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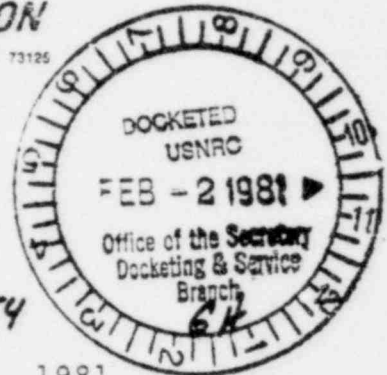


**KERR-McGEE CORPORATION**

KERR-McGEE CENTER • OKLAHOMA CITY, OKLAHOMA 73125

ENVIRONMENT AND HEALTH MANAGEMENT DIVISION

DOCKETED  
PROPOSED RULE FR 2  
45 FR 66754



January 27, 1981

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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



ATTN: Docketing and Service Branch

RE: Proposed General Statement of Policy and Procedure  
for Enforcement Actions; 10 CFR Part 2, (45 FR  
p. 66754, October 7, 1980)

Dear Sir:

Kerr-McGee Corporation wishes to take this opportunity  
to submit comments on NRC's proposed Enforcement Policy.

Sincerely,

W. J. Shelley, Vice-President  
Nuclear Licensing and Regulation  
Environment and Health Management

WJS/pls

Attachment

Acknowledged by card... 2/2/81...

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COMMENTS ON ENFORCEMENT PROGRAM  
10 CFR PART 2  
PROPOSED GENERAL STATEMENT OF POLICY AND PROCEDURE  
FOR  
ENFORCEMENT ACTIONS

The following comments are submitted in response to the questions asked by the NRC on October 17, 1980, 45 Federal Register (page 66754).

General Comment

It is questionable from this document whether such a system is actually needed. A policy which informs the regulated community is certainly desirable, but no rationale for implementing a policy with such rigid guidelines was given. To impose such a system upon licensees when a valid (but less complex) system already exists is arbitrary, to say the least, unless it is justified.

1. "Is the policy fair and equitable?"

The policy is not fair and equitable due to the different levels of severity assigned for the same incident based on the type of licensee involved. It is our contention that a given class of violation should incur the same penalty for any licensee.

The penalties should be ranked not by the type of licensee, but by the degree of severity of the violation. If such a modified approach were taken, anomalies such as that noted for "accidental criticality" could be avoided.

2. "Is the policy understandable?"

It is understandable with the exception that certain phrases are not sufficiently defined. Such words as "good faith", "minor safety and environmental significance", and "exercise judgment and discretion" do not lend themselves to a clear understanding by the licensee of the NRC's intent.

3. "Are the severity levels appropriate?"

The severity levels seem to be unnecessarily fragmented in an attempt to cover every possible infraction or violation. Adoption of a ranking method of severity such as proposed under Paragraph 1 would do much to simplify the presentation.

4. "Are the different types of activities well enough defined?"

The activities are seemingly well enough defined, however, it is unclear whether the licensee is liable for penalties under several activities for a single incident, i.e., an over exposure and not reporting it properly.

Since a single licensee would normally be engaged in more than one activity, he obviously is exposed to multiple hazards for a single incident.

5. "Are the distinctions among various types of licensees shown on Table 1 appropriate?"

It appears from the table that some increment of potential is included in the penalty schedule. If this is a consideration, it ought to be described since to the casual reader identical incidents earn significantly different penalty levels.

Granted, it is simpler and probably creates a more manageable system to lump "types of licensees" into rigid categories based on potential. However, a greater inventory of nuclear material does not necessarily mean greater potential consequences. The potential public consequences should be set forth by definite criteria and assessed on a case-by-case basis to assure fair and equitable application.

6. "Are the facts for determining the levels for enforcement actions appropriate?"

The penalty table implies that Severity 1 and 2 categories are of the same degree of seriousness. They should therefore be combined into one severity class.

7. "Is the degree of discretion allowed to office directors appropriate?"

Office directors should be permitted additional flexibility in deciding whether or not to penalize a licensee, depending upon the circumstances. A policy as rigid as this one encourages the application of penalties unnecessarily.

8. "Are the levels of civil penalties that required Commission involvement appropriate?"

The Commission should be involved whenever a multiple penalty exceeds the appropriate base shown in Table 1 as the result of a continuing violation or a multiplicity of incidents. The current high levels of penalties that can be imposed before Commission involvement is required could cause numerous appeals to be filed for hearings before the Commission.

9. "Are the provisions for escalated actions set forth in Table 2 appropriate?"

Table 2 reinforces the fear described above that the table will severely restrict the discretion of the office director. If the licensee recognizes and promptly corrects the cause of the violation, this action should remove the necessity for imposing a penalty for the first offense as shown on Table 2.

General Comments

Footnote 15, page 56756 states that "Willful violations include those involving careless disregard of requirements." If this is what is meant, then it should be incorporated into the text and not placed in a footnote. Confusion with other similar sounding terms but with different legal meaning and consequences would then be avoided.

/hmr