# 10-144 DEPARTMENT OF HUMAN SERVICES

 BUREAU OF HEALTH

 DIVISION OF HEALTH ENGINEERING

Chapter 224: AIR AND WATER RADON SERVICE PROVIDER REGISTRATION RULES

Summary: These rules are designed to regulate the companies and personnel authorized by state law to provide air and water radon services to personnel, facilities, and structures within the State of Maine.

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PART A. GENERAL PROVISIONS

SECTION 1. SCOPE.

 Except as otherwise specifically provided, these regulations apply to all persons or companies located within or outside the State of Maine that intend to conduct air or water radon services, including but not limited to radon testing , evaluation of radon detection devices, radon mitigation consultation, or radon mitigation in the State of Maine.

SECTION 2. DEFINITIONS.

 As used in these rules, unless the context otherwise indicates, the following terms have the following meanings.

 "Act" means the Radon Registration Act (Sec 1. 22 MRSA c. 165, section 771 et seq.)

 "Air radon" means the radioactive gaseous element and its decay products found in air. See "Radon".

 "Associated radiological concerns" means radioactive elements other than radon, including, but not limited to, radium, thorium, uranium, and their respective decay products.

 "Authorized radon testing device" means a device that collects radon or its decay products, requires analysis by an independent measuring facility or is a continuous monitoring device and,

 a. for air radon- has been determined to be acceptable by the United States Environmental Protection Agency under the Radon Measurement Proficiency Program conducted under 15 United States Code, Section 2661, et. seq.

 b. for water radon- criteria will be determined after EPA begins its radon in water certification program following adoption of their radon in water MCL.

 "Contractor" means an individual or a company employing such individuals, who, for remuneration, proposes to reduce radon levels in a structure or modifies a structure to reduce radon levels. This includes design, installation, or supervising the installation of mitigation systems. Also called a mitigator.

 "Department" means the Department of Human Services, Division of Health Engineering.

 "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency (EPA).

 "Listed facility" means a radon testing facility that is:

 a. designated as a primary company by the Radon Measurement Proficiency (RMP) Program of the United States Environmental Protection Agency under 15 United States Code, Section 2661, et. seq.

 b. a water radon test facility that is certified to measure gross alpha in water or uses the current draft method proposed by EPA for the measurement of radon in water, and will use the final method determined by EPA.

 "Lowest livable level" means the lowest level of a structure that can reasonably be occupied throughout the year with little or no modification preceding occupancy. If the level in question does not meet these criteria but is used as a workshop, playroom, or exercise room, this level shall be considered livable for the purposes of radon testing.

 "Mitigator" see "Contractor".

 "Persons" means any individual, corporation, partnership, firm, institution, group, agency, or political subdivision of this or any other state or the Federal government, municipal or quasi-municipal organization but not including the Department.

 "Primary measurement company" or "Laboratory" means a service that has the capability to analyze or read radon measurement devices using a laboratory or portable equipment and skilled operators. Also called a listed facility in these rules.

 "On-site" means in the structure the client has requested radon services for.

 "Quality Assurance" or "(QA)" means insuring accuracy and reproducibility in analysis and or mitigation methods in accordance with written standards as set forth in the EPA radon proficiency program.

 "Radon" means the radioactive gaseous element and its decay products produced by the disintegration of the element radium in air, water, soil, or other media.

 "Radon Contractor Proficiency Program" or "RCP" means EPA's National Radon Contractor Proficiency Program, a program designed to provide minimum proficiency criteria for individuals who design and supervise the installation of radon mitigation systems in buildings. This program measures the proficiency of the individual contractor, not the proficiency of the contractors' company.

 "Radon Measurement Proficiency Program" or "RMP" means EPA's National Radon Measurement Proficiency Program, a program designed to identify technically competent organizations and individuals capable of providing the public with radon measurement services, and to promote standard measurement and quality assurance practices.

 "Radon Service Providers" means persons or companies providing radon testing services, evaluation of radon detection devices, radon mitigation consultation and/or radon mitigation services.

 "Radon Testing Services" means providing, for direct or indirect remuneration, determination of radon levels or analysis of an authorized radon testing device. This term includes those services provided by listed facilities.

 "Secondary measurement company" or "testing company" means a company that offers radon services to include home inspection and consultation, and radon detector distribution, but such company does not have its own laboratory analysis capability.

 "Supervised employee" means an untrained employee (not sub-contractor) that operates under supervision in a clients building, has no decision making authority, does not assist in planning the activities to take place at the work site, and operates from a "cookbook" list of instructions that they are not permitted to deviate from in any way. See "Untrained employee".

 "Supervisor" means the registered individual supervising untrained (supervised) employees.

 "Untrained employee" means an employee of a registered company who does not have the required qualifications to become registered as a radon service provider and performs radon services in a clients building while under supervision.

 "Very high radon levels" means 50 pCi/l in air and 100,000 pCi/l in water.

 "Water radon" means radon found in water.

SECTION 3. SEVERABILITY.

 The provisions of the rules are severable. If any provision of these rules is found to be invalid, or if the application of any provision of these rules to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications.

SECTION 4. REGISTRATION REQUIREMENTS

 A. Pursuant to the Act, all persons or companies located within or outside the State of Maine that intend to conduct radon testing services, evaluation of radon detection devices, radon mitigation consultation, or radon mitigation services in the State of Maine shall be registered by the Department. No radon service provider may offer or provide these services unless registered with the Department. The requirements of these rules are continuing requirements.

 B. Initial Registration. The Department shall register an applicant who provides evidence meeting the criteria for the requested registration and files a complete and accurate application. Minimum criteria for registration are:

 1. All air radon service providers- participation in the appropriate EPA Radon Proficiency Programs.

 2. Water radon test evaluators- participation in a certification program regarding gross alpha emitter measurement in water or measure radon in water according to the most recent method put forth by EPA, until EPA finalizes their radon in water measurement methods.

 3. Water radon testers and mitigators- completion of the Waterborne Radon course provided by the Eastern Regional Radon Training Center, or equivalent training as determined by the department.

 4. Supervised employees- no training requirements. Application must include a statement that each supervised employee is an untrained employee (not sub-contractor) that operates under supervision in a clients building, has no decision making authority, does not assist in planning the activities to take place at the work site, operates from a "cookbook" list of instructions that they are not permitted to deviate from in any way, and that any problems or deviations from the planned activity at each individual work site will be handled in person and on site by the supervisor.

 5. All registrants conducting Radon related services shall have a quality assurance (QA) program to assure that services are performed accurately and errors are controlled and corrected in a minimal amount of time. Program elements should include: responsibilities and duties of all persons performing radon services; standardized procedures for testing and/or evaluation; maintenance schedule for equipment; review of results; standardized reporting procedures; and corrective action plan.

 6. Temporary waivers of registration will be considered for applicants who prove they have attempted to meet the minimum requirements but do not through no fault of their own. This pertains primarily to those experiencing delays in getting listed with the EPA proficiency programs.

 C. Use of Listed Facilities. Only listed facilities are authorized to analyze radon measurement devices that are used in the State of Maine.

 D. Notice Of Registration. The registrant shall be notified in writing of their registration.

 E. Use of Authorized Radon Testing Devices. Only authorized radon testing devices are allowed to be used to test for radon in the State of Maine.

 F. Fees. The annual fee shall be in accordance with the following schedule. The registration fee for a company will cover the registration fee for one principal owner of the company who would also have to register as an on-site employee.

 1. Radon Testers And Evaluators

 a. Companies Performing Testing Services, or Primary Companies that evaluate radon testing devices: $150. each

 b. On-site Employees employed by the above companies performing radon testing services : $150. each

 c. Supervised Employees employed by the above companies performing on-site radon testing services $100. each

 2. Radon Mitigators

 a. Companies performing mitigation or mitigation consultation services: $ 75. each

 b. On-site Employees employed by the above companies performing radon mitigation services: $ 75. each

 c. Supervised Employees employed by the above companies performing on-site radon mitigation services: $ 50. each

 G. Proration of Fees. The fees shall be prorated by the Department on a six month basis, based upon the fiscal year July 1 - June 30.

 H. If the Department refuses to register an applicant, the applicant may request an administrative hearing as specified in Part C Section G.

 I. Renewal of Registration. The registration may be renewed biennially, upon submittal of the proper registration fee, beginning July 1, 1993. Renewal applications shall be provided by the Department with a minimum notice of 30 days. If the Department determines not to renew a registration, the registrant shall be afforded an administrative hearing upon request, as specified in Part C, Section G.

SECTION 5. EXEMPTIONS TO THE REGISTRATION REQUIREMENTS

 A. General Provision. The Department may, upon application therefore or upon its own initiative, grant such exemptions or exceptions from the requirements of these regulations as it determines are authorized by law and will not result in undue hazard to public health and safety or property.

 B. Government Employees. Qualified State of Maine personnel in the course of their assigned duties, and qualified U.S. Environmental Protection Agency personnel as well as any qualified subcontractor of the State of Maine and the U.S. Environmental Protection Agency, operating within this State providing the work performed is in accordance with the Radon Measurement Proficiency Program, the Radon Contractor Proficiency Program, and uses associated quality assurance procedures.

C. Residential use. A person performing testing or mitigation on a building owned or inhabited by that person.

D. New construction. A builder utilizing preventive or safeguarding measures in new construction as recommended in "Radon-resistant Residential New Construction" EPA/60018-881087, published by the U.S. EPA, or an equivalent publication as determined by the department.

SECTION 6. RECORDS

 A. Notification To Clients. The following information shall be conveyed to clients:

1. The Maine registration number of the radon service provider;

2. A statement to the effect that any questions, comments, or complaints concerning individuals or firms providing radon related services in Maine should be directed to:

 Radiation Control Program

 State House #10

 Augusta, ME 04333-0010 Phone 287-5676;

3. A statement that the State of Maine requires the reporting of radon test results to the Department in accordance with the Act ( 22 MRSA sec. 771 et seq.), and that the following is to be reported to the Department:

 a. Zip code of the structure tested.

 b. The radon laboratory result or mitigation type.

 c. Mailing/Street address of the structure tested or mitigated in cases of very high radon levels.

 B. Reports To The Department. Reporting to the department is to follow these procedures and must include this information.

1. All registrants shall mail a report to the department as specified in these rules on the first day of each calender month for all radon services completed during the previous calender month (note-a completed mitigation is one in which the results of the follow up test have been received by the mitigator). These reports shall be on approved forms provided by the Department or on floppy diskette in a Department approved format. For any month during which no radon services are performed in Maine, a report shall be submitted stating this on the same forms or in the format referenced above.

2. Data to be Reported: Radon Testers and Evaluators.

a. Maine registration number of the lab evaluating the test device;

b. Maine registration number of the tester, when applicable.

c. Zip code of location of the structure tested (summaries of results such as mean, mode, and median are not acceptable);

d. Test type (air radon, water radon);

e. Test tracking number or identifying number;

f. Level of structure tested (basement, 1st floor, other);

g. Test result in pCi/l;

h. Mailing/Street address for structures with very high radon levels (this item, if necessary, will be requested separately after receipt of the report).

 3. Data To Be Reported: Radon Mitigators.

a. Maine registration number of mitigator;

b. Zip code of the location of the structure mitigated (summaries of results such as mean, mode, and median are not acceptable);

c. General mitigation type (active subslab depressurization, air exchanger, sealing/caulking, aeration, GAC unit, other-please specify).

d. Mailing/Street address for structures with very high pre-mitigation radon levels (this item, if necessary, will be requested separately after receipt of the report).

SECTION 7. INSPECTIONS AND RECORDS REVIEW

 A. Each registrant shall make available for inspection to the Department during working hours records maintained pursuant to these regulations. Records to be maintained are:

1. Radon testers and evaluators. Client name, address, location of structure if different than client address, test device ID number(s), location(s) of test device(s), and test results.

2. Radon mitigators. Client name, address, phone number, location of structure if different than client address, pre-mitigation test result and location, post-mitigation test result and location, mitigation system type, and any variations from the minimum performance standards listed in these rules.

 B. The Department is authorized to visit places of business and testing or mitigation locations in order to review records and to observe mitigation techniques, laboratory operations, and other such radon services for the purpose of verifying the quality of radon services work.

SECTION 8. COMMUNICATIONS.

 All communications and reports concerning these regulations, and applications filed thereunder, shall be addressed to the Radiation Control Program, State House Station #10 (157 Capitol Street), Augusta, Maine 04333.

SECTION 9. VIOLATIONS TO THESE RULES.

 An injunction or other court order may be obtained prohibiting any violation of any provision of the Act or any regulation or order issued thereunder. Any person failing to register pursuant to these rules commits a civil violation for which a forfeiture not to exceed $500 may be adjudged. Any person in violation of §777 (use of listed facilities), §778 (reporting requirements), or §779 (advertising) commits a civil violation for which a forfeiture not to exceed $250 per violation may be adjudged. Any person who engages in radon testing, advertising or mitigation in violation of this chapter is also in violation of Title 5, chapter 10 (Unfair Trade Practices). Other violations of these rules are punishable as Class E crimes pursuant to 22 MRSA §47.

SECTION 10. TRUTH IN ADVERTISING.

A. False and/or misleading claims or advertisements shall not be made with regard to any and all products and/or services offered.

B. Only services which can actually be provided by the firm at the time of the advertisement shall be offered.

C. "Scare Tactics" such as statements indicating exaggerated cancer risks or exaggerating loss of property value shall not be utilized.

D. A person may not advertise any radon testing device as "State Approved", "approved by the State of Maine" or by use of any phrases with similar meaning or content. This restriction also applies to any reference denoting municipal approval.

SECTION 11. CHANGE IN REGISTRATION STATUS.

 Any person or company that is registered under these rules must notify the department within five working days after a change occurs that alters an applicant's ability to meet the prerequisites for registration. Notification shall be in writing and on company letterhead.

SECTION 12. ROSTER OF REGISTRANTS.

 A list of registered radon service providers shall be prepared by the department and be made available to the public.

SECTION 13. MAINE RADIATION ACT.

 The Maine Radiation Act (22 MRSA §661 et seq.) may also pertain to activities regulated by these rules.

PART B. MINIMUM PERFORMANCE STANDARDS

SECTION 1. GENERAL PERFORMANCE STANDARDS.

 All radon service providers shall conform to the minimum performance standards set forth by EPA in their Radon Proficiency Programs or listed in this section, and shall use EPA approved protocols (except where Maine protocols are more stringent) or equivalent practices as determined by the department and shall comply with applicable federal, state, and local statutes, ordinances, and rules. Additionally, anyone registered to perform radon related work in the state of Maine shall abide by acceptable general performance standards.

SECTION 2. RADON TESTING.

 A. Testing Location.

 1. Initial radon screening tests: air radon screening tests shall take place in the lowest livable level of the structure, in addition to any other levels requested by the client.

 2. Follow up testing: EPA testing protocols shall be followed.

 B. Testing Conditions. All radon testing, except during diagnostic work, shall occur with no temporary mitigation methods (such as plywood over a sump hole) taking place. Any sampling that occurs with temporary mitigation methods in place shall be considered invalid for the purpose of determining the radon level of the structure. All other EPA testing protocols shall be followed.

SECTION 3. WATER RADON MITIGATION.

 A. Aeration Systems. All aeration systems used in water radon mitigation shall have the exhaust vent stack meet the same criteria as the vent stack used in sub-slab depressurization systems used in air radon mitigation. These criteria are found in EPA's Radon Mitigation Standards.

 B. Granular Activated Carbon. All Granular Activated Carbon units used for radon mitigation shall have disposal options or disposal schedules provided by the mitigator. These disposal options and schedules will be based on guidance provided by the department.

PART C. ENFORCEMENT ACTIONS, PROCEDURES, AND CIVIL PENALTIES

SECTION 1. PURPOSE AND SCOPE.

 The purpose of the enforcement program is to promote and protect the health, welfare and safety of the public, including employees by:

 A. Ensuring compliance with regulations and registration conditions;

 B. Obtaining prompt correction of violations and adverse quality conditions which may affect safety;

 C. Deterring future violations and occurrences of conditions adverse to quality; and

 D. Encouraging improvement of registrant activities, including the prompt identification and reporting of potential safety problems.

 E. Consistent with the purpose of this enforcement program, prompt and vigorous enforcement action will be taken when dealing with registrants who do not achieve the necessary attention to detail and high standard of compliance.

SECTION 2. ENFORCEMENT CONFERENCES.

 A. Whenever the Department has learned of the existence of a potential violation for which a civil penalty or criminal action may be warranted, the Department will conduct an enforcement conference with the licensee prior to taking enforcement action, unless the Department determines that the severity of the potential violation warrants escalating enforcement action. The purpose of the enforcement conference is to:

 1. Discuss the violations or nonconformance, their significance and causes, and the registrant's corrective actions.

 2. Determine whether there are any aggravating or mitigating circumstances, and

 3. Obtain other information which will help determine the appropriate enforcement action.

 B. During the enforcement conference, the registrant will be given an opportunity to explain to the Department what corrective actions were taken or will be taken following discovery of the potential violation or nonconformance.

 C. When needed to protect the public health and safety, escalated enforcement action, such as the issuance of an order suspending or revoking a registration, will be taken prior to the enforcement conference. In such cases, an enforcement conference may be held after the escalated enforcement action is taken.

 D. Following the enforcement conference, the Department shall issue a notice of violation or a letter indicating the potential violation has been resolved.

SECTION 3. NOTICE OF VIOLATION.

 A. Before instituting any proceeding to suspend or revoke a license or to take other action for alleged violation of any provision of the Act or these rules or the requirements for registration, the Department will serve on the registrant a written notice of violation. The notice of violation will concisely state the alleged violation and will require that the registrant or any other person submit, within twenty (20) working days of the date of the notice or other specified time, a written (facsimile accepted) explanation or statement in reply including:

 1. corrective steps which have been taken by the registrant or other person and the results achieved;

 2. corrective steps which will be taken; and

 3. the date when full compliance will be achieved.

 B. When the Department finds that the public health, safety, or interest so requires, or that the violation is willful, the notice of violation may be omitted. If a notice of violation is served and the Department determines the response is unsatisfactory, or no response is made within the required time frame, the Department may escalate its enforcement action.

SECTION 4. CIVIL PENALTIES

 A. A civil penalty is a monetary penalty that may be imposed for violation of:

 1. registration requirements of the Act or these rules, or

 2. reporting requirements, requirements to use listed facilities, and advertising restrictions of the Act.

 B. Civil penalties shall be sought in District Court pursuant to Maine Rules of Civil Procedure, paragraph 80 H.

SECTION 5. REVOCATION OR SUSPENSION OF REGISTRATION.

 Actions by the Department to suspend or revoke registrations shall be brought in Administrative Court pursuant to 5 MRSA §10051 et seq. Such actions may be brought for violations of the Act or these rules, or for the following:

 A. To remove a threat to the public health and safety or the environment;

 B. To stop mitigation activities when: (i) further work could preclude or significantly hinder the identification or correction of an improperly constructed mitigation related system or component, or (ii) the registrant's quality assurance program implementation is not adequate to provide confidence that testing and or analysis activities are being properly carried out;

 C. When the registrant has not responded adequately to other enforcement action;

 D. When the registrant interferes with the conduct of an inspection or investigation; or

 E. After sufficient documentation of misconduct has been obtained by the Department, or upon delisting by the EPA Radon Proficiency Programs.

 F. When a registrant is unable or unwilling to comply with the requirements set forth in the Act or these regulations, to include;

 1. Misrepresentation or false advertising.

 2. False reporting.

 3. Failure to report as required by these rules.

 4. No longer meet requirements of registration.

 5. Other good cause as may be deemed reasonable by the Department.

 6. Misleading Advertising.

 G. When a registrant refuses to correct a violation;

 H. When a registrant does not respond to a notice of violation where a response was required;

 I. When a registrant refuses to pay a penalty as stated in section 4 Civil Penalties.

 J. For any reason not mentioned above for which registration revocation is legally authorized.

SECTION 6. ADMINISTRATIVE HEARING.

 If the Department decides to refuse to renew a registration, or denies an application for registration, the aggrieved person may request an Administrative Hearing pursuant to 5 MRSA §9051 et seq. The Department shall notify the registrant or applicant of its intention and shall notify the registrant or applicant of the procedures for requesting such a hearing. The request must be made within 30 days of the Department's notification letter.

SECTION 7. DENIAL OF ADMINISTRATIVE HEARING.

 The Department may suspend, revoke, or refuse to review a registration without affording opportunities for hearing pursuant to sections 5 or 6 when the health or physical safety of a person is in immediate jeopardy at the time of the Department's action, and affording such hearings would fail to respond adequately to a known risk. Suspensions, revocations or refusals to review registrations pursuant to this section may not continue for more than 30 days.

SECTION 8. REFERRAL TO THE DEPARTMENT OF THE ATTORNEY GENERAL.

 Alleged unfair trade practices (5 MRSA §205 et seq.) and alleged criminal violations of the Act and these rules shall be referred to the Attorney General's Office for any further proceedings.

SECTION 9. PUBLIC DISCLOSURE OF ENFORCEMENT ACTIONS.

 In accordance with the Administrative Procedures Act, all enforcement actions and registrants' responses are publicly available for inspection. In addition, press releases may be issued for civil penalties and orders.

SECTION 10. APPEALS PROCEDURE.

 Any person aggrieved by a final departmental decision may seek judicial review in the Superior Court pursuant to 5 MRSA section 11001 et seq.

STATUTORY AUTHORITY: 22 MRSA § 771 et seq.

EFFECTIVE DATE: October 1, 1993

EFFECTIVE DATE (ELECTRONIC CONVERSION): May 5, 1996

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 16, 2025

NON-DISCRIMINATION NOTICE

In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.), Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), the Age Discrimination Act of 1975, as amended (42 U.S.C. §6101 et seq.), and Title IX of the Education Amendments of 1972, the Maine Department of Human Services does not discriminate on the basis of sex, race, color, national origin, handicap or age in admission or acess to or treatment or employment in its programs or activities.