

request where good cause is shown. There is good cause in this instance because SLC has not yet received key documents, including the Office of Investigations (OI) Report and records associated with the pre-decisional enforcement conference. Such documents directly address the bases for the Suspension Order, and may contain information that is material to this Answer. Rather than request an extension of time, however, SLC has elected to submit this Answer and Hearing Request now because it appears that doing so may expedite the hearing process. Without a prompt review of the Suspension Order, SLC's business and the jobs of its employees will both be put in severe jeopardy. SLC requests, however, that it be permitted to amend or supplement its Answer until ten days after the NRC's final response to SLC's FOIA request.

II. ANSWER TO THE SUSPENSION ORDER

The following discussion identifies and responds to each allegation or charge made in the Suspension Order, including admission or denial of the allegation and a statement of the facts on which the Licensee relies; it does not, however, attempt to address every contested factual assertion or omission in the Suspension Order.

Allegation 1: The Suspension Order alleges, in substance, that contrary to Condition 16 of License Number 37-00030-02 and Condition 20.A of License Number 37-00030-08, SLC failed to make prescribed deposits into the decommissioning trust fund at various times between May 2001 and November 2003, and as a result, as of November 30, 2004 there was a deficit of \$36,000 plus interest in the fund.

Answer: SLC admits that its deposits were not made on the schedule specified in the referenced License Conditions and that, as a result, as of November 30, 2004, the fund balance was \$36,000, plus interest, less than it would have been if all of its payments had been timely. On December 29, 2004, SLC sent the trustee of the decommissioning trust fund a deposit in the amount of \$36,949.61. As a result, SLC has

now made all of the payments that the referenced License Conditions require to be paid by the date of this Answer.

Allegation 2: The Suspension Order alleges, in substance, that the failure to make such payments was a deliberate violation of the License Conditions.

Answer: SLC denies that the violation was deliberate, although SLC does admit that it knew that the referenced License Conditions provided for monthly payments into the decommissioning trust fund and that it did not make all of the deposits into the fund on this schedule. It was impossible for SLC to make some of the required deposits on the required schedule because a downturn in business after September 11, 2001 left SLC with insufficient funds to make these deposits on time, even after SLC had reduced its business expenses to the minimum for its business to remain viable.

SLC's payment of its minimum business expenses was not optional. In fact, it too was implicitly required by its NRC licenses, since such payments were needed to preserve the viability of SLC's business. If its business had failed, SLC could not have made all of the payments required by those conditions. SLC has made all of the required payments, although a number were late due to the cash flow problems caused by the downturn in business. The violation was caused by the downturn in business, not by an intent not to make the required payments.

Allegation 3: The Suspension Order alleges, in substance, that as a result of this violation, the exemption from the financial assurance requirements of 10 CFR § 30.35 was void and SLC was in continuous violation.

Answer: SLC admits that the referenced License Conditions provide that the exemption is valid until the date of any failure to comply with it. However, SLC does not agree that under this provision the exemption became void when SLC's payments were late. The allegation implies that the exemption would have been void if even one

required payment was as little as one day late, and that this would be so even if this lateness was due to circumstances beyond the control of SLC. To the contrary, the NRC surely would have intended to reserve the right to consider the significance of such a violation. Moreover, the licenses do not specify any action to be taken by SLC in the event of a failure to comply with the payment schedule. These considerations make clear that the intent of the License Conditions is not that a failure to comply with the payment schedule would render the exemption void, but only that it would render the exemption voidable. Consequently, the exemption remains in effect .

Allegation 4: The Suspension Order alleges, in substance, that the alleged deliberate failure to make payments on the specified schedule has significant health and safety implications.

Answer: SLC denies that its actions had any significant health and safety implications. The Suspension Order does not explain what significant health and safety implications the NRC Staff has in mind. SLC is thus left to guess at possible bases for this innuendo. First, it is clear that the delays in making the deposits did not cause any direct impacts on anyone's health or safety. The control of licensed materials in SLC's possession was not adversely affected.

Second, the delays did not have a significant adverse effect on the availability of funds for decommissioning. When the Suspension Order was issued, SLC had already made substantial progress in catching up on the required payment schedule and it has since deposited the remaining amount that was in arrears. Furthermore, the amount at issue was a very small fraction of the projected cost of decommissioning. As the NRC Staff itself describes the circumstances, the total amount SLC was to deposit during the current license term was \$492,000, while the NRC estimates the total decommissioning

cost at between \$50 million and \$120 million. *See* Enclosure 1 to the NRC Staff's letter dated December 10, 2004. The deficit of \$36,000 as of November 30, 2004 was thus much less than one tenth of one percent of the estimated decommissioning cost and less than ten percent of the amount to be deposited during the current five year term of the licenses. In view of the large uncertainty concerning the total decommissioning cost, the amounts at issue are clearly not significant.

Finally, labeling this as a deliberate or willful violation does not provide an adequate basis for concluding that the NRC cannot have confidence that SLC will comply with NRC requirements. Any judgment about whether the NRC should have confidence that SLC will comply with NRC requirements and protect the public health and safety must take into account the complete record of SLC's conduct as an NRC licensee. With respect to the significance of the violation, as discussed above, the license conditions were predicated on SLC having the ability to make the mandated deposits in accordance with the specified schedule, and did not address the actions to be taken if that turned out not to be the case. As events developed, however, the economic downturn made it impossible for SLC to make the payments. Although SLC was forced to lay off part of its workforce and cut the salaries of all employees, throughout this economically difficult time it continued to conduct its activities involving licensed material in a manner that protected the public health and safety in accordance with the NRC regulations and requirements regarding control of such material.

NRC's reviews have confirmed that SLC has protected the health and safety of the public. For example, the NRC Staff itself just recently completed a "four month integrated safety inspection" at SLC's Bloomsburg facility which included an

“examination of [SLC’s] licensed activities as they relate to radiation safety and to compliance with the Commission’s regulations and the license conditions.” *See* letter, George Pangburn to Larry Harmon (November 4, 2004). During that lengthy NRC inspection, the NRC Staff identified only one violation of “low safety significance” which the Staff treated as a Non-Cited Violation. *Id.* The Suspension Order does not identify any activities performed by SLC in a manner that is detrimental to public health and safety. The results of this recent inspection are generally consistent with prior NRC inspections.

Allegation 5: The Suspension Order alleges that, based on the alleged willful failure to make the required scheduled payments and the resultant implication for public health and safety, the NRC lacks reasonable assurance that the health and safety of the public, including SLC’s employees, will be protected.

Answer: SLC denies that there is any lack of reasonable assurance that SLC’s licensed activities will be conducted in a manner that provides reasonable protection of the health and safety of the public, including SLC’s employees. To the contrary, there is ample basis for the NRC to conclude that SLC has protected the public health and safety and has demonstrated that it has both the capability to provide such protection and can be relied upon to do so. As discussed above, NRC inspections during the very period at issue in the Suspension Order have found that SLC’s activities were conducted in a manner that provided adequate protection of the health and safety of the public.

The allegations in the Suspension Order do not vitiate this long positive record. In particular, the actions of SLC alleged in the Suspension Order do not suggest that SLC lacks the necessary character to be a reliable NRC licensee. Indeed, in 1999, as part of the dialogue that led to the referenced conditions, SLC advised NRC that it would only be able to meet the payment schedule that was eventually incorporated into the License

Conditions if the business climate remained positive. When the NRC issued the renewed licenses, however, the License Conditions did not provide any direction regarding the actions SLC was to take in the event that a downturn in business prevented full compliance with the payment schedule. Thus, when SLC experienced such a downturn in its business it had no regulatory guidance regarding how to respond. Its actions must be viewed in this light.

Allegation 5 could not be justified unless the NRC found that SLC failed to make a good faith effort to comply with the licenses and other requirements. The Suspension Order, however, neither makes such a finding nor alleges facts that could support such a finding. Even if the NRC faults SLC's actions in response to the difficult circumstances described above, such criticism must be considered in the context of SLC's overall conduct as a licensee. When so considered, it is clear that there is adequate assurance that SLC will comply with NRC requirements and protect the health and safety of the public and its own employees. There is extensive evidence that SLC does conduct its activities competently and with due regard for NRC requirements and for the protection of the health and safety of the public and its employees.

Allegation 6: The Suspension Order alleges that the public health and safety require that the License Nos. 37-00030-02 and 37-00030-08 be suspended and that the Licensee develop a plan for orderly shutdown.

Answer: SLC denies that the public health and safety require that the licenses be suspended or that licensed activities be shutdown. As discussed above, licensed activities have been and continue to be conducted in a manner that provides adequate protection of the public health and safety. License suspension and shutdown of licensed activities are more likely to reduce the level of protection because they will prevent SLC from earning

additional funds for decommissioning and jeopardize SLC's ability to provide the basic services needed to maintain security and control licensed material. If SLC is thus prevented from continuing to provide these necessary services, the government will be required to divert funds from other environmental protection activities to control the radioactive materials at the SLC site. The overall level of protection of the health and safety of the public would not be increased by such a suspension.

For the reasons described above, the allegations or charges in the Suspension Order do not support issuance of the Order, and therefore, the Order should not have been issued and should not be sustained.

III. DEMAND FOR HEARING

In accordance with the provisions of 10 CFR §2.202(b), SLC demands a hearing on whether the Order should be sustained.

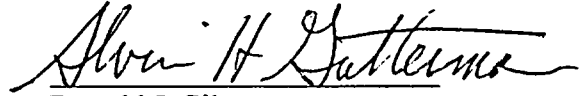
IV. CONCLUSION

Although SLC failed to make some of the required deposits into the decommissioning trust fund on the schedule required by the License Conditions, this violation was the result of business conditions that did not sustain that schedule of payments. The circumstances do not justify a finding of a willful violation. Moreover, the record of SLC compliance with NRC requirements demonstrates that it is conscientious about protecting the health and safety of the public, including its

employees. Accordingly, SLC requests a hearing on the Suspension Order and that the Suspension Order be rescinded.

Respectfully submitted,

SAFETY LIGHT CORPORATION



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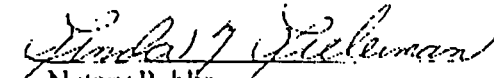
Dated: December 29, 2004

AFFIDAVIT OF WILLIAM E. LYNCH, JR.

I declare under penalty of perjury that the facts set forth in Safety Light Corporation's "Answer to and Request for Hearing on Order Suspending License (Effective Immediately)" dated December 30, 2004 are true and correct to the best of my knowledge, information and belief.


William E. Lynch, Jr.
Vice President
Safety Light Corporation

Subscribed and sworn before me this 17 day of December, 2004.


Notary Public

My Commission expires: 7/10/2005

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Linda M. Lieberman, Notary Public
Eggleston Twp., Chester County
My Commission Expires July 10, 2005
Member, Pennsylvania Association of Notaries