

Radiological Health Final Fee Rule 7-423

Thomas K. Fidler

**Deputy Secretary for
Waste, Air and Radiation Management**

Authority

- Radiation Protection Act

Act 147-1984 as amended 31-2007

“collect fees sufficient to cover costs”

- Radon Certification Act

Act 43-1987

“establish a fee schedule to cover the costs of certification”

This Final Fee Rulemaking will provide revenue sufficient to cover program costs as directed by **Act-147** and **Act-43**.

Reason for Rulemaking

- The enhanced revenues are needed to support new and existing program responsibilities.
- The Commonwealth assumed the responsibilities of an Agreement State on March 31, 2008.
- Agreement State status was supported by the Governor and PA Legislature. The need for additional fees was acknowledged at that time.

Purpose of Rulemaking

- The regulatory fees are the sole source of revenue for their respective programs.
- The last fee increase was 7 years ago;
 - ◆ program costs have risen about 30%
 - ◆ looking ahead, current fees will be unable to fully support their programs.

Fee History

- Pa. Code, Chapter 218
(related to fees)
Last General Revision - **Nov 17, 2001**
- Pa. Code, Chapter 240
(related to radon certification)
Last Fee Revision - **January 19, 1991**

Summary of Fees Affected

- ❖ Annual fees for:
 - ❖ X-ray facility registration
 - ❖ Radioactive material licenses
 - ❖ Accelerator licenses
 - ❖ X-ray service provider registration
- ❖ Hourly Rate charged for professional staff time
- ❖ Biennial certification fees for radon testers, mitigators and laboratories

Chapter 218 - Other Changes

- ❖ 218.11a
 - ❖ Allows for retroactively collecting a one-time prorated annual fee from Nuclear Regulatory Commission (NRC) licensees initially transferred to the Commonwealth as part of the Agreement State process.
- ❖ 218.11(i)
 - ❖ Department requirement to review the adequacy of fees at least every 3 years and propose changes to the Board to balance fees and costs; per Act 31-2007.

Chapter 240 - Other Changes

- ❖ New biennial fee for:
 - ❖ Listing approved Primary Testing Devices for radon
 - ❖ Listing approved Course Providers for continuing education
 - ❖ Each additional testing employee at a firm
- ❖ New fee for:
 - ❖ Late reporting of the results from radon service activities
 - ❖ Late submittal of renewal applications for radon services
- ❖ All radon fees are consolidated in a new table, the “Radon Certification Fee Schedule”

Federal Initiatives

- **The Energy Policy Act of 2005**
 - ◆ Took away non-Agreement States ability to regulate essentially all radioactive material, thereby encouraging Agreement State status.
- **NRC**
 - ◆ Provides negligible economic support to Agreement States.
- **U.S. EPA**
 - ◆ Encourages state Radon programs by providing matching funds grants.
 - ◆ However, the percentage of matching available from year to year is not guaranteed or a reliable revenue stream.
- There is no significant federal support for other programs like x-ray registration that rely on the Final-Form fees.

Implementation

- Start of revenue enhancement is expected to coincide with CY 2009.
 - ◆ Chapter 218 programs won't see the full benefit for 12 months.
 - ◆ Radon revenues are spread over 24 months.
- Agreement State staff augmentation staggered across FY2008-9. X-ray staff supplement in the interim.
- The Final Rule provides a means for collection of license fees retroactive to the effective date of license transfer from NRC to ensure no loss of revenue during transition.

Cost of Compliance

- On average, the fee increases presented here amount to $\approx 3.7\%$ compounded annually.
- Under Chapter 218, the regulated community can expect:
 - ◆ Across-the-board increase of about 40%, since fees have not been increased since 2001 and will not have the opportunity to increase again until 2011.
 - ◆ Lower fees compared to what would be charged by the NRC if PA ceded its radioactive material program.
- Chapter 240 radon fees have not changed since 1991. The increase in existing fees has been minimized by expanding fee categories and structuring fees based on volume of certification requested.

Advisory Committee - Proposed

August 21, 2007, RPAC approved of the Proposed Rule and included a request to examine three possibilities:

1. **Phase in radon fees:** Phasing fees is not practical due to the extended biennial permit cycle.
2. **Scale radon fees with business size:** The new certification fees for additional employees in a firm and the use of individual testing devices results in fees that are generally higher for larger radon service providers.
3. **Re-evaluate feasibility of a CPI:** There is little benefit to adding increased complexity as the final rule would require fees to be re-evaluated every 3 years.

Rulemaking History

- Proposed Rule
 - ◆ Approved by the EQB on December 18, 2007
 - ◆ Published in the PA Bulletin March 15, 2008 with a 30 day comment period.

- Two Public Comments

- ◆ Both were from the radon service industry, expressing concerns about the impact of fee increases on small radon businesses.
- ◆ They requested DEP look for ways to cut program costs, provide scaled or reduced fees for small business and phase in any fee increases.

- The Attorney General and Standing Legislative Committees had no comments.

- IRRC provided no comments and indicated that should the Proposed Rule be submitted unchanged at Final, IRRC would deem it approved.

Advisory Committee - Final

- The Department returned to RPAC on May 29, 2008 with a Draft Final Rule unchanged from the Proposed Rule and explained how it would respond to the Commentators.
- The Draft Final Rule was unchanged because:
 - ◆ Opportunities to reduce program costs have been fully exploited
 - ◆ Radon fees were already small business fees
 - ◆ Fees are scaled to business size through the amount of certification required rather than the volume of business transacted
 - ◆ Fees cover 2 years and are impractical to phase in

Advisory Committee - Final

- The RPAC understood the desire to find more small business relief, but voted to approve the unchanged Draft Final Rule.
- The Radon portion of the draft final rule was presented to the Small Business Advisory Committee (SBAC). SBAC provided no comments.

Future Steps

- The Department recommends that the Board approve promulgation of the Final-Form rulemaking. The Department requests the regulation be promulgated prior to January 1, 2009, so programs can fulfill their responsibilities, particularly transition to Agreement State.
- Act 31-2007 and the Final-Form Rule will direct the Department to review the adequacy of these fees every 3 years, report back to the Board, and propose any necessary changes.