

License Nos.: 37-00030-02
37-00030-08

Docket Nos.: 03005980
03005982

Safety Light Corporation

Title: Affidavit of Francis M. Costello dated June 30, 1992

This document is Exhibit No. 22 to NRC Staff's Motion for Summary Disposition As To NRC Jurisdiction Over USR Industries, Inc., USR Lighting, Inc., USR Chemical Products, Inc., USR Metals, Inc., and USR Natural Resources, Inc., dated June 30, 1992 (ML040230156) and NRC Staff's Statement of Undisputed Material Facts As to Which No Genuine Issue Remains (ML040230151)

List of all Exhibits at ML040220785.

Tab. 22
Staff Exh. 22

UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
SAFETY LIGHT CORPORATION)	
UNITED STATES RADIUM)	
CORPORATION)	
USR INDUSTRIES, INC.)	Docket Nos. 030-05980-ML/ML-2
USR CHEMICAL PRODUCTS, INC.)	030-05982-ML/ML-2
USR METALS, INC.)	
USR LIGHTING, INC.)	
U.S. NATURAL RESOURCES, INC.)	(ASLBP Nos. 92-659-01-ML
LIME RIDGE INDUSTRIES, INC.)	and 92-664-02-ML-2)
METREAL, INC.)	
(Bloomsburg Site Decommissioning)	
and License Renewal Denials))	

AFFIDAVIT OF FRANCIS M. COSTELLO

I, Francis M. Costello, being duly sworn, depose and state as follows:

1. I am employed by the United States Nuclear Regulatory Commission (NRC) as a Senior Health Physicist, Nuclear Materials Safety Section B, Nuclear Materials Safety Branch, Division of Radiation Safety and Safeguards, Region I, U.S. Nuclear Regulatory Commission at 475 Allendale Road, King of Prussia, Pennsylvania. In 1970, I received a Bachelor's Degree in Engineering Physics from St. Joseph's University in Philadelphia, Pennsylvania. In 1974, I received a Master's Degree in Health Physics from Rutgers University in New Brunswick, New Jersey. I worked as an operational health physicist at an accelerator at Brookhaven National Laboratories from 1972 to 1975. From 1975 to 1977 I worked as a health physicist for Delmarva Power, including

one year at Salem Nuclear Generating Station. I have been employed as an inspector at NRC Region I since 1977. During this time, I have been involved in inspecting and licensing byproduct materials licensees and in the operation the NRC's direct radiation monitoring program for nuclear reactors. I was certified by the American Board of Health Physics in 1977.

2. I was the principal inspector from 1980 through 1989 at the United States Radium (U.S. Radium) and Safety Light Corporation site in Bloomsburg, Pennsylvania. This affidavit represents my knowledge of the corporate transactions involving U.S. Radium and Safety Light, as well as my review of the NRC's files for information regarding those transactions.

3. On June 30, 1956, the Atomic Energy Commission (AEC) originally issued License No. 37-30-2 (now denoted as License No. 37-00030-02) to U.S. Radium.

4. The AEC subsequently issued License Nos. 37-00030-07E, 37-00030-08, 37-00030-09G, and 37-00030-10G to U.S. Radium.

5. On August 5, 1969, in response to U.S. Radium's application to renew license 37-00030-02, the AEC issued Amendment Number 36 to the license, which modified license 37-00030-02 to limit U.S. Radium's authorization to the "decontamination, clean-up, and disposal of equipment and facilities previously used for research, development, and processing under this license."

6. On June 7, 1977, U.S. Radium submitted an application to renew license

37-00030-02 that described the purpose of the renewal as being "decontamination, cleanup and disposal of equipment and facilities previously used for research, development, and processing under this license."

7. By letter dated June 9, 1978, the NRC requested U.S. Radium to "supplement [its] application with a detailed report concerning the status of your decontamination efforts." The report was to "identify those areas which are still contaminated and the types and quantities of contamination in those areas, provide a description of [U.S. Radium's] current program for surveying those areas and surrounding environs, and outline [U.S. Radium's] plan for completing decontamination of [the Bloomsburg site]."

8. U.S. Radium responded to this letter by submitting a plan, dated October 23, 1978, for completing certain site characterization and decontamination efforts.

9. On January 25, 1979, the NRC issued Amendment No. 40 to license 37-00030-02, which required the licensee to a) perform the site characterization and decontamination efforts required in the licensee's October 23, 1978, plan and b) submit by July 1 a report of the status and schedule of work for the twelve month period commencing July 1.

10. On April 11, 1980, an NRC inspection determined that the report and schedule of decontamination operations had not been submitted on July 1, 1979, as required.

11. By letters dated December 15, 1980, and January 21, 1981, Safety Light informed the NRC that, effective November 24, 1980, U.S. Radium Corporation had changed its name to Safety Light Corporation.

12. As of January 21, 1981, U.S. Radium had not informed the NRC of the reorganization it had undergone in August of 1980 (identified in (18), *infra*). Specifically, as of January 21, 1981, I had no knowledge of the August 1980 reorganization, nor do the NRC's records indicate that the NRC had any such knowledge. No corporation or individual involved with the 1980 reorganization of U.S. Radium requested the NRC's permission or consent to transfer control of U.S. Radium's licenses identified in (3) and (4), *supra*, to USR Industries.

13. On January 20, 1983, the NRC issued License Amendment No. 42 to license 37-00030-02. License Amendment 42, based on the January 21, 1981, letter identified in (11), *supra*, changed the name on license 37-00030-02 from United States Radium Corporation to Safety Light Corporation. The same change was made on U.S. Radium's other licenses identified in (4), *supra*. When the NRC issued these amendments, the only information it had indicated that Safety Light was identical to U.S. Radium before the 1980 restructuring identified in (18), *infra*. The NRC then had no knowledge that U.S. Radium was a subsidiary of USR Industries or that substantial assets of U.S. Radium had been transferred to the other USR companies. Figure 6 in the Staff's Motion for Summary Disposition filed with this affidavit represents the action the NRC Staff

believed it was taking in changing the name on the licenses identified in (3) and (4), *supra*, from U.S Radium to Safety Light.

14. On March 8, 1983, I inspected the Bloomsburg site (along with Nancy Dennis, another NRC inspector). During this inspection, the NRC first became aware that the entity that had been known as U.S. Radium before August of 1980 had been reorganized. Specifically, I was told during this inspection that ownership of the Bloomsburg facility had changed on November 24, 1980, when U.S. Radium sold the facility to the then-current President and Vice-President of the Safety Light Corporation and that "the remainder of the previous activities conducted by U.S. Radium at the Bloomsburg facility were transferred to U.S.R. Metals Corporation." This is reflected in NRC Inspection Report Nos. 30-5980/83-01, *et al.*, dated September, 22, 1983, at page 4, which was included with the NRC's letter to Safety Light Corporation dated September 22, 1983.

15. Prior to March 8, 1983, the NRC was not aware of the sale of Safety Light by USR Industries, Inc., on May 24, 1982. No corporation or individual involved with the May 24, 1982, sale of Safety Light requested the NRC's permission or consent to transfer control of the licenses identified in (3) and (4), *supra*, through this sale to new owners.

16. By letter dated November 11, 1983, in response to the NRC's letter of September 22, 1983, identified in (14), *supra*, Safety Light informed the NRC that "effective November 24, 1980, our Company name was changed from United States

Radium Corporation to Safety Light Corporation. There were no organizational changes made due to the name changes." The letter further stated that USR Industries sold Safety Light Corporation to a group of executive officers on May 24, 1982. This was the first information the NRC received that identified the May 24, 1982 sale. Prior to November 11, 1983, the NRC was not aware of the existence of USR Industries, Inc., nor did it have any knowledge of USR Industries' relationship to Safety Light or U.S. Radium. Specifically, prior to November 11, 1983, I had no knowledge of USR Industries' existence and relationship to U.S. Radium or Safety Light, nor do NRC records reflect any such knowledge.

17. On June 19-20, 1986, another NRC inspector, Thomas K. Thompson, began an inspection at the Bloomsburg site and on November 12, 1986, I inspected the Bloomsburg site with a different NRC inspector, Josephine M. Piccone, and concluded that a violation of 10 C.F.R. § 30.34(b) had occurred in that control over license 37-000320-02 had been transferred without the written consent of the NRC. Specifically, the NRC did not receive prior notice of the May 24, 1982, sale of Safety Light Corporation and did not grant prior written approval of the resulting transfer of control of the licenses as required by 10 C.F.R. § 30.34(b). This is reflected in Inspection Report Nos. 030-5980/86-001, *et al.*, dated March 22, 1988, page 3; this inspection report was transmitted to the Licensees by letter dated April 20, 1988, which also enclosed a Demand for Information.

18. The Commission did not obtain any information regarding the organization of USR Industries and its subsidiaries, or their relationship to U.S. Radium or Safety Light, until the Licensees responded to the April 20, 1988, Demand for Information. In their replies to the April 20, 1988, Demand for Information, the Licensees informed the NRC for the first time that U.S. Radium had reorganized in 1980.

19. The NRC has never given its written consent to the August 1980 transfer of control over license 37-00030-02 to USR Industries, Inc., has never given its written consent to USR Industries' transfer of control over license 37-00030-02 through the sale of Safety Light on May 24, 1982, nor has the NRC given its written consent to any transfer of control of any of U.S. Radium's licenses identified in (4), *supra*. No NRC record reflects the NRC's consent to a transfer of control over any of U.S. Radium's licenses identified in (3) and (4), *supra*.

20. The NRC has never found that (a) the August 1980 transfer of control over license 37-00030-02 to USR Industries, Inc., or (b) USR Industries' transfer of control over license 37-00030-02 to the three individuals who purchased Safety Light on May 24, 1982, was in accordance with the Atomic Energy Act of 1954, as amended. The NRC has never found that a transfer of control of any of U.S. Radium's licenses identified in (4), *supra*, was in accordance with the Atomic Energy Act of 1954, as amended. No NRC record reflects a finding by the NRC that a transfer of control of any of U.S. Radium's licenses identified in (3) and (4), *supra*, was in accordance with the Atomic Energy Act of 1954, as amended.

21. In summary, the U.S. Radium Corporation informed the AEC and its successor, the NRC, that it intended to decontaminate the Bloomsburg site in 1969 and 1978. In 1969, 1977, 1979, 1980, 1983, 1986, and 1988 the AEC and NRC informed U.S. Radium Corporation in writing that decontamination was expected. In 1980, after having been cited for a violation for failure to comply with the requirement to submit a decontamination report and schedule, U.S. Radium Corporation separated the liability of its licensed operation from the assets of the rest of the corporation without notice to the NRC, changed its name in 1981, and, in 1982, sold that licensed operation without notifying the NRC and without the NRC's written consent.

The foregoing and the attached statement of professional qualifications are true and correct to the best of my knowledge and belief.

Francis M. Costello
Francis M. Costello

Subscribed and sworn to before
this 30th day of June, 1992

Roselyn H. Levin
Notary Public
My commission expires: 3/24/96

NOTARIAL SEAL
ROSELYN H. LEVIN, Notary Public
Upper Merion Twp., Montgomery Co.
My Commission Expires 3/24/96