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October 20, 2000

Re: Allendale Mutual Insurance Company v. Safety Light Corporation
NRC File No. TR-00-08
Our File No. 00222-0324

Charles E. Mullins, Esquire
U.S. NUCLEAR REGULATORY COMMISSION
Room #0-15D21
11555 Rockville Pike
Rockville, MD 20852

Dear Mr. Mullins:

We have received your letter dated October 11, 2000, which responds to ours dated September 22 and September 28, 2000, submitted in support of our client's request for an opportunity to interview and/or depose NRC employees.

We have reviewed the regulations to which you make reference and do not believe that they provide authority for the requirements that you set forth in your letter. Although the regulations require that, in most instances, the NRC's General Counsel must authorize an NRC employee to provide information of the type which is described in 10 C.F.R. §9.201, the regulations do not require that a person or entity seeking such information provide the elaborate justification which you contend must be provided. 10 C.F.R. §9.202(b), to which you refer us, provides only that "a summary of the testimony desired must be furnished to the General Counsel by a detailed affidavit or, if that is not feasible, a detailed statement by the party seeking the testimony. . .". It provides further that "[t]he General Counsel may request a plan from the party seeking discovery of all demands then reasonably foreseeable, including but not limited to, names of all NRC personnel from whom discovery is or will be sought, areas of inquiry," etc. There is no requirement in the regulation that those who request information must "explain - in some detail - not only the issues in the litigation and the lawsuit and the information that they seek from the NRC employees, but the relevance of that information to the issues in litigation." There is no requirement, therefore, that Allendale explain how the information which it seeks "is relevant to the central issue in this case: whether Safety Light can recover under the insurance

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policies at issue". Neither do the regulations require that Allendale explain why the question of what Safety Light knew and when it acquired that knowledge is relevant to that issue. Finally, the regulations do not require that Allendale demonstrate why its review of the relevant files in the NRC Region I Office would not provide the answer to the aforementioned questions. In short, we believe that the regulations which you have cited require only that a party seeking information from an NRC witness (1) identify the information sought with reasonable particularity, and (2) obtain the General Counsel's permission to interview and/or depose the employee, which permission may not be unreasonably withheld, provided that the General Counsel is furnished with the information described in 10 C.F.R. §9.202(b)(1). Our letters dated September 22 and September 28, 2000 provide the information which is required by the regulations.

The aforementioned points notwithstanding, Allendale is prepared to provide some additional information. Among the issues in this matter are those of (1) fortuitousness of Safety Light's claimed damage and loss, (2) the trigger of Safety Light's notice obligation under the policy, (3) the date on which the policy's suit limitation began to run, and (4) trigger of coverage under the Allendale policies. Resolution of each of these issues may depend, to at least some extent, on Safety Light/U.S. Radium's appreciation of the NRC's requirements and/or demands, which we believe are expressed in numerous documents which date as far back as 1969, that Safety Light decontaminate and/or remove from the Almedia, Pennsylvania site certain property which became contaminated in the course of U.S. Radium's operations prior to 1969. Although Safety Light does not appear to dispute the authenticity of any of the documents (NRC inspection reports, Demands for Information, correspondence, etc.) or, to the best of our knowledge, take the position that the documents constitute hearsay (which, under Federal Rule of Evidence 803(8), they should not, as you point out), Safety Light appears to be contending that the documents do not, in fact, mean what Allendale believes they say. For example, Safety Light appears to contend that, despite the NRC's use of the term "decontamination" in various documents, the NRC really meant only to require that Safety Light monitor and/or perform studies on the site and that it did not mean to require Safety Light to proceed with actual decontamination of the property. We think that it is important that Allendale be afforded an opportunity to obtain testimony from NRC witnesses about the action which the NRC expected Safety Light to take in response to the NRC's various directives over the years. In this regard, the testimony of John D. Kinneman, Francis M. Costello and William T. Russell, among others, may be important.

We believe that the Nuclear Regulatory Commission, as an administrative agency of the United States government, is required to cooperate with litigants consistent with the procedures described in 10 C.F.R. §9.200, et seq. Allendale has provided the NRC with the information which we believe is reasonably required under the regulations. It is our intention, therefore, to subpoena the testimony of Messrs. Costello, Kinneman and Russell and, if necessary, to seek the assistance of the United States District Court for the Middle District of Pennsylvania in compelling the NRC to provide the access to witnesses which we seek.

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We look forward to hearing from you promptly as to whether the NRC will permit the depositions we and Safety Light have requested without court intervention.

Very truly yours,

HECKER BROWN SHERRY AND JOHNSON

BY: William H. Black, Jr.
William H. Black, Jr.

WHB/rlb

cc: Suzanne Q. Chamberlin, Esquire

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