

February 7, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	Docket Nos. 30-5980-MLA
SAFETY LIGHT CORPORATION	)	30-5982-MLA
Bloomsburg, Pennsylvania Site	)	30-5980-EA
	)	30-5982-EA
	)	
(Materials License Amendment and	)	ASLBP Nos. 04-833-07-MLA and
Materials License Suspension)	)	05-835-01-EA

NRC STAFF MOTION FOR PROTECTIVE ORDER
GOVERNING DISCLOSURE OF SENSITIVE INFORMATION

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323, the NRC Staff (Staff) files this motion requesting that the Board issue a Protective Order governing access to and disclosure of certain sensitive information in the above-captioned proceeding. The Staff requests that the Presiding Officer adopt the attached draft Protective Order (with the attached Confidentiality and Non-Disclosure Agreement). Counsel for Safety Light Corporation (SLC) , and Pennsylvania Department of Environmental Protection (PADEP) were provided a copy of a draft of this motion and Protective Order, and were given an opportunity to comment. Counsel for SLC and PADEP notified the Staff that they support the approach taken in this motion.

BACKGROUND

On October 25, 2004, the Commission blocked public access to all documents through the Agencywide Document Access and Management System (ADAMS). The shut-down of ADAMS was ordered to facilitate a security review of publicly available documents to ensure that potentially sensitive unclassified information be removed from the NRC website so that any information which might provide assistance to terrorists would be inaccessible. The Staff's security review of

documents related to this proceeding identified certain documents that contain sensitive unclassified information that could be useful to terrorists.

The Staff has determined that certain documents that contain sensitive unclassified information should be provided to the parties to these proceedings pursuant to 10 C.F.R. §§ 2.336(b) and 2.1203(a). The Staff believes that the issuance of a Protective Order is appropriate to ensure both that all parties may be afforded prompt access to relevant documents and that sensitive unclassified information will continue to be protected. The Protective Order would cover all documents containing sensitive unclassified information disclosed by the Staff in the initial hearing file, as well as sensitive documents subsequently added to the hearing file. In essence, the terms of the Protective Order would set forth provisions on handling and treatment of protected sensitive information and restrict the distribution of such information to authorized persons pursuant to a Confidentiality and Non-Disclosure Agreement.

CONCLUSION

For the foregoing reasons, the Staff requests that the Board issue a Protective Order in the form attached.

Respectfully submitted,

/RA/

Mitzi A. Young
Counsel for NRC Staff

/RA/

Michael A. Woods
Counsel for NRC Staff

Dated at Rockville, Maryland
this 7th day of February, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

E. Roy Hawken, 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

MEMORANDUM AND ORDER
(Protective Order)

This Protective Order governs the disclosure and use of certain protected sensitive information¹ potentially relevant to the application of Safety Light Corporation (SLC) for renewal of its NRC License Nos. 37-00030-02 and 37-00030-08, or to the Order Suspending License (Effective Immediately) issued by the NRC Staff (Staff) on December 10, 2004.

Specifically, counsel, consultants, and others representing SLC and Pennsylvania Department of Environmental Protection (PADEP) shall be permitted access to protected sensitive information upon the following conditions:

1. Any person permitted access to protected sensitive information on behalf of SLC or PADEP shall execute the attached Confidentiality and Non-Disclosure Agreement.

¹ Protected sensitive information is defined as any document, in its entirety, identified by the NRC Staff as containing sensitive unclassified information that could be useful to terrorists. The definition of protected sensitive information in this Order does not include classified or safeguards information which is subject to separate provisions with respect to handling, use and disclosure; it includes information that is unclassified, but potentially sensitive.

2. Only individual counsel, consultants, and others representing a party² who have executed the attached Confidentiality and Non-Disclosure Agreement may have access to protected sensitive information. Protected sensitive information shall not be used except as necessary for the conduct of this proceeding, nor shall it be disclosed in any manner to any person except to the minimum number of counsel, consultants, or other party representatives who are engaged in the conduct of this proceeding and who need to know the information in order to carry out their responsibilities in this proceeding. Individuals with access to protected sensitive information pursuant to this Order may make copies of and take notes on the protected sensitive information, but such copies and notes become protected sensitive information. Such notes and copies will not be included in ADAMS or the Electronic Hearing Docket for this proceeding unless submitted for inclusion by the designated representative of that party.

3. Counsel, consultants, and others representing a party who receive any protected sensitive information shall maintain its confidentiality as required in the attached Confidentiality and Non-Disclosure Agreement, the terms of which are hereby incorporated in this Protective Order.

4. All pleadings and correspondence in this proceeding that contain protected sensitive information shall:

a. be served by electronic mail, with an additional paper copy served in a single, opaque envelope by United States first class, registered, express, or certified mail, internal NRC mail, or messenger-courier or overnight delivery service (e.g., Federal Express);

b. include an attached cover sheet identifying the pleading or correspondence as protected sensitive information and a cover letter that summarizes the contents of the pleading or correspondence without reference to any protected sensitive information; and

² The term "party" shall mean SLC and PADEP. For the purposes of this protective order, the term "party" does not include the NRC staff. The provisions of this Protective Order, unless expressly stated, do not apply to NRC employees, contractors, or consultants.

c. be served only on the Atomic Safety and Licensing Board, NRC's Office of the Secretary, and persons authorized to receive protected sensitive information under this Protective Order.

5. Counsel shall take all reasonable precautions necessary to assure that protected sensitive information is not distributed to unauthorized persons. Counsel are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

6. The terms of this Protective Order apply to protected sensitive information notwithstanding any prior releases in which this information was treated as public. A public release of protected sensitive information before this Order became effective shall not serve as grounds for subsequent distribution of protected sensitive information to unauthorized persons.

7. Protected sensitive information shall remain available to all parties until the later of the date that an order terminating this proceeding is no longer subject to judicial review, or the date that any other Commission proceeding relating to the protected sensitive information is concluded and no longer subject to judicial review. The parties shall, within fifteen (15) days of the later date described above, return the protected sensitive information (excluding notes of protected sensitive information) to the party that authored or originated the information, or shall destroy the information, except that copies of filings, official transcripts, and exhibits in this proceeding that contain protected sensitive information, and notes of protected sensitive information may be retained, if they are maintained in a secure place.³ Within such time period, each party shall also submit to the producing party an affidavit stating that, to the best of its knowledge, all protected sensitive information and all notes of protected sensitive information have been returned or have been destroyed or will be maintained in accordance with the above. To the extent protected

³ Counsel are responsible for determining what measures are necessary to assure that protected sensitive information is kept in a secure place such that no distribution of protected sensitive information to unauthorized individuals will occur.

sensitive information is not returned or destroyed, it shall remain subject to the provisions of this Protective Order.

8. Counsel, consultants, or any other individual representing a party who has reason to suspect that protected sensitive information may have been lost or misplaced or that protected sensitive information has otherwise become available to unauthorized persons during the pendency of this proceeding shall notify the Atomic Safety and Licensing Board promptly of those suspicions and the reasons for them.

9. Any violation of the terms of this Protective Order or a Confidentiality and Non-Disclosure Agreement executed in furtherance of this Protective Order may result in the imposition of sanctions as the Atomic Safety and Licensing Board or the Commission may deem appropriate, including but not limited to referral of the violation to appropriate bar associations and/or other disciplinary authorities.

10. The Atomic Safety and Licensing Board may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

Rockville, Maryland
February 7, 2005

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

Under penalty of perjury, I hereby certify my understanding that access to protected sensitive information is provided to me pursuant to the terms and restrictions of the Atomic Safety and Licensing Board's Protective Order, dated February __, 2005, in this proceeding, that I have been given a copy of and have read this Protective Order, and that I agree to be bound by it. I understand that the contents of the protected sensitive information, any notes or other memoranda, or any form of information that copies or discloses protected sensitive information shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this Declaration or the Protective Order, which incorporates the terms of this Declaration, constitutes a violation of an order of the Nuclear Regulatory Commission and may result in the imposition of sanctions as the Atomic Safety and Licensing Board or Commission may deem to be appropriate, including, but not limited to, referral of the violation to appropriate bar associations and other disciplinary authorities.

WHEREFORE, I do solemnly agree to protect such protected sensitive information as may be disclosed to me in this NRC proceeding, in accordance with the terms of this declaration.

Name (printed): _____

Title: _____

Representing: _____

Signature: _____

Date: _____

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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Bloomsburg, Pennsylvania Site	)	30-5980-EA
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	)	
(Materials License Amendment and	)	ASLBP Nos. 04-833-07-MLA
Materials License Suspension)	)	05-835-01-EA

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF MOTION FOR PROTECTIVE ORDER GOVERNING DISCLOSURE OF SENSITIVE INFORMATION" in the above-captioned proceeding have been served on the following by deposit in the United States mail or by deposit in the Nuclear Regulatory Commission's internal system, and by electronic email as indicated by an asterisk (*) on this 7th day of February, 2005.

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/RA/

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Counsel for NRC Staff