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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

E. Roy Hawkens, Chairman
Ann Marshall Young
Dr. Peter S. Lam

In the Matter of

SAFETY LIGHT CORPORATION
Bloomsburg, Pennsylvania Site

(Materials License Amendment)

Docket Nos. 30-5980 & 30-5982

ASLBP No. 04-833-07-MLA

November 9, 2004

MEMORANDUM AND ORDER
(Granting Pennsylvania's Request For Hearing)

Before the Licensing Board is the request for hearing submitted on August 30, 2004, by the Pennsylvania Department of Environmental Protection (Pennsylvania) in response to a June 23, 2004 notice of opportunity for hearing regarding a proposed amendment to the 10 C.F.R. Part 30 byproduct materials licenses of the Safety Light Corporation (Safety Light).¹ As relevant here, Safety Light seeks to renew its Materials License No. 37-0030-08, and incident to the license renewal it seeks a continued exemption from the decommissioning funding requirements of 10 C.F.R. § 30.35. Pennsylvania requests a hearing to oppose Safety Light's license-renewal application if such renewal results in a continued exemption from section 30.35. Because we find Pennsylvania has standing and advances an admissible contention, we grant its request for a hearing.

¹ The notice was published in the Federal Register. See 69 Fed. Reg. 39,515 (June 30, 2004).

I. BACKGROUND

A. Factual Background

For purposes of this ruling, we assume the correctness of the well-pleaded facts in Pennsylvania's Request For Hearing [hereinafter Pennsylvania Hearing Request], which neither Safety Light nor the NRC Staff contest.

For over two decades, Safety Light has manufactured devices containing tritium at a facility located in Bloomsburg, Pennsylvania, pursuant to NRC License Number 37-00030-08. Safety Light's current activities at the Bloomsburg site consist primarily of the manufacture of self-luminous signs, each which contains about 10 curies of tritium. See Pennsylvania Hearing Request at 3-4.²

Effective July 27, 1990, 10 C.F.R. § 30.35(e) requires licensees to submit a plan containing a cost estimate for decommissioning. Additionally, section 30.35 requires licensees to certify that financial assurance for the estimated cost of decommissioning is provided by (1) prepayment of necessary money into a segregated fund, or (2) a surety, insurance, or other

² Pennsylvania states that, prior to Safety Light's acquisition of the Bloomsburg site, other companies were licensed to use radioactive materials there for manufacturing purposes. From 1950 to 1960, the previously licensed manufacturer disposed of solid radioactive waste in two underground silos, each of which had a capacity of approximately 650 cubic feet. One silo was used to dispose of Radium-226, Strontium-90, and possibly Cesium-137. The other silo was used for Strontium-90, Cesium-137, and possibly Radium-226. Liquid radioactive waste was disposed of in portions of an abandoned canal that ran through the site. Since 1969, tritium has been the only radionuclide used at the site, and a separate building was erected at the site to house the tritium manufacturing operations. Radiological surveys that were conducted at the site in the late 1970s and early 1980s revealed soil contaminated with Radium-226, Cesium-137, and Strontium-90. Groundwater samples indicated levels of tritium and Strontium-90 above NRC guidelines. See Pennsylvania Hearing Request at 4-5.

In this license-renewal proceeding, Safety Light – in addition to seeking to renew License 37-00030-08 – also seeks to renew License 37-00030-02, which authorizes it to possess radioactive material existing in contaminated facilities at the Bloomsburg site as of January 3, 1995, and to characterize and decommission those portions of the site, including the radioactive material discussed above. Pennsylvania does not oppose the renewal of License 37-00030-02. See Pennsylvania Hearing Request at 4-5 & n.2.

guarantee method. 10 C.F.R. § 30.35(f)(1)-(2). The NRC may exempt a licensee from the requirements of section 30.35 if it determines an exemption is “authorized by law and will not endanger life or property or the common defense and security and [is] otherwise in the public interest.” Id. § 30.11(a).

Safety Light sought an exemption from section 30.35, because it was unable to certify financial assurance for a decommissioning funding plan. In February 1992, the NRC denied Safety Light’s request for an exemption and, accordingly, denied Safety Light’s application to renew License 37-00030-08. The NRC thus ordered Safety Light to decommission and decontaminate the Bloomsburg site for release for unrestricted use. See Pennsylvania Hearing Request at 8-9.

Safety Light challenged the NRC’s denial of its application for license renewal. During the pendency of that proceeding, the parties negotiated a Settlement Agreement under which the license was renewed in August 1994 for a five-year period, with an expiration date of August 31, 1999. As relevant here, the Settlement Agreement: (1) exempted Safety Light from the requirements of 10 C.F.R. § 30.35 for the renewal period; (2) required Safety Light to set aside funds on a monthly basis and place them in a trust account to be used exclusively for decontamination, decommissioning, and other safety purposes authorized by the NRC; and (3) required Safety Light to perform a site characterization study describing the nature, extent, quantities, and location of radioactive contaminants. See Pennsylvania Hearing Request at 9-10. The Agreement also provided that “it is explicitly understood and agreed that the [NRC] Staff’s determination of . . . whether to grant or deny any further request for exemption from 10 C.F.R. § 30.35, shall be binding for all purposes, and [Safety Light] . . . hereby agree[s] that such Staff determination shall not be the subject of any request for hearing or adjudicatory

review.” Safety Light Corp. (Bloomsburg Site Decontamination), LBP-94-41, 40 NRC 340, 348 (1994).

During the next five years, Safety Light complied with the above terms of the Settlement Agreement. As the expiration date of the license period approached, however, Safety Light still lacked the financial ability to comply with the decommissioning funding requirements of 10 C.F.R. § 30.35. Accordingly, when Safety Light submitted its request for a license renewal in April 1999, it again asked the NRC to grant an exemption from section 30.35. The NRC granted Safety Light’s exemption request, and it renewed License 37-00030-08 for another five years, or until December 31, 2004. See Pennsylvania Hearing Request at 9-10. Included in the renewed license were conditions governing radioactive waste disposal and financial assurance. These conditions required Safety Light to: (1) dispose of, within two years of generation, radioactive waste generated after January 1, 2000, if a waste disposal site is available (Condition 18); (2) dispose of or otherwise remove from the site by December 31, 2004 all radioactive waste generated from activities performed prior to January 1, 2000 (Condition 19); and (3) deposit prescribed amounts of money on a monthly basis in a trust fund to be used exclusively for decontamination, decommissioning, and safety purposes authorized by the NRC (Condition 20). See Pennsylvania Hearing Request, Exh. A.³

As discussed below, in its current license-renewal request, Safety Light represents that, despite its good faith efforts, it was unable to comply with these three conditions.

B. Safety Light’s Pending Request For License Renewal And Exemption From 10 C.F.R. § 30.35

³ In granting Safety Light’s license-renewal request, the NRC expressed the expectation that Safety Light would be able to demonstrate compliance with the requirements of 10 C.F.R. § 30.35 in its next license-renewal application. See Pennsylvania Hearing Request, Exh. F.

On April 22, 2004, Safety Light applied to renew License 37-00030-08 and requested a continued exemption from 10 C.F.R. § 30.35. See Pennsylvania Hearing Request, Exh. B. In its license-renewal application, Safety Light acknowledged that it had not disposed of the on-site radioactive waste as required by Conditions 18 and 19 of its current license, and it provided the following explanation:

We have tackled the remediation of the underground silos which, as agreed by all parties, represented the greatest potential threat to public safety at our site. In this effort, to date we have spent more than \$1,600,000.

While we continue to work toward a solution for the long term disposition of some of the waste, the silos and their contents have been removed from the ground, the waste has been sorted and segregated to the fullest extent possible, one truckload of waste has been removed from the site, and the balance is properly stored in appropriate containers on site. The threat to the public posed by the potential migration of this waste from the underground silos has been eliminated.

As outlined in our letter of December 10, 2003 regarding Condition 18 of our License, at present we have 16,731 curies of tritium waste on site. This material remains on-site due to our joint decision to concentrate our limited financial resources on the completion of the silo remediation project.

Despite the fact that it is only our . . . [manufacturing] activities [under License 37-00030-08] that generate[] any cash flow from which we contribute toward the Escrow Fund, to date all available funds have been expended on the . . . clean-up [of radioactive waste that was generated previously under License 37-00030-02]. Although we are not certain that a disposal option exists for all of the waste generated by the 08 license, this could have been addressed and can certainly be addressed in the future if we decide to use our available funds here rather than divert them for use in the 02 license remediation and disposal activities.

Id. (paragraph numbers omitted).

Safety Light also advised that it had been unable to comply fully with Condition 20 of its license, which required Safety Light periodically to deposit prescribed amounts of money in a trust fund to be used exclusively for decontamination, decommissioning, and safety purposes authorized by the NRC. At the time of its license-renewal request, Safety Light had deposited a total of \$339,000 in the trust account, which, under the license, represented about 80% of the amount it had committed to deposit. See Pennsylvania Hearing Request, Exh. B. Safety Light

told the NRC that the deficiency was attributable to a “very difficult business environment” that rendered it “impossible” to make the prescribed deposits. Id. But Safety Light assured the NRC it was “working diligently to make up this shortfall and [was] committed to include additional sums with [its] current monthly payments as [it is] able. Whatever balance remains at the end of our current license period will continue to be paid with additional escrow payments during our next license period until this deficiency is made up, bringing our total contribution attributable to our current license to \$492,000.” Id.

Finally, in its license-renewal application, Safety Light recognized that – if the NRC grants another exemption from 10 C.F.R. § 30.35 – Safety Light must continue to deposit money in the trust fund. Safety Light stated, however, that it had been too aggressive with its commitment to deposit money in the trust fund during the prior license-renewal period: “The economic downturn made it impossible for us to keep up with our obligation [and] we recognize that we cannot commit to the same levels of funding as before and be confident in our ability to meet our obligation. We therefore propose to contribute \$5,000 per month for the 60 month renewal period from January 2005 through December 2009. This will add an additional \$300,000 to the Escrow Fund.” Pennsylvania Hearing Request, Exh. B.

On June 30, 2004, the NRC published notice in the Federal Register that Safety Light had applied for renewal of License 37-00030-08. 69 Fed. Reg. 39,515. The NRC advised the public that any person whose interest may be affected by Safety Light’s request and who desires to participate as a party in the proceeding “must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.” Id. at 39,516.

C. Pennsylvania’s Opposition To Safety Light’s License-Renewal Request

On August 30, 2004, Pennsylvania filed a timely request for a hearing, arguing that Safety Light's request for an exemption from 10 C.F.R. § 30.35 should be denied and, accordingly, its license-renewal request must be denied. In particular, Pennsylvania argued it has standing to intervene in Safety Light's license-renewal proceeding, and it advanced the following six contentions in support of its opposition to Safety Light's renewal request: (1) Safety Light's application fails to comply with NRC regulations and directives; (2) Safety Light has no valid exemption from the requirements of 10 C.F.R. § 30.35 that can be renewed through this proceeding because the exemption automatically terminated when Safety Light failed to comply with its current license; (3) Safety Light should not be granted a further exemption from the financial assurance requirements or a reduced rate of contribution into the escrow funds; (4) Safety Light's exemption from financial assurance requirements gives it an unfair competitive advantage over other licensees who must comply with those requirements; (5) Safety Light's failure to contribute to the escrow funds and its request for a reduced rate of contribution show it is not a viable business and that its application should be denied; and (6) Safety Light's failure to dispose of the on-site tritium waste as required by its license constitutes a violation of that license that mandates denial of its application.

Safety Light did not respond to Pennsylvania's hearing request. On September 27, 2004, the NRC Staff submitted a Response To Request For Hearing Filed By The Commonwealth Of Pennsylvania [hereinafter NRC Staff Response], opining that Pennsylvania's hearing request should be granted, because Pennsylvania has standing to intervene, and one of Pennsylvania's six contentions (i.e., contention number 3) is admissible. The NRC Staff argued, however, that the remaining five contentions are inadmissible.

On October 4, 2004, Pennsylvania submitted a Response To The NRC Staff's Response To The Commonwealth of Pennsylvania's Request For Hearing [hereinafter

Pennsylvania Response], stating that it does not contest the NRC Staff's conclusion that contentions 4 and 5 are not admissible, but arguing that the remaining four contentions (i.e., contentions 1, 2, 3, and 6) are admissible.

The participants' written submissions are sufficient for us to resolve Pennsylvania's request for a hearing without the need for oral argument. For the reasons discussed below, we grant Pennsylvania's request.

II. ANALYSIS

A requestor who, like Pennsylvania, has filed a timely request to intervene as a party in an adjudicatory proceeding, must (1) establish it has standing, and (2) proffer at least one admissible contention to be litigated in the proceeding. 10 C.F.R. § 2.309(a). Pennsylvania satisfies both requirements.

A. Pennsylvania Has Standing To Intervene Pursuant To 10 C.F.R. § 2.309(d)(2)

Ordinarily, to establish standing to intervene as a party in an adjudicatory proceeding, a requestor must demonstrate: (1) the nature of its rights under the Atomic Energy Act of 1954; (2) the nature and extent of its property, financial, or other interest in the proceeding; and (3) the possible effect of the proceeding on the requestor's interests. 10 C.F.R. § 2.309(d)(1)(ii)-(iv).

However, the above requirements do not apply where a State seeks to intervene in an adjudication concerning a facility located within its borders. Under such circumstances, the State need simply indicate in its request for a leave to intervene that the proceeding involves "a facility located within its boundaries." 10 C.F.R. § 2.309(d)(2)(i). A State that satisfies this requirement "need not address the standing requirements" (*id.*), and the Licensing Board designated to rule on the request for leave to intervene "shall not require a further demonstration of standing" (*id.* § 2.309(d)(2)(ii)).

In the instant license-renewal proceeding, Pennsylvania satisfies the requirement for standing to intervene under section 2.309(d)(2), because – as indicated in Pennsylvania's hearing request – the proceeding concerns a manufacturing installation and waste-storage site in Bloomsburg, Pennsylvania and, thus, involves "a facility located within [Pennsylvania's]

boundaries.” 10 C.F.R. § 2.309(d)(2)(i). The regulations require no further showing of standing from Pennsylvania.⁴

B. Pennsylvania Advances An Admissible Contention

A requestor must advance at least one admissible contention to participate as a party in an adjudicatory proceeding. 10 C.F.R. § 2.309(a). For a contention to be admissible – that is, for it to be cognizable by this Board – a contention must: (1) provide a specific statement of the issue of law or fact to be raised; (2) provide a brief explanation of its basis; (3) demonstrate that the issue raised is within the scope of the proceeding; (4) demonstrate that the issue raised is material to the findings the NRC must make to support the action involved in the proceeding; (5) provide a concise statement of the alleged facts or expert opinions that support the requestor’s position on the issue and on which the requestor intends to rely at the hearing, together with references to the specific sources and documents on which the requestor relies; and (6) provide specific information, including references to specific portions of the licensee’s application, to show that a genuine dispute exists with the licensee on a material issue of law or fact. Id. § 2.309(f)(1)(i)-(vi).

Pennsylvania raised six contentions in its hearing request. The NRC Staff responded that only one contention (i.e., contention 3) was admissible. In reply, Pennsylvania did not contest the Staff’s position that contentions 4 and 5 were inadmissible; however, Pennsylvania continued to argue that contentions 1, 2, 3, and 6 were admissible.

⁴ The NRC Staff avers (NRC Staff Response at 3-4) that Pennsylvania has standing because it satisfies the traditional standing requirements in 10 C.F.R. § 2.309(d)(1). We agree that Pennsylvania also satisfies those standing requirements.

In light of Pennsylvania's concession that it does not contest the NRC Staff's view that contentions 4 and 5 are inadmissible, we treat those contentions as abandoned.⁵ We now address the admissibility of contentions 1, 2, 3, and 6.

1. Contention 1 Is Not Admissible

Contention 1: Safety Light's Application Fails To Comply With Applicable Regulations And The Directives Of The Commission.

Pennsylvania alleges three bases in support of its contention that Safety Light's license-renewal application is fatally defective. Each alleged basis is legally insubstantial.

First, Pennsylvania argues (Pennsylvania Hearing Request at 17) Safety Light's failure to include a decommissioning cost estimate or funding plan in its license-renewal application violates 10 C.F.R. § 30.35. Section 30.35 ordinarily requires a license applicant to provide the NRC with this information, but the NRC may exempt licensees from this requirement. In particular, 10 C.F.R. § 30.11 provides in relevant part that the NRC "may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of [section 30.35] . . . as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest." 10 C.F.R. § 30.11(a). A licensee who is granted an exemption from section 30.35 need not, of course, comply with the regulatory requirements from which it has been exempted. Accordingly, insofar as Safety Light has obtained an exemption and seeks a further exemption, it is not violating section 30.35. See NRC Staff Response at 5-6. Regarding Pennsylvania's contention that Safety Light no longer has a valid exemption that can be renewed, we address that contention in Part II.B.2 infra and reject it as inadmissible.

⁵ Even if Pennsylvania had not abandoned contentions 4 and 5, we would have concluded they were inadmissible on the alternative grounds that they were outside the scope of the proceeding, lacked an adequate basis, and failed to establish a genuine dispute on a material issue of law or fact, as argued by the NRC Staff. See NRC Staff Response at 11-14.

Pennsylvania also asserts (Pennsylvania Hearing Request at 17-18) that Safety Light's failure to include a decommissioning cost estimate or funding plan in its application violates Commission directives. Pennsylvania grounds this assertion on a sentence from a Commission memorandum granting Safety Light's license-renewal application in 1999. In that memorandum, the Commission approved exempting Safety Light from section 30.35, but it stated that "[t]he licensee should be put on notice in the cover letter transmitting the renewed license that the NRC expects the licensee to . . . demonstrat[e] compliance with the requirements of 10 C.F.R. § 30.35 when the licensee applies for the next renewal of this license." Pennsylvania Hearing Request, Exh. F. A memorandum, however, cannot impose binding requirements on a licensee. See Curators of the Univ. Of Mo., CLI-95-8, 41 NRC 71, 98 (1995) ("[o]nly statutes, regulations, orders, and license conditions can impose requirements upon applicants and licensees"). Moreover, the Commission's use of the word "expects" indicates that the sentence was precatory; the Commission was exhorting Safety Light's future compliance with section 30.35. Pennsylvania's contrary argument – that the sentence constitutes an inexorable command mandating Safety Light's compliance with section 30.35 and rescinding its regulatory right to request a future exemption – cannot be squared with the Commission's plain language. See NRC Staff Response at 7.

Finally, Pennsylvania argues (Pennsylvania Hearing Request at 18) that Safety Light's license-renewal application must be deemed defective in light of the NRC Staff's Request For Additional Information (RAI) from Safety Light. Pennsylvania points out that the RAI asks Safety Light to provide particularized cost estimates for disposal of radioactive wastes, and to explain its proposal to reduce its monthly contributions to the escrow fund. Pennsylvania asserts that "the fact that [the NRC Staff] deemed it necessary to ask for this detailed information shows that the initial submission by Safety Light failed to conform to the

Commission's directive and the applicable regulations." Id. Pennsylvania's assertion lacks merit.

As the Commission has explained, the issuance of an RAI by the NRC Staff does not suggest that a license application is deficient:

RAIs are a standard and ongoing part of NRC licensing reviews. They are a routine means for our Staff to request clarification or further discussion of particular items in the application. What would be unusual in a license renewal case is if by now no RAIs had been issued, not that some have been. . . . The NRC does not violate[] any clear legal duty by proceeding first to docket [an application] and thereafter to request additional information.

Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2 & 3), CLI-99-11, 49 NRC 328, 336 (1999) (quotation marks and citations omitted). Absent a showing to the contrary, the issuance of RAIs in the context of NRC licensing reviews is properly viewed as the Staff's conscientious performance of its duties. See Balt. Gas & Elec. Co. (Calvert Cliffs Nuclear Power Plant, Units 1& 2), CLI-98-25, 48 NRC 325, 349 (1998).

Thus, to propound a cognizable contention, Pennsylvania "must do more than rest on the mere existence of RAIs as the basis of their contention." Oconee Nuclear, CLI-99-11, 49 NRC at 336 (brackets and internal quotation marks omitted). It must provide analysis, discussion, or information showing with specificity that the RAI is evidence that the license application fails to conform with governing regulations or directives. Id. at 337. This Pennsylvania failed to do. Rather, it advanced a bare assertion that "lacks specificity, presents no underlying support other than a general reference to assorted RAIs issued by the Staff, and cannot be viewed as showing a genuine dispute with [Safety Light] on a material issue." Id.⁶

⁶ In rejecting Pennsylvania's invitation to equate the issuance of an RAI with a conclusion that Safety Light's license-renewal application is deficient, we do not suggest that the answers to the RAI will be irrelevant to this proceeding. As discussed infra Part II.B.3, we anticipate that many of the answers will be relevant and, in all likelihood, highly probative in our adjudication of Pennsylvania's admissible contention that Safety Light's request for an exemption to section 30.35 should be denied. Cf. Balt. Gas & Elec. Co. (Calvert Cliffs Nuclear Power Plant, Units 1& 2), CLI-98-25, 48 NRC 325, 349 (1998) ("The Staff assuredly will not

In summary, each of the three bases relied on by Pennsylvania in support of contention 1 is insubstantial as a matter of law and, as a result, the contention does not raise a genuine dispute regarding a material issue germane to this case. Contention 1 is therefore inadmissible.

2. Contention 2 Is Not Admissible

Contention 2: Safety Light Has No Valid Exemption From The Financial Assurance Requirements Of 10 C.F.R. § 30.35 That Can Be Renewed Through This License Application Because The Exemption Terminated When Safety Light Failed To Comply With Its Current License.

In arguing that contention 2 is admissible, Pennsylvania points to Condition 20.A in Safety Light's current license, which requires Safety Light to make prescribed deposits to an escrow account and provides that Safety Light's exemption from section 30.35 "is valid [until December 31, 2004] *or until the date of any failure to comply with this license condition.*" Pennsylvania Hearing Request, Exh. A (emphasis added). Pennsylvania argues that Safety Light's failure to comply with Condition 20.A terminated its exemption from section 30.35 pursuant to the self-executing terms of the license, and its license-renewal application should therefore "be denied insofar as it requests a 'continuation' of its present exemption." Pennsylvania Hearing Request at 20.

Even if Pennsylvania is correct that Safety Light's exemption terminated when it failed to comply with Condition 20.A, that fact is not determinative of whether Safety Light should be granted an exemption incident to its current license-renewal request. A licensee's request for an exemption from section 30.35 is determined in *all* instances by applying the standards in 10 C.F.R. § 30.11(a). This is so whether a licensee seeks an initial exemption or a continuation of an existing exemption.

grant the renewal application if the responses to the RAIs suggest unresolved safety concerns.").

Accordingly, for purposes of determining whether Safety Light's exemption request should be granted, Pennsylvania's contention that Safety Light no longer has a valid exemption that can be renewed is beside the point; the salient inquiry is whether an exemption is warranted pursuant to section 30.11(a). Contention 2 is thus inadmissible.⁷

3. Contention 3 Is Admissible

Contention 3: Safety Light Should Not Be Granted Any Further Exemption From Financial Assurance Requirements Or A Reduced Rate Of Contribution Into the Escrow Funds.

Pennsylvania contends that Safety Light should not receive any further exemption from the decommissioning funding requirement of 10 C.F.R. § 30.35, because conditions at Safety Light's site pose serious environmental and public health hazards that will require significant funds to remediate, and Safety Light cannot effectively remediate the site at the funding levels in its current license, much less at the reduced funding levels it proposes in its license-renewal application. Pennsylvania Hearing Request at 20-22. Accordingly, argues Pennsylvania, granting Safety Light's exemption request would lead to a situation where Safety Light would be unable to meet its obligations to properly dispose of accumulated and future tritium waste and properly decommission the site – an outcome that would “violate Pennsylvania's interests, fail to protect the public health, safety, and welfare, and would not be in the public interest.” *Id.* at 22.

We find this contention satisfies the admissibility requirements of 10 C.F.R. § 2.309(f)(1). Whether Safety Light should be granted an exemption from the decommissioning

⁷ We nevertheless note that Safety Light's past failure to comply with licensing conditions may be relevant to our adjudication of whether it satisfies the standards embodied in section 30.11(a) for granting an exemption from section 30.35 (*infra* Part II.B.3). We do not suggest that Safety Light's non-compliance with past licensing conditions presumptively impugns its integrity or character. See *Dominion Nuclear Connecticut, Inc.* (Millstone Power Station, Unit 3), CLI-02-22, 56 NRC 213, 228 (2002). However, Safety Light's inability to comply with past licensing conditions may be a pertinent factor in predicting its ability to comply with future licensing conditions of a similar nature.

funding requirements of section 30.35 is a central issue in Safety Light's license-renewal request. Indeed, Safety Light's license-renewal request is inextricably linked to its exemption request, because the former cannot be granted unless the latter is granted. See NRC Staff Response at 6.

As the NRC Staff correctly observes, Pennsylvania provided a detailed description of the "history and current condition of the Bloomsburg, Pennsylvania site, to show the presence of significant levels of radiological contaminants, . . . which [Safety Light] has failed to complete its commitment to remove." NRC Staff Response at 10. We agree with the NRC Staff that Pennsylvania has established with sufficient basis that a genuine dispute exists on material issues of law and fact that are both within the scope of the proceeding and material to the findings the Staff would need to make to support the proposed licensing action. Id. at 10-11. Contention 3 is therefore admissible.

In adjudicating contention 3, we will be guided by section 30.11(a), which authorizes an exemption from section 30.35 if the Commission determines such exemption is "authorized by law, and will not endanger life or property or the common defense and security and [is] otherwise in the public interest." 10 C.F.R. § 30.11(a). In making this determination, the threshold inquiry is whether, as matter of financial fact, the licensee is able to comply with the requirements of section 30.35. If this threshold inquiry is resolved in the negative, the next inquiry is whether an exemption, and the accompanying licensing conditions related to that exemption, will be consistent with the standards in section 30.11(a). This latter inquiry involves consideration of *all* relevant facts bearing on those standards, which – in this case – would include Safety Light's past compliance, or lack thereof, with applicable regulations and licensing conditions (supra note 7) and the information contained in Safety Light's answers to the RAI posed by the NRC Staff (supra note 6).

Specifically, we believe the following information – requested by the NRC Staff in the RAI – is illustrative of the type of facts that will be relevant to our assessment of whether an exemption is warranted: (1) Safety Light’s annual generation of radioactive waste over the past five years, including curie content, volume, and the work-activity that generated the waste; (2) a description of the waste generated in the past five years that has been shipped, including shipping date, curie content, and volume; (3) an inventory of all waste generated under License 37-00030-08 currently held in storage, including type of waste, curie content, and volume; (4) a detailed estimate of the cost for disposal of all tritium waste currently on site, and a discussion of what waste cannot be shipped under current circumstances and why; (5) a discussion of how Safety Light handles, recycles, or disposes of returned signs containing tritium, including a statement of curie content and volume of tritium signs that have been returned in the past five years; (6) a discussion of Safety Light’s actions to dispose of all waste generated under License 37-00030-08, any additional efforts that can be made to dispose of this waste, and actions to minimize the generation of additional waste; and (7) Safety Light’s projected profits over the next five years to support its exemption request. See Pennsylvania Hearing Request, Exh. G. Ultimately, these facts, and all other relevant facts, will inform our application of 10 C.F.R. § 30.11(a) in determining whether granting Safety Light an exemption is authorized by law, will not endanger life, property, or the common defense and security, and is otherwise in the public interest.

4. Contention 6 Is Not Admitted.⁸

Contention 6: Safety Light’s Failure To Dispose Of The On-Site Tritium Waste As Required By Its License Constitutes A Violation Of That License, And Thus Its Application Should Be Denied.

⁸ As discussed supra p. 10 & n.5, Pennsylvania has abandoned contentions 4 and 5, and we find them to be inadmissible in any event.

Pennsylvania grounds contention 6 on two bases. First, it asserts that Safety Light's non-compliance with the waste-disposal requirements in Conditions 18 and 19 of its current license constitutes reason for revoking the license. Pennsylvania Hearing Request at 25-26. Second, Pennsylvania argues that Safety Light's license-renewal request should be denied absent the establishment of "license conditions that set meaningful goals for waste removal and the establishment of financial assurances adequate to accomplish that removal." *Id.* at 26. We do not admit this contention, because the first basis is outside the scope of this proceeding, and the second basis is duplicative of issues we will consider in our adjudication of contention 3.

First, Pennsylvania's claim that Safety Light's current license should be revoked based on its non-compliance with Conditions 18 and 19 raises enforcement-related issues that are beyond the scope of this proceeding. Such issues may be raised in an enforcement action pursuant to 10 C.F.R. § 2.206; they may not be raised here. See NRC Staff Response at 14. We reiterate that Safety Light's failure to comply with past licensing conditions may be a relevant factor that informs our resolution of contention 3 and, ultimately, may determine whether Safety Light's license-renewal request will be granted. But Pennsylvania may not inject enforcement issues into this license-renewal proceeding.⁹

However, Pennsylvania also grounds contention 6 on an admissible basis; namely, Safety Light's license-renewal request should be denied unless the new license establishes

⁹ Pennsylvania also asserts that Safety Light's failure to comply with licensing Conditions 18 and 19 mandates the conclusion that Safety Light deliberately misrepresented material facts in its license-renewal request when it said that it conducted "all operational programs in full compliance with the requirements of our licenses." Pennsylvania Response at 7. This assertion ignores that Safety Light's license-renewal request candidly explains the status of its site-remediation efforts, including the fact that its waste-removal efforts are incomplete, but on-going. See Pennsylvania Hearing Request, Exh. B. Pennsylvania will nevertheless not be precluded during our adjudication of contention 3 from offering relevant evidence concerning Safety Light's non-compliance with past licensing conditions (supra note 7), including evidence of alleged misrepresentations regarding such non-compliance.

meaningful goals for waste removal and requires adequate financial assurances to effect that removal. This aspect of contention 6 is substantially identical to contention 3, which – as discussed supra pp. 14-16 – opposes the granting of Safety Light’s license-renewal request on the ground that Safety Light should not be granted a further exemption or a reduced rate of contribution into the escrow fund, because either outcome would result in Safety Light’s inability to properly dispose of waste and decommission the site. Resolving contention 3 will require us – in the context of determining whether a further exemption is warranted (and, hence, whether the license-renewal request should be granted) – to determine meaningful waste-removal goals and whether Safety Light can achieve those goals and remediation of the site at either current or proposed funding levels. Because the admissible basis of contention 6 is duplicative of issues we will adjudicate in contention 3, we do not admit it.¹⁰

III. CONCLUSION

For the foregoing reasons, we conclude Pennsylvania (1) has standing pursuant to 10 C.F.R. § 2.309(d)(2) to challenge Safety Light’s request to renew NRC license number 37-00030-08, and (2) articulates an admissible contention pursuant to 10 C.F.R. § 2.309(f).

Accordingly, it is ORDERED that:

1. Pennsylvania’s hearing request is granted.
2. Contention 3 is admitted for litigation in this proceeding.
3. Contentions 1, 2, 4, 5, and 6 are not admitted for litigation in this proceeding.
4. The hearing will be conducted pursuant to 10 C.F.R. Part 2 Subpart L. Absent contrary direction from the Licensing Board, the participants will proceed in compliance with the

¹⁰ Pennsylvania purports to “reserve[] its right under 10 C.F.R. § 2.309(f)(2) to timely amend its contentions and file new contentions based on [new] information provided by [Safety Light].” Pennsylvania Hearing Request at 28. We note that to amend its contentions or file new ones, Pennsylvania must obtain leave from the Board and show that it satisfies the requirements of section 2.309(f)(2)(i)-(iii).

regulatory time limits governing Subpart L proceedings. E.g., 10 C.F.R. § 2.336 (mandatory disclosures); id. § 2.1202(b)(2) (NRC Staff party status statement); id. § 2.1203 (hearing file submission).

5. The participants will set aside Wednesday, December 15, 2004, from 1:00 p.m. to 3:00 p.m., for purposes of conducting a telephonic prehearing conference. Guidance regarding the conduct and scope of the conference, as well as instructions for accessing the conference call, will be provided in a future order.

Any appeal to the Commission from this Memorandum and Order must be taken within ten days after service of this order (10 C.F.R. § 2.311).

THE ATOMIC SAFETY
AND LICENSING BOARD¹¹

/RA/

E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

/RA/

Ann Marshall Young
ADMINISTRATIVE JUDGE

/RA/

Dr. Peter S. Lam
ADMINISTRATIVE JUDGE

Rockville, Maryland
November 9, 2004

¹¹ Copies of this Memorandum and Order were sent this date by internet e-mail to: (1) counsel for the Pennsylvania Department of Environmental Protection; (2) licensee Safety Light Corporation; and (3) the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
SAFETY LIGHT CORPORATION) Docket Nos. 30-5980/5982-MLA
)
Bloomsburg, Pennsylvania Site)
(Materials License Amendment))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (GRANTING PENNSYLVANIA'S REQUEST FOR HEARING) (LBP-04-25) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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Docket Nos. 30-5980/5982-MLA
LB MEMORANDUM AND ORDER (GRANTING
PENNSYLVANIA'S REQUEST FOR HEARING)
(LBP-04-25)

Safety Light Corporation
4150-A Old Berwick Road
Bloomsburg, PA 17815
Attention: William Lynch

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 9th day of November 2004