

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Emler at 9:30 A.M. on March 1, 2006 in Room 526-S of the Capitol.

Committee members absent: Senator Reitz, excused

Committee staff present:

Raney Gilliland, Kansas Legislative Research Department
Bruce Kinzie, Revisor of Statutes' Office
Cherryl Masters, Secretary to Senator Emler

Conferees appearing before the committee:

Rep. Mario Goico
Warren B. Wood, General Counsel, Wolf Creek Nuclear Operating Corporation

Others in attendance: See attached list

Chair opened hearing on:

HB 2703 - Nuclear generating facility, security guards

Proponents

Rep. Mario Goico spoke in favor of **HB 2703** which would create the Nuclear Generating Facility Security Guard Act to provide protection from liability for the guards and the owners of the facility. (Attachment 1)

Warren B. Wood, General Counsel and Secretary, Wolf Creek Nuclear Operating Corporation, testified **HB 2703** 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. (Attachment 2)

Randy L. Rogers, Coffey County Sheriff, presented written testimony in favor of **HB 2703**. (Attachment 3)

Discussion on the scope of the language in Section 2 and Section 3 concerning definition of boundaries involved in the coverage by the security officers.

Closed hearing on **HB 2703**.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 3

Testimony on HB 2703.
Senate Utilities Committee
March 1, 2006
By Representative Mario Goico

Honorable Chairman Emler and distinguished senators members of the committee

Nuclear generating stations can be targets of terrorists or others who would want to create harm. Currently, security guards at nuclear facilities are limited in their ability to deter serious criminal act committed by hostile trespassers. The men and women that protect these facilities must be provided the necessary authorizations to allow them to responsibly carry out their duties. This bill provides explicit authorization for the use of deadly force when necessary.

HB 2703 would create the Nuclear Generating Facility Security Guard Act. This bill would add nuclear generating facilities to the definition of "criminal trespassing" in statutes regarding crimes against property. Criminal trespassing on a nuclear power plant will be a severity level 6, personal felony. The bill would authorizes the use of physical or deadly force by an armed nuclear security officer against another person who is on the facility's property and the guard believes this person will cause personal harm, property damage, use criminal weapons or is criminally trespassing.

The bill also provides protection from liability for the guards and the owners of the facility, if the officers use deadly force and have reasonable belief of the need for such force to defend themselves or another person. Also, an armed nuclear security guard could threaten to use physical or deadly physical force against another person if the guards believe it necessary to protect themselves or the facility.

Provide the officers with the assurance that if the facility is threatened they can use the necessary force to counter that threat without the possibility of legal action or civil liability. The officer must have reasonable belief of the need for such force. The guard's reasonable belief would be a defense to any civil or criminal action taken against the guard or the facility owners for false arrest, false or unlawful imprisonment, or wrongful detention. This bill requires that the officers hired by Wolf Creek must pass extensive testing and training.

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Attachment 1-1**

Testimony on HB 2703 before the
Senate Utilities Committee by
Warren B. Wood, General Counsel and Secretary,
and
Loren S. Cox, Supervisor Security Training,
Wolf Creek Nuclear Operating Corporation
March 1, 2006

Chairman Emler 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.

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 may 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,
- maintain strict site access controls for personnel,
- conduct vehicle checks at greater stand-off distances,
- improve their capability to respond to explosions and fires,
- strengthen their security force training and qualification programs, and
- enhance 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. There is only one highway access into the plant, and 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

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capable of stopping any vehicle that tries to circumvent the guardhouse. Reinforced concrete Jersey barriers surround much of the perimeter of the plant. Closer to the plant are 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.

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 dilemma.

More recently, in late 2004 the NRC sent a letter to Homeland Security Advisors in states having nuclear power plants encouraging those states to adopt legislation to enhance the effectiveness of nuclear plant security personnel.

We are aware of four states that have enhanced their statutes either on authorized weaponry or the use of force in the context of defending nuclear power plants against intrusion and attack-- Arizona, Texas, New York and New Jersey. Kansas HB 2703 is patterned after the Arizona law (Arizona Criminal Code §§ 13-4901 through 4904).

First, this bill creates a new felony called "Criminal Trespass on a Nuclear Generating Facility." (Ordinary trespass currently is just a misdemeanor in Kansas.) The bill requires that the plant's surrounding barriers be posted with signage indicating it is a felony to trespass there.

Second, the bill permits a nuclear plant guard to use physical force against another within posted nuclear plant property if the guard reasonably believes that such force is necessary to prevent or terminate the 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.

Third, the bill permits the nuclear plant guard to threaten and to use up to deadly physical force against another within posted nuclear plant property if the guard reasonably believes that such force is necessary to prevent the commission of other specified crimes involving potential great bodily harm or death, or to protect himself or a third person from the use or imminent use of physical force or deadly physical force.

Fourth, the bill gives the 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, his employer and the plant's owners with immunity from civil liability for the guard's engaging in conduct 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, a private person is justified in the use of force against an aggressor when 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?

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 more defined authority 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

Senate Utilities Committee

by

Warren B. Wood and Loren S. Cox,

Wolf Creek Nuclear Operating Corporation

March 1, 2006



Main Gate Search Station

2-6



Active Vehicle Barrier

2-17

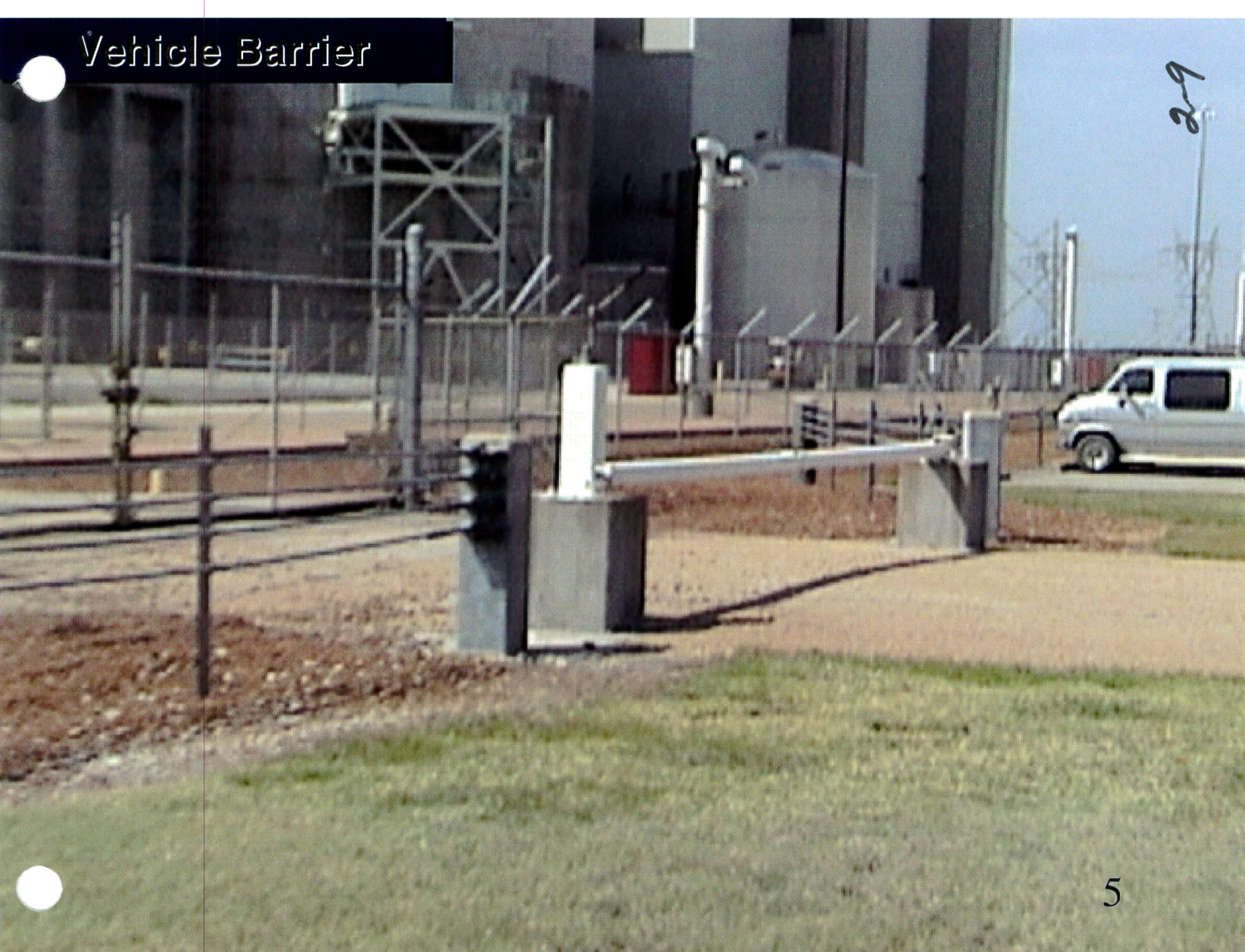


OCA Vehicle Barrier

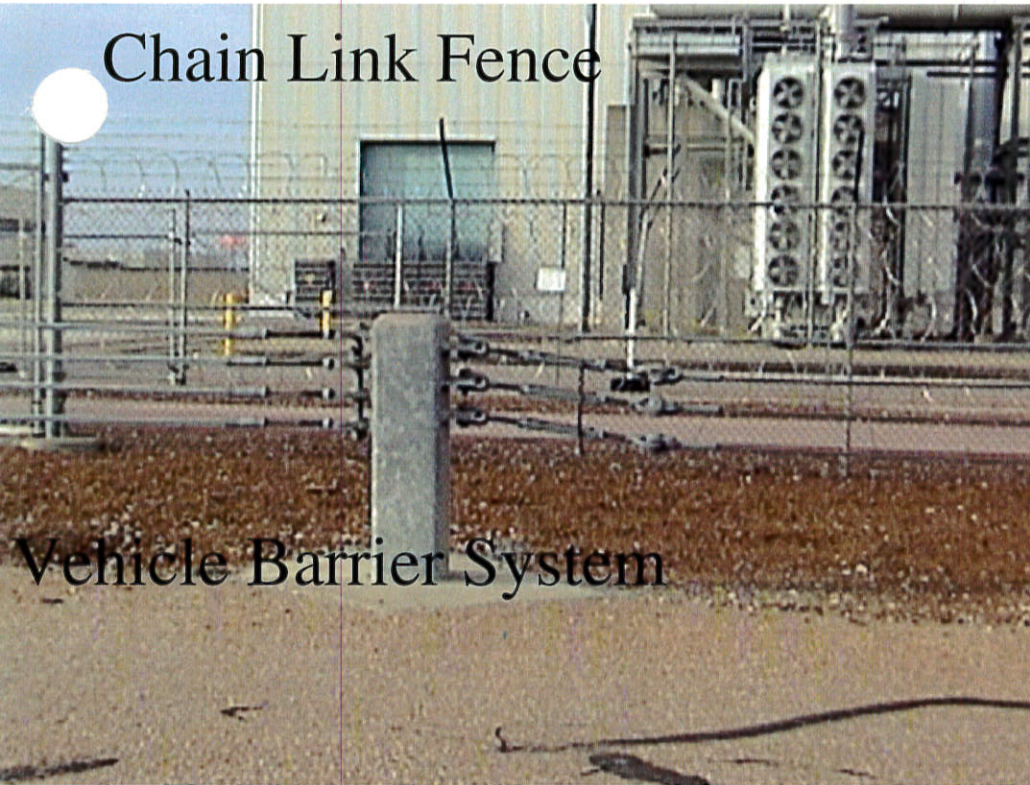


2-8

Vehicle Barrier



Chain Link Fence



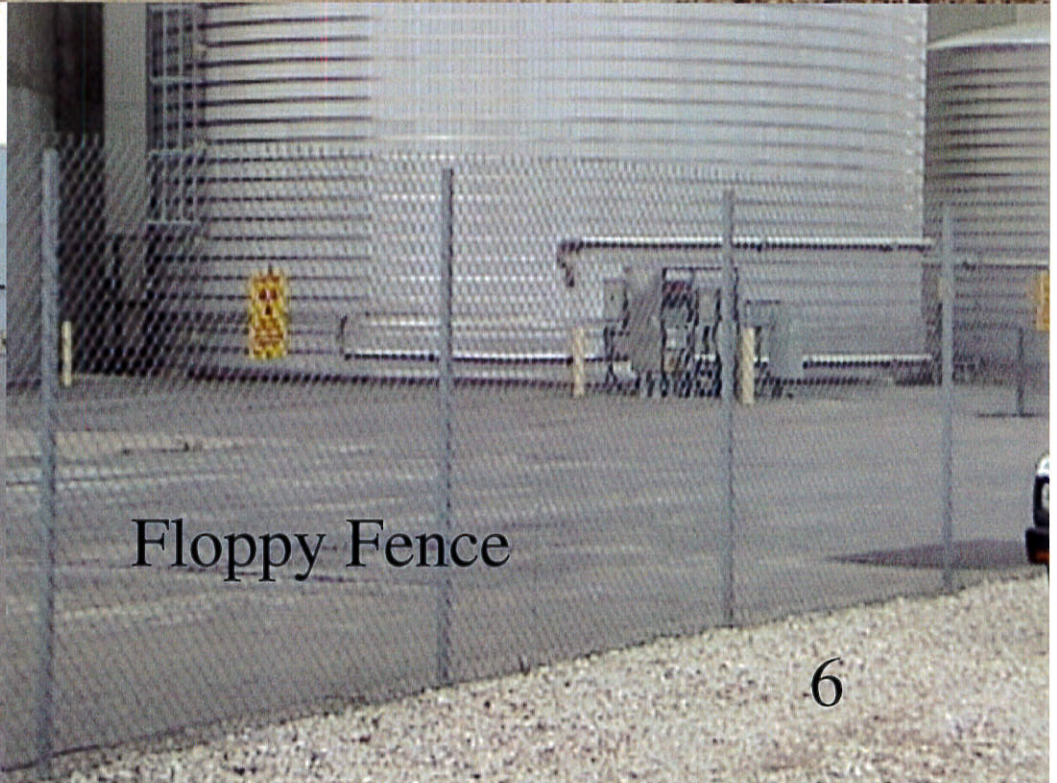
Vehicle Barrier System



Bared Wire Fence



Bared Wire Fence with Razor Wire



Floppy Fence

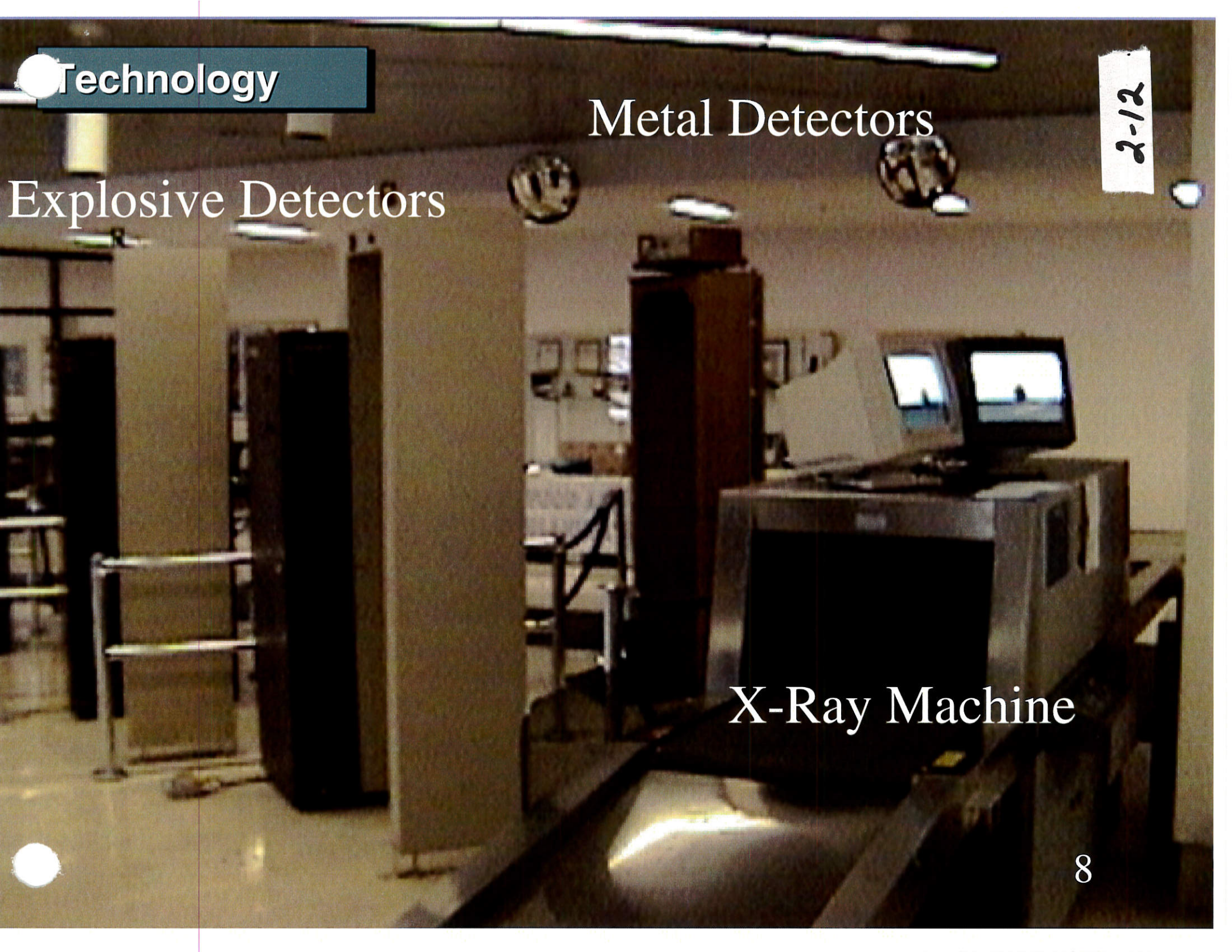


Technology

Metal Detectors

2-12

Explosive Detectors



X-Ray Machine

Alarm Assessment

2-13

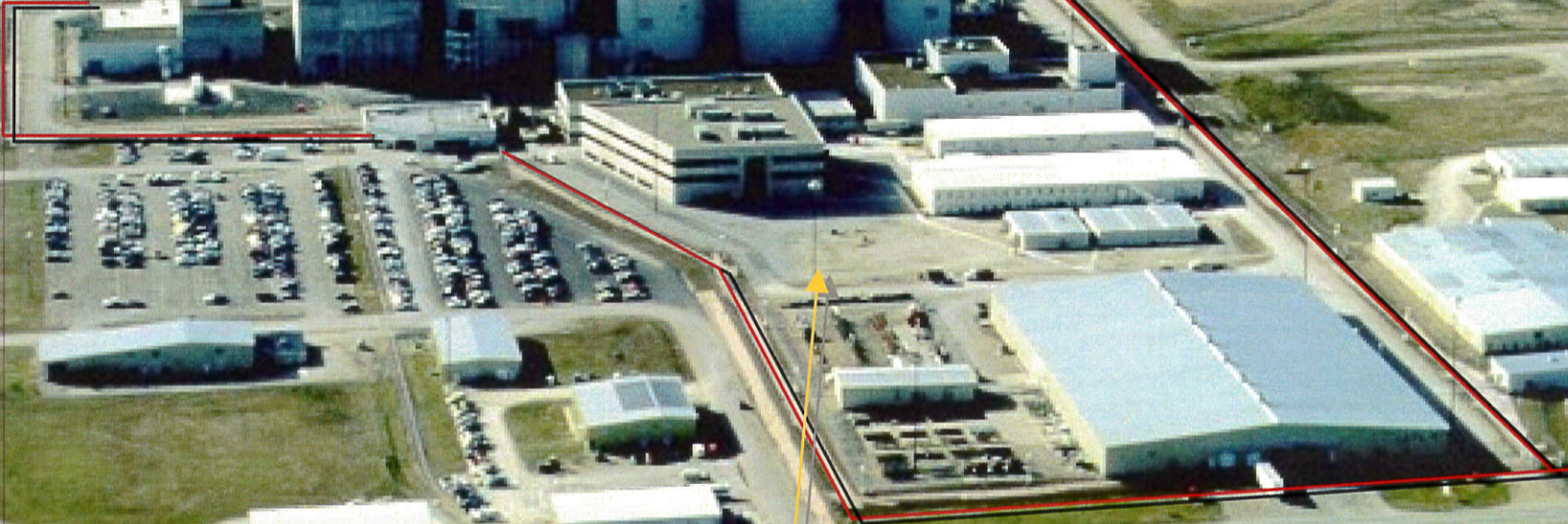
Intrusion Detection System
Cameras
Video Capture System

Concentric Circles of Security

2-14

Vital Area

Owner Controlled Area



Protected Area



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605 NEOSHO ST., PO BOX 226
BURLINGTON, KANSAS 66839
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IN KANSAS TOLL FREE (800) 362-0638



RANDY L. ROGERS

SHERIFF

KENNETH RONEY, UNDERSHERIFF

JOHN LIDDELL, CHIEF DEPUTY

LAW ENFORCEMENT BEYOND 2000

To: Senate Utilities Committee
Re: HB2703

As Sheriff of Coffey County I have reviewed HB2703 and believe this bill to be a bill that is in the best interest for Wolf Creek Security Personnel and the Nuclear Power Plant Industry and a necessity to enable the security force at Wolf Creek to properly perform their job. In today's world there are numerous threats that could become reality in regards to nuclear power plant facilities. This bill would give the necessary legal tools to the security force to properly react to and deal with many situations that could occur at Wolf Creek. Security at Wolf Creek Nuclear Power Plant is taken very seriously by the leadership at Wolf Creek to ensure that the highest standards of training are met. Security Personnel are potentially faced with making life and death decisions. I have the up most confidence that the security personnel would make the proper decision when faced with making a decision to take the appropriate action to protect the plant. I would urge your support of this bill and ask that you pass this bill out of committee favorably. If I can be of any assistance in this matter, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Randy L. Rogers". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Randy L. Rogers
Coffey County Sheriff

Senate Utilities Committee
March 1, 2006
Attachment 3-1