effect in that regard. The Department will continue to monitor the number of tests and mitigations performed. The purpose of the fee increase is not a short-term increase in funds. Section 2 of the Radon Certification Act states that the purpose of the act is to "protect property owners from unqualified or unscrupulous consultants and firms by requiring the Department of Environmental Resources to establish and carry out a

program of certification of persons who perform radon progeny testing or carry out remedial radon measures.” 63 P.S. § 2002. This increase will help carry out this intent long-term and ensure quality testing and mitigations in Pennsylvania.

5. **Comment:** The Department should look at its own infrastructure costs and efficiency. While the Department feels their internal controls protects the consumer, they are focused on what they think they can control instead of consumer protection. There are requirements that are not necessary, but are time consuming. For instance, the process to add or remove monitors from inventory. It may be more appropriate to consult with an unbiased source to review the Department’s operational costs and procedures to identify cost saving measures instead of passing the burden to the public. If the result of higher costs reduces the number of radon tests, less protection is a result. (3, 7)

Response: The Department is always looking to improve efficiencies and eliminate unnecessary regulations. The issue of adding or removing monitors from inventory is outside the scope of this rulemaking. The Department is undertaking a separate rulemaking to address issues like these.

6. **Comment:** The proposal does not taken into account financial realities. The economy is depressed and the real estate market is at a low. There are a number of competitors in the market and raising fees to consumers will result in losing a portion of business. Certification renewal fees were doubled a few years ago, and now the department wants to increase them again. The Department has a negative attitude towards the regulated community and punishes for reporting improper practices by others. (5)

Response: The radon certification fees have not been increased since 2009. At that time, the Department did not experience a decrease in reported mitigation installations and tests and does not expect that this fee increase will have a different effect. The Department will continue to monitor the number of tests and mitigations performed. The Department strives to implement its regulations in an unbiased manner that achieves compliance through education and values feedback from the regulated community through the Radiation Protection Advisory Committee or case-specific discussions.

7. **Comment:** The proposed tax will may put an end to testing or lead to inaccurate, poorly managed testing devices used by owners and buyers. There are other costs that go into testing, additional fees, taxes or service charges could cause the industry to decline in quality, accuracy and competency. The need to regulate quality control is understood, however, this could put an end to awareness and testing programs. Buyers are already discouraged from testing from agents due to mitigation processes that need to be done prior to closing. (8)

Response: The cost of testing for radon and installing a mitigation system, if needed, should be a small percentage of the overall costs of real estate transactions. This benefit to the purchaser and any future occupants of the home outweighs the cost of the increased fee. Pennsylvania is one of the few states that perform blind tests on radon measuring devices used in the Commonwealth. For blind testing, the Department may anonymously purchase secondary radon devices from PA Certified laboratories or testers and expose them to known

concentrations of radon in a radon chamber. After the exposures, the devices are sent back to the lab for analysis. A comparison is done between the lab reported results and the radon chamber value. The “passing” criterion is that each device must have a relative percent error of +/- 25% or less.

8. Comment: I am opposed to Radon fee of \$50.00. (9)

Response: Section 8 of the Radon Certification Act (RCA) requires the Department to “establish a fee schedule to cover the costs of the certification programs.” 63 P.S. § 2008. The \$50 fee in this rulemaking is needed for the Department to continue to perform the work required by the RCA.

9. Comment: Seriously, you are trying to add an additional \$50 fee for Radon Mitigation installation? I am disappointed that this is another fee that sellers and buyers will have to absorb to purchase a home. Why do regulations have to always have a negative effect on buyers and sellers? (10)

Response: Section 8 of the Radon Certification Act requires the Department to “establish a fee schedule to cover the costs of the certification programs.” 63 P.S. § 2008. This rulemaking is needed to meet that statutory requirement. The cost of testing for radon and installing a mitigation system, if needed, is a small percentage of the overall costs of real estate transactions and should not be an impediment to homeownership. Additionally, radon testing and radon mitigation systems add significant benefits to the transaction process and to the home itself. By testing for radon, a serious health concern can be identified. If a mitigation system is needed, the health concern can be corrected and removed. This benefit to the purchaser and any future occupants of the home outweighs the cost of the increased fee. The U.S. EPA as well as other national and international health and radiation safety organizations have declared radon to be the second leading cause of lung cancer after smoking, and the leading cause of lung cancer in non-smokers. Pennsylvania residents are at particular risk since the radon levels in this state are much more significant than most other parts of the country.

10. Comment: Radon mitigation is voluntary and should not be part of government or state legislature. (12)

Response: The choice of whether to test and mitigate radon exposure in homes or prospective homes remains voluntary.

11. Comment: It feels as if this is a double dip. License fees, taxes being collected already on the transaction and now trying to add this? Not fair to the consumer at all. (16)

Response: Section 8 of the Radon Certification Act requires the Department to “establish a fee schedule to cover the costs of the certification programs.” 63 P.S. § 2008. The \$50 fee in this rulemaking is needed to meet that statutory requirement. The Radiation Protection Program receives no other revenue from real estate transactions.

- 12. Comment:** Radon, a known safety concern, is prevalent in Pennsylvania. Why make it more of a hardship to remediate? (17)

Response: The Department did not experience a decrease in the amount of mitigation installations and tests reported after the last radon certification fee increase in 2009. The Department does not expect this increase to have an effect in that regard. The Department will continue to monitor the number of tests and mitigations performed.

- 13. Comment:** Please do not go forward with this \$50 fee for radon mitigation certification. Your agency has a history of reckless rule making creating tens of millions of dollars of expense to consumers. Think that's an exaggeration? Consider the reckless changes and expenses associated with NPDES permitting associated with storm water management. Nobody wants more government interaction. (19)

Response: The increase in fees support the continuation of the existing radon program that has been positively commended by many citizens of the Commonwealth as well as the EPA. Several other states use a similar fee to fund radon programs. Pennsylvania has a unique geologic setting such that it has some of the highest radon levels in the country. In fact, a private home in Pennsylvania has recently been measured with the highest radon value in the country at 3,750 pCi/L. This value is over 900 times greater than the U.S. EPA recommended action level of 4 pCi/L. Pennsylvania also has a wide geographic distribution of radon occurrence, and with the population of 12.5 million people, has a great potential for radon exposure. While there are nine other states that have licensing or certification programs for radon testing, mitigation, and laboratory analysis; given Pennsylvania's unique geology, strong radon regulation is necessary. The U.S. EPA as well as other national and international health and radiation safety organizations have declared radon to be the second leading cause of lung cancer after smoking, and the leading cause of lung cancer in non-smokers. Pennsylvania residents are at particular risk since the radon levels in this state are much more significant than most other parts of the country.

- 14. Comment:** Why aren't funds from general revenue used to support this need? This is a community health issue, not necessarily a personal or property issue and so should be supported by the whole Commonwealth. (21)

Response: General Fund tax revenue has not been directed to the Radiation Protection Program. The current statutory and fiscal structure of the Radiation Protection Program is for fees to support the respective program areas. This is true for nuclear power plants, radioactive materials and X-ray equipment users.

- 15. Comment:** What could be the purpose of taxing a service that mitigates radon. Radon is not present in every home. It's bad enough to find radon in your home let alone discovering that the DEP will now tax you on it. Radon, I'm sure you know, causes cancer. are we really going to take advantage of people who might suffer the consequences of radon by charging them more money? What will this tax be used for? Sorry, I'm not a fan of this tax. (13, 14, 22, 24, 25)

Response: Section 8 of the Radon Certification Act requires the Department to “establish a fee schedule to cover the costs of the certification programs.” 63 P.S. § 2008. This rulemaking is needed to meet that statutory requirement in order to continue the existing radon program.

- 16. Comment:** Other government officials are discussing a tax on unhealthy items, such as cigarettes. This Department is proposing a tax on a remediation system that is supposed to protect children from something that causes cancer. Find another way to raise money. (23)

Response: Section 8 of the Radon Certification Act requires the Department to “establish a fee schedule to cover the costs of the certification programs.” 63 P.S. § 2008. The statute does not allow for any other method to generate revenue to pay for the existing program.

- 17. Comment:** One of the reasons given for this fee increase was the government would have to decrease spending without an increase in fees. This should have already happened prior to proposing a fee increase. The DEP is already over-staffed. The DEP should not allow employees to drive Commonwealth vehicles home for their personal transportation to and from work. The \$50 tag fee will not benefit any consumers. It is just another tax they will have to pay. It decrease the desire to have a radon mitigation system. Radon is naturally occurring and is not an environmental concern being caused, and does not need regulated. The government should just be informing the public of the dangers. The Department should be decreasing the cost of regulation instead of adding more to the public. (26)

Response: The Department is always looking to improve efficiencies and eliminate unnecessary regulations. The Department has revised the proposed approach in the final rulemaking to remove the mitigation tag requirement and instead requires the mitigator pay the \$50 fee when an active mitigation system is installed and when a passive mitigation system is converted to an active mitigation system per quarter.

- 18. Comment:** Stating the Radiation Protection Fund is dwindling sounds like poor management and doesn't justify increasing fees. Someone doesn't go to their boss and ask for a raise because they can't balance their checkbook. The proposed radon mitigation system tag does not help protect consumers. It does nothing for the functionality of the system and doesn't make a poorly installed one work better. Another reason for the fee is for outreach and public service announcements. These announcements are not reaching across the state and anyone can use Google to get information for free. The Boards approach to encouraging more radon mitigation systems to be installed is to make it harder and more expensive? This industry's profit margins are already low. Any lower, and it will cause noncompliance on other costs the Department forces on the industry in unnecessary continuing education. There is no new information on radon. The continuing education requirement does not gain anything for the industry and public except for cost. Countless hours are used to monitor this unnecessary requirement and could be used as a cost cutting measure. It is understood the licensing requirement protects consumers from less reputable providers, but the initial license is sufficient for this. The audits are also an unnecessary costs. It doesn't protect the public, it just causes the business to cease operations for a day and ends up adding cost onto the consumer. Added costs decreases the public's desire to test for or mitigate radon. These cost

cutting measures also help with the Board's energy efficiency goals. The rulemaking states; "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 for regulatory amendments to increase program fees." Why does it need recommendations to increase fees? Why doesn't it need recommendations for decreasing costs, or streamlining processes? (29)

Response: The Department has revised the proposed approach in the final rulemaking to remove the mitigation tag requirement and instead requires the mitigatory to pay the \$50 fee based on the number of active mitigation systems installed and when a passive mitigation system is converted to an active mitigation system per quarter. The Department's public service announcements are publicized through various media outlets such as radio stations and television stations throughout the Commonwealth. While outside the scope of this rulemaking, the continuing education requirements have been decreased in past rulemakings. The Department has a statutory obligation to ensure testing and mitigation system installations are conducted properly. In order to satisfy that obligation, inspections are conducted. The Department is always looking to improve efficiencies and eliminate unnecessary regulations.

Section 8 of the Radon Certification Act requires the Department to "establish a fee schedule to cover the costs of the certification programs." 63 P.S. § 2008. This rulemaking is needed to meet that statutory requirement to continue the existing radon program. The Department is continually analyzing its administrative processes, equipment, and technology to identify areas to improve efficiency, but the increase in personnel costs cannot be mitigated.

- 19. Comment:** Radon testing in Pennsylvania is voluntary. The number of tests performed is related to the cost of testing. Until testing is required, raising fees will endanger public health because it will result in less tests being performed. Does the "continued outreach and public service announcements regarding indoor radon" include the free tests given to the public? If so, our certification fees are being used to directly compete against industry providers. This promotes the idea that we are overcharging our consumers and should be giving away tests. The U.S. EPA tried to have a program funded by radon testers, but since it was so expensive to administer, the program disappeared. This could definitely happen here too. Most radon testing companies do testing as an add-on service. (30)

Response: The certification fees are not used to provide free radon test kits to the public. The Department receives a grant from the EPA for that portion of the radon program. The Department did not experience a decrease in the amount of mitigation installations and tests reported after the last radon certification fee increase in 2009 and therefore does not expect this increase to have an effect in that regard. The Department will continue to monitor the number of tests and mitigations performed.

- 20. Comment:** Smaller testers and mitigators may not find this feasible. It is not in the public's interest to have a smaller pool of radon professionals, especially in rural areas. What measures has the Department taken to secure funding for its activities without further burdening the radon test and mitigation industry with higher fees? (33)

Response: The Department understands the concerns the regulated community has regarding this fee increase. The Department did not experience a decrease in the amount of mitigation installations and tests reported after the last radon certification fee increase in 2009 and therefore does not expect this increase to have an effect in that regard. The Department will continue to monitor the number of tests and mitigations performed. Additionally, the Department is always looking to improve efficiencies and eliminate unnecessary regulations.

- 21. Comment:** The proposed tag fee as an added cost gives a disincentive to the public to protect themselves from radon by mitigating their homes. This is contradictory to the Department's mission. Added mitigation costs and potential other increases in costs from further regulatory changes that are already in process, could delay or derail home closings. Departmental policies can negatively impact the market. (33)

Response: The cost of installing a mitigation system, if needed, is a small percentage of the overall costs of real estate transactions and should not be an impediment to homeownership. Additionally, radon mitigation systems add significant benefits to the transaction process and to the home itself. If a mitigation system is needed, the health concern caused by radon exposure can be corrected and removed. This benefit to the purchaser and any future occupants of the home outweighs the cost of the increased fee.

- 22. Comment:** What research has the department conducted to understand the tradeoff between cost of mitigation/test and the willingness of the citizens of the Commonwealth to do so? How expensive can mitigation become before we experience a dramatic drop in activity? (33)

Response: The Department did not experience a decrease in the amount of mitigation installations and tests reported to the Department after the last radon certification fee increase in 2009. The Department does not expect this fee increase to have an effect in that regard. The Department will continue to monitor the number of tests and mitigations performed.

- 23. Comment:** Implementing the radon mitigation system tag requirement will make the DEP part of the supply chain. Supply chain issues such as online ordering, order acknowledgment, payment methods, and on-time delivery will need to be addressed. This is not typical of a regulatory agency and may not be supported by IT systems. What are the plans for tag ordering? (33)

Response: The Department has revised the proposed approach in the final-form rulemaking to remove the mitigation tag requirement and instead requires the mitigator to pay the \$50 fee when an active mitigation system is installed and when a passive mitigation system is converted to an active mitigation system per quarter.

- 24. Comment:** Payment options need to include credit cards, which is not available now. Small businesses may not have the ability to pay cash upfront to order these tags. What are the plans for tag payment options? (33)

Response: The Department has revised the proposed approach in the final-form rulemaking to remove the mitigation tag requirement and instead requires the mitigator to pay the \$50 fee when an active mitigation system is installed and when a passive mitigation system is converted to an active mitigation system per quarter. The Department is assessing the availability of credit card payment systems for radon certification fees.

- 25. Comment:** DEP will need a tracking system for the packages of tags it will send out and a means to guarantee on-time delivery to support industry schedules. A lost package of tags could impact dozens of mitigators, and the liability could be costly for DEP. What are the plans for tag delivery? (33)

Response: The Department has revised the proposed approach in the final-form rulemaking to remove the mitigation tag requirement and instead requires the mitigator to pay the \$50 fee when an active mitigation system is installed and when a passive mitigation system is converted to an active mitigation system per quarter.

- 26. Comment:** This will require more time-consuming paperwork for companies with multiple certified mitigators as they will need to manage multiple pools of tags, and guessing how many each mitigator may need in a given week and tracking what tags go with which certified mitigator. This provide a disincentive to having a fully certified workforce, since Firm employees do not require this. Having less certified individuals is not in the best interest of the public. Will the Department consider allowing certified individuals to share a common pool of tags IF THEY HAVE THE SAME EMPLOYER? (33)

Response: The Department has revised the proposed approach in the final-form rulemaking to remove the mitigation tag requirement and instead requires the mitigator to pay the \$50 fee when an active mitigation system is installed and when a passive mitigation system is converted to an active mitigation system per quarter.

- 27. Comment:** Public outcry usually directs regulatory oversight, but there is no public outcry on radon exposure. The public has little knowledge of radon, and radon is not even included in rad-workers annual exposure since it's not caused by licensed material. There is no federal or state regulatory limit for radon in air or water. There are no requirements to test for radon other than for HUD Multifamily mortgage transactions, but DEP wants to overregulate the radon service professionals. It is understand there are those individuals who do not follow regulations. The Department should look to expand the program or run it more efficiently. (35)

Response: Radiation worker's exposure to radon from licensed material is included in 10 CFR 20 Appendix B, incorporated by reference in 25 Pa. Code Chapter 219. While no regulatory limit exists for radon in indoor air or water; the Commonwealth follows the action level recommended by the EPA. The Department is not adding requirements for radon certification in this rulemaking. The Department analyzes its administrative processes, equipment, and technology to identify areas to improve efficiency.

28. Comment: The mitigation system tags are an excellent idea because they inform the consumer that the state is involved however the tags should be provided free to mitigators upon certification. After all what do they get for their certification fee other than the right to have a small business in this state? (35)

Response: The Department has decided to withdraw the radon mitigation tag approach; however, a label is currently required to be attached to the system. The radon certification program assures building owners that radon testers, mitigators, and laboratories have the required qualifications.

29. Comment: Most radon service providers have been able to increase their prices because of losing referrals from it. There are uncertified people, other than homeowners or occupants, that are placing and retrieving devices and enforcement is not taken against them. (35)

Response: When the Department becomes aware of any uncertified individual performing radon testing, the Department takes enforcement actions against those individuals pursuant to the Department's authority under the Radon Certification Act, 63 P.S. §§ 2001—2014, and the Radiation Protection Act, 35 P.S. §§ 7110.101-7110.704. Anyone wishing to report an uncertified person, other than homeowners or occupants, performing radon-related services can call the Radon Division at 717.783.3594.

30. Comment: Home builders are exempt from radon regulations, yet they install radon mitigation systems. These mitigation systems would not have this radon mitigation system tag, but the Department should think about requiring it if they need additional revenue. These builders also should be required to have training just like certified mitigators, since most are not installed correctly. (35)

Response: Section 6 of the Radon Certification Act exempts builders from the certification requirements. 63 P.S. § 2006. Appendix F in the Uniform Construction Code has instructions for proper installation of radon resistant new construction. The Department of Labor and Industry oversees and implements the Uniform Construction Code.

31. Comment: The Department should consider requiring radon resistant new construction when building new homes. It is less costly and helps to reduce radon. (35)

Response: While this comment is outside the scope of this rulemaking, the Department agrees that radon resistant new construction (RRNC) is an important part of minimizing radon exposure. The Department has and continues to work with individual municipalities to encourage them to adopt RRNC standards in local building codes.

32. Comment: Laboratories that do testing on radioactive material pay one fee regardless of how many employees it has. Radon laboratories that have more than one employee performing analysis are considered firms and are charged more. There are seven radon labs in Pennsylvania and they are small businesses that will suffer from increased fees. The Radon Certification Act and Radiation Protection Act should not be grouped together. Customers have said they will go to out of state larger companies if the prices were raised. It is difficult

to get homeowners and buyers to test for radon due to so many other expenses they have. Have the EQB members tested their homes, workplace or child's school? If the industry can't cover their expenses they will simply no longer off the services and the Department will need to perform the outreach on its own. (35)

Response: The Department understands the concern raised by the commentator. While this rulemaking does address fees for individuals and firms, the Department is pursuing a separate rulemaking that will address substantive issues in 25 Pa. Code Chapter 240, such as what constitutes a firm. The Department encourages the commentator to submit a comment in that regard during the public comment period for that rulemaking. The Department urges everyone in the Commonwealth to test homes, workplaces, and schools.

33. **Comment:** Since the last fee increase and over the past several years the actions of the DEP Radon Division have created an atmosphere of distrust of the Radon Division among radon service providers. Overregulation of radon service providers has already caused radon service fees to consumers to increase. Many Pennsylvania residents opt out of radon testing when purchasing a home due to the cost to test. The radon services industry in Pennsylvania is the most regulated in the nation and it has become more difficult for new radon service providers to enter the radon services field. Further fee increases and a continuance of the excessive regulations and oppressive enforcement tactics of the Radon Division is counterproductive and will leave more residents of the Commonwealth exposed to the harmful effects of radon. (36)

Response: The Department strives to implement regulatory programs in a cooperative, uniform and fair manner. The Department is always interested in receiving feedback in the context of case-specific discussions. The Department implements its enforcement authority pursuant to the Radon Certification Act, 63 P.S. §§ 2001—2014, the Radiation Protection Act, 35 P.S. §§ 7110.101-7110.704, the regulations promulgated thereunder, and the agreed-to conditions contained in each radon certification application. The Department's data shows that there has not been a decrease in testing or mitigations performed have not decreased since the last fee increase in 2009. In 2009, 42,817 radon tests were performed and that number has increased to as many as 65,488 through the years. In 2009, 9,195 mitigation services were performed and that number has increased to as many as 13,114.

While outside the scope of this rulemaking, regarding the regulatory requirements applicable to the radon services industry in Pennsylvania, the General Assembly recognized the unique public health issue radon presents in the Commonwealth. 63 P.S. § 2002(a)(1). The U.S. EPA as well as other national and international health and radiation safety organizations have declared radon to be the second leading cause of lung cancer after smoking, and the leading cause of lung cancer in non-smokers. Pennsylvania residents are at particular risk since the radon levels in this Commonwealth are much higher than most other parts of the country. As such, Pennsylvania's Radon Certification Act requires that radon service providers are qualified to perform mitigation services. 63 P.S. § 2002(a)(5). Qualifications include minimum experience requirements, proficiency testing, periodic recertification, measures for decertification, and truth in advertising requirements. 63 P.S. § 2013 (1)-(5).

34. **Comment:** Testers and mitigators can't continue to absorb the increasing fees for radon testing and mitigation with all other operating costs also continuing to increase. This will have a great impact on Pennsylvania's economy. A proper analysis should be done with Department representatives and industry professionals before increasing fees. How are the additional funds going to be allocated? More public outreach is needed. Increased fees will reduce tests, decrease home sales, and reduce the number of radon professionals. (37)

Response: Certification fees will continue to support the radon certification program and public outreach. The Department has not seen any evidence of decreased tests and home sales due to the prior fee increase; and the Department will continue to monitor the number of tests and mitigation installations performed in the Commonwealth by certified testers and mitigators. The Department recently performed a fee analysis for the functional areas of X-ray Machines / Accelerators, Radioactive Materials / Decommissioning, Nuclear Power Plants (NPP) / Environmental Surveillance and Radon. We reviewed the results of that analysis with the NPP operators and Environmental Quality Board. This information was also reviewed with our RPAC, which has a radon representative. That individual reached out to other radon industry professionals as these fee increases were proposed.

35. **Comment:** I did a cost-benefit analysis of my radon testing and found that it costs more to test than what is charged to the consumer. I already charge the maximum of what I think the public can afford. I am less inclined to promote testing now. The Department could help by reducing the confusion in its regulations, promoting a helping attitude instead of a punishing one, and asking our opinion instead of a Board of people who are not radon professionals. Radon and radioactive materials are two different things. Companies that handle radioactive materials should need every employee certified like the radon industry if they are put into the same package. (38)

Response: The Department is undertaking a separate rulemaking to address substantive issues. The Department implements its enforcement authority pursuant to the Radon Certification Act, 63 P.S. §§ 2001—2014, the Radiation Protection Act, 35 P.S. §§ 7110.101-7110.704, the regulations promulgated thereunder, and the agreed-to conditions contained in each radon certification application.

The radon certification and radioactive materials license fees were included in the same regulatory package to promote administrative efficiency. The need for each respective fee increase was analyzed individually for this rulemaking package. On July 2, 2016 the Department published the proposed fee increase in the *Pennsylvania Bulletin*, and then sent a letter on July 11th to all the certified radon testers, mitigators and laboratories to formally notify the regulated community of the proposed action.

The Department values the radon industry's input into the regulatory process. The Radiation Protection Advisory Committee (RPAC), which has a representative from the radon industry, endorsed moving forward with this rulemaking. To increase participation from the regulated community, the Department plans to conduct a webinar, and the RPAC created a Radon Subcommittee at its November 17, 2016, meeting in order to better facilitate input from the radon industry.

36. Comment: Many radon testers are home inspectors. These inspectors will discontinue providing this service if the fees increase. This fee increase provides no value to the industry or the public. It is felt this increase is for more audit and fining actions. Other states such as Ohio and Illinois provide value-added services and technical assistance programs. Pennsylvania does not. It seems like taxing home buyers and seller's through pass-through secondary taxation. The outreach service of the industry is threatened by the increasing costs. The DEP does not reach out to minority and low-income communities for radon outreach. The increase impedes the mission of the PA AARST Chapter in radon outreach and education and testing encouragement. The DEP did not have proper radon representation when considering this fee increase. The AARST represents the radon industry and was not asked to participate in these discussions. One person does not speak for the entire industry. The increased cost to the industry's overhead could be a \$200 plus increase for the consumer. That will make the consumer weigh the affordability of mitigating. The fee increase could impact the quality and features of mitigation systems due to trying to keep costs to the consumer down. It is considered improper due diligence to not conduct a cost/economic impact study. Radon and Radioactive Materials fees should not be in the same package. They are completely different in their missions and business structures. (39)

Response: The Department assists the industry by performing blind testing on certified individual's passive testing devices to ensure these devices are working correctly, and performing diagnostics in difficult-to-mitigate homes. For blind testing, the Department may anonymously purchase secondary radon devices from PA Certified laboratories or testers and expose them to known concentrations of radon in a radon chamber. After the exposures, the devices are sent back to the lab for analysis. A comparison is done between the lab reported results and the radon chamber value. The "passing" criterion is that each device must have a relative percent error of $\pm 25\%$ or less. The Department values the radon industry's input into the regulatory process. The Radiation Protection Advisory Committee (RPAC), which has a representative from the radon industry, endorsed moving forward with this rulemaking. The representative from the radon industry reached out to various industry professionals in order to gain more than one person's input into this rulemaking. The RPAC is also forming a Radon Subcommittee in order to gain additional input from the industry regarding its radon regulations.

The Department does not specifically target minority and low-income communities for radon testing; however, it implements a broad and uniform outreach program to all communities throughout the Commonwealth in order to raise awareness about the dangers of radon and encourage testing.

The radon certification and radioactive materials license fees were included in the same regulatory package to promote administrative efficiency. The need for each respective fee increase was analyzed individually as demonstrated in the 2014 fee analysis.

37. Comment: Annual radioactive material license fees would increase by \$6,700 and X-ray certificate would increase by \$300 under this new fee structure. It is understood that the radiation protection fund is entirely funded by these fees. It is also understood that the

increase is intended to assure enough funding to carry out Pennsylvania's Agreement State and Radiation Protection Act duties. However, the increase exceeds the Consumer Price Index inflation rate since 2009 and the projected inflation rate for 2009-2022. The proposed new Source Material-Other license fee of \$20,100 greatly exceeds the current U.S. Nuclear Regulatory Commission equivalent fee, which is \$6,800. The radioactive license fees should not be increased more than 20%. This increase can affect the competitiveness in the market. Increased costs affect the ability to maintain manufacturing. A more reasonable fee helps the industry invest in the economy and provide more jobs. (40)

Response: The Department determines fee amounts through comprehensive expense and workload analysis studies. The expense and workload analysis studies were incorporated into the 2014 fee analysis presented to the EQB. These analyses help quantify funding necessary to support the duties specific to radiation protection program areas. Also, though this is called a license fee, the fee supports more than just the tracking of radiation sources and the issuance of a license. It includes all program oversight elements, the most important of which is periodic on-site inspection to ensure compliance so that the public and the environment is adequately protected. This requires the maintenance and support of special equipment and trained technical/professional personnel who must make time-intensive visits to the facilities involved. The fees are set in consideration of the technical complexity of the level of oversight and inspection required. Only radioactive material licensing fees have been determined to necessitate a fee increase. The evaluation of X-ray fees has resulted in no increase.

Regarding the comparison of certain fee categories to the current 2016 NRC fee schedule, the Department performs its own workload analysis. The majority of fee categories resulted in much lower fees compared to current NRC fees. For example, portable gauge operators (Fee Category 3P) and medical human use (Fee Category 7C) are 49% and 44%, respectively, lower than the NRC. The few categories that are higher are primarily the result of a limited number of licensees NRC currently has for those specific areas. For example, in 2010 the NRC fee category for Source Material (2C) was \$21,100. At that time, the NRC regulated numerous licenses with that type of fee category. Since then, the NRC's numbers have dropped due to states taking over responsibilities for these types of licensing operations. The Department's proposal of \$20,100 will still be almost 5% lower than the NRC's 2010 fee.

38. **Comment:** Many firms that use portable nuclear density gauges are small. The proposed fee increase may result in firms discontinuing the use of these gauges as the profit margin is low and there are other costs in order to maintain these gauges as well as paying the license fee. The government needs to work within its budget and cut costs instead of increasing fees. An information notice that was sent out stated the department's operating reserves was decreasing, which suggests that there is a surplus of funds. Small firms do not have a surplus to use. More consideration is needed for small businesses paying these fees. A sliding scale increase based on number of employees could assist small businesses with this change. (6, 28)

Response: DEP is the primary Commonwealth agency charged under the Radiation Protection Act with protecting Commonwealth citizens from harmful and unnecessary

exposure to sources of radiation. 35 P.S. § 7110.301(a). Under Section 401, the Department is charged with collecting fees sufficient to support program activities from licensed radiation sources so as not to require support from general fund revenues. 35 P.S. § 7110.401. Maintaining appropriate reserves is necessary for sustaining these program activities.

Furthermore, in March 2008, the Governor signed an agreement with the U.S. Nuclear Regulatory Commission (NRC) for 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 RPA and the Agreement State program.

As for small business concerns as they relate to radioactive materials licensing, the Department provides the opportunity for small business to use the small business fee categories under Chapter 218, Appendix A, if certain requirements are met.

- 40. Comment:** While we recognize that Section 8 of the Radon Certification Act (act) (63 P.S. § 2008) requires that the Department of Environmental Protection (Department) establish a fee schedule to cover the costs of the certification programs established in the act, and Section 401 of the Radiation Protection Act (35 P.S. § 7110.401) contains a similar requirement, commentators oppose the significant fee increases proposed in this regulation. Several commentators suggest that the Department should minimize expenses before imposing higher costs on the regulated community. Others indicate that the industry's increased costs will be passed on to consumers, which may result in fewer people testing and mitigating their homes.

Has EQB evaluated whether increased costs for radon testing and mitigation could lead to a decline in radon testing and/or mitigation overall? We ask EQB to address in the Preamble of the final regulation its consideration of any negative impact that increased fees could have on efforts to protect the public from radon. Also, EQB should explain what has been done to reduce expenses and improve efficiency to the greatest extent possible in order to reduce the fiscal impact on the regulated community.

Additionally related to fees, in response to Regulatory Analysis Form question #29, EQB anticipates the promulgation, effective and compliance dates for the final-form regulation to be Quarter 2, 2017. We note that the Radiation Protection Program Three-Year Regulatory Fee and Program Cost Analysis Report to the EQB shows that proposed increased fees were expected to begin in 2016-17. Given the discrepancy between these dates, we ask EQB to provide updated information in the Preamble of the final-form regulation regarding projected program costs and revenue. (41)

Response: The Department did not experience a decrease in the amount of mitigation installations and tests reported to the Department after the last radon certification fee increase in 2009. The Department does not expect this fee increase to have an effect in that regard, but will continue to monitor the number of tests and mitigations performed. According to the Department's fee analysis of the radon program, the biggest cost factor is personnel. Personnel costs (salaries and benefits) have increased approximately 45% since the last fee increase in 2009 while fees have remained static. Expense and workload analysis studies were incorporated into the 2014 fee analysis presented to the EQB.

The Department is continually analyzing its administrative processes, equipment, and technology to identify areas to improve efficiency, but the current staffing levels are necessary for the Department to carry out its obligations under the RPA and RCA. It is important to note that the U.S. Nuclear Regulatory Commission performs routine audits to ensure the Department is maintaining adequate staffing levels to perform the required radioactive materials licensing actions and facility inspections. To date, this has not been a concern to NRC. However, training new employees in this highly technical work can take up to two years. Therefore, it is prudent to add new staff before too many current staff retire, which is foreseeable due to the demographics of the Bureau. Though not subject to audit, the radon program is required to certify over 700 radon testers, mitigators and laboratories.

Efficiencies have recently been gained using new online radon data reporting, allowing a respective reduction in clerical staff, but the certification aspect still requires several trained and experienced radiological health physics staff.

Please refer to Section F of the Order to this final rulemaking for tables that show projected program costs and revenue for Radioactive Materials Licensing and Radon due to the discrepancy between the 2014 fee analysis and the current anticipated effective date for the final rulemaking. This increase in fees along with existing program funds will provide sufficient revenue through FY 2020-2021 for radioactive materials licensing and FY 2019-2020 for the radon program.

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

Fee Category^{5,6}	Description	Annual Fee (\$)^{1,2,3,4,7}
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—[m]Metal [e]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>

* * * * *

* 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.

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CHAPTER 240. RADON CERTIFICATION

Subchapter A. GENERAL PROVISIONS

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§ 240.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Radon Certification Act (63 P.S. §§ 2001—2014).

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

Acts—The Radon Certification Act and the Radiation Protection Act (35 P.S. §§ 7110.101—7110.703).

Firm—A person, other than an individual.

Laboratory analysis—The act of determining radon concentrations in air, water, soil or passive radon testing devices.

Mitigate—To repair or alter a building or building design for the purpose in whole or in part of reducing the concentration of radon in the indoor atmosphere.

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

Person—An individual, corporation, partnership, association, trust, estate, public or private institution, group, agency or political subdivision of this Commonwealth, another state or political subdivision or agency thereof, and a legal successor, representative, agency or agency of the entities listed in this definition.

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Subchapter D. OPERATION REQUIREMENTS

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§ 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:

* * * * *

(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) Within 45 days after testing, mitigation or other radon-related service is provided, the person providing radon-related services shall report in writing to the owner or occupier of the building the results in picocuries per liter and when appropriate in working levels of radon measurements taken in the building. If a person provides the service through a certified intermediary, it is the responsibility of the intermediary to report the results.

* * * * *

(Editor's Note: The following section is new and printed in regular type to enhance readability.)

§ 240.309. RADON MITIGATION SYSTEM FEE ~~Pennsylvania Radon Mitigation System Tag.~~

(a) THE RADON MITIGATION SYSTEM FEE SET FORTH IN APPENDIX A WITH A DEPARTMENT-APPROVED RADON MITIGATION SYSTEM FEE FORM SHALL

BE SUBMITTED TO THE DEPARTMENT BY: ~~Upon activation of a new active radon mitigation system in this Commonwealth or upon activation of a passive radon mitigation system 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 not a 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) A PERSON WHO INSTALLS OR IS IN RESPONSIBLE CHARGE OF EMPLOYEES WHO INSTALL AN ACTIVE RADON MITIGATION SYSTEM IN THIS COMMONWEALTH. ~~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, the certification number of the individual who is certified to mitigate radon and the responsible charge of the firm's mitigation activities shall be recorded.~~

(2) A PERSON WHO CONVERTS OR IS IN RESPONSIBLE CHARGE OF EMPLOYEES WHO CONVERT A PASSIVE RADON MITIGATION SYSTEM TO AN ACTIVE RADON MITIGATION SYSTEM IN THIS COMMONWEALTH. ~~The date of the radon mitigation system activation.~~

(b) THE FEE FOR EACH RADON MITIGATION SYSTEM INSTALLED OR ACTIVATED MUST BE RECEIVED BY THE DEPARTMENT NO LATER THAN 10 BUSINESS DAYS AFTER THE END OF THE QUARTER IN WHICH THE INSTALLATION OR ACTIVATION WAS PERFORMED. ~~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 shall 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] §525 every 2 years

Testing Employee	[\$100] <u>\$150</u> every 2 years
Testing Firm	[\$700] <u>\$1,050</u> every 2 years
Mitigation Individual	[\$300] <u>\$450</u> every 2 years
Mitigation Firm	[\$700] <u>\$1,050</u> every 2 years
Laboratory Individual	[\$400] <u>\$600</u> every 2 years
Laboratory Firm	[\$750] <u>\$1,125</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 FEE</u>	<u>\$50 per tag FOR EACH RADON MITIGATION SYSTEM INSTALLED OR ACTIVATED (4)</u>

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 shall be purchased in amounts of five or more per transaction.~~ The Department will waive the RADON MITIGATION SYSTEM 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 THE EMPLOYEE'S official duties and the employee is not compensated for this service except through the employee's salary.

July 19, 2017

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

Re: Final Rulemaking: Radiological Health and Radon Certification Fees; and
Pennsylvania Radon Mitigation System Fee (#7-498)
Final Rulemaking: Water Quality Standards – Class A Stream Redesignations (#7-528)

Dear Mr. Sumner:

Pursuant to Section 5(a) of the Regulatory Review Act, please find enclosed copies of two final-form rulemakings for review and comment by the Independent Regulatory Review Commission (IRRC). The Environmental Quality Board (EQB) adopted both final-form rulemakings at its June 20, 2017 meeting.

The Radiological Health and Radon Certification Fees; and Pennsylvania Radon Mitigation System Fee (#7-498) final-form rulemaking amends 25 Pa. Code, Chapters 218 and 240 and adjusts the radioactive materials licensing and radon certification fees. The amendments in Chapter 218 will increase the annual fees for radioactive material licenses, with one exception, and increase the hourly rate professional fee associated with certain full-cost recovery licenses. The amendments in Chapter 240 will increase the application fees for certification of radon services and add a new requirement and fee for active mitigation systems installed or passive mitigation systems converted to active mitigation systems in this Commonwealth.

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 fees, which support radon testing and mitigation certification, 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 of Environmental Protection (DEP) would be required to curtail spending for needed equipment, infrastructure upgrades, training and hiring of qualified personnel. This rulemaking addresses these problems by increasing the Chapter 218 and 240 fees to meet Radiation Protection Act (RPA) and Radon Certification Act (RCA) requirements to adequately fund the licensing and inspection of radioactive materials and the certification of individuals who perform radon-related activities.

With two exceptions, the final-form rulemaking will increase the Chapters 218 and 240 fees by 50 percent 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. One exception is for license category 2A(2)(c) – ‘Source Material – Metal Extraction,’ which

will be reduced by 50 percent. No one is currently licensed in the Commonwealth of Pennsylvania in this Source Material category. The second exception is for category 7B—Human Use—Broad Scope (except Teletherapy). Based on feedback from the Radiation Protection Advisory Committee (RPAC), this fee category will only be increased by 25 percent to avoid licensees in this category from downgrading their licenses to a specific license and to avoid placing additional administrative burdens on DEP.

The proposed rulemaking added subsection 240.303(a)(7) to include the serial number of the Pennsylvania Radon Mitigation System Tag as a reporting requirement. This subsection has been deleted from the final-form rulemaking due to the removal of the proposed requirement of a Pennsylvania Radon Mitigation System Tag to be placed on any newly installed or converted radon mitigation system in this Commonwealth.

The proposed rulemaking additionally included the new § 240.309 that contained the requirements for Pennsylvania Radon Mitigation System Tags to implement the new \$50 radon mitigation system fee. The EQB received several comments that raised concern over the logistical and administrative burdens that the tags would place on both DEP and the regulated community. This section has been revised in the final-form rulemaking to remove the use of a mitigation tag for payment of the \$50 fee. The final-form regulation requires payment of the fee to DEP using a form created for this purpose. DEP must receive the fee and the form within 10 business days of the end of the quarter in which an active mitigation system is installed or a passive mitigation system is converted to an active system. This change to the final-form regulation reduces the logistical and administrative burdens that would have been imposed by requiring a mitigation tag while retaining the \$50 mitigation system fee that is needed to adequately fund the radon certification program.

All Pennsylvania radioactive material licensees and certified radon testers, mitigators and laboratories will be required to comply with this rulemaking. DEP regulates approximately 850 specific and general licensees and approximately 720 radon certificate holders.

The proposed rulemaking was approved by the EQB on April 19, 2016, and published in the *Pennsylvania Bulletin* on July 2, 2016. Public comments on the proposed rulemaking were accepted through August 30, 2016. The Board received comments from 40 commentators during the public comment period and the Independent Regulatory Review Commission (IRRC). These comments were considered and are addressed in the comment and response document that accompanies this final-form rulemaking.

DEP presented the draft final-form Annex A to RPAC on November 17, 2016, and RPAC concurred with DEP's recommendation to advance the final-form rulemaking forward for EQB consideration.

The Water Quality Standards – Class A Stream Redesignations (#7-528) final-form rulemaking includes regulatory changes that are the result of stream evaluations conducted by DEP in response to a submittal of data from the Pennsylvania Fish and Boat Commission (PFBC) under 25 Pa. Code § 93.4c (relating to implementation of antidegradation requirements). Section 93.4c(a)(1) pertains to the process for changing a designated use of a stream. In this final-form rulemaking, redesignations rely on § 93.4b(a)(2)(ii) to qualify streams for High Quality (HQ) designations based upon their classifications as Class A wild trout streams. A surface water that has been classified a Class A wild trout stream by the PFBC, based on species-specific biomass standards, following public notice and comment, qualifies for HQ designation. The PFBC Commissioners approved these waters after public notice and comment.

DEP staff conducted an independent review of the trout biomass data in the PFBC's fisheries management reports for streams throughout the Commonwealth to ensure that the HQ criteria were met. Based on these data and appropriate regulatory criteria, DEP developed this package of stream redesignations. The regulations include HQ stream redesignations in the Delaware, Susquehanna and Ohio River basins.

During DEP's review of stream data, listing errors were discovered in § 93.9. The final-form rulemaking corrects an error in the drainage list at § 93.9d (listing for a short segment of the Pohopoco Creek main stem). This rulemaking also corrects an error in § 93.9k (portions of Little Nescopeck Creek (above State Route 309) and Creasy Creek) included with the data submittal from the PFBC. However, these portions of the upper Nescopeck Creek basin are already designated HQ-CWF, MF and therefore no change is necessary. Further, this rulemaking corrects some stream names as they appear in §93.9k. The United States Geologic Survey (USGS) maintains the National Hydrography Dataset (NHD) Flowline, and these corrections are being made to maintain consistency between the *Pennsylvania Code* and the NHD Flowline. Finally, this rulemaking includes the HQ waters redesignations, based on the Class A wild trout qualifier.

One minor edit was made to the redesignations recommended in the proposed rulemaking. DEP staff noted that, in Drainage List F, the Annex A references T 707 Bridge in the zone descriptions for both of the Willow Creek entries. This is actually the T 708 Bridge that crosses Willow Creek. Both entries for Willow Creek in Drainage List F are corrected in the final-form rulemaking.

DEP is unable to accurately estimate who will be affected by these stream redesignations because: (1) persons, businesses and small businesses will not be impacted until a future activity requiring a new or modified National Pollutant Discharge Elimination System (NPDES) permit is proposed; (2) effluent discharges and receiving stream characteristics are unique; (3) social and economic justification may be available to modify the compliance requirement; and (4) generic technology or cost equation are not available for purposes of comparing the costs and/or savings for local governments that are responsible for discharges.

However, the stream redesignations benefit all citizens of the Commonwealth, both present and future, by maintaining and protecting water. Small businesses in the recreation industry should

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be positively affected by these regulations. The maintenance and protection of the water quality will ensure the long-term availability of Class A fisheries.

Further, DEP identified three public water supply facilities with raw water intakes that are no further downstream than 16.5 stream miles of the candidate stream sections for redesignation in this rulemaking package. These three public water suppliers which serve over 115,000 citizens should benefit from this regulation because their raw source water will be afforded a higher level of protection. This provides an economic benefit as the source water treatment costs for the drinking water will be less for customers if less treatment is needed due to the high quality of the water in the stream.

The proposed rulemaking was published in the Pennsylvania Bulletin on March 5, 2016 opening a 45-day public comment period that closed on April 18, 2016. Over 300 public comments were received for the proposed regulatory amendments in addition to comments from IRRC. Most comments supported the regulatory amendments. All comments were considered and are addressed in the comment and response document that accompanies this final-form rulemaking.

The Department will provide assistance as necessary to facilitate IRRC's review of the enclosed final-form rulemaking under Section 5.1(e) of the Regulatory Review Act.

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,

A handwritten signature in cursive script, appearing to read 'Laura Edinger', followed by a comma.

Laura Edinger
Regulatory Coordinator

Enclosures



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
POLICY OFFICE

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO
THE REGULATORY REVIEW ACT

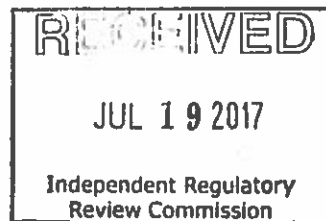
I.D. NUMBER: 7-498

SUBJECT: Radiological Health and Radon Certification Fees; and Pennsylvania Radon Mitigation System Fee

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 Tolerated Regulation
- a. ☐ With Revisions b. ☐ Without Revisions



FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

7-19-17 John MaherMajority Chair, HOUSE COMMITTEE ON
ENVIRONMENTAL RESOURCES & ENERGY

Representative John Maher

7-19-17 Sandy MatzkeMinority Chair, HOUSE COMMITTEE ON
ENVIRONMENTAL RESOURCES & ENERGY

Representative Mike Carroll

7-19-17 Gene YawMajority Chair, SENATE COMMITTEE ON
ENVIRONMENTAL RESOURCES & ENERGY

Senator Gene Yaw

7-19-17 John YudichakMinority Chair, SENATE COMMITTEE ON
ENVIRONMENTAL RESOURCES & ENERGY

Senator John Yudichak

7/19/17 David Sumner

INDEPENDENT REGULATORY REVIEW COMMISSION

David Sumner

ATTORNEY GENERAL (for Final Omitted only)

LEGISLATIVE REFERENCE BUREAU (for Proposed only)

