



U.S. Department of Energy
Office of Inspector General
Office of Inspections and Special Inquiries

Inspection Report

Protective Force Response to a
Security Incident at Sandia National
Laboratory, California

Sunday, February 8, 2004



The 1-ton truck that breached the Sandia and Lawrence Livermore National Laboratories' security perimeter.

SOURCE: SANDIA SECURITY OFFICE




Department of Energy

Washington, DC 20585

August 11, 2004

MEMORANDUM FOR THE SECRETARY

FROM:


Gregory H. Friedman
Inspector General

SUBJECT:

INFORMATION: Inspection Report on "Protective Force Response to a Security Incident at Sandia National Laboratory, California"

BACKGROUND

In the early morning hours of February 8, 2004, a 1-ton utility truck dragging a length of chain link fence and traveling at a high rate of speed approached an entrance leading into the Department of Energy's (DOE's) Sandia National Laboratory, California (Sandia) and Lawrence Livermore National Laboratory (LLNL). The truck proceeded past one of several recently constructed security kiosks and entered a Federal Property Protection Area, which is an area established to protect Government-owned property against damage, destruction, or theft. The kiosks were manned by Sandia Security Police Officers (SPOs), with LLNL SPOs providing secondary support. A Sandia SPO immediately notified his superiors of the intrusion, and multiple SPOs rapidly responded to the scene, stopping the vehicle a considerable distance inside the site security perimeter. The suspect was subsequently arrested by local law enforcement officials.

The security kiosks, along with vehicle arrest systems (commonly referred to as pop-up barriers) that were intended to be used to prevent vehicular intrusions, had recently been constructed on what had formerly been a public street. This was part of an effort to address a post-September 11th site risk analysis. These improvements, along with a truck inspection station, had a total cost of approximately \$4.9 million. The installation of the guard kiosks and pop-up barriers was completed in July 2003.

As a result of concerns raised to the Office of Inspector General regarding how this incident was handled, we initiated a review of the matter. The objectives of this inspection were to determine if: (1) the recently installed pop-up vehicle barriers were effectively employed; and (2) applicable DOE/National Nuclear Security Administration (NNSA) security procedures were followed in response to the vehicle entering the site without authorization.

RESULTS OF INSPECTION

We found that the pop-up vehicle barriers were not employed in response to the February 8, 2004, intrusion incident. Specifically:

- The barrier activation procedures had not been approved by NNSA Federal and contractor security officials, so the barriers had not been energized. Therefore, at the



time of the incident, the barriers were not up, as called for in the procedures, and security personnel could not activate them; and

- Despite this incident, NNSA Federal and contractor security officials did not approve the use of the barrier activation procedures until May 2004, approximately 10 months after the installation of the barriers was completed. We could find no satisfactory explanation for the extended delay in implementing the totality of the \$4.9 million in security upgrades at the site.

In addition, we found that applicable DOE/NNSA security procedures were not followed when the suspect vehicle was stopped. Specifically:

- Sandia SPOs did not immediately arrest the suspect, waiting instead for local law enforcement officials to arrive on the scene to arrest and process the suspect. This occurred because Sandia placed its own restrictions on the implementation of the standard DOE arrest procedures; and
- Prior to the arrival of local law enforcement officials, Sandia SPOs failed to implement DOE procedures for “unknown risk” vehicle stops, which included restraining and searching the suspect and searching the suspect’s vehicle. We determined that Sandia’s local policies were in conflict with DOE’s standard “unknown risk” procedures. We were told that these local restrictions were intended to limit Sandia’s liability from legal challenges to the actions of the SPOs.

As noted in a recent Office of Inspector General report, entitled “The Department’s Basic Protective Force Training Program” (DOE/IG-0641), local deviations from standard DOE security procedures may interfere with the approved, overall strategy for protecting sensitive departmental sites.

Sandia and LLNL represent two of the most critical national security components in the DOE complex. Securing these sites has always been a stated Department priority. However, in the post-September 11th environment, this effort has received even greater emphasis, as evidenced by the costly security system upgrades described in this report. As a consequence, the protracted delay in implementing the security upgrades and the restrictions imposed on standard DOE/NNSA protective force procedures appeared inconsistent with the current security posture of the Department.

The report includes recommendations to NNSA and the Department’s Office of Security and Safety Performance Assurance (SSA) that are designed to enhance the Department’s safeguards and security program.

MANAGEMENT REACTION

In responding to a draft of this report, NNSA did not specifically concur or nonconcur with our findings and recommendations. NNSA stated that it recognizes the seriousness of the incident that occurred and will identify lessons learned and ensure that appropriate follow-up actions are

implemented. However, other NNSA comments, as well as comments from the Sandia Site Office that were attached to NNSA's response, indicated disagreement with aspects of our report. For example, while acknowledging that there was a delay in the implementation of the pop-up barriers, NNSA stated that: ". . . the approval process for activation of the barrier was executed in a manner that ensured the safest, most secure operating environment possible for both members of the public and the responsible security protective force staff." The Sandia Site Office further stated that: "This process was complicated and took time to complete in that two separate federal offices and two separate contractor organizations operating under separate and distinct security and safety authorizations were involved."

In light of current national security concerns, we believe that the delay in implementing barrier activation was unacceptable. The site went through an assessment and planning process leading to expenditure of about \$4.9 million on critical security upgrades, including the barriers, apparently without being certain under what conditions the barriers could be used. This was followed by approximately 10 additional months to obtain approval for the use of the barriers, several months of which were after the February 2004 incident. Further, the Site Office explanation regarding the involvement of four separate entities was questionable given the fact that all of the entities were under NNSA's cognizance.

Finally, NNSA contended that the Sandia SPOs handled the situation within applicable parameters. It was our conclusion that DOE's policies and procedures required additional actions on the part of the SPOs to ensure the safety and security of all personnel involved, as well as the Department's assets. SSA, in its response to the draft report, generally concurred with the findings and recommendations and stated that: ". . . we agree that the responding security police officers (SPOs) endangered themselves and the local law enforcement officers by not immediately restraining and searching the subject"

Management's comments are provided in their entirety in Appendix B of the report.

Attachment

cc: Deputy Secretary

Administrator, National Nuclear Security Administration

Under Secretary for Energy, Science and Environment

Director, Office of Security and Safety Performance Assurance

Director, Policy and Internal Controls Management

Director, Office of Program Liaison and Financial Analysis

PROTECTIVE FORCE RESPONSE TO A SECURITY INCIDENT AT SANDIA NATIONAL LABORATORY, CALIFORNIA

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Overview

INTRODUCTION AND OBJECTIVE

The Department of Energy (DOE) requires that safeguards and security interests be protected from hostile acts that may cause unacceptable adverse impacts to national security. DOE safeguards and security interests include the premises of National Nuclear Security Administration (NNSA) laboratories such as the Lawrence Livermore National Laboratory (LLNL) and Sandia National Laboratory, California (Sandia California), which are co-located in Livermore, California, and are hereafter jointly referred to as the Livermore site.

DOE requires each site to determine the appropriate level of protection through an analysis of the risks facing the specific DOE safeguards and security interests, to include the nature of the threat, the vulnerability of the potential target, and the potential consequences of an adversarial act. A risk analysis at the Livermore site resulted in the closure of a public street, the construction of a truck inspection station, and the installation of guard kiosks and pop-up vehicle barriers on that street at a cost of approximately \$4.9 million. This project was justified by emerging security threats and recent world events. The guard kiosks and pop-up barriers were completed by July 2003, and they control entry to a Federal Property Protection Area posted with signs prohibiting trespassing. A Federal Property Protection Area is an area established to protect Government-owned property against damage, destruction, or theft.

In the early morning hours of Sunday, February 8, 2004, a 1-ton utility truck dragging a length of chain link fence and traveling at a high rate of speed was driven past one of the recently constructed security kiosks and into the Federal Property Protection Area. The kiosk was manned by Sandia California Security Police Officers (SPOs), with LLNL SPOs providing secondary support. The Sandia California SPO posted at the security kiosk immediately notified his superiors of the intrusion, and multiple SPOs rapidly responded to the scene, stopping the vehicle a considerable distance inside the Livermore site security perimeter. The suspect cooperated by stepping out of his vehicle and waited until local law enforcement officials arrived at the scene. Local law enforcement officials placed the suspect under arrest, searched the suspect, and ultimately transported the suspect to jail.

As a result of concerns raised to the Office of Inspector General regarding how this incident was handled, we initiated a review of

the matter. The objectives of this inspection were to determine if: (1) the recently installed pop-up vehicle barriers were effectively employed; and (2) applicable DOE/NNSA security procedures were followed in response to the vehicle entering the Livermore site without authorization.

OBSERVATIONS AND CONCLUSIONS

We concluded that the pop-up vehicle barriers were not effectively employed. Specifically, we found that:

- At the time of the incident, the barrier activation procedures had not been approved by NNSA Federal and contractor security officials, so the barriers had not been energized. Therefore, the barriers were not up, as called for in the procedures, and security personnel could not activate them.
- Despite this incident, NNSA Federal and contractor security officials did not approve the use of the barrier activation procedures until May 2004, approximately 10 months after the installation of the barriers was completed.

In addition, we concluded that applicable DOE/NNSA security procedures were not followed when the suspect vehicle was stopped. Specifically, we found that:

- Sandia California SPOs did not arrest the suspect after he left his vehicle and instead relied on local law enforcement officials to arrest and process the suspect. This occurred because Sandia California placed restrictions on the implementation of DOE arrest procedures; and
- Prior to the arrival of local law enforcement officials, Sandia California SPOs failed to implement DOE procedures for “unknown risk” vehicle stops, which include restraining and searching the suspect and searching the suspect’s vehicle. We determined that Sandia California’s local policies contradicted the DOE “unknown risk” procedures.

We believe that this incident demonstrates the need for NNSA and its contractors to place greater emphasis on assuring that post-September 11th security upgrades are effectively implemented in a timely manner. We also believe that Sandia California’s ability to effectively perform the SPO function has been hindered by local restrictions on the implementation of DOE/NNSA protective force requirements. These local restrictions, which we were told were intended to limit Sandia California’s liability from legal challenges to the actions of the SPOs, may prevent SPOs from reacting

effectively to potential threats. As noted in a recent Office of Inspector General report, entitled “The Department’s Basic Protective Force Training Program” (DOE/IG-0641), local deviations from standard DOE security procedures may interfere with the approved, overall strategy for protecting sensitive departmental sites.

Details of Findings

LIVERMORE SITE SECURITY IMPROVEMENTS

At the time of the incident, the barrier activation procedures had not been approved by NNSA Federal and contractor security officials, so the barriers had not been energized. Therefore, the barriers were not up, as called for in the procedures, and security personnel could not activate them. Further, we noted that despite this incident, NNSA Federal and contractor security officials did not approve the use of the barrier activation procedures until May 2004.



SOME OF THE NEWLY CONSTRUCTED SECURITY KIOSKS

According to an NNSA official, the construction work necessary to make the barriers operational was completed in July 2003. Sandia California also established “Special Order 2” in August 2003, which prescribed general standards and rules for the deployment of the pop-up barriers. However, the Special Order did not contain specific criteria and procedures regarding barrier deployment or an implementation date for barrier operation. In November 2003, and again in January 2004, Sandia California officials provided draft barrier implementation procedures to the NNSA Livermore and Sandia Site Offices. We were told, however, that issues such as the type of vehicle that would be stopped, considerations for emergency vehicles leaving the site when the barriers were activated, and the acceptable level of risk in operating the barriers delayed approval of the draft procedures.

In the absence of procedures approved by NNSA Federal and contractor security officials, the vehicle barriers were not used for their intended purpose. Thus, on February 8, 2004, the barriers were not available to the SPOs as an option for preventing unauthorized access to the Livermore site. The approval from NNSA Federal and contractor security officials to use the barriers was not received until May 2004. In view of the justification for

the security upgrades, we believe this delay in approving barrier activation procedures is unacceptable.

ARREST OF SUSPECT

Sandia California SPOs did not arrest the suspect after he left his vehicle and instead relied on local law enforcement officials to arrest and process the suspect. This occurred because Sandia California placed restrictions on the implementation of the DOE arrest procedures. The local law enforcement officials arrested the suspect for three misdemeanor criminal violations.

Under 10 Code of Federal Regulations (CFR) §1047.4, “Arrest Authority,” DOE and NNSA SPOs are extended Federal arrest authority in certain circumstances, including for listed misdemeanors committed in the presence of the SPO. Further, DOE Manual 473.2-2 “Protective Force Program Manual,” states under “Arrests” that:

When a suspected felon is apprehended (regardless of whether on or off DOE property), or when a suspected misdemeanant is apprehended on DOE property, the [Protective Force] officer must immediately notify the appropriate U.S. Attorney’s Office and escort the suspect to the nearest U.S. District Court or U.S. Magistrate for arraignment (unless otherwise directed by Federal law enforcement authorities . . .). Under no circumstances must a suspected felon be removed to another jurisdiction without first being processed through the Federal criminal justice system where the suspected felon was apprehended.

An official with DOE’s Office of Security Policy Staff stated that the above procedures are describing SPO arrests.

We determined that Sandia California prohibits its officers from implementing certain requirements of the “Protective Force Program Manual.” Specifically, Sandia California SPO policy and training materials state that:

. . . at this site we do not exercise our arrest authority unless specifically directed by management. Instead, we detain subjects until [L]ocal Law Enforcement Agency (LLEA) personnel arrive. . . . DOE allows individual sites to make this decision.

The policy and training materials also state:

You're probably wondering why we train you in arrest authority when Pro Force arrests are not allowed at this site.

- * We must comply with DOE regulations
- * There is always a possibility that you would have to arrest under special circumstances.

We were unable to find any directive or provision in DOE security policies that allows individual sites to make the decision to not exercise their arrest authority. We were told by an NNSA official that restrictions at DOE and NNSA sites on the use of arrest authority have evolved over the years due to concerns regarding the liability that could result from legal challenges and that arrest authority is generally restricted to the theft of nuclear material. However, DOE policy does not make these distinctions. We believe that restrictions on arrest authority imposed by Sandia California may create confusion during an incident such as the one that occurred on February 8, 2004, thereby preventing security personnel from promptly addressing potential threats to the site.

**SANDIA CALIFORNIA
VEHICLE STOP
PROCEDURES**

Prior to the arrival of local law enforcement officials, Sandia California SPOs failed to implement DOE procedures for "unknown risk" vehicle stops, which include restraining and searching the suspect and searching the suspect's vehicle. We determined that Sandia California's local policies contradicted the DOE "unknown risk" procedures.

Sandia California security officials provided us with a description of the events of February 8, 2004. The officials said that when trespassing onto the Livermore site, the suspect drove his vehicle into a Federal Property Protection Area. Sandia California security personnel in two vehicles approached the suspect's vehicle head-on with red lights illuminated, and the suspect halted. The suspect exited his vehicle and assumed a prone position on the ground without being directed to do so. Sandia California security personnel directed the suspect to stand up so they could attempt to determine by visual inspection if the suspect might have a weapon. The security personnel then directed the suspect to move to a nearby bench to wait for local law enforcement officers to arrive. The suspect, though compliant with officers' directions, exhibited irrational behavior that included repeated screaming and fidgeting. At the request of Sandia California security personnel, local law enforcement officers took control of the incident upon their arrival and processed the suspect and the incident scene.

The Department's standardized SPO training course that implements Department security policies and procedures states that SPOs, when confronted with an "unknown-risk" vehicle stop, will order the suspect to remain on the ground in a prone position, then "speed-cuff" the suspect. The training also states that the suspect will be searched, followed by a search of the suspect's vehicle for additional suspects. However, Sandia California SPO training policy contradicts this training. Specifically, Sandia California training policy states:

Be very sure of justification and legality before conducting a search. We rarely encounter situations requiring us to search people, and we have mutual aid agreements with nearby agencies who are very experienced. Therefore, [Protective Force] personnel at Sandia/CA normally do not perform searches.

Another Sandia California SPO training policy states that a search is appropriate while a suspect is detained if there is reasonable belief that it is necessary to protect the suspect or others. Sandia California officials said that, in their opinion, the suspect was compliant with the on-scene officers and represented a low risk to the officers since he was cooperative. The officials said that they believed a minimal use of force was appropriate given the circumstance of this incident.

Local law enforcement officers who were knowledgeable of the incident events said that, in their opinion and pursuant to their department policy, the suspect represented a degree of risk that required that he be handcuffed and searched immediately after he was removed from his vehicle, not some 10 minutes later when they arrived at the scene. They said that since the suspect was wearing loose fitting clothing that could have concealed a weapon, a physical search was necessary to rule out that danger.

RECOMMENDATIONS

We recommend that the Administrator, NNSA:

1. Review the circumstances that resulted in a delay in implementation of the pop-up barriers, and ensure timely implementation of security enhancements in the future.
2. Ensure DOE policies and procedures pertaining to arrests and vehicle stops are implemented at the Livermore site, to include SPOs being appropriately trained.

We recommend that the Director, Office of Security and Safety Performance Assurance (SSA):

3. Evaluate the policies and procedures on arrest authority at DOE's sites, including NNSA's, and develop additional specific policies and procedures as necessary on the use of arrest authority to ensure protective force personnel are able to react effectively in assessing potential threats and arresting suspects, particularly in a post-September 11th environment.

**MANAGEMENT
COMMENTS**

In comments on our draft report, SSA generally concurred with our findings and recommendations.

NNSA did not specifically state whether management concurred with the findings and recommendations in our draft report. NNSA stated that NNSA and the Sandia Site Office recognize the seriousness of the incident that occurred and will identify lessons learned and ensure that appropriate follow-up actions are implemented. However, other NNSA statements, as well as comments from the Sandia Site Office that were attached to NNSA's response, indicated disagreement with aspects of our report. For example, while acknowledging that there was a delay in the implementation of the pop-up barriers, NNSA stated that: ". . . the approval process for activation of the barrier was executed in a manner that ensured the safest, most secure operating environment possible for both members of the public and the responsible security protective force staff." The Sandia Site Office further stated that: "This process was complicated and took time to complete in that two separate federal offices and two separate contractor organizations operating under separate and distinct security and safety authorizations were involved."

As another example, NNSA's response stated that the Sandia Site Office's "comments provide information that causes the on-site General Counsel to believe that the Sandia-Livermore Protective

Force personnel handled the situation within the parameters of Federal law and the Use of Force continuum.”

Management’s comments are provided in their entirety in Appendix B of the report.

**INSPECTOR
COMMENTS**

We found SSA’s comments to be responsive to our report. Regarding NNSA’s comments, we believe that the extended delay in implementing barrier activation was unacceptable. The site went through an assessment and planning process and subsequently spent about \$4.9 million on critical security upgrades that included the barriers, without being certain whether and under what conditions it would actually use the barriers. This was followed by approximately 10 additional months to obtain approval for the use of the barriers, several months of which were after the February 2004 incident. The Sandia Site Office’s explanation that the approval involved four separate entities operating under separate and distinct security and safety authorizations is troubling in that each of the entities was under NNSA’s cognizance. In today’s environment, all Departmental elements must act in a cohesive manner to quickly identify and address security issues.

Regarding NNSA’s statement that the Sandia-Livermore Protective Force personnel handled the situation within the parameters of Federal law and the Use of Force continuum, we believe that DOE’s policies and procedures required additional actions on the part of the SPOs to ensure the safety and security of all personnel involved, as well as the Department’s assets. Further, we note that SSA stated in its comments that: “. . . we agree that the responding security police officers (SPOs) endangered themselves and the local law enforcement officers by not immediately restraining and searching the subject Also, the SPOs should have conducted at least a cursory inspection of the vehicle to ensure that it contained no other persons who could have presented a threat.”

Appendix A

SCOPE AND METHODOLOGY

The fieldwork for this inspection was conducted between February and April 2004. As part of this inspection, we interviewed officials from the NNSA Service Center and the Livermore and Sandia Site Offices, as well as security officials from Sandia California. We also interviewed local law enforcement officials. We conducted a document review and analysis that included:

- 10 CFR §1047 “Limited Arrest Authority and Use of Force by Protective Force Officers”;
- DOE Order 473.2 “Protective Force Program”;
- DOE Manual 473.2-2 “Protective Force Program Manual”;
- DOE Manual 473.1-1 “Physical Protection Program Manual”;
- East Avenue security upgrade construction planning documentation;
- Security Implementation Plan for Access Control to East Avenue, dated October 2002;
- DOE Central Training Academy “Vehicle Stops” course syllabus; and
- Sandia California SPO lesson plans that included “Search and Seizure,” “Limited Arrest Authority,” and “Use of Force.”

This inspection was conducted in accordance with the “Quality Standards for Inspections” issued by the President’s Council on Integrity and Efficiency.



Department of Energy
Washington, DC 20585

August 5, 2004

MEMORANDUM FOR ALFRED K. WALTER
ACTING ASSISTANT INSPECTOR GENERAL
FOR INSPECTIONS AND SPECIAL INQUIRIES

FROM: GLENN S. PODONSKY, SP-1

SUBJECT: Draft Inspection Report on "Protective Force Response
to a Security Incident at Sandia National Laboratory,
California" (S04IS017)

The subject report, transmitted by your memorandum, IG-40, of July 9, 2004, same subject, has been reviewed by the Office of Security and Safety Performance Assurance (SSA). In general, we concur with the findings and recommendations of the investigator and we offer only minor comments on the content of the draft report.

On page 5, in the last paragraph, there is a reference to, "Policy issued by the Department's Nonproliferation and National Security Institute..." The Department of Energy (DOE) Nonproliferation and National Security Institute has been re-designated as the DOE National Training Center (NTC). In addition, the NTC does not formulate policy. One of the primary functions of the NTC staff is to translate Departmental safeguards and security policy into practical, implementable form suitable for presentation in a training environment. A more appropriate rendering might be, "Training materials prepared by the Department's National Training Center (NTC)..." "Course materials" or "lesson plans" also could be substituted for "policy."

Title 10, Code of Federal Regulations (CFR), Part 1047 (10 CFR 1047), "Limited Arrest Authority and Use of Force by Protective Force Officers," derives from section 161.k. of the Atomic Energy Act of 1954, as amended, and provides the guidance for implementation of arming, arrest, and application of force by protective force personnel within the DOE. The only exception is the Strategic Petroleum Reserve Project, which is governed by a separate CFR. Although 10 CFR 1047 does contain limitations on the offenses for which a protective force officer may exercise arrest authority, trespassing on DOE installations is specifically enumerated in 1047.4(2)(ii)(B). Therefore, in the situation addressed by this inquiry, the authority to arrest should not have been in question. Regardless of whether an official arrest occurred or merely detainment for civil authorities, we agree that the responding security police officers (SPOs) endangered themselves and the local law enforcement officers by not immediately restraining and searching the subject, regardless of the degree of apparent



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compliance. Also, the SPOs should have conducted at least a cursory inspection of the vehicle to ensure that it contained no other persons who could have presented a threat.

Additionally, section 1047.5(d) prescribes that, "Custody of the person arrested should be transferred to other federal law enforcement personnel (i.e., U.S. Marshals or FBI agents) or to LLEA personnel, as appropriate, as soon as practicable." Since trespassing is a misdemeanor and there were undoubtedly numerous offenses for which the Local Law Enforcement Agency (LLEA) could have charged the subject, the transfer of custody in accordance with the local memorandum of understanding (MOU) between Sandia National Laboratories, California, and the Livermore Police Department appears to have been appropriate.

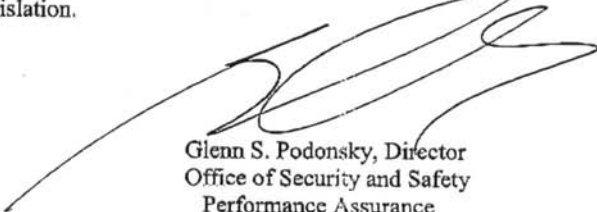
Draft Recommendations

SSA concurs with draft recommendation 1 without comment.

SSA concurs with draft recommendation 2 without comment.

SSA concurs with draft recommendation 3 with the following comments:

- The Office of Safeguards and Security Evaluations (OA-10) will continue to review site arrest procedures and training materials to ensure consistency with current DOE policy.
- A review of 10 CFR 1047 has been underway with both facets, arrest authority and the application of force, under scrutiny. It is becoming apparent that the authority extending from 161.k. is inadequate for the post-9/11 environment and that a major revision of the CFR is needed. Upon completion of the CFR review, a request will be submitted to the DOE Office of General Counsel for an opinion on the most expeditious means of accomplishing a comprehensive overhaul of the regulation and/or its underlying legislation.



Glenn S. Podonsky, Director
Office of Security and Safety
Performance Assurance

cc: Director, Policy and Internal Controls Management (NA-66)
W. Desmond (NA-55)
A. Guevara (OA-10)
J. Hyndman (SO-10.3)



Department of Energy
National Nuclear Security Administration
Washington, DC 20585



August 4, 2004

MEMORANDUM FOR Alfred K. Walter
Acting Assistant Inspector General
for Inspections and Special Inquiries

FROM: *for* *Doug Hibbits*
Michael C. Kane
Associate Administrator
for Management and Administration

SUBJECT: Comments to Draft Report on Protective Force Incident at Sandia
Livermore; S04017; IDRMS No. 2004-25012

The National Nuclear Security Administration (NNSA) appreciates the opportunity to have reviewed the Inspector General's (IG) draft Inspection report, "Protective Force Response to a Security Incident at Sandia National Laboratory, California." We understand that the IG conducted this Inspection based on a security incident that occurred at Sandia National Laboratory, California (Sandia-Livermore) to determine how this incident was handled.

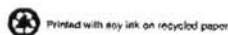
NNSA, and specifically the Sandia Site Office, recognize the seriousness of the incident that occurred. We will identify those lessons learned and ensure that appropriate follow-up actions are implemented. We acknowledge that there was a delay in the implementation of the pop-up barriers. However, we believe that the approval process for activation of the barrier was executed in a manner that ensured the safest, most secure operating environment possible for both members of the public and the responsible security protective force staff. Additional information related to that delay is included in the attached comments. Regarding the recommendation about consistent implementation of policies and procedures, we note that arrests and vehicle stops must be consistently implemented throughout the complex.

The attached comments provide information that causes the on-site General Counsel to believe that the Sandia-Livermore Protective Force personnel handled the situation within the parameters of Federal law and the Use of Force continuum.

Should you have any questions about this response, please contact Richard Speidel, Director, Policy and Internal Controls Management. He may be contacted at 202-586-5009.

Attachment

cc: William Desmond, Acting Associate Administrator for Defense Nuclear Security
Patty Wagner, Manager, Sandia Site Office
Karen Boardman, Director, Service Center
Robert Braden, Senior Procurement Executive



**Comments to
Inspector General's Draft Inspection Report
"Protective Force Response to a Security Incident
at Sandia National Laboratory, California"**

The followings comments are included in their entirety. They were submitted by the Sandia Site Office (SSO) as the cognizant federal office for Sandia-Livermore.

Specific Comments

The SSO has reviewed the Draft inspection report and has also reviewed the circumstances of the incident with SNL/CA officials. The SSO recognizes the seriousness of the incident and is committed to working with SNL/CA and its Protective Force (PF) contractor to identify lessons learned and to ensure that appropriate follow-up actions are implemented and validated as necessary. However, after reviewing all associated information, the SSO believes that SNL/CA PF personnel handled the situation within the parameters of federal law and the DOE use of force continuum. Although the level of force utilized by SNL/CA PF officers may not have seemed stringent enough to other security – law enforcement professionals, the officers on-scene made decisions and implemented a course of action based on their assessment of the situation. The decisions and the course of action were based on their training from DOE approved curriculum and knowledge of DOE arrest authority as defined in 10 CFR 1047. This illustrates the fact-dependent nature of such determination and the need to recognize the importance and role of professional judgment and discretion.

Throughout the report, it is implied that the actions of SNL/CA PF personnel were contrary to DOE policy. The report also implies that the Nonproliferation National Security Institute issues policy and procedures for the Department of Energy. SSO takes issue with both of these statements.

By following the framework of DOE PF legal authority one can arrive at the conclusion that SNL/CA PF personnel took the appropriate course of action. SSO points to the last paragraph of 10 CFR Part 1047 Final Rule Summary (Federal Register July 31, 1985), which states:

"The purpose of these rules is to insure that protective force personnel at DOE facilities exercise such arrest authority, including the use of force to effect an arrest or apprehend a suspect, in a manner consistent with both DOE's security objectives and recognized legal standards."

The actions of the SNL/CA PF personnel were implemented in a manner consistent with DOE's security objectives and recognized legal standards. As soon as the vehicle penetrated the boundary of the Livermore site, PF personnel alerted PF commanders and local law enforcement agencies, initiated a response, stopped the suspect vehicle, separated the individual from the vehicle, established a perimeter around the vehicle and the suspect with multiple responding officers, assessed the situation, and controlled the actions of the individual until a complete on-scene investigation could be made by PF commanders and responding local law enforcement

personnel. As outlined within an approved Memorandum of Understanding established per DOE M 473.2-2, with Livermore Police Department, the suspect was arrested and transported by LPD officers.

10 CFR 1047, promulgated under the authority of the Atomic Energy Act of 1954, as amended, identifies the felonies and misdemeanors that DOE PF personnel are authorized to enforce by the way of making an arrest.

The statute and the regulation authorize, but do not require, protective force personnel to make an arrest under any particular factual scenario. The incident in question poses a potential situation that every DOE facility is faced with. Access control points are susceptible to unauthorized entry. DOE PF personnel cannot immediately arrest and/or escalate the use of force until a complete assessment of the situation has occurred. The actions taken by SNL/CA PF personnel were reasonable and appropriate under the factual circumstances and are, in the opinion of the SSO, consistent with those that would likely be taken by other PF personnel at other DOE facilities. Typically, DOE PF organizations "detain" individuals and either release them or turn them over to local, State or Federal law enforcement agencies.

It is important to note that the Draft report did not classify this security incident as arising from either a "felony" or "misdemeanor" offense. Again, the report concludes *"contrary to DOE policy, Sandia California SPOs did not arrest the suspect after he left his vehicle and instead relied on local law enforcement officials..."* As depicted in the Draft report, personal accounts by SNL/CA SPOs and incident reports, SNL/CA exercised appropriate discretion consistent with law and DOE policy by allowing a responding law enforcement agency to effect the arrest. Although there are provisions for DOE PF personnel to make arrests and there are general guidelines for the transfer of such individuals in DOE custody to the custody of the U.S. Marshals, Federal Bureau of Investigation, or local law enforcement agencies, the establishment of MOUs with applicable local and State law enforcement agencies provides an avenue to effectively deal with criminal offenses.

Page 4 of the report quotes from DOE M 473.2-2, Attachment 2, 5., h., (3), part of the DOE Fresh Pursuit Guidelines. These guidelines are intended for the pursuit of criminals across jurisdictional lines. The Guidelines clearly state *"the following procedures are intended to provide protective personnel with flexibility when in fresh pursuit of a fleeing suspected criminal."* Paragraph 4. a. of the Guidelines states a PF officer *"may"* engage in pursuit for alleged misdemeanors. Again DOE policy does not specify that PF personnel *"will"* engage in pursuit or *"will"* arrest for misdemeanor offenses. These guidelines also provide for DOE PF personnel to coordinate their actions with responding local, State and Federal agencies and to use *"common sense"* to determine which agency should make the actual arrest. Thus, a review of DOE policy, 10 CFR 1047, and provisions of the Atomic Energy Act indicates that the SNL/CA PF personnel acted in accordance with DOE policy by not arresting the individual contrary to the conclusion of the Inspector General Report.

The NNSI (now the National Training Center) is not and has never been a policy issuing organization for the DOE. The mission of the NTC is to provide standardized training to safeguards and security professionals and organizations. The NNSI is tasked to develop and provide training for DOE Security Police Officers. The basic SPO standard curriculum is

developed by NNSI and approved by DOE based on a generic Job Analysis prepared by the NNSI. The Job Analysis examines SPO job duties across the DOE complex. A March 2004 OIG Report entitled "*The Department's Basic Protective Force Training Program*", noted several variations in the methods for teaching the SPO course.

The report recommended that DOE "*Determine the extent of and reasons for curriculum modifications and differences in training delivery methods throughout the Department's complex.*" This suggests that such variations in how the Basic SPO course is taught could lead to inconsistent application of DOE policy and arrest authority across the complex.

The standard SPO curriculum for Arrest Authority contained in the NNSI lesson plans is simply a review of Section 161k., 10 CFR 1047, the Atomic Energy Act, and the applicable Title 18 U.S.C. criminal offenses. Consistent with DOE policy and applicable law, the curriculum is specifically designed to provide an overview of DOE PF arrest authority and DOE policy, rather than provide comprehensive training on arrest procedures. DOE facilities have and continue to rely upon local, State and Federal law enforcement agencies to exercise their legal authorities as appropriate to effect arrests whether on or off DOE property. SSO agrees that the SNL/CA site-specific lesson plans should be revised to reflect a consistent approach with approved DOE curriculum. We do not believe that this contributed to the actions of the officers involved in the incident.

As noted in the draft report there were seemingly long delays in the preparation, coordination, and finalization of approval documents necessary for the safe and secure deployment and full activation of the barrier system. This process was complicated and took time to complete in that two separate federal offices and two separate contractor organizations operating under separate and distinct security and safety authorizations were involved. Furthermore, the matter required integration and close coordination between safety, security, contracts and legal organizations at the operational level. The approval process for the barrier activation plan was executed in a manner that insisted upon the outcome being the safest and most secure operating environment possible for both members of the public and the responsible security protective force staff.

Of the report's three recommendations, SSO agrees that the installation of the pop-up barriers was delayed. However, the deployment of the barriers is based on the assessment and judgment of the officer on-scene and it would be speculative to conclude that if the barriers had been operational at the time, they would have been used for this incident. SSO partially agrees with the second recommendation. This recommendation should be expanded to "all" DOE facilities and PF organizations. As pointed out in this response, SSO believes this is not an isolated issue for the DOE PF complex. SSO agrees with the third recommendation and would expand it by saying that post 9-11 security posture requires a detailed review of DOE legal authority and the law enforcement functions expected to be performed by SPOs.

As outlined in this response, DOE policy on the role of the SPO in the protection of DOE facilities, assets, and interests should be re-examined by DOE policy makers in view of the post 9-11 security environment, and the underlying legal authority and SPO curriculum be re-evaluated and revised accordingly.

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