

RAS 9231

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

DOCKETED 01/27/05

SERVED 01/27/05

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 Amendment and
Materials License Suspension)

Docket Nos. 30-5980-MLA, 30-5982-MLA,
30-5980-EA and 30-5982-EA

ASLBP Nos. 04-833-07-MLA and
05-835-01-EA

January 27, 2005

ORDER

(Order Granting Hearings, Consolidating Proceedings, And Establishing Hearing Schedule)

On January 25, 2005, counsel for Safety Light Corporation (Safety Light), the Pennsylvania Department of Environmental Protection (Pennsylvania), and the Nuclear Regulatory Commission Staff (NRC Staff or Staff) participated in a telephonic conference to discuss further proceedings in these cases. Based on that conference, it is ORDERED that:

1. Safety Light's Request For Hearing On Order Suspending Licenses, dated December 29, 2004, is granted. See Docket Numbers 30-5980-EA & 30-5982-EA, ASLBP No. 05-835-01-EA. The parties in the license suspension proceeding are Safety Light and the NRC Staff.

2. Safety Light's Demand For Hearing On Denial Of License Renewal Applications, dated December 30, 2004, is granted. See Docket Nos. 30-5980-MLA & 30-5982-MLA, ASLBP No. 04-833-07-MLA. The parties in the proceeding relating to the NRC Staff's denial of Safety Light's license-renewal request for License Number 37-0030-02 are Safety Light and the NRC Staff. The parties in the proceeding relating to the NRC Staff's denial of Safety Light's license-renewal request for License Number 37-0030-08 are Safety Light, the NRC Staff, and Pennsylvania. We note that the proceeding involving the denial of Safety Light's license-renewal request subsumes the proceeding involving Safety Light's license-renewal request.

3. The adjudication of the suspension order will be governed by the hearing procedures in Subpart L, 10 C.F.R. §§ 2.1200 et seq., consistent with the request of Safety Light and the NRC Staff in their joint motion dated January 18, 2005. See 10 C.F.R. §§ 2.310(b), 2.1200.

4. The adjudication of the NRC Staff's denial of Safety Light's license-renewal request will likewise be governed by the hearing procedures in Subpart L, 10 C.F.R. §§ 2.1200 et seq. See 10 C.F.R. §§ 2.310(a), 2.1200

5. Pursuant to 10 C.F.R. § 2.317(b), the proceeding involving the suspension of Safety Light's licenses is hereby consolidated with the proceeding involving the NRC Staff's denial of Safety Light's license-renewal request. Pennsylvania's participation in the consolidated proceeding will be limited to its opposition to Safety Light's license-renewal request for License Number 37-0030-08 and, more specifically, to arguments relating to the following contention admitted in the Board's November 9, 2004 order: Safety Light should not be granted any further exemption from financial assurance requirements or a reduced rate of contribution into the escrow fund for License Number 37-0030-08.

6. Consistent with the obligation in 10 C.F.R. § 2.202©)(1) to conduct enforcement hearings "expeditiously," and guided by input provided by the parties during our telephonic conference on January 25, 2005, we establish the following accelerated schedule to govern the conduct of the Subpart L hearing in this case:

February 7, 2005: On or before this date, the Staff shall make the disclosures mandated by 10 C.F.R. § 2.336(b), and shall file in the docket, present to the Board, and make available to the parties a hearing file (10 C.F.R. § 2.1203(a)).

February 7, 2005: On or before this date, Safety Light and Pennsylvania shall, for their respective cases, make the disclosures mandated by 10 C.F.R. § 2.336(a).

February 16, 2005: On or before this date, Safety Light, the Staff, and Pennsylvania shall, for their respective cases, file initial written statements of their positions and written testimony under oath with supporting affidavits (10 C.F.R. § 2.1207(a)(1)). The statement should be in the nature of a trial brief that provides a precise road map of the party's case, setting out affirmative arguments and applicable legal standards, identifying witnesses and evidence, and specifying the purpose of witnesses and evidence (i.e., stating with particularity how the witness or evidence supports a factual or legal position). In preparing these submissions, the parties should bear in mind that – in light of the regulatory requirement to conduct this proceeding with dispatch – there might not be an opportunity following the conclusion of the hearing to elaborate upon their positions on such pivotal legal issues as the standards that govern the ultimate determinations the Board will be called upon to make.

March 2, 2005: On or before this date, Safety Light, the Staff, and Pennsylvania shall, for their respective cases, file written responses and rebuttal testimony under oath with supporting affidavits directed to the initial statements and testimony of the other participants (10 C.F.R. § 2.1207(a)(2)). The written response should be in the nature of a response brief that identifies the legal and factual weaknesses in an opponent's position, identifies rebuttal witnesses and evidence, and specifies the precise purpose of rebuttal witnesses and evidence. Being in the nature of rebuttal, the response is not to advance any new affirmative claims or arguments that, under the terms of this order, should have been, but were not, included in the party's previously-filed initial written statement.

March 2, 2005: On or before this date, Safety Light, the Staff, and Pennsylvania shall, for their respective cases, submit proposed questions for the Board to consider for propounding to the persons sponsoring the testimony identified in the section 2.1207(a)(1) submissions filed on February 16th. The proposed questions – which need not be filed with any other party (10 C.F.R. § 2.1207(a)(3)(I)) – will be propounded at the discretion of the Board (id. § 2.1207(a)(3)(iii)).

In preparing the proposed questions, each party should be mindful that the examination plan is not a trial tool to assist the party; rather, its purpose is to assist the Board in ensuring the development of an adequate record. Accordingly, the plan should contain a brief description of the issue or issues on which the examination will be conducted, the objective of the examination, and the proposed line of questioning (including specific questions) that may logically lead to achieving the objective.

All submitted questions will be kept by the Board in confidence until they are either propounded by the Board, or until issuance of the initial decision on the issue being litigated, at which time the Board shall then provide all proposed questions to the Commission's Secretary for inclusion in the official record of the proceeding. See 10 C.F.R. 2.1207(a)(3)(iii).

March 4, 2005: On or before this date, Safety Light, the Staff, and Pennsylvania shall, for their respective cases, submit proposed questions directed to rebuttal testimony for the Board to consider for propounding to the persons sponsoring the testimony identified in the section 2.1207(a)(2) submissions filed on March 2nd (10 C.F.R. § 2.1207(a)(3)(ii)). The proposed questions – which need not be filed with any other party (10 C.F.R. § 2.1207(a)(3)(I))

– will be propounded at the discretion of the Board (id. § 2.1207(a)(3)(iii)). In preparing an examination plan, each party should bear in mind the guidance discussed above regarding the purpose and contents of such plan.

March 4, 2005: On or before this date, Safety Light, the Staff, and Pennsylvania shall, for their respective cases, file any requests to permit cross-examination of a specified witness or witnesses by a party, as well as cross-examination plans. See 10 C.F.R. § 2.1204(b).

March 10, 2005: An oral hearing shall be conducted, commencing at 9:30 a.m., in the ASLBP Hearing Room, T-3 B45, at NRC Headquarters, Rockville, Maryland. If the hearing runs beyond one day, we shall continue and complete the hearing on March 11, 2005. All individuals who provide written testimony under oath with supporting affidavits for a party shall be available during the hearing to provide oral testimony, unless the Board expressly provides otherwise (10 C.F.R. § 2.1207(b)(5)) .

7. Any objections to this order must be filed by February 1, 2005. See 10 C.F.R. § 2.329(e).

FOR THE ATOMIC SAFETY
AND LICENSING BOARD¹

/RA/

E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
January 27, 2005

¹ Copies of this Memorandum And Order were sent this date by internet e-mail to counsel for (1) Safety Light Corporation, (2) the Pennsylvania Department of Environmental Protection, 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
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Bloomsburg, Pennsylvania Site)
(Materials License Amendment))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (ORDER GRANTING HEARINGS, CONSOLIDATING PROCEEDINGS, AND ESTABLISHING HEARING SCHEDULE) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
E. Roy Hawkens, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
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Washington, DC 20555-0001

Administrative Judge
Peter S. Lam
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Lisa B. Clark, Esq.
Michael A. Woods, Esq.
Mitzi A. Young, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Thomas M. Crowley, Esq.
Assistant Counsel
Pennsylvania Department of Environmental
Protection
Southcentral Regional Counsel
909 Elmerton Avenue, Third Floor
Harrisburg, PA 17110

Docket Nos. 30-5980/5982-MLA
LB ORDER (ORDER GRANTING HEARINGS,
CONSOLIDATING PROCEEDINGS, AND
ESTABLISHING HEARING SCHEDULE)

William E. Lynch, Jr., Vice President
Safety Light Corporation
4150-A Old Berwick Road
Bloomsburg, PA 17815

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 27th day of January 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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U.S. Nuclear Regulatory Commission
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Michael A. Woods, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
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909 Elmerton Avenue, Third Floor
Harrisburg, PA 17110

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Donald J. Silverman, Esq.
Alvin H. Gutterman, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004

William E. Lynch, Jr., Vice President
Safety Light Corporation
4150-A Old Berwick Road
Bloomsburg, PA 17815

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 27th day of January 2005