



**State of New Jersey**  
Department of Environmental Protection  
P.O. Box 402  
Trenton, New Jersey 08625

PHILIP D. MURPHY  
*Governor*

CATHERINE R. MCCABE  
*Commissioner*

SHEILA Y. OLIVER  
*Lt. Governor*

	)	<u>ADMINISTRATIVE ACTION</u>
	)	FINAL DECISION
NEW JERSEY DEPARTMENT OF	)	
ENVIRONMENTAL PROTECTION,	)	
RADIATION PROTECTION PROGRAM,	)	OAL DKT NOS. EER 15235-16, 15238-16,
	)	08632-17, 08636-17, 15236-16, 15237-16,
Petitioner,	)	08623-17, 08629-17
	)	
v.	)	AGENCY REF. NOS. PEA160001-439481,
	)	PEA160002-439481, PEA170001-439481,
RADIATION DATA,	)	PEA160004-439481, PEA160002-332995,
	)	PEA160003-332995, PEA160004-332995,
Respondent.	)	PEA170001-332995
	)	
	)	(CONSOLIDATED)

This Order addresses the appeal of two Administrative Orders (AOs) and six Administrative Orders and Notices of Certification Suspension (Notices) that the Department of Environmental Protection (Department), Bureau of Radiation Protection, issued to Radiation Data (Respondent) for failing to pay required program administration fees, assessed semi-annually, for Respondent's radon measurement business as well as its radon mitigation business, for the years 2015 and 2016, in violation of the Radiation Protection Act (Act), N.J.S.A. 26:2D-1 et seq., and the implementing regulations, N.J.A.C. 7:28-27.1 et seq. The total fees owed, as set forth in the AOs and Notices, are \$36,630 for Respondent's radon measurement business, and \$17,139 for its radon mitigation business.

### PROCEDURAL AND FACTUAL BACKGROUND

Radon is a colorless, odorless, radioactive gas that increases the risk of developing lung cancer. The Act requires the Department to establish a program for the certification of persons who test for, mitigate, and safeguard buildings from radon gas and radon progeny. N.J.S.A. 26:2D-70 and -71. The Act further mandates the Department to establish a fee schedule to cover the costs of the radon measurement and mitigation certification programs. N.J.S.A. 26:2D-75. In 1990, the Department promulgated regulations to implement the Act, including a fee schedule. N.J.A.C. 7:28-27.30.

Due to Respondent's failure to pay the program administration fees, the Department issued separate AOs, each dated May 12, 2016, ordering Respondent to cease operation or comply by paying the unpaid fees for its radon measurement and mitigation businesses, respectively. The AOs notified Respondent that failure to submit payment would result in the suspension of its certifications. When Respondent failed to comply, the Department issued the Notices, notifying Respondent of the overdue fees and that its certifications for its radon measurement business and radon mitigation business were suspended for a period not less than 30 days and continuing until the fees are paid. See N.J.A.C. 7:28-27.25. The Notices pertaining to Respondent's radon measurement business were dated July 6, 2016, for the unpaid fees for the number of measurement devices employed from January 1, 2015 through June 30, 2015; August 31, 2016, for the unpaid fees for the number of measurement devices employed from July 1, 2015 through December 31, 2015; and March 23, 2017, for the unpaid fees for the number of measurement devices employed from January 1, 2016 through June 30, 2016. The Notices

pertaining to Respondent's radon mitigation business were dated July 6, 2016, for the unpaid fees for the number of buildings mitigated from January 1, 2015 through June 30, 2015; August 31, 2016, for the unpaid fees for the number of buildings mitigated from July 1, 2015 through December 31, 2015; and March 23, 2017, for the unpaid fees for the number of buildings mitigated from January 1, 2016 through June 30, 2016.

Respondent's hearing requests to challenge the AOs and Notices were granted and the matters consolidated after transmittal to the Office of Administrative Law (OAL). The consolidated matters were assigned to Administrative Law Judge (ALJ) Jacob S. Gertsman, temporarily assigned. On November 13, 2017, the ALJ held separate hearings on the consolidated AOs and Notices related to Respondent's radon measurement business and those related to its radon mitigation business. After post-hearing briefs and other submissions by the parties to correct the record were received, the ALJ closed the record.

The ALJ issued an Initial Decision on June 21, 2018, affirming the AOs and Notices. The total unpaid program administration fees in the AOs and Notices were \$36,630 for Respondent's radon measurement business and \$17,139 for its radon mitigation business, for three consecutive semi-annual periods. However, the parties stipulated Respondent had been assessed but failed to pay a total of \$48,840 and \$22,852 in unpaid program administration fees for its radon measurement and radon mitigation businesses, respectively. These amounts include the fees assessed but unpaid for a fourth semi-annual period. Based on the parties' stipulation, including Respondent's admission, the ALJ found Respondent liable for the total amount of unpaid program administration fees as of March 2017. No exceptions were filed.

Based on my review of the record and the Initial Decision, I ADOPT the Initial Decision with a modification limiting Respondent's liability for unpaid program administration fees to those identified in the AOs and Notices.

#### DISCUSSION

N.J.A.C. 7:28-27.30(d) requires a certified radon measurement business to submit a program administration fee to the Department in accordance with Fee Schedule B, set forth in the regulation. Fee Schedule B establishes a flat program fee, as well as an activity fee based on the number of measurement devices employed each semi-annual period. Similarly, a certified radon mitigation business must submit a program administrative fee to the Department in accordance with Fee Schedule C, included in the regulation. Fee Schedule C also sets forth a flat program fee, as well as an activity fee which is based on the number of buildings mitigated each semi-annual period. Pursuant to the regulation, both program administration fees will be adjusted up or down annually by the previous 12-month inflation factor.

Respondent is a certified radon measurement business and a certified radon mitigation business. As set forth in the AOs and Notices, the semi-annual periods for which Respondent owes program administration fees are January 1, 2015 to June 30, 2015; July 1, 2015 to December 31, 2015; and January 1, 2016 to June 30, 2016. As part of its certified radon measurement business, Respondent employed over 5,000 radon measurement tests, incurring the highest program administration fee under the Fee Schedule B in each of the relevant semi-annual periods. As part of its certified radon mitigation business, Respondent mitigated over 200 buildings in each of the relevant semi-annual periods, likewise incurring the highest program

administration fee under the Fee Schedule C in each of the relevant semi-annual periods. Accordingly, for each of the three relevant semi-annual periods, Respondent was assessed a program administration fee of \$12,210 for its certified radon measurement business, and \$5,713 for its certified radon mitigation business.<sup>1</sup>

In his thorough Initial Decision, the ALJ presented the stipulated facts, made findings of facts, and, after describing the parties' respective positions, set forth conclusions of law. I ADOPT the ALJ's findings of facts, as fully supported by the record. I also ADOPT the ALJ's conclusions of law, which are well-reasoned and based on the statutory and regulatory requirements for certified radon measurement and mitigation businesses. I therefore ADOPT the ALJ's Initial Decision as to Respondent's liability for unpaid program administration fees pertaining to its certified radon measurement business and its certified radon mitigation business. However, while the AOs and Notices at issue in these consolidated cases pertain to the above-noted three semi-annual periods, with a total of \$36,630 in assessed fees for Respondent's radon measurement business, and \$17,139 in assessed fees for its radon mitigation business, the Initial Decision found Respondent liable for the stipulated total amounts owed as of March 2017, which included fees assessed for a fourth semi-annual period. I am mindful that the Initial Decision made this liability finding based on Respondent's own admission that it failed to pay additional program administration fees assessed for its radon measurement business and its radon mitigation business, bringing the total amounts owed as of March 2017 to \$48,840 and \$22,852. However, because the scope of the hearing was limited to the AOs and Notices, which alleged

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<sup>1</sup> These figures reflect the fees as adjusted by the inflation factor.

that Respondent failed to pay required program administration fees for three semi-annual periods, I am constrained to MODIFY the Initial Decision to find Respondent liable only for the unpaid program administration fees as set forth in the AOs and Notices at issue in these consolidated cases.

Further, I ADOPT the ALJ's finding in the Initial Decision that Respondent is subject to a suspension of its radon measurement certification for not less than 90 days but MODIFY the Initial Decision to clarify that the suspension shall continue until the program administration fees at issue are paid. In order to correct a typographical error,<sup>2</sup> I also MODIFY the Initial Decision as to the consolidated radon mitigation case to clarify that Respondent is subject as well to a suspension of its radon mitigation certification for not less than 90 days and until the program administration fees are paid.

#### CONCLUSION

For the reasons set forth therein and above, I ADOPT as MODIFIED herein the ALJ's Initial Decision and find that Respondent is liable for non-payment of the required program administration fees for its radon measurement business and its radon mitigation business as assessed in the AOs and Notices at issue in these consolidated cases. Respondent is hereby ORDERED to pay, in accordance with paragraph 3 of the respective Notices, \$36,630 in program administration fees for its radon measurement business and \$17,139 in program administration fees for its radon mitigation business, within 30 days from the date of this Final Decision.

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<sup>2</sup> In the Initial Decision, on page 29, the ALJ orders that the AOs and Notices are affirmed in the radon mitigation case, and further orders that Respondent is liable for the unpaid administration program fees and subject to suspension of its certification. The ALJ's reference to radon measurement certification in this paragraph is corrected to radon *mitigation* certification.

Respondent's certification for each business is ORDERED immediately suspended for not less than 90 days from the date of this Final Decision and until the program administration fees are paid. Respondent is further ORDERED to return, within 14 days of the date of this Final Decision, its current radon measurement business certification document and its current radon mitigation business certification document.

IT IS SO ORDERED.

DATE:

7/31/18



Catherine R. McCabe, Commissioner  
New Jersey Department of  
Environmental Protection

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