

address that Report in the SLC Motion. Moreover, since the OI Report provided by the NRC Staff is incomplete, SLC and the Licensing Board are both unable to assess the accuracy of the characterization of it in the Staff Response.

1. The Allegation That SLC Payments To Vendors, Employees And Other Contractors Violated The License Conditions Is A New Allegation.

The Staff Response at page 5 states:

The Office of Investigations concluded that, because SLC knew that monthly payments were a condition of its licenses and that its failure to make these payments violated the terms of the exemption granted in its license, SLC's decision to pay vendors, employees, other contractors instead of the NRC was deliberate. See Pangburn at ¶ 8; OI Report at 11-12. Therefore, SLC's conduct was willful.

The Suspension Order does not discuss SLC's payments to vendors, employees or contractors, and does not mention any SLC decision to make payments to others instead of making payments to the trust fund. There also was not such a discussion in the OI Report Summary provided by the NRC in advance of the Predecisional Enforcement Conference. In fact, the SLC Motion pointed out that the Suspension Order did not allege that SLC had the funds needed to make the required payments on time, and that without such an allegation, the alleged violation could not be deliberate. SLC Motion at 5.

The SLC Motion does discuss, in very general terms, SLC's payment of certain salaries of employees and bills of suppliers, but without a specific allegation from the NRC Staff, SLC did not have an opportunity to discuss the adequacy of the evidence. In addition, the OI Report contains material evidence concerning this allegation that was withheld by the NRC at the time of the SLC Motion. Accordingly, SLC did not respond to this assertion and the SLC Motion could not discuss the OI Report.

2. The Allegation That The Delay In Making The Payments Resulted In Funds Being Insufficient To Pay For Disposal Of Certain Waste Is A New Allegation.

The Staff Response at page 8 states:

The failure of SLC to make required payments to the decommissioning trust fund resulted in insufficient funds being available to pay for disposal of certain radioactive waste exhumed from the silos at the Bloomsburg site. Pangburn Affidavit at ¶ 11.

A similar but more extensive statement is included in the Pangburn Affidavit at ¶ 11.

There is no such assertion in the Suspension Order. There also is no such allegation in the OI Report Summary that the NRC provided to SLC in advance of a pre-decisional enforcement conference in July 2004. As a result, SLC had no opportunity to respond to this assertion and the SLC Motion does not discuss it.

3. The Assertion That The Justification For Immediate Effectiveness Is Associated With The Environmental Protection Agency Proposal To Include The Bloomsburg Facility On The National Priorities List Is A New Allegation.

The Staff Response at page 8 (and footnote 6) states:

Therefore, the public health, safety and interest required that the Order be immediately effective.⁶

⁶The Environmental Protection Agency has proposed to include SLC's Bloomsburg site on the National Priorities List. See National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 41, 69 Fed. Reg. 56970, 56976 (Sept. 23, 2004).

There is no such assertion in the Suspension Order. There also is no such assertion in the OI Report Summary. As a result, SLC had no opportunity to respond to this assertion and the SLC Motion does not discuss it. While the Staff Response does not explain further the intended significance of this reference, SLC believes that it is important to assure that the Licensing Board does not rely on this footnote as a basis for concluding

that the immediate effectiveness of the Suspension Order will not increase the safety risks.

4. The Assertion That The Suspension Order Was Made Immediately Effective Because It Included Necessary Actions To Ensure SLC Could Properly Plan And Conduct Orderly Shutdown Is A New Assertion.

The Pangburn Affidavit at ¶ 4 states:

The Order was made immediately effective because it included actions the licensee needed to take upon issuance in order to ensure that SLC could properly plan and conduct orderly shutdown activities commencing January 1, 2005, in a manner protective of public health and safety and consistent with the public interest.

There is no such assertion in the Suspension Order. As a result, SLC had no opportunity to respond to this assertion and the SLC Motion does not discuss it.

5. The Staff Response Relies On Documents That Were Not Available To SLC.

In addition to the Pangburn Affidavit, the Staff Response includes as attachments various documents that were not available to SLC during the preparation of the Motion, and therefore could not have been discussed in the SLC Motion. The most significant of these documents is the OI Report, which is the principal basis for the Suspension Order.

The Staff Response relies directly on the OI Report at page 5 and relies repeatedly on the Pangburn Affidavit between pages 3 and 8. The Pangburn Affidavit, in turn, relies on the OI Report, particularly in ¶ 8. The OI Report was withheld from SLC until it was served as an attachment to the Staff Response.¹ By withholding the OI Report from SLC,

¹ SLC specifically requested the OI Report for use in responding to the Suspension Order, but the NRC Staff did not provide it, and instead referred SLC to the Freedom of Information Act (FOIA) and associated NRC regulations. SLC then promptly submitted a FOIA request in accordance with the NRC procedures and asked for expedited handling of the request, citing the urgent need for this information for use in responding to the Suspension Order. A copy of this request, which was submitted via electronic mail, is provided here as Attachment 1. As noted at page 5, footnote 6, of the SLC Motion, SLC's request for expedited handling was denied. A copy of the NRC letter confirming this denial is provided as Attachment 2. SLC has not yet received any other response to its FOIA request.

the NRC denied SLC the opportunity to address in the SLC Motion, the adequacy of the principal evidence it cites in the Suspension Order.

The NRC also did not provide SLC with the transcript of the pre-decisional enforcement conference, which the Staff Response provides as part of the collection of documents it identifies as Attachment B. Although SLC representatives attended that conference, SLC did not have the transcript and could not consult legal counsel about it. As a result, SLC did not have an opportunity to discuss that transcript in the SLC Motion.

6. The Copy Of The OI Report Provided With The Staff Response Is Significantly Incomplete.

The copy of the OI Report that is attached to the Staff Response appears to have been redacted; there are blackened areas in places that appear to have contained text at page 12 of the OI Report, page 2 of exhibit 5, pages 3-4 of exhibit 6, pages 3-4 of exhibit 7 and pages 3-4 of exhibit 8. In addition, page 7 of the OI Report states that certain records reviewed by OI as part of the investigation are being maintained by the NRC but are not provided as exhibits to the OI Report.

While it is recognized that the Privacy Act prohibits the NRC from disclosing certain types of information, and that this may justify all or part of the redaction, the Staff Response does not explain the reasons for each redaction, and SLC cannot determine the significance of any redaction.

The redaction at page 12 of the OI Report is of particular concern because the context does not provide any basis for assuming that the Privacy Act required this redaction. In addition, because the first word after this redaction is "Therefore," it appears that the deleted information may have provided the basis for the OI conclusion

that “OI does not believe the evidence proves a violation of 30.9 . . .” Since the basis of the OI conclusion is put into issue by footnote 5 on page 8 of the Staff Response (“OI conclusions regarding safety are not dispositive”), SLC has no way of determining whether the redaction on page 12 of the OI Report withholds relevant information.

Request for Relief

Because the Staff Response relies on information that is not included in the Suspension Order, and SLC did not have an opportunity to address the significance of such information in its Motion, SLC requests an opportunity to submit a reply to the Staff Response to address such information. The proposed Reply is attached.

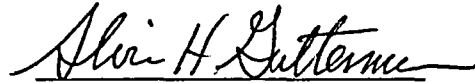
In addition, SLC requests that the Licensing Board direct the NRC Staff to provide SLC the information that has been omitted from the copy of the OI Report provided with the Staff Response, along with any other records retained in the OI case file. If there are legal impediments to the NRC Staff providing some of this information, the NRC Staff should be required to provide a justification for withholding the information. After receipt of this information, SLC should be given the opportunity to supplement its Motion.

The above request should not be allowed to delay a decision on SLC’s Motion. Since this request for additional information is very limited, the NRC Staff should be able to provide the information promptly, and SLC will review the information upon receipt

and promptly submit it supplement or advise the Licensing Board that it does not desire to submit a supplement.

Respectfully submitted,

SAFETY LIGHT CORPORATION



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Counsel for Safety Light Corporation

Dated: January 10, 2005

Alvin H.
Gutterman/WA/MLBLaw
12/22/04 02:04 PM

To foia@nrc.gov
cc may@nrc.gov
bcc
Subject FREEDOM OF INFORMATION ACT REQUEST

FREEDOM OF INFORMATION ACT REQUEST

In my capacity as an attorney who represents Safety Light Corporation in connection with the Denial Of Safety Light Corporation's Application To Renew Licenses And Order Suspending Licenses (Effective Immediately) – EA-04-148 (December 10, 2004), I request the following records:

1. Office of Investigations (OI) Report 1-2003-056, including all associated attachments and exhibits;
2. all witness statements and transcripts of interviews associated with the referenced OI report, to the extent that such statements and transcripts are not provided in response to the above request for exhibits and attachments to the OI report;
3. any other records concerning the referenced OI investigation and report, to the extent that such records are not provided in response to the above request for exhibits and attachments to the OI report; and
4. any other records associated with the referenced denial and Order, to the extent that such records are not provided in response to the above request for the OI report and associated records, exhibits and attachments.

The requested records are needed so that Safety Light Corporation can prepare its answer to EA-04-148, an immediately effective Order. Since the Order requires Safety Light Corporation's answer to be submitted by December 30, 2004, I request expedited handling of this request.

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 23, 2004

FOIA/PA 2005-0088



Al Gutterman
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Washington, DC 20004

Dear Requester:

We received your Freedom of Information Act/Privacy Act (FOIA/PA) request on December 22, 2004.

Your request has been assigned the following reference number that you should use in any future communications with us about your request: **FOIA/PA 2005-0088**

To ensure the most equitable treatment possible of all requesters, the NRC processes requests on a first-in, first-out basis, using a multiple track system based upon the estimated time it will take to process the request. Based on your description of the records you are seeking, we estimate completion of your request will take 21-30 workdays (4-6 weeks). We will advise you of any change in the estimated time to complete your request.

For purposes of assessing fees in accordance with our regulations (10 CFR 9.33), we have placed your request in the following category: Commercial

If applicable, you will be charged appropriate fees for Search, Review, and Duplication of records.

A sheet has been enclosed that explains in detail the fee charges that may be applicable. **Please do not submit any payment unless we notify you to do so.**

You have asked that your request be accorded expedited processing. To ensure fairness to all, requests are normally processed in turn based on time of receipt. Exceptions are made only in cases where a requester has clearly shown a compelling need based on a threat to life or safety, or when a requester that is primarily engaged in disseminating information to the public has clearly shown a compelling urgency to inform the public concerning matters of actual or alleged Government activity. You have not satisfied the criteria for expedited processing. Therefore, your request is denied. You may appeal this determination. Any such appeal must be made in writing within 30 calendar days by addressing the appeal to the Secretary of the Commission.

The following person is the FOIA/PA Specialist who has been assigned responsibility for your request: **Mary Jean Pool, 301-415-7097**

If you have questions on any matters concerning your FOIA/PA request please feel free to contact the assigned FOIA/PA Specialist or me at (301) 415-7169.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carol Ann Reed".

Carol Ann Reed
FOIA/Privacy Act Officer
Office of the Chief Information Officer

Enclosures:
Incoming Request
Explanation of Fees

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the Matter of)	
)	
)	Docket Nos. 030-05980
)	030-05982
SAFETY LIGHT CORPORATION)	
Bloomsburg, Pennsylvania Site)	ASLBP NO. 04-833-07-MLA
)	
)	
)	
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Safety Light Corporation Motion for Leave to Reply and Other Relief and Proposed Reply were served upon the persons listed below by U.S. mail, first class, postage prepaid and, where shown, by e-mail on this 10th day of January 2004.

Secretary of the Commission*
Attn: Rulemakings and Adjudication Staff
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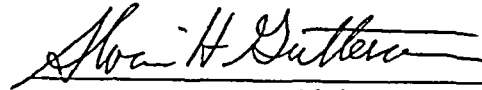
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Alvin H. Gutterman
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*Original and two copies