

## EXECUTIVE SUMMARY

### **Radiological Health and Radon Certification Fees (Amendments to 25 Pa Code, Chapters 218 and 240)**

This final rulemaking revises fees associated with the licensing, registration and certification activities within the Radiation Protection Program. The Radiation Protection Act (Act 147-1984) requires the Department to establish fees in amounts at least sufficient to cover the costs of the radiation protection program mandated by the Act. Despite substantial increases in both program and personnel costs, the current Chapter 218 fees, which support the licensing and inspection of radioactive materials and radiation-producing machines, and the current Chapter 240 radon fees have not been revised since 2001 and 1991, respectively. As a result, the Radiation Protection Fund is seriously depleted in operating reserves and the Department is curtailing discretionary spending for much-needed equipment and infrastructure upgrades and personnel training relative to the management of the Radiation Protection Program. This rulemaking addresses these problems by increasing the Chapter 218 and 240 fees accordingly to cover program costs. These fee increases are independent of the recent nuclear power plant fee increases which were implemented as a result of revisions to Act 147 in 2007.

Through this rulemaking, existing radiation-producing machine and radon certification fees will increase about 40 percent and radioactive material licensing fees will increase approximately 30 percent. The extent of the fee increases is reflective of their static nature since their origination; however, broken down annually, the increases amount to approximately a 3.7 percent increase. The rulemaking package also includes new radon fees for registering course providers, listing primary testing devices, for certifying more than one employee in a firm and for late filing of applications and filing late reports. The proposed fees in this rulemaking package were calculated at a rate as to not require further adjustments through the next four years.

There are no comparable federal fees for radon certification or radiation-producing machines as those programs are implemented through the states. The radioactive material license fees are patterned after 10 CFR Part 171 and capped at 2007 levels. The radon fees impact about 750 permits, all small businesses. The radioactive material license fees affect about 1,000 authorizations and provide for reduced fees for small businesses. The majority of the fees deal with 11,000 authorizations for radiation-producing machines.

The Radiation Protection Advisory Committee (RPAC) reviewed the proposed rulemaking at its August 21, 2007, meeting. The EQB adopted the proposed regulations on December 18, 2007, and the rulemaking was published in the *Pennsylvania Bulletin* on March 15, 2008 (38 Pa.B. 1246), commencing a 30-day public comment period. During the public comment period, two commentators provided comments to the EQB on the proposed rule, both of which emphasized the impact the fee adjustments would have on small radon businesses. While the Department is sensitive to the costs of the regulated community, in particular those of small businesses, it emphasizes that the radon fees adjusted in this rulemaking have not been altered since their origination over 17 years ago and, as a result, do not cover the increased costs of program implementation and management, which have been impacted by inflation. Furthermore, the regulatory fee adjustments are structured based on the number of employees in the firm, not on

business volume, which provides additional consideration to the challenges of small businesses. On May 29, 2008, the Department returned to the RPAC with a draft final rule that was unchanged from its proposed form. After review of the draft final rule and discussion of the Department's proposed responses to the comments, the RPAC recommended, by letter dated May 30, 2008, that the draft final rulemaking be submitted to the EQB for consideration. Upon completion of its statutorily mandated review of the proposed rulemaking, the Independent Regulatory Review Commission did not issue any comments on the regulations.

There is no statutory deadline for final adoption of this rulemaking. However, the fee amounts in the rulemaking were set with the expectation that they would be implemented in calendar year 2009 to ensure revenue needs associated with the Commonwealth's Agreement State program expansion, which was authorized by the U.S. Nuclear Regulatory Commission on March 31, 2008. Delay of the rulemaking, including the associated fee adjustments, will jeopardize staff augmentation that is necessary under Agreement State with the Nuclear Regulatory Commission. Upon promulgation of the rulemaking, the Department will review the fees set forth in the regulations every three years and adjust them as necessary to cover program costs impacted by inflation.