

RAS 9185

LBP-05-02
DOCKETED 01/24/05

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

SERVED 01/24/05

Before Administrative Judges:

E. Roy Hawkens, Chairman
Alan S. Rosenthal
Dr. Peter S. Lam

In the Matter of

SAFETY LIGHT CORPORATION
Bloomsburg, Pennsylvania Site
(Materials License Suspension)

Docket Nos. 30-5980-EA & 30-5982-EA

ASLBP No. 05-835-01-EA

January 24, 2005

MEMORANDUM AND ORDER

(Denial Of Motion To Set Aside Immediate Effectiveness Of Order Suspending License)

On December 10, 2004, the Nuclear Regulatory Commission (NRC or Commission) Staff issued an order that suspended, effective immediately, two materials licenses held by Safety Light Corporation. The Staff made the suspension order immediately effective based on the alternative conclusions that (1) in willful violation of licensing conditions, Safety Light failed to make prescribed monthly payments to a decommissioning trust fund, and (2) Safety Light's violation of a licensing condition gave rise to significant health and safety concerns. On December 29, 2004, Safety Light moved to set aside the "effective immediately" aspect of the suspension order. The Staff opposed the motion and, on January 13, 2005, the parties presented argument to this Board. Because we find that adequate evidence supports the Staff's conclusion that a willful violation occurred, we deny Safety Light's motion.¹

¹ On December 29, 2004, Safety Light also requested a hearing to challenge the suspension order. Proceedings on that challenge are on-going. Here, we resolve only Safety Light's motion to set aside the "effectively immediately" aspect of the suspension order. See 10 C.F.R. § 2.202(c)(2)(i).

I. BACKGROUND

1. The Relevant Licensing Conditions. Safety Light is a small company in Bloomsburg, Pennsylvania that employs about thirty individuals. It holds two Byproduct Materials Licenses issued pursuant to 10 C.F.R. Part 30. License Number 37-00030-02 authorizes Safety Light to characterize and to decommission certain contaminated portions of its facility, and License Number 37-00030-08 authorizes it to manufacture self-luminous signs that utilize tritium, as well as targets containing tritium for neutron-generating devices. Both licenses were last renewed on December 28, 1999 for five-year terms that were scheduled to expire on December 31, 2004.²

Ordinarily, the holder of a materials license must – as a condition of licensing – certify that it has provided financial assurance for the estimated cost of decommissioning its facility by (1) prepayment of monies into a segregated fund, or (2) a surety, insurance, or other guarantee method. See 10 C.F.R. §§ 30.32 and 30.35. However, the Commission may exempt a license applicant from these decommissioning funding assurance requirements if it determines that 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 lacked the financial resources to satisfy the decommissioning funding assurance requirements for its facility, whose decommissioning cost is estimated as ranging from \$50 million to \$120 million. See Encl. 1 to NRC Staff Notice of Denial Of License Renewal (Dec. 10, 2004). Therefore, in 1999 Safety Light requested a section 30.11 exemption from the requirements of section 30.35, which the Commission granted. As a condition of remaining exempt from the regulatory funding requirement, however, Safety Light’s licenses required it to make the

² On April 22, 2004, Safety Light applied to renew both licenses. On December 10, 2004, the Staff denied the license-renewal requests because Safety Light (1) failed to comply with substantive provisions of its licenses, (2) could not comply with the decommissioning funding assurance requirements in 10 C.F.R. §§ 30.32 and 30.35, and (3) failed to demonstrate that an exemption from the decommissioning funding assurance requirements was warranted pursuant to 10 C.F.R. § 30.11. On December 30, 2004, Safety Light demanded a hearing to challenge the denial of its license-renewal requests pursuant to 10 C.F.R. § 2.103(b).

following periodic payments to a decommissioning trust fund: \$7,000 per month in 2000, \$8,000 per month in 2001 and 2002, and \$9,000 per month in 2003 and 2004 – for a total of \$492,000. See License Number 37-00030-02, Condition 16; License Number 37-00030-08 (Condition 20.A). The licenses specified that *any* failure by Safety Light to comply with the monthly payment schedule would result in immediate termination of its exemption which, in turn, would cause Safety Light to be in violation of the regulatory decommissioning funding assurance requirements. Ibid. The licenses stated in this regard: “This exemption is valid until [December 31, 2004] or *the date of any failure to comply with this license condition.*” Ibid. (emphasis added).

2. Safety Light’s Failure To Comply With The Payment Schedule Prescribed In Its Licenses. In 2000, Safety Light complied with the payment schedule prescribed in its licenses, depositing \$7,000 per month in the decommissioning trust fund. However, on two occasions in 2001 to 2002, Safety Light failed – due to “[in]sufficient funds” caused by a “difficult business environment” – to make the required monthly deposits of \$8,000. See Affidavit of Safety Light Vice President William Lynch at 2-3 (Dec. 29, 2004) (Exh. A to Safety Light Motion To Set Aside Immediate Effectiveness of Order Suspending License (Dec. 29, 2004)) [hereinafter Lynch Affidavit]. In January and February of 2003, Safety Light made the two \$8,000 payments that were in arrears, but failed to make the \$9,000 payments that were due those months. Id. at 3. During the 11-month period from January to November of 2003, Safety Light failed to make nine payments, creating a fund shortage of \$81,000. Ibid.

Safety Light Vice President, William Lynch, is the company official who – assisted by Safety Light Plant Manager, Larry Harmon – decided, due to inadequate company resources, not to make the prescribed payments to the decommissioning trust fund.³ Instead, to avoid going out of

³ The President of Safety Light, Charles White, is not involved in the company’s day-to-day operations. Mr. White states that, unlike Mr. Lynch and Mr. Harmon, he did not know that licensing conditions required monthly payments to a decommissioning trust fund, nor did he know that Safety Light repeatedly failed to comply with the licensing payment schedule. See Interview (continued...)

business, Mr. Lynch used the available money to pay the salaries of company employees and the bills of suppliers. See Lynch Affidavit at 3. As Mr. Lynch explained, “if the business had failed, [Safety Light] would not have been able to make any further payments into the decommissioning trust fund. It was necessary to sustain the business during the downturn if [Safety Light] was going to be able to make all of the required payments.” Id. at 4. During this time, Safety Light “la[id] off personnel, cut the salaries of management employees, and limit[ed] other expenditures to the minimum necessary to allow the business to continue during this difficult period.” Id. at 3.

Mr. Lynch elected not to mention Safety Light’s violation of its licensing condition to the NRC, because Safety Light “intended to make the payments as soon as [it] had the necessary resources” and any “lack of payments from [Safety Light] were reflected in the monthly statements that [Safety Light] and the NRC received from the decommissioning trust fund trustee.” Lynch Affidavit at 4.

In November 2003, Safety Light was scheduled to have radioactive waste removed from the facility; however, the planned waste-removal was cancelled because it was determined that the trust fund lacked sufficient money to pay for the removal. On November 20, 2003, a member of the NRC Staff, Marie Miller, met with Mr. Harmon to discuss, inter alia, the shortage of money in the trust fund. Although Mr. Harmon knew that Safety Light repeatedly had failed to comply with the licensing payment schedule and was in arrears by \$81,000, he did not then mention this to Ms. Miller. Rather, he first sought permission from Mr. Lynch to make this disclosure. The next day, with Mr. Lynch’s permission, Mr. Harmon called Ms. Miller and told her about the missed payments, which, in turn, triggered a Staff investigation. See Interview of Larry Harmon at 9-11, 14-17 (Dec.

³(...continued)
of Charles White at 5, 10, 13-14 (Feb. 13, 2004) (Exh. 8 to Attachment A to NRC Staff Response To Safety Light Motion To Set Aside The Immediate Effectiveness Of Order Suspending License (Jan. 4, 2005)).

16, 2003) (Exh. 7 to Attachment A to NRC Staff Response To Safety Light Motion To Set Aside The Immediate Effectiveness Of Order Suspending License (Jan. 4, 2005)).

3. The Staff's Issuance Of An Immediately Effective Suspension Order. The NRC Office of Investigations (OI) conducted an investigation, which included interviewing under oath the Safety Light President (Mr. White), Vice President (Mr. Lynch), and Plant Manager (Mr. Harmon). See OI Report 1-2003-056 (Mar. 9, 2004) (Attachment A to NRC Staff Response To Safety Light Motion To Set Aside The Immediate Effectiveness Of Order Suspending License (Jan. 4, 2005)). The OI Report concluded that Safety Light officials (Mr. Lynch and Mr. Harmon) "deliberately violated a condition of [Safety Light's] license by failing to make the required monthly deposits to the NRC trust fund (missed 13 payments over a three year period)." OI Report at 1 & 12.

By letter dated July 1, 2004, the NRC advised Safety Light President, Mr. White, of the conclusion reached in the OI Report, and it invited him to attend a predecisional enforcement conference on July 20, 2004. See Letter From George Pangburn to C. Richter White (July 1, 2004) (Attachment B to NRC Staff Response To Safety Light Motion To Set Aside The Immediate Effectiveness Of Order Suspending License (Jan. 4, 2005)). The purpose of the conference was to allow Safety Light officials to provide their "perspective[s] on these matters and any other information that you believe the NRC should take into consideration" in determining whether a violation occurred and whether enforcement action was warranted. Ibid. Mr. White, Mr. Lynch, and Mr. Harmon participated in the conference. See Transcript of Predecisional Enforcement Conference (July 20, 2004) (Attachment C to NRC Staff Response To Safety Light Motion To Set Aside The Immediate Effectiveness Of Order Suspending License (Jan. 4, 2005)).

On December 10, 2004, the NRC issued an Order Suspending License (Effective Immediately). The NRC explained (Order at 5-6):

[T]he Licensee admitted knowledge of the requirement to make payments to the trust fund, yet failed to do so. The obligation to make the specified payments set forth in the license conditions is unqualified and is not subject to the state of [Safety Light's] business conditions, and was material to the granting of an exemption to the

Licensee in connection with the renewal of its licenses in 1999. The Licensee's deliberate failure to make the required payments to the trust fund . . . voided the exemption from the financial assurance requirements of 10 C.F.R. § 30.35, and placed the Licensee in continued violation of these license conditions and 10 C.F.R. § 30.35. This deliberate failure by the Licensee has significant health and safety implications in that these regulatory requirements are intended to ensure the availability of adequate funds for characterization, packaging, and disposal of radioactive waste from the Licensee's site.

Based on the Licensee's willful failure to make the required scheduled payments into the decommissioning trust fund as required by its licenses, and the resultant implication for public health and safety, I lack the requisite reasonable assurance that the Licensee's current operations can be conducted under License Nos. 37-00030-02 and 37-00030-08 in compliance with the Commission's requirements and that the health and safety of the public, including the Licensee's employees, will be protected.

Thus, the NRC made the suspension order effective immediately based on its alternative conclusions that (1) Safety Light willfully violated licensing conditions, and (2) this violation has significant health and safety implications that require immediate action.

Safety Light moves this Board to set aside the immediately effective aspect of the order.

II. ANALYSIS

Safety Light contends that the immediate effectiveness of the suspension order must be set aside, because the NRC Staff cannot show – as it must under 10 C.F.R. § 2.202(a)(5) – that adequate evidence supports a conclusion that the violation was “willful” or that immediate action was required to protect the “public health, safety, or interest” (*ibid.*). We are constrained to reject Safety Light's argument. We find that adequate evidence supports the conclusion that Safety Light willfully violated its license conditions, and that the Staff thus acted within the bounds of its regulatory authority in making the order immediately effective.⁴

⁴ Because we find that adequate evidence supports a conclusion that Safety Light willfully violated license conditions, we need not, and do not, resolve whether the Staff's alternative ground for making the suspension order immediately effective (*i.e.*, that Safety Light's violations posed a risk to public health and safety that required immediate action) is supported by adequate evidence. We nevertheless observe that, on November 4, 2004, the Commission completed a four-month integrated safety inspection of Safety Light that included reviews of site conditions, site security, licensed activities, records, radioactive material storage, radioactive waste management, (continued...)

A. Immediately Effective Orders Are Reviewed Pursuant To A Two-Part Test That Applies The Deferential “Adequate Evidence” Standard.

Pursuant to 10 C.F.R. § 2.202(a), when the Commission finds evidence of a license violation, it may issue an order that suspends or revokes the license. Additionally, if the Commission “finds that the public health, safety, or interest so requires or that the violation or conduct causing the violation is willful,” it may make the license suspension or revocation “immediately effective pending further order” (id. § 2.202(a)(5)).⁵

In response to such an order, a licensee may – in addition to demanding a hearing on the merits of the order (10 C.F.R. § 2.202(c)) – move the presiding officer to set aside the immediate effectiveness of the order and demand a hearing (id. § 2.202(c)(1) & (c)(2)(i)). In its motion to set aside the immediate effectiveness of the order, the licensee must aver that the order is “not based on adequate evidence but on mere suspicion, unfounded allegations, or error” (id. § 2.202(c)(2)(i)). Moreover, the motion “must state with particularity the reasons why the order is not based on adequate evidence and must be accompanied by affidavits or other evidence relied on” (ibid.).

⁴(...continued)

and dose assessments. The Inspection Report concluded that Safety Light was adequately complying with Commission requirements, which seemingly undercuts a determination that the violation in this case posed a threat to public safety or health necessitating immediate action. See Inspection Report (Nov. 4, 2004) (Exh. D to Safety Light Motion To Set Aside Immediate Effectiveness of Order Suspending License (Dec. 29, 2004)).

⁵ It is well established that a Government agency may issue an immediately effective order when necessary to protect public health and safety. See 57 Fed. Reg. 20,194, 20,195-96 (May 12, 1992) (citing cases). Willful violation of a Commission requirement likewise provides a basis for issuing an immediately effective order, because the NRC relies on the voluntary cooperation and obedience of “individuals involved in licensed activities to ensure compliance with NRC requirements. When an individual willfully violates Commission requirements, that reliance is undermined.” Id. at 20,195. A willful violation by a nuclear licensee may cause the Commission to lose confidence in the licensee’s willingness or ability to operate in compliance with licensing or regulatory requirements which, in turn, may warrant an immediately effective order to “restore reasonable assurance that the public health, safety, and interest [will] be protected.” Ibid.

The “adequate evidence” standard the Commission must satisfy to sustain an immediately effective order is not onerous. Although adequate evidence consists of “more than uncorroborated suspicion or accusation,” it does not rise to the level of preponderance of the evidence. See United Evaluation Services, Inc. (Beachwood, New Jersey), LBP-02-13, 55 NRC 351, 354 (2002) (quoting 57 Fed. Reg. 20,194, 20,196 (May 12, 1992)). Adequate evidence exists “when the facts and circumstances within the NRC Staff’s knowledge, or which it has reasonably trustworthy information, are sufficient to warrant a person of reasonable caution to believe that the charges specified in the order are true.” Ibid.; accord Advanced Medical Systems, Inc. (One Factory Row, Geneva, Ohio), CLI-94-6, 39 NRC 285, 301 (1994).

The Commission has likened the “adequate evidence” standard to the “probable cause” standard in the criminal context, which must be satisfied, for example, to justify an arrest or the issuance of a warrant. Advanced Medical Systems, Inc., CLI-94-6, 39 NRC at 301. Application of this non-stringent evidentiary standard in the context of immediately effective orders “strikes a reasonable balance between the Commission’s ability to protect the public health, safety, or interest on the basis of reasonably trustworthy information while still providing affected parties with a measure of protection against arbitrary enforcement action by the Commission.” Id. at 301-02 (quoting 57 Fed. Reg. at 20,196).

In sum, when an immediate effectiveness determination is challenged, the Staff must satisfy a two-part test: it must demonstrate that adequate evidence – i.e., reliable, probative, and substantial (but not preponderant) evidence – supports a conclusion that (1) the licensee violated a Commission requirement (10 C.F.R. § 2.202(a)(1)), *and* (2) the violation was “willful,” *or* the violation poses a risk to “the public health, safety, or interest” that requires immediate action (id. § 2.202(a)(5)).

Here, there is no dispute that adequate evidence supports the conclusion that Safety Light violated a Commission requirement. Safety Light's licenses contained a condition that imposed a mandatory and unqualified requirement on Safety Light to make monthly payments to the decommissioning trust fund. During Safety Light's five-year license term, it failed – in violation of these license conditions – to make at least 11 of the 60 scheduled monthly payments. See Lynch Affidavit at 3.

Safety Light insists, however, that its violations were not “willful” within the meaning of section 2.202(a)(5) and, accordingly, the immediate effective order cannot stand. For the reasons discussed below, we reject this claim.

B. Safety Light's Violations Were “Willful” Within The Meaning Of Section 2.202(a)(5). Safety Light invites us to construe the term “willful” in section 2.202(a)(5) to contain a scienter requirement such that the Staff, to sustain an effective immediately order, must show some evidence of a wrongful purpose. So construed, argues Safety Light, its violations were not willful, because it never intended to flout or ignore its license conditions; rather, it simply lacked the funds to make the required payments to the trust fund. As Safety Light explains, if it had made the scheduled payments as required by the license conditions, it would have gone out of business because it would not have had sufficient funds to pay employees and suppliers. Safety Light decided to stay in business at the expense of violating its license conditions, and it “fully intended to make the payments as soon as [it] had the necessary resources” (Lynch Affidavit at 4), which it in fact has done.⁶

⁶ Safety Light states that the business climate for marketing and selling its products has improved and, starting in December 2003, Safety Light was “able to make a payment on the amount in arrears, and during 2004 [Safety Light] has not only been able to make the required payments but also has paid the amounts that had been missed. The final payment of \$36,949.61 was sent to the fund trustee on December 29, 2004.” Lynch Affidavit at 3.

Safety Light concedes (Lynch Affidavit at 4) that it was remiss in not promptly discussing with the NRC Staff its failure to comply with the payment schedule mandated by its licenses (supra
(continued...))

The NRC Staff opposes Safety Light's effort to construe "willful" as containing a scienter requirement. It argues that a licensee willfully violates a Commission requirement if the licensee is aware of the requirement and nevertheless consciously acts in derogation of that requirement. So construed, contends the Staff, the record shows Safety Light willfully violated its license conditions, because Safety Light management knew its licenses required it to make monthly deposits into the decommissioning trust fund, and Safety Light consciously decided not to make those payments.

We agree with the Staff that the term "willful" in section 2.202(a)(5) does not contain a scienter requirement. This conclusion is buttressed by the regulatory history of section 2.202 and Commission precedent.

In 1992, when the Commission promulgated revisions to section 2.202, it stated: "[A]llowing an order to become immediately effective on the ground of willfulness is consistent with Section 9 of the Administrative Procedure Act [APA], 5 U.S.C. 558. Under that provision, orders may be immediately effective – i.e., advance notice of license withdrawal, suspension, revocation or annulment need not be given in cases of willfulness" (57 Fed. Reg. at 20,195). It thus appears that the Commission intended "willful" in section 2.202 to be construed in the same manner that the term "willfulness" is construed in section 558 of the APA.

Notably, in statutes that do not prohibit offenses involving turpitude (and section 558 of the APA is *not* a statute designed to target offenses involving turpitude), the Supreme Court has instructed that the term "willfully" is often used without any implication of scienter. Rather, the term "denotes that which is 'intentional, or knowing, or voluntary, as distinguished from accidental,' and . . . it is employed to characterize 'conduct marked by careless disregard whether or not one has

⁶(...continued)
p. 4), and we emphatically agree that it was. The NRC Staff rightfully expects licensees to be proactive in dealing with the implications of violations of Commission requirements.

the right so to act.” United States v. Illinois Cent. R. Co., 303 U.S. 239, 242-43 (1938) (quoting United States v. Murdock, 290 U.S. 389, 394 (1933)).

Consistent with this Supreme Court guidance, courts of appeals overwhelmingly have declined to construe “willfulness” in section 558 (and its predecessor, section 1008) of the APA as embodying a scienter requirement. Rather, courts have concluded that an entity willfully violates a requirement if – regardless of culpable purpose – it: (1) intentionally performs an act that it knows is prohibited (willful commission), or intentionally fails to perform an act that it knows is required (willful omission); or (2) engages in conduct that may be characterized as careless disregard of requirements that results in a violation of such requirements.⁷ This is the meaning we believe should be attributed to the term “willful” in section 2.202.

Importantly, Commission precedent supports our interpretation. See Hamlin Testing Labs., Inc., 2 AEC 423, 428 (1964) (a licensee willfully violated a Commission requirement when it “knew what was required of it under the Commission’s regulations and the terms and conditions of its license, and [failed] to comply therewith”); X-Ray Engineering Co., 1 AEC 553, 555 (1960) (same). Cf. 55 Fed. Reg. 12,374, 12,375 (Apr. 3, 1990) (in Federal Register notice of proposal to revise regulations to address willful misconduct by unlicensed individuals, Commission states that a “violation is willful if an individual either knew that the conduct was prohibited or showed a careless disregard for whether the conduct was prohibited”).⁸

⁷ See, e.g., Lawrence v. CFTC, 759 F.2d 767, 773 (9th Cir. 1985); Finer Foods Sales Co., Inc. v. Block, 708 F.2d 774, 777-78 (D.C. Cir. 1983); Silverman v. CFTC, 549 F.2d 28, 31 (7th Cir. 1977); Koden v. Department of Justice, 564 F.2d 228, 234 (7th Cir. 1977); George Steinberg & Son, Inc. v. Butz, 491 F.2d 988, 994 (2d Cir.), cert. denied, 419 U.S. 830 (1974); Cargill, Inc. v. Hardin, 452 F.2d 1154, 1156, 1173 (8th Cir. 1971); Goodman v. Benson, 286 F.2d 896, 900 (7th Cir. 1961); Eastern Produce Co. v. Benson, 278 F.2d 606, 609 (3d Cir. 1960).

⁸ At oral argument, Safety Light relied on Babcock & Wilcox Co. v. OSHRC, 622 F.2d 1160, 1166 (3d Cir. 1980), to support its position that the term willfulness means “defiance or such reckless disregard of consequences as to be equivalent to a knowing, conscious, and deliberate flaunting of [a requirement].” (quoting Frank Irey, Jr., Inc. v. OSHRC, 519 F.2d 1200, 1207 (3d Cir. 1974), aff’d en banc, 519 F.2d 1215 (1975), aff’d sub nom. Atlas Roofing Co. v. OSHRC, 430 U.S. (continued...))

Having rejected Safety Light's assertion that the term "willful" contains a scienter requirement, the question then becomes whether adequate evidence supports a conclusion that Safety Light's violation of its license conditions was willful – i.e., deliberate, intentional, or knowing (as opposed to negligent or accidental). We have no difficulty resolving this question in the affirmative. Safety Light concedes that it was aware that the licenses required monthly deposits into the decommissioning trust fund, and it also concedes that during the license terms, it knowingly failed to make numerous deposits pursuant to the prescribed payment schedule. See Lynch Affidavit at 2-4. Thus, by Safety Light's own concession, its violations were willful. We therefore sustain the immediately effective aspect of the suspension order.

We emphasize that our ruling today is a limited one. The lenient "adequate evidence" standard that we apply in this case is not the standard for determining the ultimate merits of an enforcement order; rather, it is used "only as a preliminary procedural safeguard against the Staff's ordering immediately effective action based on 'clear error, unreliable evidence, or unfounded allegations.'" Advanced Medical Systems, Inc., CLI-94-6, 39 NRC at 302 (quoting 57 Fed. Reg. at 202,197). Thus, in finding that adequate evidence supports a conclusion that Safety Light willfully violated a licensing condition, we do not intimate any view on whether, in the totality of

⁸(...continued)
442 (1977)). However, the analysis in Babcock & Wilcox Co. is inapposite. There, the Third Circuit construed the term "willfulness" in the Occupational Safety and Health Act of 1970 pursuant to the legislative history and statutory structure of that Act (622 F.2d at 1165-66); here, we construe the term "willful" in 10 C.F.R. § 2.202 consistent with the meaning of "willfulness" in the APA. Equally important, we construe section 2.202 consistent with Commission precedent.

Moreover, even if we found that Babcock & Wilcox Co. were relevant, we would still be inclined to sustain the immediately effective order here, because the Third Circuit in Babcock & Wilcox Co. stated that "there is little, if any, difference" between its interpretation of "willfulness" and an interpretation of "willfulness" without a scienter component and defined as "an act done voluntarily, with either an intentional disregard of, or plain indifference to, OSHA requirements." 622 F.2d at 1167. The Third Circuit explained: "To our way of thinking, an 'intentional disregard of OSHA requirements' differs little from an 'obstinate refusal to comply'; nor is there in context much to distinguish 'defiance' from 'intentional disregard.' 'Flaunting the act' or 'flouting it,' as some would say, again carries the same meaning." Ibid.

circumstances, suspension of Safety Light's license is a reasonable and equitable sanction that fulfills a demonstrable regulatory purpose, nor do we intimate any view on whether the denial of Safety Light's license-renewal request was proper. Those issues are not currently before us (supra notes 1 & 2).⁹

⁹ On January 10, 2005, Safety Light moved for leave to reply to the NRC Staff's opposition to Safety Light's motion to set aside the immediately effective order, and Safety Light accompanied its motion with a Proposed Reply. The Staff opposed Safety Light's motion on January 12, 2005. We grant Safety Light's motion, and we have fully considered the material in its Proposed Reply, which is part of the record.

On January 10, 2005, Safety Light also requested that this Board direct the Staff to make certain records available to Safety Light. On January 12, 2005, the Staff voluntarily made additional records available to Safety Light, and at oral argument on January 13, 2005, Safety Light indicated that the Staff's disclosures rendered Safety Light's request for additional records moot.

CONCLUSION

For the foregoing reasons, we conclude that adequate evidence supports the immediate effectiveness of the Staff's order suspending the two materials licenses held by Safety Light Corporation. Accordingly, Safety Light's motion to set aside the immediate effectiveness of the suspension order is DENIED.

This order constitutes final agency action on immediate effectiveness. See 10 C.F.R. § 2.202(c)(2)(i).

THE ATOMIC SAFETY
AND LICENSING BOARD¹⁰

/RA/

E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

/RA/

Alan S. Rosenthal
ADMINISTRATIVE JUDGE

/RA/

Dr. Peter S. Lam
ADMINISTRATIVE JUDGE

Rockville, Maryland
January 24, 2005

¹⁰ Copies of this Memorandum And Order were sent this date by internet e-mail to counsel for (1) licensee Safety Light Corporation, and (2) the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (DENIAL OF MOTION TO SET ASIDE IMMEDIATE EFFECTIVENESS OF ORDER SUSPENDING LICENSE) (LBP-05-02) 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-EA
LB MEMORANDUM AND ORDER (DENIAL OF MOTION
TO SET ASIDE IMMEDIATE EFFECTIVENESS OF ORDER
SUSPENDING LICENSE) (LBP-05-02)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 24th day of January 2005