



KERR-McGEE NUCLEAR CORPORATION

KERR-McGEE CENTER • OKLAHOMA CITY, OKLAHOMA 73125

May 8, 1980

DOCKET NUMBER

PROPOSED RULE

PR-19, 30, 40, 50, 70, 71, 150 (19)
(45 FR 15184)



Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Attention: Docketing and Service Branch

Subject: Proposed Rule - Protection of Employees Who Provide Information, 10 CFR, Parts 19, 30, 40, 50, 70, 71, 150; 45 Federal Register 15184, March 10, 1980.

Dear Secretary:

Please refer to the Kerr-McGee Nuclear Corporation letter of April 16, 1980. We wish to add a further observation concerning the subject proposed rules.

Section 161 of the Atomic Energy Act and Public Law 95-601 of the Energy Reorganization Act do not authorize the Commission to promulgate the subject regulations. Further, an employee's rights under Public Law 95-601 are fully protected by Department of Labor regulations; thus, additional rules are unnecessary.

1. COMMISSION LACKS AUTHORITY TO REGULATE SUBJECT AREA

A. ATOMIC ENERGY ACT

In the Supplementary Information of the March 10, 1980 notice, the NRC states that Section 161 of the Atomic Energy Act alone would authorize promulgation by the Commission of the subject proposed rules. Section 161(p) states that the Commission is authorized to "make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this chapter." (emphasis added) Nowhere did Congress state that protection of employees who provide information was a purpose of the Atomic Energy Act. Therefore, the subject proposed rules do not further a purpose of the Act and are unauthorized by Section 161.

B. ENERGY REORGANIZATION ACT

Public Law 95-601 (42 USC 5851) of the Energy Reorganization Act prohibits employer discrimination of employees who provide information and directs the Secretary of Labor to enforce

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its provisions. No reference is made to the Commission, and a fortiori no authority exists for it to promulgate rules under P.L. 95-601. Further, imposition of the penalties (license revocation and fines) proposed by the Commission in subparagraph (c) of subparts 30.7, 40.7, 50.7, 70.7 and 71.5(a) by any agency is not authorized by this section of the Act. The precision with which other sections* of the Act provide for penalties is evidence that Congress intended for only those penalties specified in P.L. 95-601 to be imposed.

2. THE PROPOSED RULES ARE UNNECESSARY

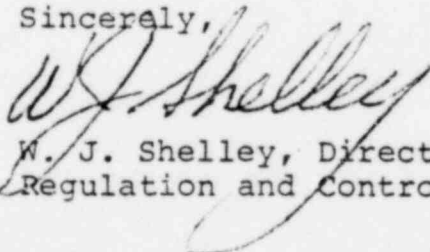
Public Law 95-601 grants employees specified rights and protections enforceable by the Secretary of Labor. The Department of Labor has promulgated rules (29 CFR Part 24) for handling employee complaints and assessing penalties against employers. Additional regulations by other agencies are unnecessary. The subject proposed rules will not grant new rights or protections to employees;** instead, they will needlessly increase the already burgeoning regulatory requirements placed on industry.

SUMMARY

Neither the Atomic Energy Act nor the Energy Reorganization Act authorize the Commission to promulgate the proposed employee protection rules. Further, this subject area is adequately regulated so that additional rules are unnecessary.

Thank you for this opportunity to comment on the subject proposed rules.

Sincerely,



W. J. Shelley, Director
Regulation and Control

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*For example, in Section 206 Congress specifies unlawful acts, directs the posting of requirements, states the penalty to be imposed, and authorizes the Commission to enforce its provisions.

**Incidentally, it is impossible at this time to know the exact requirements of the subject proposed regulations because Form NRC-3 "Notice to Employees" to be posted by employers has not yet been revised to reflect this rulemaking.