



U.S. Department of Justice

United States Attorney  
Southern District of Texas

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October 4, 2000

Mr. Charles E. Mullins  
Senior Attorney  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Re: USA v. USR Industries, Inc.

Dear Mr. Mullins:

Enclosed per your request are copies of the Petition to Enforce Order and the Notice of Dismissal in the referenced matter.

Very truly yours,

MERVYN M. MOSBACKER  
United States Attorney

By: Pat Skoff  
Pat Skoff, Secretary to:  
JOHN B. KINCHEN  
Assistant United States Attorney

Enclosures

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ERTDS-06001



PARTIES, JURISDICTION, AND VENUE

1. Petitioner is the United States of America, suing on behalf of the U.S. Nuclear Regulatory Commission ("NRC" or "Commission").

2. Respondents USR Industries, Inc., USR Metals, Inc., USR Chemical Products, Inc., USR Lighting, Inc., and US Natural Resources, Inc., are companies whose business office is located at 550 Post Oak Boulevard, Suite 545, Houston, Texas, which is within this judicial district. The companies' registered agent, Stephen C. Miller, may be served at the above address.

3. This Court has jurisdiction over this action pursuant to 42 U.S.C. §2280, 28 U.S.C. §§ 1331 and 1345, and the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001, et seq.

4. Venue is proper in this district pursuant to 28 U.S.C. §1391(b).

STATUTORY AND REGULATORY FRAMEWORK

5. In 1954, Congress established the Atomic Energy Commission (AEC") as an independent agency to control the development and use of atomic energy under the Atomic Energy Act ("AEA") of 1954, as amended, 42 U.S.C. §§2011, et. seq.

6. In 1974, Congress created the Nuclear Regulatory Commission ("NRC") and transferred the AEC's regulatory responsibilities to the NRC under the Energy Reorganization Act

("ERA") of 1974, as amended, 42 U.S.C. §§5801, et. seq. See generally 42 U.S.C. §§ 5841(f) and 5842.

7. The transfer of regulatory authority to the NRC included the transfer of licenses issued by the AEC along with the authority to enforce the regulatory provisions in the AEA, as well as the ERA.

8. Principal among the NRC's responsibilities is "protecting the public health and safety [and] protecting the environment ...." 10 C.F.R. §1.11(b).

9. Under Section 81 of the AEA, 42 U.S.C. §2111, the NRC "is authorized to issue general or specific licenses to applicants seeking to use byproduct material ...[,]" which is defined in Section 11e of the AEA, 42 U.S.C. §2014(e).

10. The Commission has adopted regulations governing the issuance of licenses authorizing the use of byproduct material, and these regulations are found in 10 C.F.R. Part 30.

11. These regulations include requirements to set aside funds to prepare for the eventual decommissioning of the licensed facilities, termination of the licenses, and release of the facility site for either unrestricted use or use subject to specified restrictions. See generally, 10 C.F.R. §§ 30.4, 30.35, and 30.36.

12. Section 183c of the AEA, 42 U.S.C. §2233(c), provides that "[n]either the license nor any right thereunder shall be

assigned or otherwise transferred in violation of the provisions of this Act."

13. Section 184 of the AEA, 42 U.S.C. §2234, provides that

No license granted hereunder ... shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, ... give its consent in writing.

14. Under Section 161, subsections b, i, and o, of the AEA, 42 U.S.C. §§2201(b), (i), and (o), the NRC may issue orders governing the various aspects of the use and possession of radioactive materials, including any and all activities authorized by the AEA and any and all licenses issued by both the AEC and the NRC.

15. The Commission's regulations in effect in 1989 provided that "[t]he Commission may modify a license by issuing an amendment on notice to the licensee that the licensee may demand a hearing with respect to all or any part of the amendment within twenty (20) days from the date of the notice or such longer period as the notice may provide." 10 C.F.R. §2.204 (1989).<sup>1</sup>

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<sup>1</sup>The currently applicable regulation is essentially the same and provides that the NRC may "institute a proceeding to modify, suspend, or revoke a license or take such other action as may be proper by serving on the licensee or other person subject to the jurisdiction of the Commission an order ...." 10 C.F.R. §2.202(a) (2000).

Moreover, "[a] licensee or other person to whom the Commission has issued an Order under this section must respond ... by filing a written answer ..." and, in addition, "the answer may demand a hearing." 10 C.F.R. §2.202(b) (2000).

16. In addition, that same regulation provided that "[w]hen the Commission finds that the public health, safety, or interest so requires, the order may be made immediately effective." Id.

17. Section 189a(1)(A) of the AEA, 42 U.S.C. §2239(a)(1)(A), provides that

[i]n any proceeding under this Act for the granting, suspending, revoking, or amending of any license ..., the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.

18. Section 191a of the AEA, 42 U.S.C. §2241(a), authorizes the Commission to establish an Atomic Safety and Licensing Board

to conduct such hearings as the Commission may direct and make such intermediate or final decisions as the Commission may authorize with respect to the granting, suspending, revoking or amending of any license or authorization under the provisions of this Act, any other provision of law, or any regulation of the Commission issued thereunder. The Commission may delegate to a board such other regulatory functions as the Commission deems appropriate.

19. The Commission normally refers requests for hearings under Section 189 to a Licensing Board for an initial determination (or "intermediate decision") with the right of appeal by an aggrieved party to the full Commission.

20. An aggrieved party may seek review of a final Commission decision by filing a petition for review with the appropriate U.S. Court of Appeals. See 42 U.S.C. §2239(b).

21. Under 42 U.S.C. §2280, the Attorney General may ask the appropriate Federal district court to issue orders and/or injunctions enforcing any NRC Order including those Orders issued under 42 U.S.C. §2239(a).

FACTS<sup>2</sup>

22. In 1956, the Atomic Energy Commission, forerunner of the NRC, issued a Byproduct Materials license to a company named U.S. Radium under the authority of Section 81 of the AEA, 42 U.S.C. §2111, and 10 C.F.R. Part 30 of the Commission's regulations. Over the years there were numerous amendments to the 1956 license, and U.S. Radium obtained additional Byproduct Material licenses.

23. A condition in each license, including the 1956 license, specified that the "authorized place of use" was a U.S. Radium facility in Bloomsburg, Pennsylvania.

24. Another condition in each U.S. Radium license contained a standard provision found in all AEC/NRC licenses subjecting the license to "the conditions specified in section 183 ["Terms of Licenses"] of the [AEA]" and "all applicable rules, regulations, and orders of the ... Commission ...."

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<sup>2</sup>The facts as stated in this Petition are taken from two agency decisions published in the official NRC Reports. Safety Light Corporation, ALAB-931, 31 NRC 350, 356-58 (1990) (This is a decision by the NRC's Atomic Safety and Licensing Appeal Board, an intermediate appellate tribunal); Safety Light Corporation, LBP-95-9, 41 NRC 412, 427-37 (1995) (This is a decision by an NRC Licensing Board).

25. Among the Commission regulations applicable to the U.S. Radium licenses are 10 C.F.R. §30.35, which requires licensees to establish a fund from which to pay for future decommissioning activities, and 10 C.F.R. §30.36, which establishes certain requirements for licensees undertaking decommissioning, including a requirement that those licensees file a description of how they intend to pay for decommissioning costs.

26. Under the Commission's regulations, 10 C.F.R. §30.4,

Decommission means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits (1) [r]elease of the property for unrestricted use and termination of the license; or (2) [r]elease of the property under restricted conditions and termination of the license.

27. Decommissioning is necessary to allow safe use of the site of licensed operations after termination of the license.

28. In 1980, U.S. Radium underwent a series of reorganizations and mergers which produced several new corporate entities, including the Respondents.

29. U.S. Radium transferred the Byproduct Material Licenses to a new corporate entity named "Safety Light Corporation," but did not transfer any significant assets to that corporation.

30. Instead, U.S. Radium transferred the clear preponderance of its profitable assets to five other new corporations created during this process, the Respondents.

31. U.S. Radium asked the NRC to change the name of the licensee on each of the various licenses from "U.S. Radium" to "Safety Light Corporation," without explaining that the change of names reflected a change in control over the license.

32. U.S. Radium did not advise the NRC of the existence of the new corporate entities, or of the substantive nature of its various mergers and reorganizations, including the fact that U.S. Radium had not assigned any significant monetary-producing assets to Safety Light Corporation, which was now responsible for decommissioning the Bloomsburg facility.

33. In late 1988, the NRC discovered U.S. Radium's corporate reorganization and that it had separated its assets from the liability of future decommissioning costs for the Bloomsburg facility.

34. On March 16, 1989, the NRC Staff issued an "Order Modifying Licenses (Effective Immediately)" to various corporate entities that the NRC Staff considered to be responsible for operations at the Bloomsburg facility, including Respondents.

35. On August 21, 1989, the NRC Staff issued a second "Order Modifying Licenses (Effective Immediately)" to the same group of corporate entities, which again included the Respondents.

36. Taken together, the two NRC orders directed those corporate entities, including Respondents, to take certain steps

with regard to the facility in order: (1) to protect the public health and safety and the environment; (2) to establish a trust fund to accumulate monies to fund future decommissioning activities at the facility; and (3) to initiate planning for eventual decommissioning activities.

37. All corporate entities named in the Orders, including Respondents, exercised their right to ask for a hearing with respect to each of the Staff's orders, and these separate requests were consolidated into one adjudicatory proceeding before an NRC Licensing Board.

38. Respondents contended, inter alia, that the NRC lacked regulatory jurisdiction over them and, therefore, they were not obliged to take any of the steps required by the two NRC orders.

39. Subsequently, the Safety Light Corporation asked the NRC to renew the various licenses on which it was listed as the licensee.

40. On February 7, 1992, the NRC Staff denied Safety Light's request, and Safety Light exercised its right to demand a hearing regarding that denial.

41. That proceeding was consolidated with the enforcement proceeding already in progress. See Safety Light Corporation, CLI-92-13, 36 NRC 79 (1992) (a decision of the Commission).

42. The proceeding continued until October, 1994, when all parties, including Respondents, Safety Light Corporation, and the

NRC Staff, signed a Settlement Agreement to terminate the consolidated proceeding.

43. On December 28, 1994, the NRC's Licensing Board entered an Order approving the Settlement Agreement, with minor modifications, and incorporating the Agreement into the body of the Order.

44. The Order (with the Settlement Agreement incorporated) is published in the official NRC Reports, see Safety Light Corporation, LBP-94-41, 40 NRC 340 (1994), and a copy is also appended to this Petition as Exhibit 1.

45. Under the terms of the Agreement, the NRC Staff agreed to renew the licenses in the name of Safety Light Corporation for a term of five (5) years and to grant Safety Light an exemption from certain NRC decommissioning regulations. See Settlement Agreement, ¶1.

46. Moreover, Respondents agreed to deposit funds in an escrow account (or trust fund), approved and monitored by the NRC Staff, according to a schedule set forth in the agreement. See Settlement Agreement, ¶3.

47. Specifically, the Agreement requires the Respondents, as a group, to make 48 monthly payments of \$1,000.00 for a total of \$48,000.00. Id.

48. In addition, the Agreement provides that the Respondents will not challenge the NRC's jurisdiction to seek

collection of any unpaid balance of this amount in the event of a breach of the Agreement. See Settlement Agreement, ¶10.

49. Finally, the Agreement provides that a failure by the Respondents to make timely payments would constitute a material breach of the Agreement, that the full amount would become due and payable, and that the NRC could resort to a judicial collection action to recover the total amount. See Settlement Agreement, ¶21.

50. No party appealed the Order to the full Commission and the Order became a "final" Commission decision when the Commission allowed the review time to expire without taking review of the decision. See 10 C.F.R. §2.786 (1995).

51. Following the agreement, the Respondents made 43 of the required 48 payments; however, the Respondents did not make the last five payments, which were scheduled for August, 1998, through December, 1998, leaving an unpaid balance of \$5,000.00.

52. On February 1, 1999, and again on May 25, 1999, the NRC notified Mr. Ralph T. McElvenny, Chairman, USR Industries, Inc., in writing, that the Respondents had breached the Order.<sup>3</sup>

53. On March 16, 1999, an NRC employee placed a telephone call to USR's Office requesting payment of the unpaid balance; although the NRC employee was not allowed to speak to Mr. McElvenny directly, the employee requested payment of the unpaid

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<sup>3</sup>Mr. McElvenny signed the Settlement Agreement on behalf of all five Respondents.

balance from a USR employee who promised to transmit the message to Mr. McElvenny.

54. In addition, immediately prior to filing this action the United States Attorney for the Southern District of Texas, through the undersigned Assistant United States Attorney, also notified Mr. McElvenny by letter of the breach of the Order and asked him to remit the unpaid balance. See April 24, 2000 letter to Ralph T. McElvenny, Jr., attached to this Petition as Exhibit 2.

55. On June 19, 2000, the undersigned Assistant United States Attorney caused to be mailed to USR a written agreement wherein USR would pay the unpaid balance, plus interest and penalty, according to a specified schedule. The schedule called for five (5) payments of \$1,000.00 on the first of each month with the applicable interest and penalty to be added to the first payment. The written agreement was mailed to USR only after assurances by a designated representative of USR, Jack DiMartino, that Mr. McElvenny would sign and return to the United States both original copies of the agreement and also remit the scheduled payments as required under the agreement.

56. However, USR and/or its designated representatives refused to sign and return the original copies of the agreement that were mailed to USR on June 19, 2000. In addition, USR failed to make the first payment on the scheduled date of July 1,

2000.

57. On July 24, 2000, the undersigned Assistant United States Attorney caused a letter to be mailed to USR stating that the United States would file this Complaint in federal court on Wednesday, August 2, 2000, if USR failed to make the required payments for the months of July and August before August 1, 2000, or if the original copies of the signed settlement agreement (reached on June 15) were not received by mail, postmarked by Friday, July 28, 2000.

58. On July 28, 2000, USR made a single payment of \$2,707.41, an amount equal to the amount of the first two payments scheduled for July and August as specified in the proposed written agreement of June 19, 2000.

59. USR did not make the payment due on September 1, 2000.

60. Accordingly, on September 18, 2000, the undersigned Assistant United States Attorney caused a letter to be mailed to USR stating that (1) the United States was rescinding its settlement offer allowing scheduled monthly payments because USR had not returned signed copies of the Agreement and had failed for the second time to make the required payments as scheduled in the Agreement; and (2) the United States would file this lawsuit on September 26, 2000, if the outstanding balance of \$3,000.00 was not paid on or before September 25, 2000.

61. As of the morning of September 26, 2000, USR still

refused to remit the unpaid balance of \$3,000.00 to the designated trust fund.

Count One - Enforcement of NRC Order

62. The United States realleges and incorporates herein by reference the allegations contained in paragraphs 1 - 61 as if fully set forth herein.

63. The United States, on behalf of the NRC, files this action pursuant to 22 U.S.C. §2280 seeking enforcement of the Order entering the Settlement Agreement freely contracted by Respondents and recovery of the unpaid balance of the debt, together with appropriate interest.

Count Two - Federal Debt Collection Procedure Act

64. The United States realleges and incorporates herein by reference the allegations contained in paragraphs 1 - 61 as if fully set forth herein.

65. USR is liable to the NRC, an agency of the United States, for the sum of \$3,000.00. The NRC and the United States Attorney for the Southern District of Texas have amicably demanded payment of said sum from USR on repeated occasions, and to date, the payment has not been received.

66. Pursuant to the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001, et seq., the United States may recover a "debt . . . that is owing to the United States on account of a . . .

fine, assessment, penalty, . . . or other source of indebtedness to the United States, . . . ." 28 U.S.C. §3002(3)(B).

67. Under Count 1 and Count 2, the United States is entitled to receive interest on its claim against USR under 31 U.S.C. §3717 and 7 C.F.R. §3.34.

68. The claim of \$3,000.00 remains unpaid with interest accruing thereon at the rate of 6.241% per annum from and after September 1, 2000 until paid and should be reduced to judgment by this Court, in favor of the United States and against USR.

RELIEF REQUESTED

69. Pursuant to 42 U.S.C. §2280 and the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001, et seq., the United States respectfully requests that this Court:

- A. Issue an Order directing Respondents to remit the outstanding balance of \$3,000.00 based on Count 1 or Count 2 above, plus interest accruing thereon at the rate of 6.241% per annum from September 1, 2000, until the date of judgment, and interest from the date of judgment at the maximum statutory rate until paid in full, to the designated Trust Fund in accordance with the Order issued by the NRC's Atomic Safety and Licensing Board, dated December 28, 1994, and the Settlement Agreement incorporated in that Order;

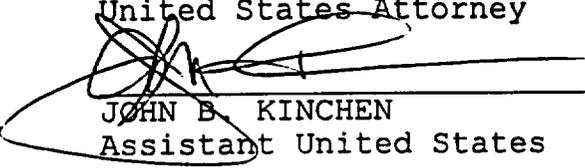
- B. Award the United States the costs of this action and related attorneys fees; and
- C. Order any other relief that this Court finds is just and proper.

Respectfully submitted,

  
\_\_\_\_\_  
CHARLES E. MULLINS  
Senior Attorney  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

(301) 415-1606 (Voice)  
(301) 415-3200 (Facsimile)

MERVYN M. MOSBACKER  
United States Attorney

  
\_\_\_\_\_  
JOHN B. KINCHEN  
Assistant United States  
Attorney

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DATED: September 27, 2000



U.S. Department of Justice

United States Attorney  
Southern District of Texas

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Phone (713) 567-9000  
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April 24, 2000

*Certified Mail - Return Receipt Requested  
and First Class Mail*

*This letter is provided for settlement  
purposes only and is privileged and  
confidential*

Mr. Ralph T. McElvenny, Jr.  
USR Industries  
550 Post Oak Boulevard, Suite 545  
Houston, TX 77056

Re: Nuclear Regulatory Commission  
Referred Amount: \$5,000.00

Dear Mr. McElvenny:

This is to notify you that the U.S. Department of Justice, at the request of the U.S. Nuclear Regulatory Commission ("NRC"), is prepared to bring a civil federal court action against USR Industries, Inc., USR Metals, Inc., USR Chemical Products, Inc., USR Lighting, Inc. and US Natural Resources, Inc. for nonpayment of escrow funds pursuant to a Settlement Agreement executed with the NRC on December 28, 1994. The United States' Petition For Summary Enforcement specifically will allege that the NRC is due the sum of \$5,000.00, plus interest as provided by the Settlement Agreement and by statute.

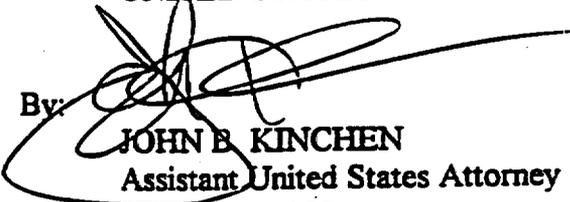
Before filing a complaint, however, we are extending to you the opportunity to discuss settlement of the above-described matter. If you are interested in resolving this matter short of litigation, please contact me promptly at (713) 567-9515. However, if I do not receive any response from you before noon on May 1, 2000, the United States will proceed to file the necessary action to resolve this matter.



Sincerely yours,

MERVYN M. MOSBACKER  
UNITED STATES ATTORNEY

By:

  
JOHN E. KINCHEN  
Assistant United States Attorney  
P.O. Box 61129  
Houston, TX 77208  
(713) 567-9515  
FAX: (713) 718-3303

cc: Mr. Charles E. Mullins  
Senior Attorney  
U.S. Nuclear Regulatory Commission  
Fax: (301) 415-1606

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*W. J. Shand*

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2. The United States filed the Petition after repeated requests for payment of amounts due under the administrative order were ignored by Respondents.

3. On September 28, 2000, Respondents remitted payment of the final amount due under the administrative order (\$3,000.00).

4. Respondents have not yet served an answer or a motion for summary judgment as of the date of filing this Notice of Dismissal With Prejudice.

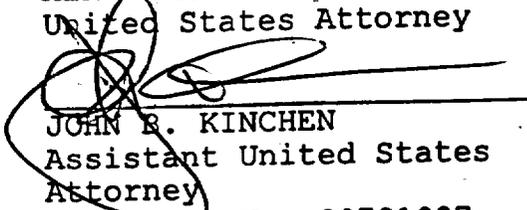
Accordingly, the United States provides notice of dismissal with prejudice in accordance with Rule 41(a)(1) of the Federal Rules of Civil Procedure and requests the Court remove the above-styled action from its docket.

Respectfully submitted,

  
CHARLES E. MULLINS  
Senior Attorney  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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CERTIFICATE OF SERVICE

I, John B. Kinchen, attorney for the United States of America, hereby certify that a true and correct copy of the foregoing Notice of Dismissal With Prejudice was mailed by regular mail and certified mail, return receipt requested, on October 3, 2000, to the following:

Ralph T. McElvenny, Jr.  
For USR Industries, Inc.  
550 Post Oak Boulevard  
Suite 525  
Houston, Texas 77027

  
JOHN B. KINCHEN  
Assistant United States Attorney

CMRRR # Z 257 403 084