



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Bureau of Radiation Protection

COMMENT AND RESPONSE DOCUMENT

Radiological Health Fees

25 Pa. Code Chapter 218
52 Pa.B. 5500 (August 27, 2022)
Environmental Quality Board Regulation #7-574
(Independent Regulatory Review Commission #3352)

INTRODUCTION

On June 14, 2022, the Environmental Quality Board (Board) adopted the Radiological Health Fees proposed rulemaking to increase the annual fees for radioactive material licenses and increase the hourly rate professional fee associated with certain full cost recovery licenses. On August 10, 2022, the Department of Environmental Protection (Department) submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment in accordance with Section 5(a) of Pennsylvania's Regulatory Review Act (71 P.S. § 745.5(a)). On August 27, 2022, the Board published the proposed rulemaking in the *Pennsylvania Bulletin* (52 Pa.B. 5500) for a 30-day public comment period that closed on September 26, 2022.

This Comment and Response Document provides responses to all comments received during the public comment period, as well as comments submitted by the Independent Regulatory Review Commission (IRRC). The House and Senate Environmental Resources and Energy Committees did not submit comments on the proposal.

A list of the commentators, including name and affiliation (if any) can be found on page 3 of this document. The commentator list also includes identification numbers, which are referenced in parentheses following each comment in this document.

Copies of all comments received by the Board during the public comment period are posted on the Department's e-Comment website at <https://www.ahs.dep.pa.gov/eComment/>. Additionally, copies of all comments are available on IRRC's website at <http://www.irrc.state.pa.us> by searching for Regulation # 7-574 or IRRC # 3352.

LIST OF COMMENTATORS ON THE PROPOSED RULEMAKING

Name/Address	
1.	Thomas Casey Famous LLC 906 West Washington St. New Castle, PA 16101
2.	Glenn Roberts UniTech Services Group, Inc. 401 North Third Ave. Royerford, PA 19468
3.	David Sumner Independent Regulatory Review Commission (IRRC) 333 Market Street 14 th Floor Harrisburg, PA 17101

Acronyms used in this Comment and Response Document

Act – Radiation Protection Act
DEP – Department of Environmental Protection
EQB – Environmental Quality Board
NRC – U.S. Nuclear Regulatory Commission
RAF – Regulatory Analysis Form

COMMENTS AND RESPONSES

1. Comment: “Like many, I had an opportunity to pivot when COVID reared its ugliness and put my condolences aside to make a substantial change for a community well deserving. I purchased a small building just prior to COVID and found it and all neighboring properties were on an illegal dumpsite from decades in the making. I’ve cleaned and cleared the 10 acres and am ready to implement storm water pipes and know I will need the correct direction and mentoring but am having difficulty with the proper collaboration and am seeking assistance.” (1)

Response: The Department thanks the commentator for the comment; however, it is outside the scope of this proposed rulemaking. The comment was referred to the pertinent regional office so the appropriate program staff could provide the requested assistance to the commentator.

2. Comment: “UniTech Services Group, Inc. (UniTech) owns and operates eight (8) licensed nuclear laundry facilities in various jurisdictions within the United States of America. All the facilities are located in the Agreement States of the Nuclear Regulatory Commission. UniTech's Royersford, PA facility is of particular interest, subject to the Pennsylvania Department of Environmental Protection (DEP) Radioactive Materials License No. PA-1073. The NRC previously licensed the facility under License No. 27-23342-01. The regulatory authority was transferred to DEP by the NRC in mid-2008, and the first DEP license was issued on June 19, 2008. By way of these comments, UniTech respectfully requests consideration by the Environmental Quality Board (EQB) and DEP for a reduction in the Fees for Radioactive Materials Licenses, Fee Category 6A, Nuclear Laundry, and implementation of the reasonableness standard. The current fee is \$43,200, and the subject Proposed Rulemaking suggests an increase to \$47,520. In support of this fee reduction request, UniTech offers the following information for consideration.

UniTech operates the only nuclear laundry facility, Fee Category 6A, regulated by DEP, and has perspective into the regulatory oversight of its facility and activities. UniTech believes that the initial fee assessed by the EQB and DEP was based on information received from the NRC. Such information was likely skewed by excessive hours devoted by NRC to oversight related to a condition that no longer exists. In 1998, Massachusetts (MA) became an Agreement State, the last state before PA became an Agreement State which regulates UniTech. UniTech believes that MA also based its nuclear laundry license fee on time estimate information from the NRC. The current MA annual nuclear laundry license fee is \$4000 (801 CMR §4.02, Fee Category RCP 21), which provides insight into more typical regulatory oversight time expenditures from the NRC.

UniTech Nuclear Laundry License Fees

MA	\$ 4,000	801 CMR 4.02	RCP 21
PA	\$ 43,200	25 Pa. Code 218	6A
NM	\$ 12,410	20 NMAC 3.16.12	F
WA	\$ 18,284	WAC 246-254-070	04
IL	\$ 13,830	32 IAC 331, App F	205B

SC	\$ 4,375	SC Code 61-30, G.5.	dd
TN	\$ 14,625	0400-20-10-.31	14.00
CA	\$ 7,347	17 CCR 30230/1	Formula

\$9,361 Average annual license fee without PA

UniTech is aware of only one other nuclear laundry in the USA, Alabama. Based on the full cost recovery rate (currently \$225/hr, proposed increase to \$275/hr), 192 staff hours would be required to equate to our annual fee, 173 hours with the proposed increases. UniTech suggests that 20 to 30 hours of staff time is a more reasonable yet conservative overestimate. UniTech respects the insight of DEP technical staff in this regard. DEP technical staff time includes a full-day inspection every two to three years, processing license amendments (only two in number since the last renewal in 2015, one of which was COVID-related), and review of routine reports.

UniTech understands that DEP prepared its Three-Year Regulatory Fee and Program Cost Analysis Report (Report) according to 25 Pa Code §218.11(l), which states: The Department will review the adequacy of the fees established in this section 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.

UniTech respectfully suggests that the regulation implies that reductions in fees should also be considered where appropriate, not only recommendations to increase fees to eliminate [any] disparity. The fee provisions of the Radiation Protection Act authorize reasonable fees (§401), and reasonableness should include consideration, as it does in the fee language for nuclear power facilities, of “fees to cover the costs of programs related to their activities” (§402). As a separate fee category in Appendix A, the actual costs incurred by DEP to oversee program activities for nuclear laundries should be considered and applied to set reasonable fees. Based on the expected evaluation, the proposed fee is not reasonable.” (2)

Response: A nuclear laundry license is a complex license involving numerous requirements in addition to the inspection, license amendment and review of reports mentioned by the commentator. As discussed in more detail as follows, there are environmental monitoring requirements, financial assurance requirements, and special training for Radiation Protection Program (Program) staff to review the licenses and perform the monitoring. In addition, there are infrastructure costs that must be maintained independent of the number of operational licenses.

Under license condition, a nuclear laundry is required to perform annual routine monitoring of the environment near and downstream of their wastewater discharge pipe into the river. This monitoring includes sampling of sediment (3 times per year), plant (2 times per year), fish (2 times per year), and clams (1 time per year) to monitor the radiological contaminants that they are discharging to the environment. The radiological results of this sampling must be reviewed by staff with federally required, specialized training on radiological contaminants in the

environment. All annual data is then compiled in a final report and evaluated against public dose limits. That report is also reviewed by this specially trained staff to evaluate their compliance.

Additionally, the Program periodically collects or obtains split samples from the licensee to perform its own independent analysis. This sampling requires specific equipment to collect and submit samples. Each sample has a cost for radiological analysis.

By regulation, a nuclear laundry is required to maintain financial assurance to ensure funds are available should the licensee become unable to properly maintain the site and terminate the license. This financial assurance requires a cost specific review of what it would take for a third party to come in and properly clean up the facility and the surrounding environment, both surface and subsurface. This cost estimation is required to be submitted at least every three years. The cost estimate and associated financial assurance mechanisms require detailed review and approvals and require special training for the individuals who perform those reviews.

At a minimum, the reviews mentioned above require at least one technical staff and one manager to complete the review for each submission. The financial assurance reviews typically involve at least one additional staff member to make sure the review is thorough. Therefore, two or three Program staff's time is required for each of these compliance activities.

The Program maintains a section of staff specifically trained for decommissioning and environmental monitoring. The NRC Agreement State Program requires that this staff receive specialized training to be qualified to implement these decommissioning and environmental monitoring requirements. Currently, the commentator's nuclear laundry facility is the sole license in Pennsylvania requiring environmental monitoring—not just the only license in the nuclear laundry license category but the only license out of all radioactive material license categories. Therefore, the commentator's nuclear laundry facility license fee is the only funding source to support this specialized training.

There is a cost for the infrastructure that must be maintained independent of the number of operational licenses. These infrastructure costs include indirect and administrative services, including rulemaking, maintaining guidance for licensees, and maintaining procedures for staff, training, and travel, the cost of information management, information technology, security, facilities management, rent, utilities, financial management, acquisitions, human resources, and policy support, etc.

The commentator has compared Pennsylvania's license fees with states that are able to supplement their fees with other funding sources to administer their programs. Section 401 of Pennsylvania's Radiation Protection Act states that "...[t]hese fees shall be in an amount at least sufficient to cover the department's costs of administering the programs." Consequently, Pennsylvania's Program is funded entirely through its license, registration, and certification fees.

As the Department noted in the Three-Year Regulatory Fee and Program Cost Analysis Report (Report) for the Program and in the Preamble to this rulemaking, the Radiation Protection Fund balance will go into the negative in fiscal year 2023-2024. Therefore, the Department cannot afford a delay in promulgating this final-form rulemaking and decreasing the fee is not feasible.

However, the Department has determined that keeping this license category at the current rate for this three-year fee review cycle is not expected to be detrimental to the Program at this time, as currently there is only one nuclear laundry license in Pennsylvania. During the next three-year fee review cycle, the Department will compile more detailed information on this unique license category, including but not limited to, training, sampling, and staff hours, which will allow the Department to assess if an additional adjustment to the nuclear laundry license fee category is appropriate.

3. Comment: IRRC notes the annual fee for a nuclear laundry license is currently \$43,200 and is proposed to be increased by ten percent to \$47,520. A commentator who holds this license believes the fee was initially based on information received from the United States Nuclear Regulatory Commission, which “was likely skewed by excessive hours devoted . . . to oversight related to a condition that no longer exists.” The commentator is also licensed in seven other states, where fees range from \$4,000 to \$18,284. The commentator goes on to request a reduction in this fee to a reasonable standard in consideration of actual costs incurred by the Department. Section 401 of the Radiation Protection Act (Act), the statutory authority for this proposed regulation, requires the Board to “set reasonable annual fees” to provide the Department with sufficient funds to administer the Radiation Protection Program. 35 P.S. § 7110.401. In addition to addressing the commentator’s concerns, IRRC asks the Board to explain why this fee, and the proposed increase, is reasonable and how it complies with the requirement in the Act. (3)

Response: As discussed in detail in the Department’s response to Comment #2, a nuclear laundry license is a complex license involving various additional requirements. There are environmental monitoring requirements, financial assurance requirements, and special training for Program staff to review the licenses and perform the monitoring. In addition, there are infrastructure costs that must be maintained independent of the number of operational licenses.

The commentator submitted several other states’ license fees as an example; however, those states’ programs are supplemented by other funds. The Commonwealth’s Program is required by statute to be funded solely through its license, registration, and certification fees and the Radiation Protection Fund balance is projected to go into the negative in fiscal year 2023-2024. Therefore, the Department cannot afford a delay in promulgating this final-form rulemaking and decreasing the fee is not feasible.

However, the Department has determined that keeping this license category at the current rate for this three-year fee review cycle is not expected to be detrimental to the Program at this time, as currently there is only one nuclear laundry license in Pennsylvania. During the next three-year fee review cycle, the Department will compile more detailed information on this unique license category, including but not limited to, training, sampling, and staff hours, which will allow the Department to assess if an additional adjustment to the nuclear laundry license fee category is appropriate.

4. Comment: IRRC comments that the full cost recovery fee for licenses in categories 4A, 5B and 14 is currently \$225 per hour and is proposed to be increased by 22 percent to \$275 per hour. This fee is assessed for decontamination and decommissioning activities performed by the

Department and covers personnel and incidental charges. IRRC notes that the Preamble and Regulatory Analysis Form (RAF) submitted with the proposed regulation state the fees in Chapter 218, Appendix A are increased by ten percent and the Board does not explain the need to raise this fee. IRRC asks the Board to revise the Preamble and RAF submitted with the final-form regulation to reflect the percentage increase of the full cost recovery fee and to explain why this increase is needed and reasonable. (3)

Response: As IRRC notes, the full cost recovery fee is an hourly rate charged for decontamination and decommissioning activities performed by Department staff. This fee is rarely utilized because it only applies in two situations. One is the extraordinary circumstance that a non-licensee possesses radioactive material requiring decontamination and decommissioning and therefore has not paid any license fee to the Department. The other case is when a licensee requests termination of their operating license and conversion to a decommissioning-only license. In this case, the Department would only charge the hourly rate if Program staff had completed enough work to exceed the annual fee paid by the licensee. This allows the Department to recover the full cost of staff time spent on unplanned work that is not included in the Program's revenue projections.

In addition to covering personnel salaries, there is a cost for the infrastructure that must be maintained independent of the number of operational licenses. These infrastructure costs include indirect and administrative services, including rulemaking, maintaining guidance for licensees, and maintaining procedures for staff, training, and travel, the cost of information management, information technology, security, facilities management, rent, utilities, financial management, acquisitions, human resources, and policy support. As this is an hourly professional rate for a license category with an unpredictable number of licensees, the fee increase is needed to compensate for the increase in Department staff salaries and the aforementioned infrastructure costs, which have risen more than 22% since the last fee increase in 2017. The Preamble and RAF for this final-form rulemaking have been updated to provide an explanation for the fee increase and the correct percentage increase of 22%.

5. Comment: IRRC notes the estimates of costs to local governments in RAF Question #20 and state government in RAF #21 to comply with this proposed regulation conflict with the estimates for these regulated communities in RAF Question #23. IRRC asks the Board to update the RAF submitted with the final-form regulation to provide consistent cost estimates. (3)

Response: The Department has updated the RAF to correct these cost estimates. The cost estimates in the responses to Questions #20 and 21 of the RAF submitted with the proposed rulemaking were the correct estimates. The response to Question #23 has been updated to be consistent with the responses to Questions #20 and 21.