



Natural Resources Defense Council

nuclear watch



Mr. William C. Ostendorff
Principal Deputy Administrator and Acting Administrator
National Nuclear Security Administration (NNSA)
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington, DC 20585

May 21, 2007

Dear Mr. Ostendorff:

On behalf of the Natural Resources Defense Council (NRDC) and Nuclear Watch New Mexico, we are writing to draw your attention to a potentially serious legal matter under the *National Environmental Policy Act* (NEPA) involving your agency's recently announced plans to construct a new 1 million-plus sq. ft., half billion dollar facility for NNSA's non-nuclear component procurement and manufacturing operations at a greenfield site approximately 8 miles south of the current Kansas City Plant (KCP) in Missouri. On May 1, 2007 the General Services Administration and NNSA jointly announced in the *Federal Register* their intent to prepare an *Environmental Assessment* (EA) to evaluate the potential environmental impacts associated with this proposal.¹

Our objections begin with the subtly deceptive title adopted for this project: "Transformation of Facilities and Infrastructure for the Non-Nuclear Production Activities Conducted at the National Nuclear Security Administration's Kansas City Plant."² In reality, the proposal has nothing to do with "transforming" facilities at NNSA's existing Kansas City Plant, as this title wrongly suggests, but rather involves the wholesale abandonment (and subsequent disposition) of the existing facilities and the transfer of "approximately two-thirds of the existing capital and process equipment to the new facilities," according to the main body of the *Federal Register* notice.

In a similar vein, the *May 1 NOI* goes on to state, incorrectly, that "the proposed action would continue the consolidation and downsizing of non-nuclear activities at the Kansas City Plant in the early 1990's," when in reality the proposed action calls for closing the current Kansas City Plant, lacks any proposal for further "consolidation" of similar activities from other NNSA sites, and calls for the construction of an entirely new plant some eight miles away at a greenfield site! Most people would regard this outcome as the opposite of what is normally meant by "consolidation."

I. The Current NNSA-GSA Proposal for a New Kansas City Plant is premised on preemptive agency judgments that prematurely narrow and effectively predetermine the NEPA analysis.

The *May 1 NOI* also jumps preemptively to a sweeping, undocumented, and unwarranted conclusion: "GSA and NNSA believe that the relocation of the *non-nuclear production mission* to another location outside the Kansas

¹ *Federal Register*/Vol.72, No. 83/Tuesday, May 1, 2007, p. 23822.

² A more apt and accurate title for the project would be "Construction of a New Plant at a Greenfield Site in Kansas City, Missouri for NNSA Non-Nuclear Production Activities."

City Metropolitan Area is not a reasonable alternative...” (Emphasis added.) Under NEPA, however, this is quintessentially the type of broad programmatic judgment that must be supported by an adequate and timely PEIS. Moreover, as a description of the status quo, it is not even accurate, as non-nuclear components are *already produced* at other nuclear weapons program sites, e.g. Los Alamos and Sandia National Laboratories, by KCP employees, and some are even procured commercially.

The *May 1 NOI* further states, or rather postulates, that “the alternatives are constructed around the mission need to maintain the Kansas City Plant while downsizing for cost efficiency,” but we find no significant evidence of “downsizing” or improved cost efficiency in the NOI’s Proposed Action, while the unique identification of NNSA’s “mission need” with continued operations in the Kansas City area is never explained. [FR Vol.72, No. 83, p. 23823]³

Can it really be the case that no other location or combination of locations “outside of the Kansas City Metropolitan Area” could constitute an objectively reasonable alternative for relocating and consolidating NNSA’s non-nuclear production mission? This preemptive judgment artificially constrains, and therefore would tend to arbitrarily and capriciously predetermine the scope of NEPA analysis and consideration, limiting it to locations within the Kansas City limits, when the obvious and necessary domain for analysis is *the nuclear weapons complex as a whole*.

Elemental common sense suggests this must be the case, but more importantly, so does DOE’s September 1996 *Final PEIS for Stockpile Stewardship and Management* [the “SSM-PEIS”] the 11 year-old base document that NNSA is, in legal terms, intending to “supplement” in 2007. The *May 1 NOI* acknowledges that NNSA is simultaneously engaged in preparing a *Supplement to the Stockpile Stewardship and Management Programmatic Environmental Impact Statement—Complex 2030* (“Complex 2030 SPEIS”), and then it cites the *SPEIS October 2006 Notice of Intent* as follows:

NNSA believes that it is appropriate to separate the analyses of the transformation of non-nuclear production from the Supplemental PEIS because decisions regarding non-nuclear activities would neither significantly affect nor be affected by decisions regarding the transformation of nuclear production activities.⁴

This unsupported assertion is demonstrably false.

II. NNSA’s Proposed Segmentation of Its Non-Nuclear Fabrication Activities from the Ongoing Broad Environmental Review of its Proposed “Complex 2030” Violates NEPA

First, on a technical level, we note that the shape, density, thickness, and composition of materials used for casings, filler materials, and other non-nuclear components can affect the reflected neutron and radiation-transfer environments in a nuclear weapons system, and hence the explosive performance of the nuclear components. Other “non-nuclear” components, such as neutron generators, tritium reservoirs

³ Pursuant to the December 1996 SSM-PEIS and ROD to “downsize in place” at KCP rather than consolidate elsewhere, the KCP footprint was to be reduced from the then current 3.2 million sq. ft to 1.8 million sq. ft. by October 2003. This option was dubbed “KCP II.” [SSM-PEIS, 1996, p. A-182] Assuming this downsizing was actually achieved in practice, the proposed new KCP plant at “more than” 1 million sq. ft. may not be a cost effective reduction in floor space from the status quo (e.g., a new 1.5 million sq. ft. KCP would be only a 16.6% reduction). Similarly, downsizing to KCP II was said to require 1,669 workers for single shift operation, and 2,257 workers for three-shift operation. [SSM-PEIS, 1996, p. S-43] The May 1, 2007 NOI describes the proposed new KCP plant, located 8 miles away, as providing “over 2000 surface parking spaces,” indicating a workforce comparable in size to the existing KCP II facility. Based on this limited data, no significant further “downsizing” is evident in the current KCP proposal.

⁴ *Federal Register*/Vol. 71, No. 202, Thursday, October 19, 2006 at 6171-61736.

and injection systems, and arming, fuzing and firing systems, are obviously also critical to the proper functioning of the primary system. Our fundamental point is that division of nuclear weapons production into disconnected “nuclear” and “non-nuclear” enterprises represents an artificial “segmentation” of the nuclear weapons complex for the purposes of analyzing and understanding its potential “transformation,” a process which may ultimately cost American taxpayers at least \$150 billion.

NNSA’s own *Ten-Year Site Plans* for the Kansas City Plant demonstrate that the site will be deeply affected by proposed transformation of the nuclear weapons complex, and is itself playing a substantial role in transforming the complex. For example, consider this excerpt from the FY 07 plan:

The KCP is aggressively evaluating transformation options in consideration of the goals from responsive infrastructure leadership at NNSA-HQ... The transformation options being considered include several different options that could be completed on a timeline to support qualification of the Reliable Replacement Warhead (RRW) program.⁵ Emphases added.

This “transformation” objective is likewise clearly implicated in the *Complex 2030 SPEIS Notice of Intent*, which says under “Purpose and Need” that “The current [nuclear weapons] policy is contained in the Nuclear Posture Review, submitted to Congress in early 2002, which states that the United States will:..... Transform the NNSA nuclear weapons complex into a responsive infrastructure that supports the specific stockpile requirements established by the President.” In numerous instances on the public record, NNSA has stated that RRW is a vehicle for transforming the nuclear weapons complex.

Furthermore, the *KCP FY06 Ten-Year Comprehensive Site Plan* explicitly states:

The KCP is continuing on the path to work with the NNSA to transition from “protecting the capabilities of the past” to “creating the responsive infrastructure of the future.” [p. 21.]

As the Reliable Replacement Warhead (RRW) requirements emerge, strategic investments will be identified. [p. 22.]

The technologies, facilities, and equipment required to support responsive infrastructure and future weapons designs are expected to emerge from the responsive infrastructure analysis currently being led by NNSA and from the design concepts of Reliable Replacement Warheads (RRW) [p.27].

Readiness of production technology advances deployment of new manufacturing processes required for the next-generation weapon systems. [p. 40]

Implementation of responsive infrastructure strategies is expected to have a major impact to future TYCSPs [KCP Ten-Year Comprehensive Site Plans]...[p. 59.]

The most direct infrastructure requirements driven by planned and potential program workload are:.. Mission work for supplying tooling and nonnuclear components for the Modern Pit Facility.... There will be significant impact on the facility from KCP’s anticipated role in the nonnuclear support for a modern pit facility.⁶ [p. 57.]

⁵ Kansas City Plant FY07 Ten-Year Site Plan, Honeywell Federal Manufacturing and Technologies, March 24, 2006, p. 12.

⁶ Congress rejected the Modern Pit Facility. However, the major new facility proposed in NNSA’s *Notice of Intent for the Complex 2030 SPEIS* is a “Consolidated Plutonium Center.” This is comprised of a scaled down Modern Pit Facility plus all research activities involving Security Category I/II amounts of plutonium. Therefore, it is reasonable to assume that a Consolidated Plutonium Center, the pivotal facility in NNSA’s Complex 2030, will significantly affect future KCP plant workload and operations, and hence its environmental impacts.

The KCP integrates technology planning, technology investments, and teaming within the NWC [nuclear weapons complex] to plan, prioritize, and establish the new capabilities and updates required for the currently assigned and projected workload. [p. 65.]

The Kansas City Plant has established a new organization to address strategic long term issues and to work with NNSA to develop an effective plan for the complex of the future. [p. 66.]
Emphases added.

These statements from the Kansas City Plant's own Site Plan make abundantly clear that this facility will both critically affect, and be affected by the future nuclear weapons complex under review in the *Complex 2030 SPEIS*. Therefore, the KCP-EA must be terminated, and the both the existing KCP site and prospective future sites for the non-nuclear fabrication mission, must be fully included within the scope of the *Complex 2030 SPEIS*.

III. NNSA's Predecessor Agency, DOE's Office of Defense Programs, Previously Regarded Consolidation of Non-Nuclear Fabrication to Potential Sites in Other States as A "Reasonable Alternative" Worthy of Detailed NEPA Analysis.

The *Complex 2030 SPEIS Notice of Intent* states that a substantial part of NNSA's proposed action is to "consolidate, relocate, or eliminate duplicative facilities and programs and improve operating efficiencies." From there it goes on to note that nuclear weapons electrical and mechanical manufacturing functions were consolidated at the Kansas City Plant (from other sites now closed) under a Record of Decision for the *1993 Nonnuclear Consolidation Environmental Assessment (EA)*.

It further notes that this earlier EA and the subsequent *1996 Stockpile Stewardship and Management PEIS* (to which the current *Complex 2030 SPEIS* is legally a "Supplement") "evaluated alternatives for consolidation of non-nuclear manufacturing, storage and surveillance functions of the Nuclear Weapons Complex to the Kansas City Plant and reducing the capacity for non-nuclear component fabrication." That description sins by omission. Under "Nonnuclear Fabrication," the *1996 SSM PEIS* actually said:

In addition to the No Action alternative, two alternatives are being considered that would meet the needs of the Program: 1) downsizing the facilities that presently perform this mission at KCP and 2) transferring the KCP nonnuclear fabrication mission to LANL, LLNL and SNL by upgrading existing nonnuclear fabrication facilities at LANL and LLNL, and constructing new nonnuclear fabrication facilities at SNL. [p. S-41, emphases added]

SNL designs most of the components that KCP manufactures; therefore, SNL would become the major nonnuclear component supplier if a decision is made to transfer this function to the weapons laboratories. Other than potential synergisms with maintaining core competencies at the weapons laboratories, a major program consideration would be the cost of transferring product technologies and recreating facilities that already exist at KCP. [p. S-21, emphases added]

A decade ago, DOE's *SSM-PEIS Record of Decision* on non-nuclear component fabrication stated that DOE's decision to downsize the existing facilities at the KCP was "the environmentally preferable alternative", "exhibit[ed] the least technical risk" and was also "the least-cost alternative." [Federal Register, December 26, 1996, p. 68023.]

Given that today NNSA is proposing to pay for "transferring product technologies and recreating facilities that already exist at KCP," these near-term costs—which could well be more than offset by

long-term savings from consolidation—are clearly not a sufficient justification for failing to examine consolidation alternatives for the non-nuclear fabrication functions now carried out by KCP.

In sum, nonnuclear consolidation to the NNSA weapons labs was actively considered as a “reasonable alternative” in the 1996 SSM PEIS, but was rejected at that time largely because of the up front costs and environmental impacts of relocating the KCP when compared to “downsizing in place.” That justification is now entirely vitiated given the current GSA/NNSA proposal to build a new half-billion dollar KCP at a new site. It is unlikely in the extreme that the incremental costs of moving equipment the few hundred additional miles to the New Mexico weapons labs, rather than to a new KCP eight miles away, could now justify excluding the weapons lab option.⁷

To the contrary, there would likely be long-term savings by weeding out redundant facilities and programs, as the *Complex 2030 SPEIS* purports to do, and eliminating ongoing security and other overhead and administrative costs (including an NNSA Site Office) at one of the eight active NNSA sites. Further, according to KCP documents, at least 10% of its workforce has long been employed at the SNL/Kirtland AFB complex and LANL. That alone gives ample and practical precedent for consolidating KCP functions at the weapons labs.

IV. Building a New KCP at a “Greenfield Site” Outside the Current Nuclear Weapons Complex Necessarily Involves Significant Environmental Impacts Requiring Consideration in an EIS.

Building a new KCP at a new and potentially less secure site may well not be the most environmentally preferable alternative for ensuring the future of this capacity within a transformed nuclear complex. Some Members of Congress have openly stated their opposition to any future NNSA nuclear weapons production sites being built at “greenfield sites,” for the very reasons noted in the *May 1 NOI*, which notes that in NNSA non-nuclear operations:

“Hazardous wastes are generated through general industrial processes and include acidic and alkaline liquids, solvents, oils, and coolants... operations do generate small quantities of low-level radioactive waste.” [FR/ Vol.72, No. 83/ May 1, 2007, p. 23823]

Thus, potential environmental hazards are clearly implicated in the operations of a future KCP, even as the old KCP explicitly states that it has environmental problems which it cannot resolve for lack of NNSA clean-up funding (as reported at length in the footnote below).⁸ Further, the *May 1 NOI*

⁷ In the SSM-PEIS, NNSA’s predecessor, DOE’s Office of Defense Programs (DP), had little difficulty identifying and analyzing in detail a number of “reasonable alternatives” for relocating and consolidating the non-nuclear fabrication mission at existing long-established DP sites in New Mexico. None of these alternatives were characterized or discarded as “unreasonable.” The 1996 analysis determined that the required upgrades to existing facilities at LANL and LLNL could be accomplished on the same timescale as the option ultimately chosen (KCP “Downsize in Place”) These estimates were supported by some 40 pages of detailed analysis [SSM-PEIS Vol. II, A-182 to A-222]

⁸ “... there is currently no budgetary category to account for the elimination of [DOE] EM [Environmental Management] funding in FY2007 and beyond.... This includes the cleanup of 42 out of 43 Solid Waste Management Units (SW-MUs), groundwater treatment and monitoring, and EM program management.... regulatory compliance is of the utmost concern. The KCP operates under a RCRA Post Closure Permit issued by the State of Missouri. If funding is not received, compliance with this Permit will be in jeopardy... the [PCB] limit has been exceeded 32 times [since 1992] and two Notices of Violation and one letter of warning have been received. A Consent Judgment is currently being negotiated between the State of Missouri and NNSA by the Department of Justice to define response actions.... Additional environmental liabilities could be generated that are not contained in the current EM baseline... These are unplanned costs and there are currently no funding source or budgetary category to perform the EM work.” KCP FY06 Ten-Year Comprehensive Site Plan, pp. 61-62. “Long Term Stewardship (LTS) is required at the KCP to ensure that all remediation activities continue to be effective and

hints at other potentially significant environmental impacts: “Concurrent with the preparation of the Environmental Assessment, GSA and NNSA will determine the applicability of floodplain management and wetland protection requirements (10 CFR Part 1022) and will publish a notice of proposed floodplain and/or wetland action as appropriate.”

The proposed site of the new KCP is directly across a state highway (Mo-150) from the former Richards-Gebaur Air Force Base (now owned by the Kansas City Port Authority) which is part of EPA’s Brownfields cleanup program. Once the contaminated areas at this former base have been cleaned up, “revitalization plans call for a state-of-the art intermodal distribution facility and a light industrial and commercial business complex.”⁹

We question the physical security and strategic wisdom of locating a critical link in the national defense infrastructure in the immediate vicinity of a major intermodal inland port and container terminal, with scores of freight trains and thousands of tractor-trailers arriving every week with cargoes coming in directly from foreign ports. Such an external environment could make it easier to mask and mount a massive truck bomb or tank car attack against the facility, and this threat in turn could require additional security measures and expense, and suggests the need for a comparative analysis of more secure alternative locations for the plant. The proper locus for that discussion is the ongoing *SSM-SPEIS*.

We are painfully aware of DOE’s/NNSA’s tortured history of compliance with the National Environmental Policy Act (NEPA), but find it worthy of note that even the *1993 Final Nonnuclear Consolidation EA* recognized:

If any significant environmental impacts due to the Proposed Action are identified during the public comment period ... then the assessment of environmental impacts for consolidating nonnuclear functions would be incorporated into the Reconfiguration PEIS. In this case, no actions would be taken to consolidate the nonnuclear manufacturing activities unless they were included in the Reconfiguration PEIS Record of Decision (ROD).

In brief, the *1991 Reconfiguration PEIS* was ultimately abandoned by DOE, the *1996 SSM PEIS* became its successor, and the current *Complex 2030 SPEIS* is a “Supplement” to the latter document. The fact that DOE quietly satisfied its NEPA obligation 14 years ago with an EA regarding “Nonnuclear Consolidation,”— when both public and government attention was focused on containing the massive contamination caused by *nuclear* materials and components, and on ending *nuclear* test explosions— cannot not be viewed today as in any way dispositive, or as any kind of guide to what is required under NEPA in the present situation. Moreover, the consolidation at that time, by helping to phase-out a number of redundant and contaminated nuclear weapons program sites, served to reduce the overall environmental impact of the NNSA’s nuclear weapons complex.

The still unresolved environmental hazards at the current KCP plant site, along with the location of a new \$500 million-plus facility in a potential floodplain and wetland immediately opposite a

protective of human health and environment following transition out of the DOE EM program... When transition occurs, soil and groundwater will still contain volatile organic compounds, petroleum hydrocarbons, and PCBs at concentrations similar to those present today... Long term groundwater monitoring and possibly treatment is expected indefinitely at the present remediation rate due to the presence off DNAPLs (Dense Non-Aqueous Phase Liquids) in fined grained soil... KCP LTS is scheduled to begin in FY2007. The funding source is undetermined at this time..... The KCP currently has nothing scheduled for LTS other than the level-of-effort and cyclical work.” Ibid, pp. 104-104.

⁹ “Brownfields 2006 Grant Fact Sheet, Kansas City Port Authority, MO,” www.epa.gov/brownfields/06arc/kansascity.htm, May 2006.

busy inland port, suggest to us that reasonably foreseeable environmental impacts of non-nuclear component production are significant enough in their own right to merit consideration in a full-blown EIS. But even if one were to set this contention aside, the KCP's non-nuclear component fabrication enterprise is inextricably connected to NNSA's overall nuclear weapons maintenance, development, and manufacturing complex now undergoing programmatic NEPA review. No one can dispute that the connected and cumulative potential impacts of this collective enterprise are "significant," and therefore that a range of reasonable alternatives for carrying out the functions of the KCP, including those having significantly reduced environmental impacts, must be fully considered in the *Complex 2030 Supplemental PEIS*.

Since non-nuclear components play a critical role in sustaining the existing stockpile, the non-nuclear fabrication enterprise plays a key role in future nuclear stockpile alternatives that emphasize the retention and maintenance of existing nuclear weapons, rather than the development and manufacture of new ones. For this reason alone, it belongs in the *SSM-SPEIS*.

Finally, given the reported half-billion dollar price tag for a new KCP, and given that DOE/NNSA chronically experiences serious cost overruns in its major construction projects, a lesser "environmental assessment" for such a costly proposed facility at a greenfield site is simply not appropriate or consistent with the purposes of NEPA. As a proposed major federal action by virtue of its future cost to American taxpayers, and in view of its potentially significant environmental impacts, a more comprehensive and thorough environmental impact statement is indicated. Given these realities, the future of a new KCP, whether or not it is located within Kansas City limits, must be fully analyzed and considered within the NEPA-required "hard look" at NNSA's proposed transformation of its nuclear weapons complex under the *Complex 2030 Supplemental PEIS*.

V. NNSA Has Ignored Our Prior Objections to Exclusion of the KCP Non-Nuclear Fabrication Mission from the Stockpile Stewardship and Management Supplemental PEIS.

For the record, in NEPA scoping comments to the NNSA Office of Transformation on January 17, 2007, the Natural Resources Defense Council (NRDC) formally objected to the exclusion of KCP activities from the now ongoing SPEIS, as follows:

"We understand there is a proposal to construct a modern non-nuclear component production facility at a new location in the Kansas City area, and that NNSA proposes to evaluate this project in a separate EIS [now downgraded to an EA]. NRDC strenuously objects to this exclusion, as it blatantly seeks to prejudice and preempt the consideration of cost effective complex consolidation options that would redistribute remaining KCP missions and capabilities to Los Alamos and Sandia National Laboratories, where some 10% of KCP employees are already assigned."¹⁰

Similarly, Nuclear Watch New Mexico objected as follows (excerpts):

We have already argued that important aspects of the Complex 2030 proposal are happening now, not sometime in the hazy future, such as the Reliable Replacement Warhead (RRW)... To say that a decision like that would not affect operations at the Kansas City Plant (KCP) defies belief... Finally, we note that broad NNSA budget categories under "Total Weapons Activities" are applied to KCP just like they would be at the other sites. We argue that NNSA makes an artificial distinction between nuclear and non-nuclear component production, when clearly the two are

¹⁰ Letter from Christopher Paine, NRDC Senior Nuclear Program Analyst, to Mr. Theodore A. Wyka, Complex 2030 SEIS Document Manager, Office of Transformation, U.S. Department of Energy, NA-10.1, Washington, D.C. 20585

not only inextricably linked but are given additional emphasis in NNSA's search for a more "responsive infrastructure..." In short, KCP should be fully considered in the Complex 2030 SPEIS...¹¹

It appears that NNSA has chosen to ignore these previous, on-the-record objections, and without any initiative on its part to communicate the legal and policy basis for its position, is pressing ahead with actions that clearly violate NEPA regulations barring improper "segmentation" of programs and projects to avoid a more rigorous level of NEPA review.

These actions notwithstanding, we again urge NNSA to: (1) immediately suspend and withdraw the *Notice of Intent to Prepare an Environmental Assessment* that NNSA published jointly with GSA in the *Federal Register* on May 1, 2007, and (2) issue a new notice stating that henceforth NEPA analysis of reasonable alternatives for relocation and modernization of NNSA's non-nuclear production activities will be conducted within the scope of the ongoing *Complex 2030 SPEIS*.

NNSA must uphold its NEPA obligation under the Complex 2030 PEIS to take a "hard look" at all the connected and cumulative impacts of its proposed "transformation" of its nuclear weapons complex. Such a hard look must include analysis of the potential environmental benefits flowing from all reasonable alternatives for consolidating nuclear weapons complex operations, including the non-nuclear fabrication mission, at a smaller number of less dispersed NNSA weapons program sites.

If you have any questions regarding this letter, or would like to discuss this matter in person, please do not hesitate to contact us.

Sincerely,

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cc: The Hon. Pete Domenici
U.S. Senator, New Mexico

The Hon. Jeff Bingaman
Senator, New Mexico

The Hon. Byron L. Dorgan, Chair
Subcommittee on Energy and Water Development
Senate Appropriations Committee

The Hon. Carl Levin, Chair
Permanent Subcommittee on Investigations
Committee on Homeland Security and Governmental Affairs

¹¹ "Scoping Comments on the Future Bombplex," Nuclear Watch NM, Jan. 17, 2007, to the Complex 2030 Document Manager, http://www.nukewatch.org/facts/nwd/BomplexScopingComments_011707.pdf

The Hon. Bill Nelson, Chair
Subcommittee on Strategic Forces
Senate Armed Services Committee

The Hon. Peter J. Visclosky, Chair
House Subcommittee on Energy and Water Appropriations

The Hon. David Hobson, Ranking Member
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