

CHAPTER 159-A**STATE NUCLEAR SAFETY PROGRAM****§661. Public policy**

In the interests of the public health and welfare of the people of this State, it is the declared public policy of this State that a facility licensed by the United States Nuclear Regulatory Commission and situated in the State must be accomplished in a manner consistent with protection of the public health and safety and in compliance with the environmental protection policies of this State. It is the purpose of this chapter, in conjunction with sections 671 to 690; Title 25, section 51; and Title 35-A, sections 4351 to 4393, to exercise the jurisdiction of the State to the maximum extent permitted by the United States Constitution and federal law and to establish in cooperation with the Federal Government a state nuclear safety inspector program for the on-site monitoring, regulatory review and oversight of a facility within the State that holds a license issued by the United States Nuclear Regulatory Commission. Nothing in this chapter may be construed as an attempt by the State to regulate radiological health and safety reserved to the Federal Government by reason of the United States Atomic Energy Act of 1954, as amended. [PL 2007, c. 539, Pt. KK, §1 (AMD).]

SECTION HISTORY

PL 1987, c. 519, §1 (NEW). PL 1991, c. 824, §A40 (AMD). PL 1997, c. 686, §2 (AMD). PL 1999, c. 174, §2 (AMD). PL 2005, c. 254, §B2 (AMD). PL 2005, c. 683, §A33 (AMD). PL 2007, c. 539, Pt. KK, §1 (AMD).

§662. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1987, c. 519, §1 (NEW).]

1. Facility. A "facility" means a production or utilization facility situated in this State that holds an operating permit or license issued by the United States Nuclear Regulatory Commission. It also means a power reactor licensee situated in the State, whether decommissioned or not, with a possession-only license issued by the United States Nuclear Regulatory Commission for special nuclear material, by-product material and source material. It also includes spent fuel or high-level waste storage facilities.

[PL 1997, c. 686, §3 (AMD).]

SECTION HISTORY

PL 1987, c. 519, §1 (NEW). PL 1997, c. 686, §3 (AMD).

§663. State Nuclear Safety Inspector

(REPEALED)

SECTION HISTORY

PL 1987, c. 519, §1 (NEW). PL 1987, c. 882, §1 (AMD). PL 1997, c. 686, §4 (AMD). PL 2003, c. 689, §B6 (REV). PL 2005, c. 254, §D1 (RP). PL 2005, c. 254, §D2 (AFF).

§663-A. State Nuclear Safety Inspector

There is established within the department the State Nuclear Safety Inspector Office administered by the State Nuclear Safety Inspector. The State Nuclear Safety Inspector is a classified employee, subject to the Civil Service Law. [PL 2007, c. 539, Pt. KK, §2 (NEW).]

1. Qualifications. The State Nuclear Safety Inspector must be an individual knowledgeable in the field of commercial nuclear power production and possess, at a minimum, a bachelor's degree with major work in nuclear, mechanical, electrical or chemical engineering and have at least 4 years' experience in nuclear operations.

[PL 2019, c. 589, §1 (AMD).]

2. Duties. The State Nuclear Safety Inspector shall serve as an on-site nuclear safety inspector of a facility and of the on-site storage and transportation of high-level and low-level nuclear waste.

[PL 2007, c. 539, Pt. KK, §2 (NEW).]

3. Staff. The State Nuclear Safety Inspector may employ other personnel as necessary to carry out the purposes of this chapter.

[PL 2007, c. 539, Pt. KK, §2 (NEW).]

SECTION HISTORY

PL 2007, c. 539, Pt. KK, §2 (NEW). PL 2019, c. 589, §1 (AMD).

§664. Responsibility of facility licensees

The responsibility of facility licensees is as follows. [PL 1997, c. 686, §5 (AMD).]

1. Records. Each facility licensee shall permit the inspection and copying, for the purposes of this chapter, of its books and records, maintained in any form, except that books and records that are privileged as a matter of law, proprietary, security-related or restricted by federal law, are not open to inspection. Subject to the approval of the United States Nuclear Regulatory Commission and of the facility licensee, access to books and records that are proprietary, security-related or restricted by federal law may be granted if the State Nuclear Safety Inspector, on behalf of the State, enters into a nondisclosure agreement. For purposes of this section, proprietary information includes personnel records, manufacturers' proprietary information, licensee proprietary information and trade secrets. For purposes of this subsection, "trade secrets" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it.

[PL 2007, c. 539, Pt. KK, §3 (AMD).]

2. Monitoring. Each facility licensee shall permit monitoring, for the purposes of this chapter, of the premises, equipment and materials, including source, special nuclear and by-product materials, in its possession or use, or subject to its control and any vehicle or means of transportation used to remove materials or equipment from the site, including, but not limited to, by rail, water, roadway or air. Monitoring of vehicles or other means of transportation used to remove materials or equipment from the site must be undertaken in a manner that is safe, that employs properly calibrated instruments and that does not result in unreasonable delays in the removal of materials or equipment from the site.

For the purposes of this subsection, "monitoring" means any one or combination of the following:

A. Observing the conduct of operations, including maintenance, quality assurance activities, the preparation, transportation and handling of radioactive waste, emissions monitoring, radiation protection and the observation of emergency preparedness tests and drills; [PL 1999, c. 739, §1 (NEW).]

B. Taking analytical radiological measurements using properly calibrated instruments to confirm:

- (1) The results of quality assurance activities undertaken by or on behalf of the facility licensee;
- (2) That the preparation, transportation and handling of radioactive waste is undertaken in accordance with applicable standards;
- (3) The results of emissions monitoring undertaken by or on behalf of the facility licensee; or

(4) That adequate radiation protection measures are in place; and [PL 2005, c. 254, Pt. B, §4 (AMD).]

C. Taking radiological measurements for the purpose of verifying compliance with applicable state laws, including, but not limited to, Title 38, section 1455, and confirming and verifying compliance with the standards of the United States Nuclear Regulatory Commission for unrestricted license termination, provided that the taking of such measurements employs techniques, protocols, instruments and quality assurance practices in accordance with generally accepted scientific or industry practices, including, but not limited to, those described in the federal Multi-Agency Radiation Survey and Site Investigation Manual. [PL 1999, c. 739, §1 (NEW).]

The licensee shall, upon request, provide split samples to the State Nuclear Safety Inspector. All analytical measurements taken pursuant to this subsection must be shared with the licensee. The licensee may provide data to explain any conflicts between measurements taken by the licensee and measurements taken pursuant to this subsection.

[PL 2007, c. 539, Pt. KK, §4 (AMD).]

3. Access.

[PL 2005, c. 254, Pt. B, §5 (RP).]

4. On-site facilities.

[PL 2005, c. 254, Pt. B, §5 (RP).]

5. Fees.

[PL 2005, c. 254, Pt. B, §5 (RP).]

SECTION HISTORY

PL 1987, c. 519, §1 (NEW). PL 1987, c. 882, §2 (AMD). PL 1991, c. 496, §1 (AMD). PL 1993, c. 664, §6 (AMD). PL 1997, c. 395, §F1 (AMD). PL 1997, c. 686, §5 (AMD). PL 1999, c. 57, §B1 (AMD). PL 1999, c. 739, §1 (AMD). PL 2005, c. 254, §§B3-5 (AMD). PL 2007, c. 539, Pt. KK, §§3, 4 (AMD).

§665. United States Nuclear Regulatory Commission activities

(REPEALED)

SECTION HISTORY

PL 1987, c. 519, §1 (NEW). PL 1997, c. 686, §6 (AMD). PL 2005, c. 254, §B6 (RP).

§666. Responsibilities of the State Nuclear Safety Inspector

The responsibilities of the State Nuclear Safety Inspector are as follows. [PL 2007, c. 539, Pt. KK, §5 (REEN).]

1. Damages to public health and safety. If the State Nuclear Safety Inspector has reason to believe that any activity poses a danger to public health and safety, and after notifying the facility licensee and the United States Nuclear Regulatory Commission, the inspector shall immediately notify the Governor and the Commissioner of Health and Human Services. This subsection may not be construed as precluding the State Nuclear Safety Inspector from discussing the safety inspector's concerns with the United States Nuclear Regulatory Commission or others before making a determination that any activity poses a danger to public health and safety.

[PL 2011, c. 655, Pt. MM, §12 (AMD); PL 2011, c. 655, Pt. MM, §26 (AFF).]

2. Reports. The State Nuclear Safety Inspector, with the cooperation of the Director of Health Engineering, shall prepare a report of the safety inspector's activities under this chapter to be submitted July 1st of each year to the Governor's Energy Office and the Legislature. The State Nuclear Safety Inspector shall prepare monthly reports for the Governor's Energy Office, the President of the Senate

and the Speaker of the House, with copies to the United States Nuclear Regulatory Commission and the facility licensee.

[PL 2011, c. 655, Pt. MM, §12 (AMD); PL 2011, c. 655, Pt. MM, §26 (AFF).]

3. Confidential and privileged information. The State Nuclear Safety Inspector shall keep confidential and privileged the identity of any person providing communications that, in the opinion of the State Nuclear Safety Inspector, support a presumption of unsafe activities, conduct or operation of a facility or that indicate any violation of the facility licensee's license issued by the United States Nuclear Regulatory Commission, unless the request for confidentiality is waived or withdrawn by such person. The safety inspector shall make all prudent efforts to investigate the basis for any related allegation of unsafe or improper activities and shall cooperate to the extent feasible with the United States Nuclear Regulatory Commission personnel in this effort. Any information brought to the attention of the safety inspector that involves the safety of the plant or a possible violation of United States Nuclear Regulatory Commission regulations must be immediately brought to the attention of the United States Nuclear Regulatory Commission and the facility licensee.

[PL 2007, c. 539, Pt. KK, §5 (REEN).]

SECTION HISTORY

PL 1987, c. 519, §1 (NEW). PL 1991, c. 151, §1 (AMD). PL 1997, c. 686, §7 (AMD). PL 2003, c. 689, §B7 (REV). PL 2005, c. 254, §B7 (RP). PL 2007, c. 539, Pt. KK, §5 (REEN). PL 2011, c. 655, Pt. MM, §12 (AMD). PL 2011, c. 655, Pt. MM, §26 (AFF).

§667. Liability

(REPEALED)

SECTION HISTORY

PL 1987, c. 519, §1 (NEW). PL 1997, c. 686, §8 (AMD). PL 2005, c. 254, §B8 (RP).

§668. Interim Spent Fuel Storage Facility Oversight Fund

The Interim Spent Fuel Storage Facility Oversight Fund, referred to in this section as "the fund," is established as a nonlapsing fund within the radiation control program in the department. All fees paid under this subchapter are collected by the department for deposit in the fund. The Radiation Control Program shall oversee the fund and may disburse amounts in the fund to agencies or to other appropriate state funds in order to pay or contribute to the payment of costs incurred by agencies with respect to federal or state proceedings; safety, radiation and environmental monitoring; and security or other oversight-related activities related to the decommissioning of a nuclear power plant or the development or operation of an interim spent fuel storage facility in this State. The State Nuclear Safety Inspector shall keep an annual accounting of all funds received by the fund and all disbursements from the fund and shall make a report of this accounting to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters by the first Monday in February of each year. [PL 2007, c. 539, Pt. KK, §6 (NEW).]

SECTION HISTORY

PL 2007, c. 539, Pt. KK, §6 (NEW).

§669. State assessment

1. Annual fee. Any licensee operating an interim spent fuel storage facility in this State shall pay a fixed annual fee to cover all present and reasonably foreseeable future state fees, costs and assessments with respect to the licensee, including, but not limited to, the costs of any commission investigation; the commission's participation in wholesale rate proceedings; safety, radiation and environmental monitoring; and security oversight-related costs. This annual fee consolidates the various fees and assessments imposed by the State on the licensee.

[PL 2007, c. 539, Pt. KK, §7 (NEW).]

2. Amount. The amount of the fixed payment is as follows:

A. Calendar year 2008, \$296,667; and [PL 2007, c. 539, Pt. KK, §7 (NEW).]

B. Calendar years 2009 to the 12th month of the year following the year the spent nuclear fuel is removed from the site, \$220,000 per year. [PL 2007, c. 539, Pt. KK, §7 (NEW).]
[PL 2007, c. 539, Pt. KK, §7 (NEW).]

3. Compliance costs. The fees paid under this section are independent of and in addition to any compliance costs incurred either by the licensee or by any contractor hired by the Department of Environmental Protection to oversee, monitor or implement measures necessary to ensure compliance pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended.
[PL 2007, c. 539, Pt. KK, §7 (NEW).]

SECTION HISTORY

PL 2007, c. 539, Pt. KK, §7 (NEW).

§670. Review of oversight activities and funding; report

1. Review. Representatives of the Office of the Public Advocate, the Department of Public Safety, the radiation control program of the department and the Department of Environmental Protection; an independent expert in radiological and nuclear engineering selected by the radiation control program in the department; and a licensee operating an interim spent fuel storage facility in this State, referred to in this section as "the licensee," shall meet on a regular basis and no fewer than 4 times per calendar year:

A. To review activities being undertaken by the licensee, the radiation control program in the department, the Department of Public Safety and other agencies of State Government, including, but not limited to, the department and the Department of Environmental Protection, with respect to ensuring:

(1) The protection of public health and safety at the site of the interim spent fuel storage facility; and

(2) Timely contract performance by the United States Department of Energy regarding the removal of spent nuclear fuel from the site; [PL 2007, c. 539, Pt. KK, §8 (NEW).]

B. To identify necessary activities to be undertaken by the parties in paragraph A for the next calendar year to ensure the protection of public health and safety at the site of the interim spent fuel storage facility and timely contract performance by the United States Department of Energy regarding the removal of spent nuclear fuel from the site; and [PL 2007, c. 539, Pt. KK, §8 (NEW).]

C. To develop recommendations regarding funding requirements to carry out the activities identified in paragraph B. [PL 2007, c. 539, Pt. KK, §8 (NEW).]
[PL 2007, c. 539, Pt. KK, §8 (NEW).]

2. Report. Based on the activities conducted under subsection 1, the radiation control program in the department, in consultation with the Office of the Public Advocate, the Department of Public Safety, the Department of Environmental Protection, the independent expert in radiological and nuclear engineering selected under subsection 1 and the licensee, referred to in this subsection as "the consulting parties," shall prepare and submit an annual report to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters no later than February 15th of each year. The report must provide a summary of the review conducted pursuant to subsection 1 and include specific recommendations regarding funding requirements for the next calendar year pursuant to subsection 1, paragraph C. If the radiation control program in the department and the consulting parties are unable to agree on recommendations regarding funding requirements, the consulting parties shall submit their individual recommendations in writing to the radiation control program in the department and the

department shall include the individual recommendations of the consulting parties in the report. The radiation control program in the department, with input from the consulting parties, shall determine the format of the report. To assist in the preparation of the report, the Department of Public Safety, the Office of the Public Advocate and the Department of Environmental Protection shall submit to the Department of Health and Human Services no later than December 15th of each year an annual accounting of expenditures of funds from the Interim Spent Fuel Storage Facility Oversight Fund established pursuant to section 668.

[PL 2007, c. 539, Pt. KK, §8 (NEW).]

3. Authority for legislation; annual fee. The joint standing committee of the Legislature having jurisdiction over utilities and energy matters shall review the report submitted under subsection 2, including, but not limited to, the recommendations regarding funding requirements. On the basis of its review, the committee may submit legislation to amend the level of the annual fee required of the licensee under section 669.

[PL 2007, c. 539, Pt. KK, §8 (NEW).]

SECTION HISTORY

PL 2007, c. 539, Pt. KK, §8 (NEW).

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