

MINUTES OF THE HOUSE UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:00 A.M. on February 8, 2006 in Room 231-N of the Capitol.

All members were present except:
Vaughn Flora- excused

Committee staff present:
Mary Galligan, Kansas Legislative Research
Dennis Hodgins, Kansas Legislative Research
Mary Torrence, Revisor's Office
Rena Hansen, Committee Secretary

Conferees appearing before the committee:
Representative Mario Goico
Warren Wood, Chief Council, Wolf Creek Nuclear Operating Plant
Loren Cox, Wolf Creek Security System

Others attending:
See attached list.

Hearing on:

HB 2703 **Nuclear generating facility, security guards.**

Proponents:

Representative Mario Goico, presented testimony, (Attachment 1), in support of **HB 2703** as a way of giving security guards at nuclear power plants more ability to protect the nuclear generating facility.

Questions were asked by Representative Carl Holmes.

Warren Wood, General Council, Wolf Creek Nuclear Operating Corporation, and Loren Cox, Supervisor Security Training, Wolf Creek Nuclear Operating Corporation, (Attachment 2 and 3), presented testimony explaining the current security system for the Wolf Creek Nuclear Operating Corporation facility. Additionally, Warren talked specifically about **HB 2703** and the things it does to improve the security of the plant. He also told the committee about some suggestions that would improve the bill and make it more solid in what it does to protect the individual security officer if a situation arises whereby they might have to detain or fatally stop an individual from attacking the plant.

Questions were then asked by Representatives: Peggy Mast, Josh Svaty, Carl Holmes, Annie Kuether, Virginia Beemer, Tom Sloan, Mitch Holmes, Oletha Faust-Goudeau, Carl Krehbiel, Jim Morrison, Tom Hawk, and Forrest Knox.

The hearing on **HB 2703** was closed.

The next meeting will be held February 9, 2006 in room 313-S.

Meeting Adjourned.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 8, 2006

NAME	REPRESENTING
Mark Schreiber	Westar Energy
Loren Cox	Wolf Creek Nuclear Operating Corp.
Roger Rouball	KCPL
LARRY BERG	MIDWEST ENERGY
PAUL WAGOS	KCP&O
LON STANTON	NORTHERN NATURAL GAS Co
Kimberly (Lincer)	Aquila
Tom Day	KCC
KEVIN GREGG	HOUSE MAJ. LEADER
Georgia Conrad	Kansas Building Association
Lindsey Douglas	Hein Law Firm
DAVE HOLTHAUS	KEC



TOPEKA

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COMMITTEE ASSIGNMENTS
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GOVERNMENTAL ORGANIZATION
AND ELECTIONS
HEALTH AND HUMAN SERVICES
TAXATION
KANSAS SECURITY

Testimony on HB 2703
Utilities Committee
February 8, 2006

Honorable Chairman Holmes and distinguish members of the committee

HB 2703 will allow guards at nuclear power plants who meet nuclear regulatory commission requirements the use of lethal force in order to prevent terrorist acts. It would also allow these guards to have fully automatic and military caliber weapons.

Currently, security guards at nuclear facilities are limited in their ability to prevent serious criminal acts committed by hostile trespassers. By amending K.S.A. 2005 supp. 21-3721, HB 2703 will allow security guards at nuclear facilities to use all necessary measures, up to and including deadly force, to prevent acts of terrorism. Several states have enacted similar legislation and it is time Kansas to do the same. With the interest of protecting the citizens of our state, I request that you pass this bill favorably.

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2/8/06

ATTACHMENT

1

Testimony on HB 2703 before the
House Utilities Committee by
Warren B. Wood, General Counsel and Secretary,
and
Loren S. Cox, Supervisor Security Training,
Wolf Creek Nuclear Operating Corporation
February 8, 2006

Chairman Holmes and members of the committee, I am Warren B. Wood, General Counsel and Secretary of Wolf Creek Nuclear Operating Corporation (“WCNOC”), and with me today is Loren S. Cox, Supervisor Security Training for WCNOC. WCNOC is a wholly-owned subsidiary of Westar Energy, Inc., Kansas City Power & Light Company and Kansas Electric Power Cooperative, Inc. Those three companies own Kansas’ only commercial nuclear fueled electric generating station, Wolf Creek Generating Station, located near Burlington in Coffey County, Kansas. WCNOC operates the plant as agent for its owner companies. We are testifying in support of HB 2703 which would enhance Kansas law with regard to the ability of the plant’s security officers to protect the plant and its work force from potential unlawful attacks and acts of terrorism.

A brief explanation of terms: during this testimony we may use the terms nuclear plant security “officers” and security “guards” interchangeably. At Wolf Creek we use the former term, although the proposed House Bill uses the latter term. For our purposes, the two terms are the same.

United States nuclear power plants in general, and Wolf Creek in particular, have always maintained an extremely high level of physical security around the plant. Some of you have visited Wolf Creek over the years and have seen and experienced first hand the priority that WCNOC places on plant security as a part of protecting the health and safety of the public. These plants are well-protected by physical barriers, highly trained armed guards, intrusion detection systems, area surveillance systems, access controls, and access authorization requirements for employees working inside the plants. Nuclear power plants likely are the best protected private sector facilities in the country.

Following the September 11, 2001, attacks on the country, our federal regulator, the Nuclear Regulatory Commission (“NRC”), took several actions to further enhance nuclear plant safety and security. Some of these actions included:

- ordering plants to increase physical security to defend against a more challenging adversarial threat,
- requiring strict site access controls for personnel,
- requiring plants to conduct vehicle checks at greater stand-off distances,
- improving liaison with federal, state and local agencies responsible for protecting critical infrastructure through integrated response planning,
- enhancing communication and liaison with the Intelligence Community,

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ATTACHMENT 2

- ordering plants to improve their capability to respond to events involving explosions and fires,
- requiring plants to strengthen their security force training and qualification programs, and
- enhancing force-on-force exercises to provide a more realistic test of plant capabilities to defend against an adversary force.

Those of you who have visited Wolf Creek have seen the extensive and diverse levels of physical security there. You know that there is only one highway access into the plant, and that about a mile north of the plant is a hardened guardhouse at which every vehicle seeking entry must stop for a brief inspection of its passengers and contents. Just south of the guardhouse is a sturdy pop-up barrier capable of stopping any vehicle that tries to circumvent the guardhouse. You have seen the reinforced concrete Jersey barriers surrounding the perimeter of the plant, and then closer to the plant, several layers of barriers including anchored cables to stop vehicles, razor wire, tall chain link fences topped with barbed wire, and inside all of that, a separate barbed wire fence. To walk into the plant, you must be escorted by an authorized plant employee through a metal detector, an explosives detector and a locked door or a secure metal turnstile. Anything you carry into the plant must first be run through an X-ray machine like those at airports.

The purpose for this verbal tour of Wolf Creek security is to impress upon you that anyone wanting to enter this highly fortified protected area of the plant for illegitimate reasons likely will be prepared to inflict serious, probably lethal, bodily harm on those who would try to stop them, and likely would intend to damage or destroy plant equipment that could result in endangering the public health and safety. It is for this reason that as early as 1989, the NRC issued Information Notice 89-05, "Use of Deadly Force by Guards Protecting Nuclear Power Reactors Against Radiological Sabotage."

Information Notice 89-05 was the NRC's effort to clarify its expectations regarding the use of deadly force by nuclear plant guards. The notice stated, "The [NRC] staff considers use of deadly force justifiable in protecting nuclear power reactors against sabotage if there is reasonable belief that an act of radiological sabotage will be perpetrated unless deadly force is used to prevent it." The notice concluded that guards defending the plant against armed assaults, armed attacks by stealth, attackers employing explosives or incendiaries, perceived armed attacks and the like "do not have to abandon cover and concealment or their defensive positions, or wait for the adversaries to fire the first shot."

Information Notice 89-05 does not supersede state law on the use of deadly force. However, it does potentially put plant security officers in a difficult position in trying to meet the NRC's expectations for defending the plant and at the same time complying with governing state law. We believe that HB 2703 will help resolve this potential dilemma.

We are aware of three states that have enhanced their statutes on the use of force in the context of defending nuclear power plants against intrusion and attack--Arizona, Texas

and New York. Kansas HB 2703 is patterned after the Arizona law, Sections 13-4901 through 4904 of the Arizona Criminal Code.

First, this bill creates a new felony called “Criminal Trespass on a Nuclear Generating Facility,” with the elements of:

- (1) knowingly entering or remaining unlawfully in or on a nuclear generating facility, or
- (2) knowingly entering or remaining unlawfully within a structure or fenced yard of a nuclear generating facility.

A definition of the term “structure or fenced yard” is included in the bill so that the elements of this new felony will require that the plant’s surrounding structures, fencing or other barriers are posted with signage indicating it is a felony to trespass there.

Second, the bill also slightly broadens the definition of the existing misdemeanor crime of Criminal Trespass (K.S.A. 21-3721) by including an element of unauthorized entry or remaining on nuclear generating facility property in defiance of an order to leave or not to enter or if the property is posted, locked, fenced or otherwise enclosed.

Third, the bill permits an armed nuclear plant guard to use physical force against another in a nuclear generating facility or structure or fenced yard if the guard reasonably believes that such force is necessary to prevent or terminate the commission or attempted commission of certain specified crimes against property, including the newly created Criminal Trespass on a Nuclear Generating Facility, or involving the criminal use of weapons.

Fourth, the bill permits the armed nuclear plant guard to use up to deadly physical force, or to threaten such force, against another in a nuclear generating facility or structure or fenced yard if the guard reasonably believes that such force or threat of force is necessary to prevent the commission of other specified crimes involving potential great bodily harm or death, or to protect oneself or a third person from the use or imminent use of physical force or deadly physical force.

Fifth, the bill gives the armed nuclear plant guard the authority to detain for a reasonable time another who the guard reasonably believes committed or attempted to commit any of the crimes specified in the prior sections, so that a law enforcement officer may be summoned.

Finally, the bill provides the guard with immunity from civil liability for engaging in conduct involving the use of force or deadly force otherwise justified under the act, and it provides an affirmative defense in civil or criminal actions for false arrest, false or unlawful imprisonment or wrongful detention.

Under current Kansas statutes, private persons generally are limited in their defense of property other than a dwelling to using “only such degree of force or threat thereof as a reasonable man would deem necessary to prevent or terminate” unlawful interference with such property. (K.S.A. 21-3213.) In a 1981 Kansas case involving this statute, the

Court of Appeals affirmed a jury conviction of a private person for aggravated assault after he shot his weapon near, but not at, two persons who were on his fenced property apparently stealing vehicle parts. (*State v. Johnson*, 6 Kan. App.2d 750, 634 P.2d 1137.) This teaches us that under current Kansas law, one may be convicted of a felony for threatening the use of deadly force in defense of one's property.

As to defense of a person, private persons are justified in the use of force against an aggressor "when and to the extent it appears to him and he reasonably believes that such conduct is necessary to defend himself or another against such aggressor's imminent use of unlawful force." (K.S.A. 21-3211.) The question for the defender then is, how "imminent" must the aggressor's use of force be to allow this statute to apply?

Next, what about a private person's use of force in making an arrest? Current Kansas law allows a private person to make a "citizen's arrest" (i.e., apprehend and detain a person committing a crime), and he may use "any force [he] reasonably believes to be necessary to effect the arrest and ... any force [he] reasonably believes to be necessary to defend [himself] or another from bodily harm while making the arrest." However he may use force likely to cause death or great bodily harm "only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or others." (K.S.A. 21-3216 and 21-3215.)

K.S.A. 22-2403, Arrest by Private Person, also addresses "citizen's arrests," providing different requirements depending on whether the crime being committed is a felony or a misdemeanor. If the crime is a felony, a private person may arrest the offender if he has "probable cause to believe that the arrested person is guilty of [the felony]." If the crime is a misdemeanor (other than traffic or tobacco infractions), a private person may arrest the offender only if the crime "has been or is being committed by the arrested person in the view of the person making the arrest." (WCNOC suggests adding K.S.A. 22-2403 to those statutes listed in New Section 4(b) of HB2703 as being, in effect, pre-empted by this bill.)

Because of the unique and highly sophisticated nature of nuclear power plants and the potential serious consequences to the public if an aggressor were to breach their multiple security barriers, we believe it is necessary and prudent to allow nuclear plant security forces a bit more leeway in the use of force and deadly force in protecting the plant and its workers. We believe that HB 2703 will enable a nuclear plant's security force to more effectively carry out its role of serving as the final barrier to an attack against the plant, all for the purpose of protecting the health and safety of other plant workers and of the public.

Thank you for the opportunity to address you this morning. We will be glad to stand for questions at the appropriate time.

Appendix A
to
Testimony on HB 2703 before the
House Utilities Committee
by
Warren B. Wood and Loren S. Cox,
Wolf Creek Nuclear Operating Corporation
February 8, 2006

HOUSE UTILITIES
DATE: 2/8/06
ATTACHMENT 3



1

Main Gate Search Station



Active Vehicle Barrier

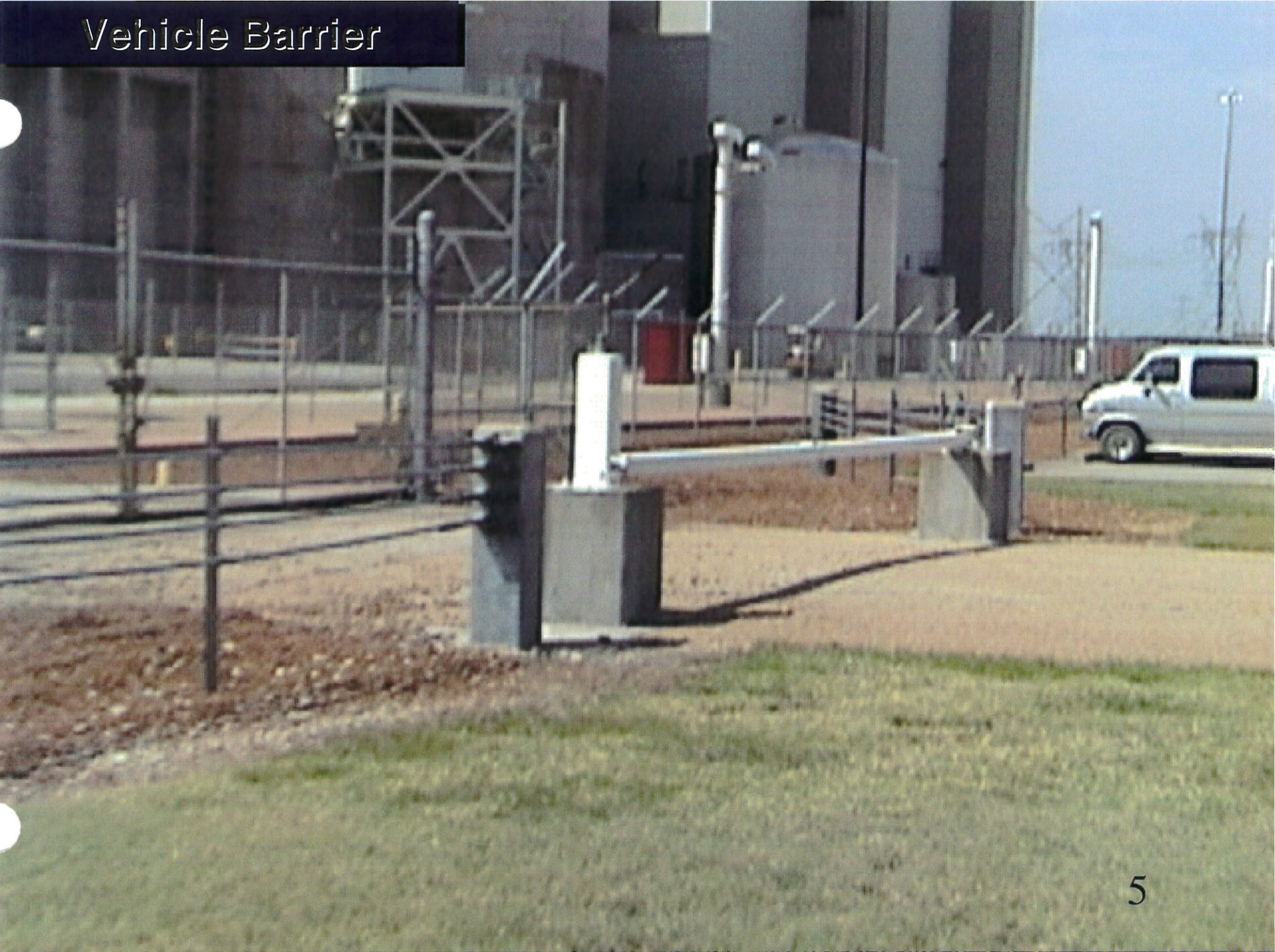


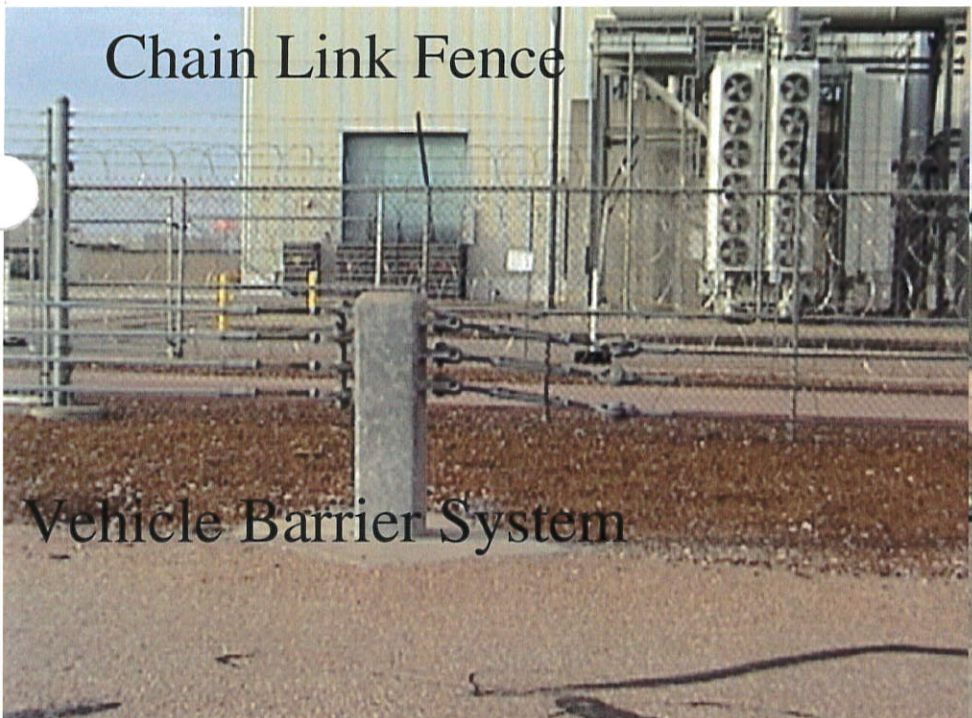
3-4

OCA Vehicle Barrier



Vehicle Barrier





Chain Link Fence

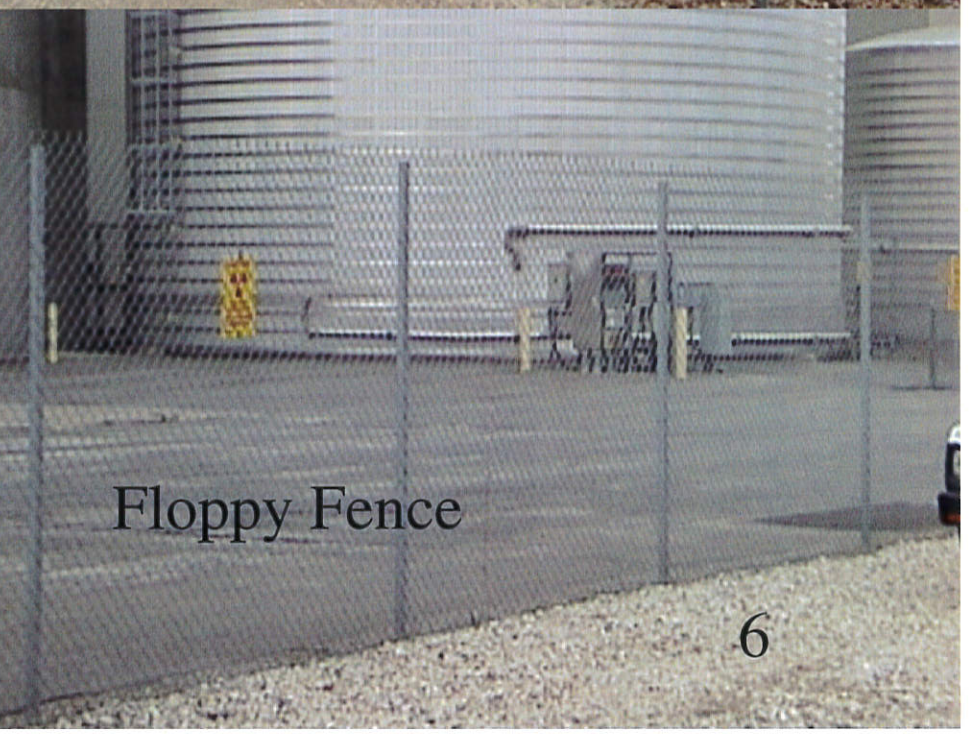
Vehicle Barrier System



Bared Wire Fence



Bared Wire Fence with Razor Wire



Floppy Fence

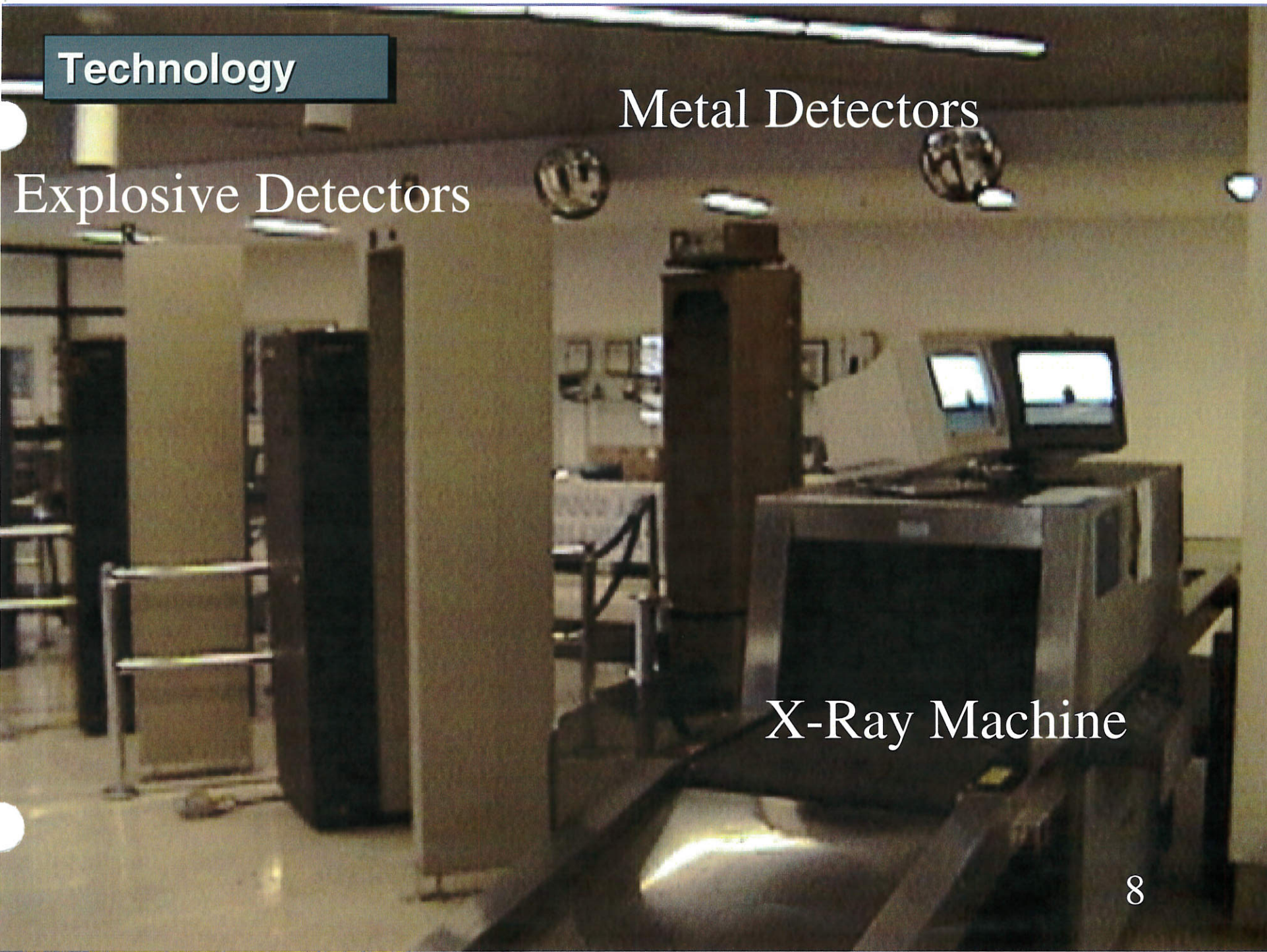


Technology

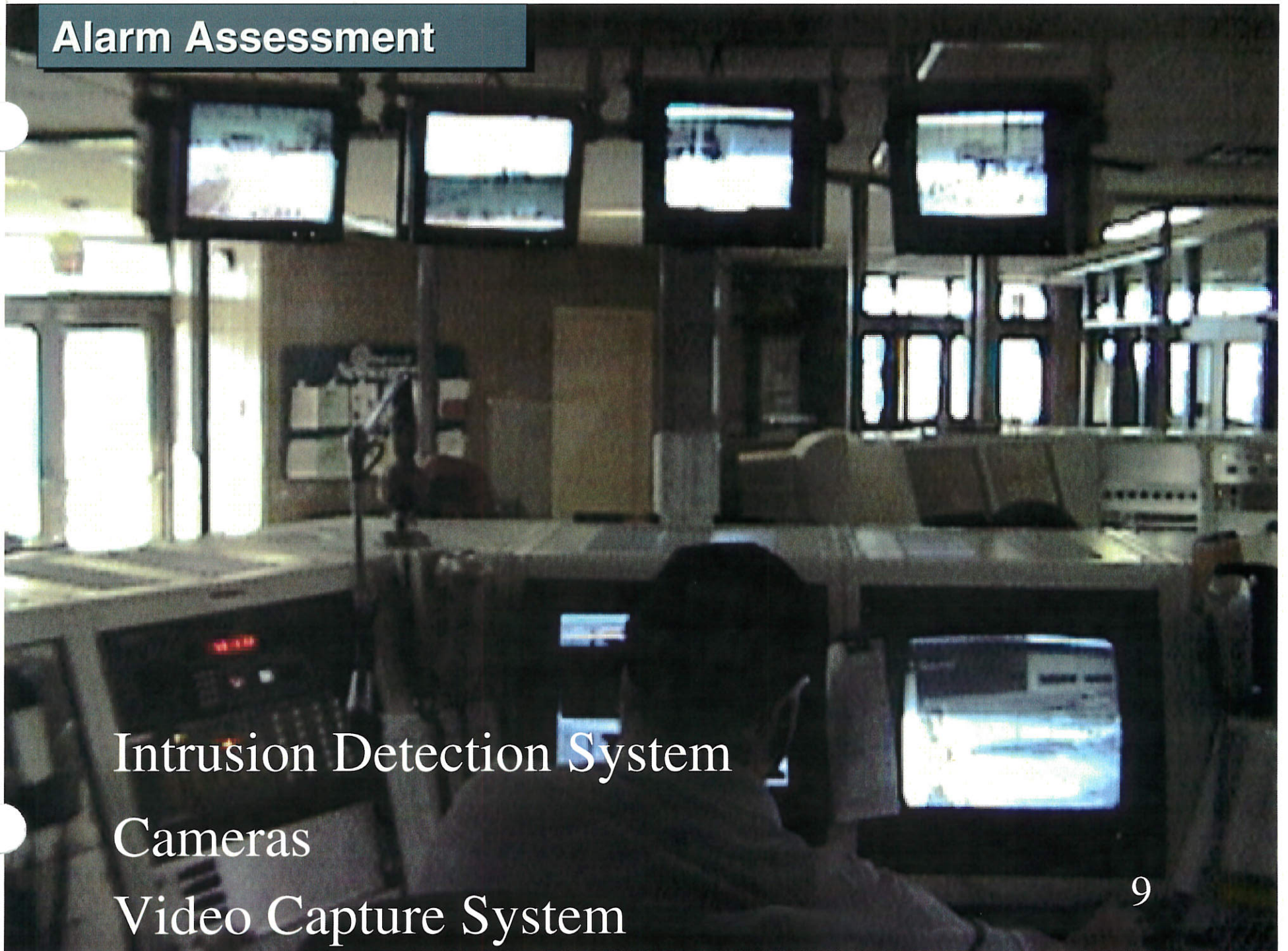
Metal Detectors

Explosive Detectors

X-Ray Machine



Alarm Assessment



Intrusion Detection System

Cameras

Video Capture System

Concentric Circles of Security

Vital Area

Owner Controlled Area

Protected Area

