



Department of Energy
National Nuclear Security Administration
Washington, DC 20585

January 18, 2007

OFFICE OF THE ADMINISTRATOR

MEMORANDUM FOR The Deputy Secretary

FROM: Linton F. Brooks *LF*

SUBJECT: Exempting Kansas City Pilot Project from
Department of Energy Orders

*CLAR -
I THINK THESE
RISKS ARE
CHEATLY
ACCEPTABLE
LF*

Purpose: To obtain your decision on exempting Kansas City Plant from requirements in three Department of Energy (DOE) Directives as a part of the on-going Kansas City Pilot Project.

Background: In April 2006 I directed the Kansas City Site Office (KCSO) to develop a plan to dramatically shift oversight at the Kansas City Plant from the current approach to one that relies more heavily on: (1) the expertise of the contractor's parent organization; (2) a more functional management assurance system with real time management information provided by the contractor to the Site Office; and, (3) Federal operational awareness based on KCSO's Line Management Plan. We began implementing this plan on January 1, 2007. The project is a "pilot" in two senses. First, if it is successful, it would be permanently implemented at the Kansas City Plant. Second, some aspects of it may be suitable for implementation at other NNSA facilities. We do not, however, envision that wholesale replacement of DOE Directives with commercial standards is appropriate for other facilities because of their nuclear safety responsibilities, responsibilities which do not exist at Kansas City.

The Pilot Oversight Plan is based on using Honeywell's experience in operating effective and efficient commercial enterprises. The Plan outlined revisions to KCSO oversight, provisions for further implementing industrial standards in lieu of DOE Directives, and established a relationship with the contractor based more on commercial practices than we have done previously. The Manager of the Kansas City Site Office, the Deputy Administrator for Defense Programs and I all believe that the management system proposed by Honeywell, together with the relief from DOE Directive requirements discussed below, will enable performance at the Kansas City Plant that is as good or better than current performance, will cost less and require fewer human resources.

As part of the pilot project I exempted Kansas City from a large number of DOE Directives. Section 3212(d) of the NNSA Act authorizes the Administrator to "establish Administration-specific policies, unless disapproved by the Secretary of Energy" (or by the Deputy Secretary acting on his behalf). The Department has institutionalized this procedure in the recently revised Directives Manual. Under the new exemption procedures the Administrator advises certain offices (including Offices of Primary Interest responsible for directives) of his intent to exempt some portion of NNSA from a requirement in a DOE Directive. If any of these offices object to the exemption, the issue is referred to the Deputy Secretary.



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In the case of the Kansas City Plant, agreement has been reached with the Offices of Primary Interest on virtually all of the directives from which I proposed to exempt the plant. The attachment illustrates the approach we used. There are, however, three directives still at issue, all involving concerns on the part of the Office of Health, Safety and Security (HSS):

1. DOE P 450.4 (Policy) DOE M 450.4-1 Integrated Safety Management System Manual Integrated Safety Management (ISM). I propose to formally exempt Kansas City from the requirements of DOE P 450.4 and DOE M 450.4-1 on the grounds that DEAR clause 970.5223-1, "Integration of Environment, Safety, and Health into Work Planning and Execution (DEC 2000)" remains in the Kansas City Plant contract as a standard clause and contains all of the basic requirements for an integrated safety management system, and comparable protection is also provided by commercial standards. The Kansas City Plant would, of course, still be covered by the Worker Safety Rule of 10 CFR 851.

HSS believes that Kansas City Plant should retain ISM as a fundamental foundational element of the 851 Worker Safety and Health Program Rule. ISM has been embraced by the last five Secretaries and other key Departmental managers, and eliminating ISM could potentially undermine the overall Departmental program and challenge a cornerstone of the Department's safety culture. ISM provides a great mechanism for tailoring requirements to address industrial hazards at Kansas City Plant with an appropriate level of rigor.

2. Safeguards and Security Requirements. I established extensive tailoring of Safeguards and Security procedures, making extensive use of National Industrial Security Program (NISPO) procedures.

HSS believes that the NNSA-approved deviations from established DOE requirements may not provide adequate protection of DOE classified information and material. Further, HSS does not believe that the Kansas City Plant Site Security Standard is more flexible than the current DOE security directives and is concerned that important existing security requirements may have been omitted. For example, HSS asserts that there are no equivalent protection standards for protection of certain categories of classified information such as Sigma 15. HSS's argument is that any standards and procedures established for Restricted Data are traceable to the Atomic Energy Act and must conform to the Department's standards and procedures. Additionally, HSS is concerned that the protection requirements for accountable classified removable electronic media (ACREM) have been omitted entirely

The Kansas City Site Office maintains that its proposed procedures, as enhanced through accepting many positive comments from HSS during the review process, provides the same level of protection for classified information and material as is provided at facilities run by contractors performing classified work for other federal agencies.

The Site Office asserts that the standards used in the Kansas City Plant (KCP) Site Security Standard (SSS) for the protection of Restricted Data are traceable to the Atomic Energy Act through the National Industrial Security Program, the National Industrial Security Program Operating Manual (NISPOM), and the portions of the DOE directives which were incorporated into the SSS. Sigma 15 protection has been incorporated into the Site Security standards, Section 7.3.9.

It is true that there are no additional protection requirements for CREM in the NISPOM and therefore cleared government contractors outside of DOE (who abide by the NISPOM and are approved for S/RD) have no additional protection requirements for CREM. Classified Removable Media (CREM) is governed by the same protection requirements governing protection of the information contained on the media when in any other form.

3. DOE O 442.1A Employee Concerns Program. I propose to exempt the Kansas City Plant from the DOE procedures for employee concerns on the grounds that the totality of Voluntary Protection Program (VPP) Certification under OSHA, current Corporate Practices (which incorporate employee feedback as part of the ES&H Management system) and the Whistleblower Protection procedures of the Code of Federal Regulations (10 C.F.R. Part 708) provide an equivalent program

HSS believes that requirements for an employee concerns program should not be removed from the Kansas City Plant contract. The Kansas City proposal, in HSS' view, does not recognize the difference between the Department's employee concerns program and the whistleblower protection process (10 C.F.R. Part 708); the employee concerns program provides the mechanism for contractor (and federal) employees to raise, in part, safety concerns, whereas the whistleblower protection process is only for protection of individuals that have raised certain types of concerns and then been subject to an adverse personnel action. Deletion of the employee's concerns program eliminates the process that supports employee's right to raise concerns outside of their employing organization.

My direction to the Kansas City Site Office provides that by June 2007 the Site Office is to provide a recommendation for when an external review should be conducted of the Pilot to evaluate impact of changed oversight and streamlined requirements. Consistent with the results of that external review the Site Office will revise the application of DOE Directives involved in this Pilot as appropriate and recommend whether to move from pilot to permanent status. Thus there will be an opportunity for NNSA and you to reevaluate the exemptions based on experience.

Recommendation: That you approve my decision modifying the application of requirements in these three directives at the Kansas City Plant. Although this is submitted as a single recommendation, you should decide on each of the three directives at issue.

	Accept NNSA Decision (NNSA view)	Reject NNSA Decision (HSS view)
1. DOE P 450.4/DOE M 450.4-1 ISM	<u>Clay Sell</u>	_____
2. Safeguards and Security Requirements	<u>Clay Sell</u>	_____
3. DOE O 442.1A Employee Concerns Program	<u>Clay Sell</u>	_____

Attachment

ILLUSTRATIVE APPROACHES TO MODIFYING DOE REQUIREMENTS

In the past the Kansas City Site Office has implemented several initiatives that have replaced DOE Orders with industrial standards, OSHA regulations, or site-specific standards. With this Pilot, additional changes are proposed which generally fall into four categories:

- 1) The first category involves exempting the Kansas City Plant from Directive requirements where there is a current law, regulation or contract clause applicable to the contractor.

Examples:

a) *DOE STD-1091-96, Firearms Safety- 10 CFR 851, Appendix A, and paragraph 5 establishes requirements for a comprehensive firearms safety program. This section mirrors the firearms safety requirements contained in DOE O 440.1A. Throughout DOE firearms safety programs are implemented to meet requirements contained in DOE O 440.1A. This order is not contained in the KCP Operating Requirements database except for the paragraph in the CRD on Occupational Medicine. DOE STD-1091-96 is intended to provide a standard interpretation to the requirements in 440.1A, but has been used at KCP as the program framework. Elimination of DOE STD-1091-96 from the Operating Requirements database does not increase risk since 10 CFR 851 establishes requirements for an acceptable firearms safety program.*

b) *DOE M 440.1-1A, Explosives Safety Manual- 10 CFR 851, Appendix A, section 3 states: "Contractors must comply with the policy and requirements specified in the DOE Manual 440.1-1A, DOE Explosives Safety Manual, Contractor Requirements Document (Attachment 2), January 9, 2006." 10 CFR 851 incorporates the DOE Explosives Safety Manual by reference. It also gives contractors the option to adopt successor versions of the Manual. This would eliminate the necessity to do a "brown sheet" change for revised versions of the Manual. Safety is neither enhanced nor degraded by replacing DOE M 440.1-1A with 10 CFR 851, but a very slight reduction in contract administration tasks would be realized.*

c) *DOE N 350.6, Worker's Compensation- Missouri State Reg. 8 CSR 50-2. Honeywell FM&T must comply with the State Regulations anyway. There is no risk involved in applying the State Regulations in place of DOE N 350.6.*

d) *DOE Order 430.1B Real Property Asset Management- The Contract contains the clause DEAR 970.5237-2, Facilities Management, Paragraph (a) Site Development Planning. The Contract contains the clause DEAR 952.217-70, Acquisition of Real Property; 41 CFR 101 Federal Property Management Regulations and 41 CFR 102 Federal Management Regulations remain a contract requirement and regulate disposition and long-term stewardship requirements.*

- 2) The second category involves exempting the Kansa City Plant from or tailoring Directives requirements to the plant where there is national or industry standard covering the same subject matter as the Directive.

Examples:

- a) *DOE Order 151.1C, Comprehensive Emergency Management System - DOE Order 151.1C is partially implemented within the Kansas City Plant Contract in accordance with the results of a Necessary & Sufficient Process on the KCP Emergency Management System. NFPA 1600 is the primary replacement with a few sections of DOE Orders on reporting retained.*
- b) *DOE O 450.1, Change 2, Environmental Protection Program- An Environmental Management System (EMS) has been in place since 1996 and Certification to ISO 14001 has been maintained since May 1997. No risk based on the success of the FM&T EMS over the past decade and the biannual third party oversight of the EMS. ISO 14001 and VPP have served as the basis for FM&T's ongoing ISMS, and these systems are inherently integrated by design. FM&T meets the intent of the DEAR clause for a documented Safety Management System.*

- 3) The third category involves substituting a site or plant standard for a DOE Directive requirement.

Example:

- a) *DOE O 442.1A DOE Employee Concerns Program - VPP Certification, ISO ES&H Elements, Corporate Practices, CFR – Whistleblower Protection. FM&T has incorporated employee feedback mechanism as part of ES&H Management system. No further directive is needed in light of established contractor procedures.*

- 4) The final category involves DOE Directive requirements that are of such low risk that elimination is not consequential to operations of the plant.

Examples:

- a) *DOE-STD-1027-92, Hazard Categorization and Accident Analysis Techniques for Compliance with DOE Order 5480.23, Nuclear Safety Analysis Reports. The Kansas City Plant manages its inventory of radio nuclides as not to exceed the thresholds listed in Attachment 1 of the Standard; therefore the requirements of DOE O 5480.23 and DOE-STD-1027-92 are avoided.*
- b) *DOE O 225.1A, Accident Investigations- Contractor are only required to support DOE Type A and B investigation in this Order. Elimination is very low risk*