

**EQB Proposed Regulation #7-423 (#2681)
Radiological Health and Radon Certification Fees**

List of Commentators

1. **Anthony LaMastra**
A.B.E. Radiation Measurements Laboratory
Lenhartsville, PA 19534

2. **Carl Distenfeld**
T.C.S. Industries
Harrisburg, PA 17112

COMMENTS AND RESPONSES

Comment:

The fee increases are exorbitant.

“The Radiation Protection Advisory Committee recommended this proposed fee be moved forward with a review of this small business nature of the radon testing industry.” What is the status of this review? (2)/(1)

Response:

DEP is very much aware and has given great consideration, prior to this fee increase proposal, to the fact that much of the radon industry is comprised of small businesses. Approximately 90% of the radon industry is small business and the original certification fees did address this by having one fee for a single individual and another higher and additional fee for a firm. However, this new proposed fee will be even more of a graduated scale because it charges an additional fee for each employee, so that larger firms with more employees will be paying more than a small firm with fewer employees.

The smallest radon business entity would be a certified testing or mitigation individual whose fee would be \$350 every 2 years or \$175/year under the proposed regulations. The current fee is \$200 every two years or \$100/year. We are considering an increase in this fee of about \$150 over a two-year period, which is consistent with the rate of inflation over the past years and comparable to other state radon certification programs and accrediting organizations other than those that institute a Program Administration Fee with a sliding scale based on volume of business generated. This “scaling” approach will be discussed later in this document. There has been no fee increase in Radon Certification fees since 1991. This fee is less than the radioactive material license fee schedule, which would be \$400/year for businesses having incomes between \$0 and \$350,000 and less than 35 employees.

If a radon business grows to the point of requiring the hire of employees, the business would then apply for a Firm Certification which would be \$700 every two years. A certified firm requires a certified individual to be in responsible charge of that firm. The fee for a certified individual

would be \$350 every two years for a total of \$1,050 every two years or \$525 annually. This type of operation would include one employee at no charge. Should the operation grow to a point of hiring additional employees, an additional fee of \$100/employee would be charged. Therefore, the fees for a firm with one certified individual would be \$1,050 every two years; a firm with one certified individual and one employee would be the same at \$1,050 every two years; a firm with one certified individual, and two employees would be \$1,050 plus \$100 or \$1,150 every two years and so on.

It has always been DEP's position to do as much as possible to maintain or reduce the expense of certification on the regulated community. The first of these reductions was accomplished by reducing the required continuing education credits from 32 to 16. This reduction in continuing education credits was not solely to reduce certification expenses, but also because radon-related information does not significantly change over the years, and so the major reasons for requiring radon continuing education is to ensure the review of information and to increase overall knowledge. The 16 credits were determined to be adequate for those requirements. Another previous change to the regulations that provided a cost savings to the industry was changing the primary measurement proficiency from an every two-year requirement to an initial one-time requirement. Also, we are in the process of removing the regulatory requirement to have each certification application notarized, which is another example of DEP reducing costs to the industry.

The Department concludes there is no reason to further modify the proposed radon fee structure in order to be equitable to the industry. Also, equity between the radon and radioactive materials programs is not mandated since the program elements that need to be supported are different.

Comment:

The Preamble states that the Bureau rejected a “scaled approach” to the radon fees which was suggested by the Advisory Committee based on a concern with the relative size of each radon business. Since this concern is raised by the two commentators, more information is needed on why this approach was deemed unnecessary. (2)/(1)

Response:

Using the above example, one can see that the proposed radon fees are indeed scaled as to the relative size of the business. This scaled approach is based on the number of employees in a firm. It is assumed that more business generated by a firm requires growth and the addition of more employees. Should the fees be scaled on a “per volume” of business scale, as is the example in a neighboring state, the fees would be much larger. For example, for the smallest business in New Jersey, which utilizes the “per volume” scale, a Radon Testing business with one certified individual or Specialist and two employees or Technicians and generating 1-49 device drops or tests within a 6-month period would be:

Initial Business Fee:	\$400
Initial Specialist Fee:	\$150
Initial Technician Fee:	\$150 (\$75 ea. x 2 Techs)
Program Admin Fee for	

1 -49 devices every 6 months: \$1,080 (\$540 every 6 mos. x 2)
\$1,780 for the First Year

Renewal Business Fee: \$200
Renewal Specialist Fee: \$ 75
Renewal Tech Fees: \$100 (\$50 ea. x 2)
Program Admin Fee for
1-49 devices every 6 months: \$1,080 (No change from the first year)
\$1,455 for the Second Year

Total Cost for the 2-year period: $\$1,780 + \$1,455 = \$3,235$

*This same business in Pennsylvania would cost \$1,150 for the 2-year certification fee regardless of the number of devices placed. In the New Jersey program the costs for the Program Admin Fee is on a sliding scale up to \$7,805 for 2,000 -5,000 devices deployed every 6 months or an additional \$15,610 a year added to the base price of Business, Specialist and Technician Fees. Also, this does not include inspection fees of \$400/inspection that are not charged in Pennsylvania.

A similar example can be given for Radon Mitigation Businesses.

It would also require a more active administrative, regulatory and inspection approach to make certain businesses are reporting properly in addition to enforcement issues when businesses violate the reporting requirement.

Comment:

There is no control over the imposition of fees or the amount on the part of the affected community. (1)

Response:

Section 102 of the Radiation Protection Act, 35 P.S. 7110.102(10) expressly states that one of the purposes of the Act is to "establish fees." Also, section 301(16) expressly states that DEP has power and authority to "require the payment of and collect fees established under Chapter 4 in an amount at least sufficient to cover the department's costs." The Radon Certification Act directs the Department to establish, by regulation, a fee schedule to cover the costs of radon certification programs (63 P.S. § 2008). The manner in which the department sets fees is not otherwise constrained. The department is not required to have small business fees or waive fees.

The Department determines fee amounts through comprehensive workload analysis studies. These analyses help quantify funding necessary to support the duties specific to the radiation protection and radon programs.

These fees are required to undergo the same process as any change to any state regulation. The proposed rulemaking has been open for informal public comment through the Radiation Protection Advisory Committee (RPAC), which is composed of members of the regulated

community, including the radon industry, and it was published in the *Pennsylvania Bulletin* with a formal public comment period of 30 days.

Comment:

DEP continuing education courses are poor and they should make an approved annual conference meet the full 16 hours of continuing education. (1)

Response:

In March 2001 DEP amended the regulations and reduced the previously required 32 credits of continuing education by half (16 credits). DEP currently allows 1 credit for every 2 hours of attendance at seminars and lectures because the attendance verification process is not as definitive; they do not give exams/quizzes, and DEP does not have the opportunity to preview the presentations and materials as it does with approved courses. DEP keeps overhead expenses down as well by privatizing all radon certification initial and continuing education courses, exams, radon proficiency, spike and calibration chambers, while still maintaining adequate quality control over all these activities, thereby reducing cost and overhead while maintaining a high quality of service to the industry. It is largely certified individuals and firms that provide most of the continuing education courses. DEP had not previously charged a course provider fee, but since this review process requires departmental resources, and in order to equalize expenses across the entire radon-related industry, DEP has added a course provider fee as well. DEP makes a wide variety of continuing education available to the certified community including:

- 1) 22 DEP-approved continuing education course providers who provide approximately 85 DEP-approved courses.
- 2) Radon courses not DEP-approved (1 credit for every 2 hours of attendance)
- 3) Radon-related symposium/conference attendance (same as above)
- 4) Radon articles published in a technical presentation.
- 5) Public outreach radon presentations (up to 4 credits per 2-year period)
- 6) Technical papers presented formally or as a poster paper
- 7) Radon course instruction, and
- 8) DEP also accepts proof of passing either the NEHA or NRSB exams as equivalent to 16 credits of continuing education.

Comment:

Why charge for testing employees and not mitigation employees? (1)/ (2)

Response:

DEP made the decision to not charge for additional mitigation employees in an attempt to equalize the expense between the mitigators and testers, because of the inherent disparities between the liability and physical effort involved in mitigation system installations and the warranting of a mitigation system. The number of currently certified testers is about three times that of certified mitigators and is a good indication that this portion of the industry is not as viable as the testing portion.

Comment:

The affected industry derives no real benefit from the fees. (1)

Response:

The fees are intended to cover the costs of the Pennsylvania Radon Certification Section only, which is responsible for reviewing and approving/disapproving applications for Radon Testing, Mitigation and Laboratory certifications. Other services DEP provides include reviewing all initial and continuing education training courses; collecting required data submission from the industry; editing and updating to the Radon Oracle database and maintaining this database; maintaining files, both paper and electronic, on all certified radon contractors and producing current monthly lists of these contractors for internal and public use; responding to all regulatory and enforcement issues that arise; assisting in answering calls and emails from the public; and developing and maintaining radon certification policy. These activities, among others, are routine requirements for any certification organization. In addition, DEP provides the regulated certified community with advertising to the citizens of Pennsylvania via public service announcements, magazine advertising, informational booths at home shows, etc., public talks and handling over 600 phone and email inquiries per month. At each of these activities the current list of contractors is always made available. These outreach activities include the production, printing and mailing of thousands of literature packs to PA citizens; these activities raise consumer awareness about Radon, thus creating a demand for radon testing and mitigation.

Comment:

Much of the work of the Radon Section can be done by the Regions, with the result of removing people from the payroll in the central office: (1)

Response:

Regional staff primarily carry out inspections for all of the Bureau's various programs including X-ray facilities and licensed Radioactive Material facilities and radon facilities and installations, whereas, Central Office staff deal primarily with registrations, certifications, licensing, fee collections, database management, webpage construction and management and in the case of the Radon Division, coordination of outreach activities, grant applications and contract oversight and handling the Radon Hotline, which receives an average of 550 calls per month, peaking to over 2,000 calls in January. Regardless of where the specific work is accomplished – Central Office or Regional Offices – the salaries of the staff complement are paid out of the Radiation Protection Fund.

It is important to note, however, that Central Office has been decreased over the past 10 years by two technical employees and has moved to a clerical pool vs. dedicated clerical staff. DEP has kept personnel hours and overhead to a minimum by privatizing all radon certification exams, radon initial and continuing education courses and radon proficiency, spike and calibration chambers, while still maintaining adequate control over all these activities. Printing costs for the large volumes of radon literature made available to the public, real estate offices, schools and physicians, etc., have been greatly reduced by moving to the “in-house” print shop and “on-demand printing” vs. ordering through outside vendors.