

RAS 9394



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February 16, 2005

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SENT VIA E-MAIL AND OVERNIGHT MAIL

Annette L. Vietti-Cook
Office of the Secretary
Sixteenth Floor, One White Flint North
11555 Rockville Pike
Rockville, MD 20852
Attn: Rulemakings and Adjudications Staff

Re: Safety Light Corporation
Docket Nos. 030-05980-MLA; 030-05982-MLA; 030-05980-EA;
030-05982-EA
ASLBP Nos. 040-833-07-MLA; 050-0835-01-EA

Dear Ms. Cook:

Please find enclosed for filing an original and two copies of the Commonwealth of Pennsylvania, Department of Environmental Protection's Initial Written Statement of Position in reference to the above-captioned matter. Copies have been sent as per certificate of service.

Thank you for your attention to this matter.

Sincerely,

Thomas M. Crowley
Assistant Counsel

/kmm

cc: Office of the General Counsel (via e-mail and overnight mail)
Safety Light Corporation (via overnight mail)

Template = SECY-037

SECY-02



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD**

Before Administrative Judges:

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

In the Matter of	:	
	:	Docket Nos. 30-05980-EA, 30-5982-
	:	EA, 30-5980-MLA, 30-5982-MLA
SAFETY LIGHT CORPORATION	:	
Bloomsburg, Pennsylvania Site	:	ASLBP No. 04-833-07-MLA and 05-
	:	835-01-EA
(Materials License Amendment and	:	
Materials License Suspension)	:	

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION'S
INITIAL WRITTEN STATEMENT OF POSITION

Pursuant to this Board's order of January 27, 2005, the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") hereby files the disclosures required by the provisions of 10 CFR §2.1207(a)(1).

I. Introduction

By Memorandum and Order dated November 9, 2004, the Board granted the August 30, 2004 hearing request of the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"). LBP-04-25, 60 NRC ____. The Department filed its hearing request in opposition to the April 22, 2004 letter from Safety Light Corporation ("Safety Light" or "SLC")

seeking a license amendment authorizing renewal of its materials license No. 37-0030-08,¹ (the “08 license”) and specifically requesting a continued exemption from the decommissioning funding requirements of 10 CFR §30.35 and a reduced rate of contribution into its decommissioning escrow fund.

The present proceeding is a consolidated action involving not only the Department’s hearing request, but also the NRC staff’s December 10, 2004 denial of Safety Light’s application for renewal of both of its licenses at the Bloomsburg, Pennsylvania facility as well as the NRC’s suspension of both licenses and the requirement for Safety Light to create and comply with an orderly shut down plan to be fully implemented by March 31, 2005. Board Order of January 27, 2005 (Granting Hearings, Consolidating Proceedings, and Establishing Hearing Schedule), ADAMS Accession Number ML050270478; See “NRC Staff Notice of Denial of License Renewal” and “Order Suspending License (Effective Immediately)”, December 10, 2004, ADAMS Accession Number ML043480277.

The Board stated in its order that:

Pennsylvania’s participation in the consolidated proceeding will be limited to it’s 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.

Board Order of January 27, 2005 at 2. The Board made clear, however, that while other contentions made by the Department in its Request for Hearing did not constitute admissible bases

¹ In this license renewal proceeding, Safety Light – in addition to seeking to renew License 37-0030-08 – also seeks to renew License 37-0030-02, which authorizes it to possess radioactive material existing in contaminated facilities at the Bloomsburg site as of January 3, 1995, and to characterize and decommission those portions of the site, including the radioactive material discussed above. Pennsylvania does not oppose the renewal of License 37-00030-02. See Pennsylvania Hearing Request at 4-5 & n.2.

for granting a hearing, they nevertheless raised significant issues that would be considered as relevant in the context of the hearing on the admitted contention. Specifically, the Board held that the Department would not be precluded from introducing evidence of Safety Light's non-compliance with past license conditions and Safety Light's response to the NRC staff's Request for Additional Information (RAI), including the environmental and safety aspects of Safety Light's compliance history. Board Memorandum and Order of November 9, 2004 at 12, n.6; 14, n. 7; 14-17; 17-18 and n.9.

The Department submits this "Initial Written Statement of Position" in support of its contentions relating to Safety Light's "08" license.

II. Applicable Legal Standards

Pursuant to 10 CFR §2.325, Safety Light, as the applicant for an amendment to its licenses seeking to renew the licenses and specifically requesting a continued exemption from the decommissioning funding requirements of 10 CFR §30.35 and a reduced rate of contribution into its decommissioning escrow fund, has the burden of proof. Similarly, the NRC staff has the burden of proof as the proponent of its enforcement order. *Id.*

The evidentiary standard for the position of a burdened party is that any assertion must be supported by a preponderance of the evidence. *In the Matter of Graystar, Inc.*, LBP-01-07, 53 NRC 186; *In the Matter of Louisiana Energy Services, L.P.*, LBP-97-3, 45 NRC 99; *Philadelphia Electric Company*, ALAB-819, 22 NRC 681.

III. Initial Statement of Position

1. The Commonwealth of Pennsylvania, Department of Environmental Protection, has standing to intervene in this hearing because this proceeding involves “a facility located within its boundaries.” 10 CFR. § 2.309(d)(2)(i); Board Memorandum and Order of November 9, 2004 at

9. The Department also satisfies the “traditional “ standing requirements of 10 CFR §2.309(d)(1)(nature of rights under the Atomic Energy act, nature of property, financial or other interest in the proceeding, and the possible effect of the proceeding on those interests.) Id. at 4.

2. The Board found that the following contention, Contention Number 3 in the Department’s Request for Hearing, was an admissible contention that formed the basis for granting a hearing: 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. (Contention admitted in the Board’s November 9, 2004 Order, LBP-04-25, 60 NRC ___ at 14-16.)

3. Safety Light is subject to the requirements of 10 CFR §30.35 as an NRC licensee licensed to possess tritium, a byproduct material with a half-life greater than 120 days. 10 CFR §30.35(b). Therefore, the obligations of 10 CFR §30.35 (c), (d), (e), and (f) apply to Safety Light, unless they are granted an exemption to those requirements. Exemptions to the provisions of 10 CFR §30.35 are governed by 10 CFR §30.11, which provides, in relevant part:

The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part and parts 31 through 36 and 39 of this chapter as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

10 CFR §30.11(a).

4. The Department contends that an exemption from the financial assurance requirements of 10 CFR §30.35 would not be “authorized by law”, and would “endanger life or property” and would not be “in the public interest.”

5. Current site conditions are such that significant environmental and public health hazards exist which will require significant funds to fully and properly remediate. NRC staff would seem to share this assessment, because they rejected as “not reasonable” several assumptions in Safety Light’s decommissioning cost estimate, stating that “significant remediation tasks were not addressed and... additional characterization (costing approximately \$500,000) would be necessary,” and that “using realistic waste disposal costs and reasonable assumptions for depth of soil contamination, we calculated DCEs being a factor of three to four higher than [those used in] your cost estimates for unrestricted release of the site.”² Maiers’ Testimony at 5-7

6. In addition, Safety Light currently lacks sufficient funds to carry out appropriate site characterization and decommissioning to deal with the known and anticipated site conditions. This deficiency, noted by NRC staff in its response to SLC’s DCE, raises two significant issues. First, Safety Light clearly cannot comply with all of its existing license conditions (specifically Condition 19) relating to waste disposal at current funding levels. Second and directly related to the first, Safety Light cannot effectively remediate the site at current funding levels, much less at the reduced

² Letter of December 19, 2001: NRC Request for Additional Information Concerning Review of Decommissioning Cost Estimate and Decommissioning Plan, Accession Number ML013540366. Safety Light had originally estimated decommissioning to cost \$5,621,360 in year 2000 dollars. December 6, 2000: Decommissioning Cost Estimate for Safety Light Corporation, Bloomsburg PA, NRC Materials License 37-00030-08, Accession Number ML003776303. Earlier that year, Larry Harmon, the Safety Light plant manager, indicated during an NRC inspection that SLC had obtained a cost estimate of about \$750,000 for the waste covered by License Condition 19 currently on hand. He stated that SLC did not have the funds to dispose of the waste at that time, and that this would be about \$17,000 per month in order to have the amount by December, 2004, which he indicated that they also do not have. He said that this license condition would have to be negotiated when the time comes. May 9, 2000: NRC Inspection Report- R030-05982/2000-001, 030-08335/2000-001, and 030-08444/2000-001, Accession Number ML003712963.

funding levels requested in their license renewal application or in the event of a business failure.³

Id.

7. Safety Light's current license requires that it dispose of, within two years of generation, all radioactive waste generated after January 1, 2000 (License Condition 18) and dispose of or otherwise remove from the site by December 31, 2004 all radioactive waste generated from activities performed prior to January 1, 2000 (License Condition 19). A review of Safety Light's own filings with the NRC and NRC documents shows that Safety Light has been, is presently, and will be in violation of Condition 19 of its current license relating to pre-January 1, 2000 tritium waste disposal. This waste represents the bulk of the waste tritium on site. This is a serious violation that directly impacts Pennsylvania, both in the present and in the future. Safety Light's license should not be renewed absent meaningful enforcement of condition 19 and adequate financial assurance measures to provide for the ultimate disposal of the tritium waste and full decommissioning of the site.

8. There is no dispute that Safety Light has not complied with License Condition 19: their license renewal application expressly states that "at present [December 10, 2003] we have 16,731 curies of tritium waste on site." Ex. B at 2, para. 3. This violation admitted to by Safety Light in regard to its waste disposal are "intentional acts" under 10 CFR §30.10(c)(an act causing a violation of a license condition) and is therefore "deliberate misconduct" subjecting the licensee to enforcement action under 10 CFR Part 2, Subpart B. This action by Safety Light is grounds for

³ This concern is reinforced by Safety Light's response to NRC staff's December 19, 2001 letter, in which Safety Light stated that "it doesn't matter which DCE [Safety Light's or ICF's, the NRC staff's consultant] we use." January 25, 2002: Safety Light Corporation Response to 12/19/01 RAI, Accession Number ML020300260. At a minimum, Safety Light's response, and their attitude toward staff's request for more information and better DCEs, does not engender confidence that Safety Light intends to adequately fund or conduct waste removal or decommissioning.

either license revocation or denial of license application for failure to operate a facility under the terms of the license pursuant to Section 186 of the Atomic Energy Act, 42 U.S.C. §2236(a), 10 CFR Part 2, Subpart B, and 10 CFR §30.61(b).

9. While the Department has some reason to be hopeful that waste issues related to License 37-00030-02 can be resolved through the intervention of the U.S. EPA, the ongoing accumulation of tritium waste combined with Safety Light's unwillingness to assume the financial assurances required by 10 CFR §30.35 creates the very real prospect of significant tritium waste remaining on site both short and long term. Such accumulation could result in serious risk of exposure to workers and the general public, environmental contamination through either gradual release or through a major release due to fire or other catastrophic event, and major expenditures of Commonwealth tax dollars to fund a response or cleanup that ought to be funded through Safety Light's license.

10. As noted above, these fears are not merely speculative. The site is in the floodplain of the Susquehanna River, there has been a fire on the site, and there are minimal security measures in place. Safety Light's failure to dispose of accumulated tritium, and the continued accumulation of tritium waste with no prospect of imminent disposal only exacerbates these conditions.

11. Pennsylvania seeks to have the tritium waste removed promptly through the enforcement of license conditions that set meaningful goals for waste removal and the establishment of financial assurances adequate to accomplish that removal while Safety Light is in place or in the event of Safety Light leaving the site. Pennsylvania, for the reasons stated above, is opposed to the renewal of Safety Light's license under its existing terms, and will only support renewal along the lines outlined above.

12. Condition 20.A of Safety Light's current license, adopted pursuant to 10 CFR §30.11, exempts Safety Light from the financial assurance requirements of 10 CFR §30.32(h) and §§30.35(a) through 30.35(f), "provided that the licensee sets aside from operating funds or any other funds, except litigation funds", specified amounts during set time periods. Condition 20.A further states that "[t]his exemption is valid until [December 31, 2004] or until the date of any failure to comply with this license condition" (Ex. A at 4, emphasis added). Safety Light admits in its renewal application that its contributions to the escrow fund "currently represents a deficiency of \$72,000."⁴ This failure to comply with an express license condition has been noted by NRC staff.⁵

13. While Safety Light has made up these arrears, Safety Light's license makes clear that its failure to make the required escrow fund contributions in a timely manner invalidates the exemption granted to Safety Light from the financial assurance provisions of 10 CFR §30.35. By its express terms, Safety Light's license is self-executing, i.e., SLC's failure to make the required payments automatically invalidated their exemption.

14. Thus, contrary to the statements in Safety Light's license renewal application, Safety Light does not currently have an exemption from financial assurance requirements that can be "continued" as requested in its application. (SLC Application, Ex. B at p.1.). Nor is it the case that SLC has "run all operational programs in full compliance with the requirements of our License." (Id. at p.2, para. 5.), because they have admitted failing to comply with Condition 20.A.

⁴ Letter of April 22, 2004: Safety Light Corp., License Renewal Request, ("SLC Application"). ADAMS Accession Number ML041310328.

⁵ Letter of December 19, 2003, from Frank J Congel, Director, Office of Enforcement, to C. Richter White, President, Safety Light Corporation, noting SLC's failure to make the monthly contributions required by Condition 20 of License No. 37-00030-08, and transmitting a Demand for Information, ADAMS Accession Number ML0335303660.

Because there is currently no valid exemption from financial assurance requirements for Safety Light, there is no exemption that can be continued in a renewed license, and their failure to comply with the exemption they were granted should not be rewarded with a grant of a continuance.

15. Moreover, Safety Light's stated reason for failing to comply with its current license condition requiring payments in to the escrow fund, and for the proposed reduced rate of contribution for the next license term, essentially amounts to Safety Light's ongoing business problems. Ex. B at 2-4. 10 CFR §30.37 (renewal of licenses) incorporates 10 CFR §30.32(d) (relating to 10 CFR §30.35 financial assurances). (See also 10 CFR §30.32(a)(4)(stating that a license application will be approved if "[t]he applicant satisfies any special requirements contained in parts 32 through 36 and 39.") Safety Light has failed to meet its license requirements relating to the financial assurances in 10 CFR §30.35 or the exemption to those requirements granted to Safety Light under 10 CFR §30.11 in its current license.

16. In light of these concerns, it is an open question whether Safety Light would qualify for a license were they to appear before the NRC as a new applicant because it appears, based on Safety Light's renewal application, that they could not meet the financial requirements of 10 CFR § 30.32(a)(4) and Section 182 of the Atomic Energy Act (relating to "financial qualifications.") 42 U.S.C. §2232(a). In other words, it is highly questionable whether Safety Light is a viable business entity that should hold an NRC license for the use of tritium.⁶ Maiers' Testimony at 6-8.

17. This is especially true given the quantity of tritium SLC is authorized to possess under their NRC license (37-00030-08), a quantity sufficient to require "consideration of the need for an

⁶ Safety Light's "business related" noncompliance is not limited to its NRC licenses. Safety Light is also a Pennsylvania licensee for radium, and has failed to pay its mandated license fees to the Commonwealth. Letter from attorney for SLC to the Department, dated July 22, 2002, Ex. D, contesting DEP assessment of license fees, dated June 12, 2002, Ex. E.

emergency plan for responding to a release" in accordance with 10 CFR §30.72 Schedule C. The quantity of tritium that triggers this requirement is 20,000 curies. SLC's license possession limit is 350,000 curies of tritium. SLC has such a plan in place⁷. The requirement to have an emergency plan is indicative that the quantities of tritium that SLC is authorized to use in its operations at the site are not inconsequential, and the requirement to have an emergency plan is an indication of the potential threat to the public and the environment posed by SLC's operations if sufficient planning and funding for decommissioning is not in place.

18. Safety Light's license application should be denied insofar as it requests a "continuation" of its present exemption from the financial assurance requirements of 10 CFR §30.35. Any such "continuation" would be both contrary to law and not in the public interest and thus would violate 10 CFR §30.11(a). Safety Light's license should not be renewed unless they can demonstrate that they are a viable business entity financially capable of operating under a license that has the full range of financial assurances as required under the Atomic Energy Act and the NRC's regulations, specifically 10 CFR §30.35, as well as removal of all previously accumulated tritium waste and assurances that waste will be properly disposed of in the future. This is the only way in which Pennsylvania can be assured that the activities being conducted under an NRC license within its borders will not result in a business failure or other situation in which Pennsylvania must bear the expense of a complex and costly cleanup which ought to be funded by the licensee. Two recent cases in Pennsylvania where there have been inadequate financial assurance for NRC licensees (i.e. Permagrain Products, Inc. and Berthold Systems, Inc.) resulted in multi-million dollar liabilities for the federal government and Pennsylvania when the companies abruptly declared

⁷ The emergency plan was originally developed as a result of an order from NRC to US Radium dated February 11, 1981 (i.e., prior to US Radium's change of name to Safety Light Corp.)

bankruptcy. These cases reinforce Pennsylvania's position that adequate financial assurance be required for SLC in order for their 08 license to be renewed. Maiers' Testimony at 4-6.

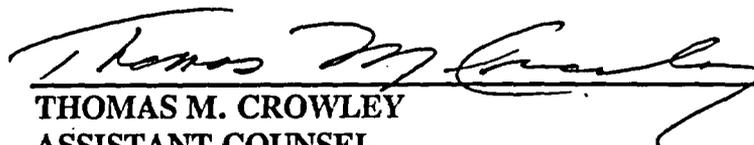
19. Because of these concerns, Pennsylvania is opposed to giving Safety Light any exemptions from financial assurance requirements, because those requirements are the only assurance that Pennsylvania has that Safety Light can meet its obligations to properly dispose of accumulated and future tritium waste and properly decommission the site. Any such exemption would violate Pennsylvania's interests, fail to protect the public health, safety and welfare, and would not be in the public interest. 10 CFR §30.11(a). Safety Light should only be granted a license renewal if they are subject to the full panoply of financial assurances under 10 CFR §30.35 and properly dispose of all presently accumulated and future waste.

20. The NRC denied Safety Light's request for license renewals for both the 08 and 02 licenses on December 10, 2004. Those denials are one of the subjects of the instant hearing. The Department is not opposed to the staff's denials of these licenses. In the event that those denials are not upheld, the Department maintains its position on the renewal of the 08 materials license.⁸

⁸ While the Department has not challenged any aspect of the 02 license renewal, as a result of ongoing EPA actions that address site conditions primarily related to the 02 license, Pennsylvania would not object to placing the 02 license in abeyance until such time that EPA determines no further action at the SLC site is required under their regulatory authority. A similar action is planned by the NRC for another site in Pennsylvania (BWXT Shallow Land Disposal Area, NRC License #SNM-2001) that is being remediated under the Formerly Utilized Site Remedial Action Plan (FUSRAP) by the United States Army Corp of Engineers (USACE).

Respectfully Submitted,

FOR THE COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION



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Dated: February 16, 2005

UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of	:	
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SAFETY LIGHT CORPORATION	:	
Bloomsburg, Pennsylvania Site	:	ASLBP No. 04-833-07-MLA and 05-
	:	835-01-EA
(Materials License Amendment and	:	
Materials License Suspension)	:	

WRITTEN DIRECT TESTIMONY AND SWORN AFFIDAVIT OF ROBERT C. MAIERS

COMMONWEALTH OF PENNSYLVANIA)	
)	SS
COUNTY OF DAUPHIN)	

I, Robert C. Maiers, being duly sworn according to law, and appearing before the undersigned deposes and state that the contents of the following Written Direct Testimony and Affidavit of Robert C. Maiers are true and correct to the best of my knowledge, information and belief.

Q. Please state your name and business address.

A. Robert C. Maiers. My business address is the Pennsylvania Department of Environmental Protection, Bureau of Radiation Protection, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

Q. By whom are you employed and in what capacity?

A. I am employed as Chief, Division of Decommissioning and Environmental Surveillance in the Pennsylvania Department of Environmental Protection, Bureau of Radiation

Protection (BRP). My duties include management and oversight of technical staff and consultants involved in radiological decommissioning projects in Pennsylvania and management of staff responsible for environmental monitoring around nuclear facilities. I am also the primary interface between the BRP and the Nuclear Regulatory Commission (NRC) for activities associated with the remediation of complex sites being decommissioned under NRC's authority. One of these complex sites is Safety Light Corporation (SLC). A copy of my professional qualifications is attached to this testimony as Exhibit 1.

Q. Could you briefly describe your education and professional qualifications?

A. I hold an Associate in Engineering degree in Nuclear Engineering Technology and a Bachelor of Science degree in Environmental Engineering Technology, both from Penn State University. I am a Licensed Professional Engineer in Pennsylvania.

Q. Do you have specific experience in regulatory issues that include financial assurance, decommissioning and license renewal?

A. Yes.

Q. How long have you been involved with those issues?

A. Since 1999.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to articulate the position of the Commonwealth of Pennsylvania with regard to Safety Light's materials license in this proceeding and to provide support for that position.

Q. Briefly stated, what is the position of Pennsylvania in regards to the renewal of Safety Light's materials license?

A. Pennsylvania's position, as stated in its hearing request and its comments to the NRC staff dated August 26, 2004, is that Safety Light's license should not be renewed unless two conditions are met. First, that Safety Light fully complies with the financial assurance requirements of 10 CFR §30.35. That is, they should have no exemptions from those requirements and no reduced contributions into the escrow fund as they have requested. And second, that all tritium waste which Safety Light was required to remove under its 1999 license must be properly removed and disposed of prior to a new license being issued.

Q. Has the Safety Light site been a concern to Pennsylvania for some time?

A. Yes.

Q. How long has it been a concern?

A. The Decommissioning Section in the BRP was first created in 1999, largely in anticipation of becoming an NRC Agreement State. As an Agreement State, Pennsylvania will assume regulatory authority over a number of NRC's complex decommissioning sites. A review of all available documentation associated with the NRC decommissioning sites that would transfer to Pennsylvania was performed by BRP in 1999. During this review, the SLC site was identified as the most problematic of the sites reviewed because of the extent of contamination and the lack of funding necessary for remediation.

Q. Is that when Pennsylvania first expressed its concerns to the NRC?

A. Yes. Beginning in 1999, regular conferences between the NRC and DEP have been held to discuss the status and issues that exist for each of the complex decommissioning sites located in Pennsylvania, including SLC. These conferences typically include the BRP Director, NRC management, staff and myself. BRP raised concerns about SLC during many of these meetings. Pennsylvania has also documented concerns related to the last NRC SLC license renewal, accumulation of operational waste, remediation of the site, and the inadequacy of SLC's contributions to their decommissioning trust account.

Q. Describe those documents, please.

A. Pennsylvania expressed concerns when NRC last renewed the SLC licenses in December 1999 (Email from David Allard to George Pangburn, June 22, 2000, attached as Exhibit 2.). These concerns centered on the lack of adequate funding for decommissioning the SLC site, the presence of radioactive waste accumulated by SLC through their operations and stored on the SLC site in areas subject to flooding and in close proximity to residential property, and the potential liabilities facing Pennsylvania upon becoming an Agreement State and assuming all regulatory authority over SLC. On April 20, 2001 Pennsylvania again expressed concerns about the conditions at SLC. Pennsylvania requested by letter that NRC consider taking actions requiring SLC to meet their responsibilities for timely cleanup and decommissioning of this site. The letter also documented Pennsylvania's concerns that SLC's contributions to their decommissioning trust account were inadequate to meet their decommissioning responsibilities.

Q. Are you familiar with the Safety Light site?

A. Yes.

Q. How are you familiar with it?

A. Beginning in 1999, I have participated in at least six thorough site familiarization tours with representatives for the NRC, the Environmental Protection Agency (EPA), the Agency for Toxic Substances and Disease Registry (ATSDR), and the Pennsylvania

Department of Health (PaDOH). In addition to these tours, I have also participated in at least three formal inspections conducted by NRC and DEP of the SLC site. During these and other site visits, either I or members of my staff have taken hundreds of digital photographs of SLC. These photographs have been used to brief government officials and members of the public about the health and safety issues at SLC. I have attached seven of the most relevant photographs to this affidavit as Exhibit 3. These photos are a fair and accurate representation of the areas of the Safety Light site as they appeared when I saw them. I have reviewed site characterization reports for SLC, including the Monserco Report, which was prepared in 1996. The report is recognized as the most comprehensive characterization report for the SLC site and contains pictures depicting conditions that are relevant to this affidavit. I have provided input to the Health Consultation prepared by the ATSDR and PaDOH that was issued August 9, 2000 and the EPA Hazard Ranking Scoring (HRS) determination that was completed January 22, 2003.

Q. Are you familiar with decommissioning cost estimates as they apply to materials licenses?

A. Yes.

Q. Could you briefly describe the function of a decommissioning cost estimate and why they are necessary?

A. A decommissioning cost estimate (DCE) is used as a baseline estimate for a decommissioning project for which funding requirements (i.e. financial assurance mechanisms) are established. A DCE includes costs for all major decommissioning, site control and maintenance activities including (1) planning and preparation, (2) decontamination and/or dismantling of facility components, (3) packaging, shipment and disposal of radioactive wastes, (4) a final radiation survey, (5) restoration of contaminated areas on facility grounds, and (6) site stabilization and long-term surveillance (if necessary). Insuring that there is adequate financial assurance for decommissioning is an important requirement for licensees because the effect of inadequate/untimely funding of decommissioning may have adverse impacts on public health and safety. If a site like SLC is not decommissioned due to insufficient funds there is an increased likelihood of contamination of and/or exposure to members of the public. Failure to provide adequate financial assurance for decommissioning also has equity considerations. The potential public costs involved in the cleanup of contaminated facilities where financial assurance is inadequate, as is the current situation with SLC, must be considered. Equity considerations call for adequate financial assurance so that a licensee's decommissioning costs are borne by the licensee.

Q. Are you familiar with the decommissioning cost estimates for the Safety Light site?

A. Yes.

Q. How did you become familiar with them?

A. I reviewed and am familiar with the Decommissioning Cost Estimates prepared for SLC by GTS Duratek ("Duratek") dated October 2000. I also reviewed and am familiar with the "Review of Safety Light Corporation Decommissioning Cost Estimate, Bloomsburg, Pennsylvania" prepared by ICF Consulting for the NRC dated August 17, 2001, as well as the "Decommissioning Cost Estimate for Safety Light Corporation Bloomsburg, PA" prepared by ICF Consulting for the NRC dated October 29, 2001.

Q. Could you summarize the key aspects of those reports?

A. The DCE prepared by Duratek for SLC that addressed the portions of the site authorized by the 08 License estimated the cost of decommissioning at \$5,621,360 in terms of year 2000 dollars. The "Review of Safety Light Corporation Decommissioning Cost Estimate, Bloomsburg, Pennsylvania" prepared by ICF Consulting for the NRC dated August 17, 2001 identified many underlying assumptions in the Duratek DCE that may not provide a reasonable basis for the DCE. Errors identified in the underlying assumptions made in the Duratek DCE would result in an underestimation of decommissioning costs. Some of these potentially unreasonable assumptions identified by the ICF review are: (a) The DCE assumes that the Nuclear Building--the primary building for SLC's tritium operations-- will remain in place after decommissioning. Given the documented contamination of subsurface soils and groundwater, it may not be feasible for the building to remain in place after decommissioning; (b) The DCE assumes a no-cost scenario for disposition of uncontaminated equipment, and an at-cost disposal for disposition of contaminated equipment. However, the DCE does not include a listing of equipment that is assumed to be contaminated or uncontaminated; (c) The DCE assumes all waste will be suitable for disposal at either Envirocare or Barnwell. The basis for this assumption is not clear, as it has been established that the mixture of radionuclides and hazardous materials present at the site could make disposal of waste problematic; (d) The DCE assumes local technicians and supervisors will be used to staff the project. It is unclear that a sufficient number of local qualified personnel will be available at the time of decommissioning; and, (e) The DCE assumes a favorable disposal rate at Envirocare. It is unclear why this assumption is made and because much of the overall decommissioning cost is driven by disposal costs, changes in the disposal rate can cause significant increases in the overall cost estimate. In addition to these potentially unreasonable assumptions, the Duratek DCE does not include a cost estimate for the near term disposal of the operational waste generated under the 08 license prior to January 1, 2000. License condition 19 of the 08 license required that this waste be disposed of by December 31, 2004.

The DCE prepared by ICF Consulting for the NRC that includes all areas within the SLC facility authorized by both the 02 and 08 licenses estimates costs that range from \$39,646,325 to \$151,979,568 depending on assumptions used.

I should note that our comments on the Duratek DCE in this testimony are limited to those aspects of the estimate that directly relate to Pennsylvania's position on the renewal of the 08 license.

Q. What is Pennsylvania's position on the Duratek estimate for those portions of the site authorized by the 08 license in relation to the amount of financial assurance required to satisfy 10 CFR §30.35?

A. Pennsylvania is willing to accept this DCE, even though the questionable assumptions and errors in the Duratek cost estimate make it likely that the actual decommissioning cost will be greater than \$5,621,360. It provides a reasonable estimate in year 2000 dollars to serve as a basis for initially establishing the amount required of SLC to meet the requirements of 10 CFR §30.35. However, 10 CFR §30.35(e) stipulates that decommissioning cost estimates be updated at intervals not to exceed three years. Based on the date of the Duratek DCE for the 08 license (October 2000), a revised decommissioning cost estimate for the 08 license is now overdue. In order to be in compliance with the regulations, a revised DCE should be prepared by SLC with their financial assurance requirement updated accordingly. Pennsylvania is willing to allow SLC up to six months to update their DCE and financial assurance provided Pennsylvania's other positions are satisfied, including the need to promptly dispose of the operational tritium wastes generated under the 08 license prior to license renewal.

Q. Are you aware of any estimates Safety Light has made in regards to the tritium waste?

A. Yes.

Q. What are they?

A. The only documented cost estimate I am aware of is that made by the plant manager of SLC, Larry Harmon, in a May 9, 2000 NRC Inspection Report (030-05982/00-01, 030-08335/00-001, and 030-08444/00-001). In this report Mr. Harmon provided a cost estimate of \$750,000 for the disposal of operational waste generated under the 08 license. In this report, Mr. Harmon also stated SLC would not be able to have the funds necessary to meet the license condition that requires this waste to be disposed of by December 31, 2004. This waste is currently stored in a waste storage building that was previously impacted by flooding as a result of Hurricane Agnes in 1972.

Q. Assuming that Safety Light's proposal in their license renewal application were adopted, what would be the consequences for decommissioning funding at the site and for the disposal of SLC's tritium waste?

A. Using the outdated DCE developed for SLC, SLC's proposed contribution rate of \$5000/month will require greater than 90 years to accumulate the funds necessary to decommission just that portion of the site authorized by the 08 License. If SLC's proposed contribution rate was instead directed to funding the disposal of the tritium waste generated under the 08 license, it will take greater than 12 years based on the

licensee's estimate for disposal cost. Given SLC's recent history of financial difficulties, it is our opinion that this company will fail before any meaningful funding can accumulate as a result of their proposed contribution rate.

Q. Are you aware of any failures of Safety Light that would indicate to you that they are not a viable business?

A. They failed to meet their license condition requiring them to remove and dispose of their waste in a timely manner. Also, they have failed to pay invoices from our Department associated with their Pennsylvania radium license. Finally, they failed to make the required payments into their decommissioning trust fund, citing poor business conditions. This is currently the subject of an enforcement action by NRC staff.

Q. Are you aware of the Department's position with respect to what is referred to as the 02 license?

A. Yes.

Q. What is that position?

A. That the Department is not involved in the hearing insofar as that license renewal is concerned.

Q. Would it be fair to say, however, that the Department has an interest in how the waste associated with that license is handled?

A. Yes, absolutely.

Q. As you understand it, what is the current status of the plans to handle that waste?

A. On January 21, 2003 the EPA issued a revised Administrative Order by Consent (AOC) to SLC regarding radioactive waste previously removed from underground silos and stored onsite. EPA determined that the presence of this waste represents an imminent and substantial endangerment to the public welfare or to the environment. This waste is regulated under NRC License #37-00030-02 (02). EPA is in the process of removing this waste under a Comprehensive Environmental Response Compensation and Liability Act (CERCLA) emergency removal action. Later, on January 2, 2003 EPA completed a Hazard Ranking System (HRS) report for SLC at the request of NRC and Pennsylvania. The HRS process resulted in a score of 70.7 for the SLC site. A HRS score of at least 28.5 is necessary for EPA to consider adding a site to the National Priorities List (NPL). As a result of that HRS work, EPA proposed the SLC site for addition to the NPL in the Federal Register on September 23, 2004, and received no negative comments. We expect the SLC site to be listed on the EPA's NPL in 2005.

Q. As a result of the proposed EPA activities on the site, both the removal and the remediation, does the Department have a view as to what might be appropriate action

for the 02 license, assuming that the NRC staff's denial of that license renewal is not upheld?

A. Yes. As a result of ongoing EPA actions that address site conditions primarily related to the 02 license, Pennsylvania would not object to placing the 02 license in abeyance until such time that EPA determines no further action at the SLC site is required under their regulatory authority. A similar action is planned by the NRC for another site in Pennsylvania (BWXT Shallow Land Disposal Area, NRC License #SNM-2001) that is being remediated under the Formerly Utilized Site Remedial Action Plan (FUSRAP) by the United States Army Corp of Engineers (USACE).

A. Thank you.

I hereby certify under penalty of perjury that the foregoing and the attached statement of professional qualifications are true and correct to the best of my knowledge, information and belief.

Robert C. Maier

Robert C. Maier, PE

Dated: February 16, 2005

Sworn to and subscribed before me

this 16th day of February, ²⁰⁰⁵~~199~~.

Deborah M. Wierzbic
Notary Public

NOTARIAL SEAL
DEBORAH M. WIERZBIC, Notary Public
Harrisburg, Dauphin County
My Commission Expires Sept. 5, 2005

Robert C. Maiers, PE

EDUCATION:

Associate in Engineering, Nuclear Engineering Technology, Pennsylvania State University, 1980

Bachelor of Science, Environmental Engineering Technology, Pennsylvania State University, 1992

EXPERIENCE:

PA Dept. of Environmental Protection, Bureau of Radiation Protection, 2001-present

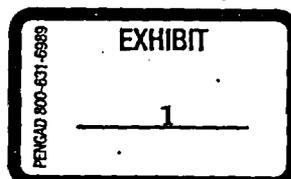
As Chief of the Division of Decommissioning and Environmental Surveillance, he manages and oversees statewide programs responsible for decommissioning nuclear facilities and environmental monitoring for operating nuclear facilities. He is the primary interface between the Department of Environmental Protection (DEP) and the Nuclear Regulatory Commission (NRC) for all decommissioning projects currently being remediated in Pennsylvania under NRC's authority. His responsibilities within the Bureau of Radiation Protection (BRP) include emergency response for radiological accidents. He is the designated alternate Incident Manager in the BRP emergency plan for nuclear power plant accidents. He has served the role of Incident Manager in graded Federal Emergency Management Agency (FEMA) exercises involving Pennsylvania nuclear power plants.

PA Dept. of Environmental Protection, Bureau of Radiation Protection, 1999-2001

As Decommissioning Section Chief, he established the first Decommissioning Section in the Bureau of Radiation Protection. This involved hiring new staff and consultants and establishing training criteria, inspection procedures, and the establishment of regulations and policies regarding decommissioning. He coordinates meetings with the NRC and other agencies regarding decommissioning issues in Pennsylvania. He is responsible for scheduling activities and exchanges of documents regarding decommissioning to ensure compliance with the Memorandum of Understanding (MOU) between the NRC and DEP dated July 15, 1996. This MOU provides the basis for cooperation between the two agencies to facilitate the safe and timely remediation and decommissioning of sites in Pennsylvania at which both agencies exercise regulatory authority.

PA Dept. of Environmental Protection, Bureau of Radiation Protection, 1998-1999

As Acting Low-level Radioactive Waste Section Chief, he supervised staff and managed a \$30 million contract for siting, constructing, operation, and closure of a low-level radioactive waste disposal facility to be located in Pennsylvania. He managed activities associated with a state wide Community Action Plan that was designed for



soliciting a community that would be willing to host a low-level radioactive waste disposal facility in Pennsylvania.

PA Dept. of Environmental Protection, Bureau of Radiation Protection, 1992-1998

As a nuclear engineer in the Division of Nuclear Safety, he performed nuclear safety oversight for nuclear power plants in Pennsylvania. He was responsible for the review and evaluation of licensee technical specification requests, review of and evaluation of plant operating reports, licensee event reports and NRC inspection reports. He performed plant safety inspections on a regular basis and documented the results in monthly reports.

Pennsylvania Power and Light, Nuclear Plant Engineering, 1982-1992

As a Staff Analyst in the Nuclear Plant Engineering Instrumentation and Controls Section, he was responsible for the design and use of instrument control valves used throughout the Susquehanna Steam Electric Station. He was responsible for environmental and seismic qualification testing performed on solenoid valves used in safety related systems. He had engineering responsibilities for the meteorological monitoring and seismic monitoring systems for the Susquehanna plant. Prior to his promotion to Staff Analyst, he worked in the Nuclear Operations Department as a nuclear plant operator. He was involved in the preoperational testing for Emergency Core Cooling Systems and Reactor Control Systems for Susquehanna Unit 1.

Duquesne Power and Light, Shippingport Atomic Power Station, 1980-1982

He was a nuclear plant operator/reactor operator for the Shippingport Atomic Power Station. He obtained a DOE security clearance and received classified training regarding the design and operation of a light water breeder reactor.

Professional Certification

Professional Engineer, PE-047960E

Maiers, Robert

From: Allard, David
Sent: Thursday, June 22, 2000 7:57 PM
To: Maiers, Robert
Subject: FW: Safety Light Corporation

Bob,

FYI. Spoke to George today and he asked I send this informally via e-mail. Lets get thru the meeting next week, see what comes back, and turn the heat up in July with formal letters if they don't take action. Also, FYI. I bcc'd Chamberlain, Denise; Hughes, Marjorie; Barton, Marylou; Kopenhaver, James; Crowley, Thomas.

Dave

-----Original Message-----

From: Allard, David
Sent: Thursday, June 22, 2000 7:49 PM
To: 'gcp@nrc.gov'
Cc: 'rb1@nrc.gov'; Maiers, Robert
Subject: Safety Light Corporation

To: George Pangburn (NRC Region I)

cc: Ron Bellamy (NRC), Bob Maiers (DEP/BRP)

Re: Safety Light Corp.

Dear George:

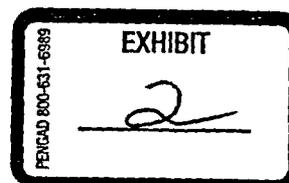
The Bureau of Radiation Protection (BRP) recently became aware of and reviewed SECY-99-269 and the associated Commission Voting Record, and would like to document our comments and concerns related to this document and the renewal of the Safety Light Corporation Licenses at Bloomsburg, Pennsylvania.

First, it is our position that the details of this document should have been fully discussed with the Pennsylvania Department of Environmental Protection (PaDEP) prior to renewal of the Safety Light licenses. In this case we feel the terms of the Memorandum of Understanding (MOU) between the United States Nuclear Regulatory Commission (USNRC) and the PaDEP (61 FR 46832), Section 12.A would apply. In fact, Commissioner Merrifield's comments on SECY-99-269 included the statement "Prior to finalizing any renewal with SLC, however, the staff should contact the appropriate offices at both the Environmental Protection Agency and the State of Pennsylvania to ensure their views on this matter are fully considered." To my knowledge, there was no attempt by NRC staff to detail their long-term approach regarding this licensee, and solicit our staff's detailed views on this matter. We were merely notified that NRC staff was recommending renewal of the Safety Light licenses.

Also, under Section 10.A.i. of the MOU it is stated "Within two weeks of receipt, the following information will be forwarded from one agency to another: plans and reports relating to site assessment / characterization; remediation or decommissioning; and all available related analytical data generated through site remediation or decommissioning." Thus far, we continue to have problems with both NRC Region I and HQs in obtaining documents unless we specifically request them, after learning of their existence. There still appears to be some confusion among some NRC staff about fulfilling this requirement of the MOU.

Our concern with the renewal of the Safety Light Corporation licenses for a period of five years centers on Pennsylvania's plan on becoming an NRC Agreement State and assuming regulatory authority over this site within the five year time period. Under the terms of the current license, there will be an approximate \$10 million shortfall between the amount needed for decommissioning and the amount accrued in the decommissioning fund at the end of the five year license renewal period. At the end of this renewal period, Pennsylvania will likely be faced with either continuing NRC's practice of exempting the requirements of 10 CFR 30.35 or with denial of the license renewals and the likelihood of assuming control of the site and the financial liability for remediation. Given the location of this site is in a flood plain and in the middle of a residential area, I am also very concerned about any suggestions that this site might be suitable for license

1.



termination under restricted release scenarios.

Given the history of this licensee and the tactics that have been used to delay and avoid financial responsibility for site cleanup, it is possible that Safety Light will eventually turn to bankruptcy to avoid their liability. The longer Safety Light is allowed to operate without any actions being taken against potentially responsible parties (PRPs), the more difficult it will become to make a recovery. It is our desire that the NRC require all containerized accumulated radioactive and / or mixed waste be sampled, stabilized and shipped for disposal in a timely manner. We would also like to know if soil samples were taken during the recent removals of the silos. Additionally, the NRC should pursue the possibility of cost recovery actions against potential PRPs aggressively during the period of the current license renewal. This will allow PaDEP to make a more informed decision when it comes time for the next license renewal.

Lastly, it is our understanding that NRC staff is preparing an analysis that includes consideration of seeking additional funds for remediation from the USR companies. We would like to be provided with this analysis as soon as it becomes available. As I mentioned today, we would like to schedule a meeting with the NRC in late July that includes PaDEP, the Environmental Protection Agency (EPA), the Agency for Toxic Substances and Disease Registry (ATSDR), and the Pennsylvania Health Department (PDH). The purpose of this meeting will be for all regulators to share information about the site and all affiliated companies, and to consider the options available to ensure remediation of the site takes place in a reasonable time frame.

Your prompt evaluation and response to the concerns noted above would be greatly appreciated.

Sincerely,

Dave Allard

.....
David J. Allard, CHP
Director, Bureau of Radiation Protection
PA Department of Environmental Protection
P.O. Box 8469
Harrisburg, PA 17105-8469

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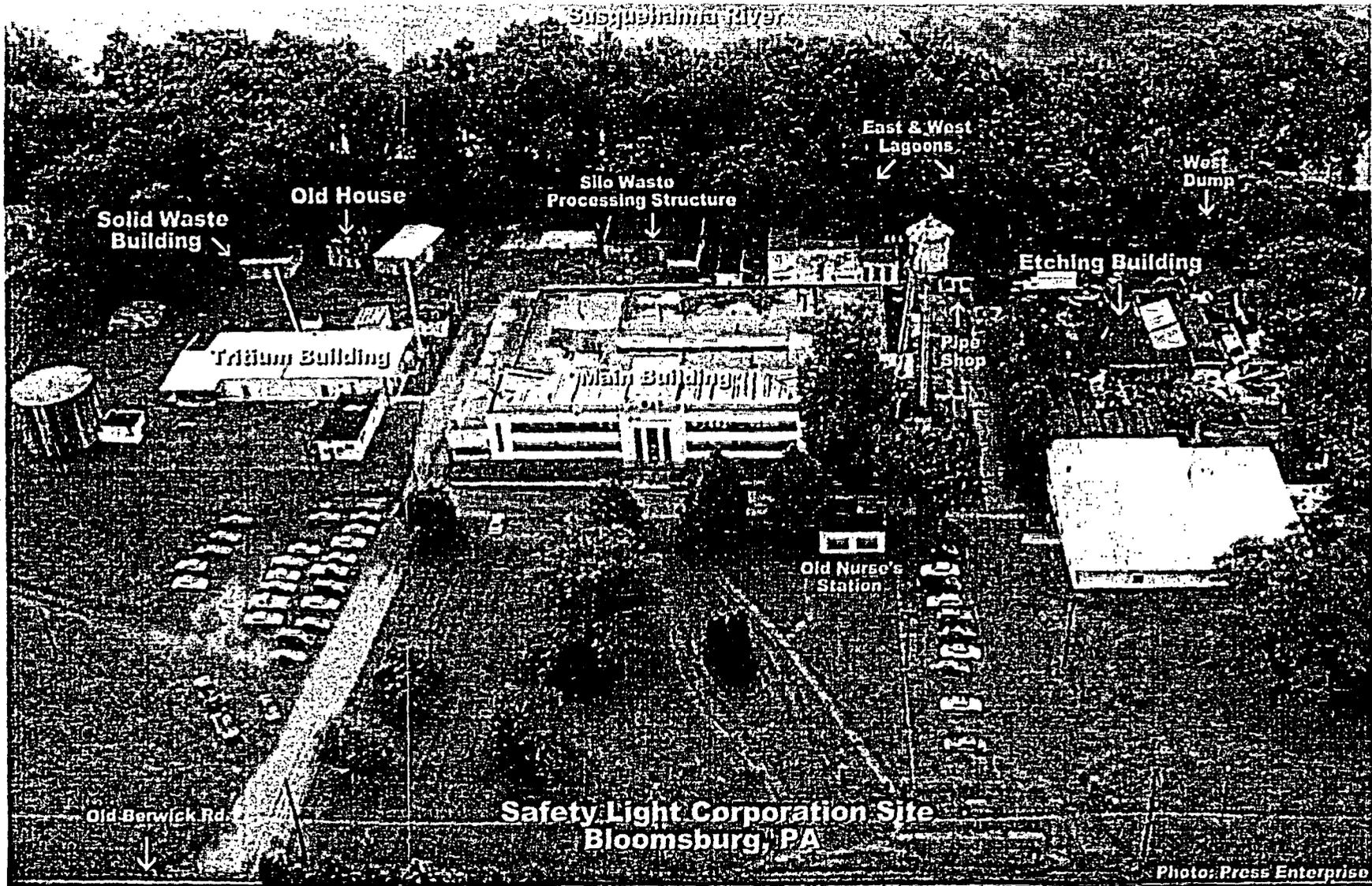
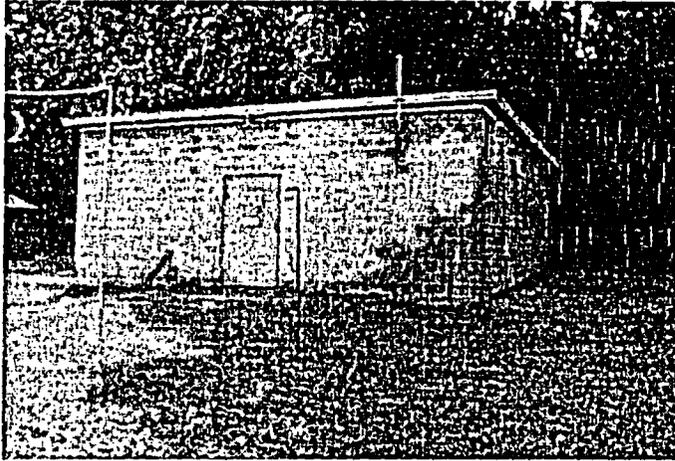


Photo #1: Aerial View of the Safety Light Site
Source: Photo- Bloomsburg Press Enterprise
Labels- PADEP

800-631-6989
EXHIBIT
3



Solid Waste Building:
North Wall

Photo #2: Solid Waste Building (Source: Monserco Report)



Solid Waste Building:
Lab waste on east wall.

Photo #3: Stockpiled Tritium Waste in Solid Waste Building (Source: Monserco Report)

Solid Waste Building:

Small source pails on west wall, compactor on north wall.

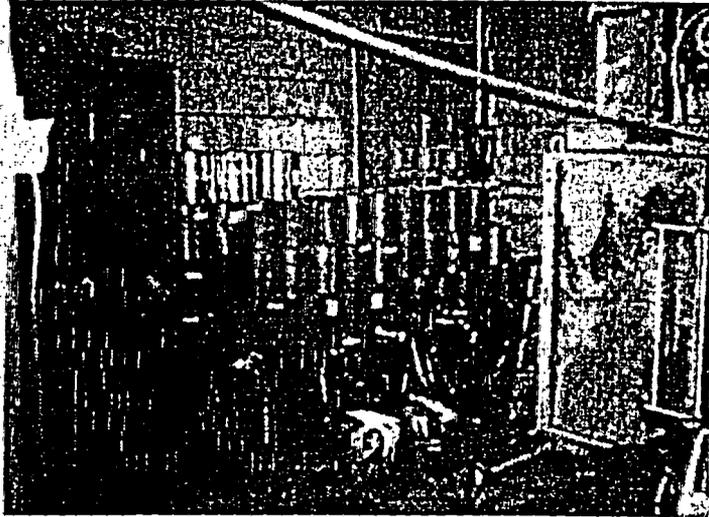
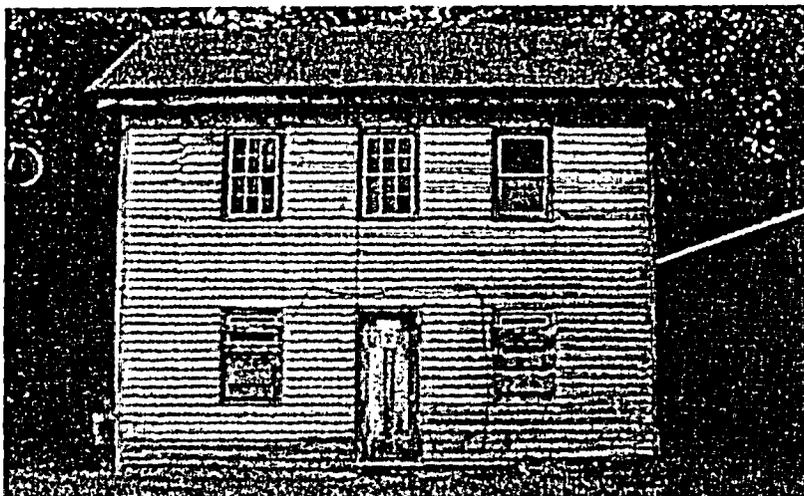


Photo #4: Stockpiled Tritium Waste in Solid Waste Building (Source: Monserco Report)



Photo #5: H-3 (tritium) Screening Room in the Acid Etching Building (Source: PADEP photo)



Old House:
Looking at north side

Photo #6: Tritium Contaminated "Old House" 1995 (Source: Monserco Report)

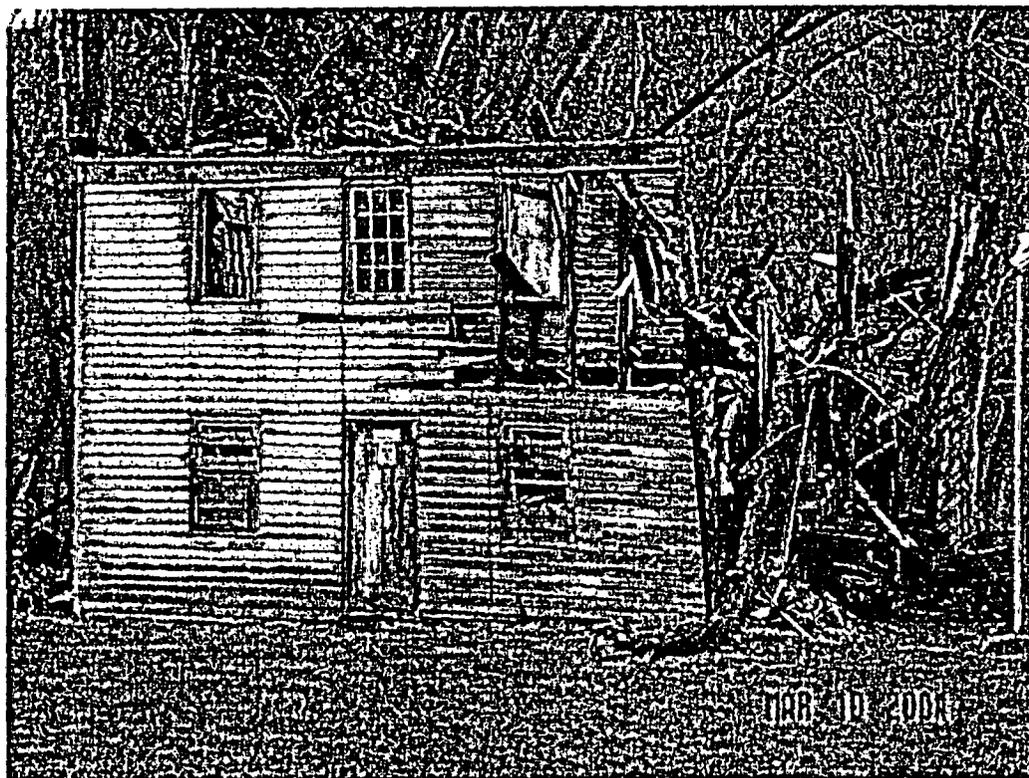


Photo #7: "Old House" after 1998 Fire and 2003 Hurricane *Isabel* Damage
(Source: PADEP photo)

**UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD**

Before Administrative Judges:

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

In the Matter of	:	
	:	Docket Nos. 30-5980-EA, 30-5982-EA,
	:	30-5980-MLA, 30-5982-MLA
SAFETY LIGHT CORPORATION	:	
Bloomsburg, Pennsylvania Site	:	ASLBP No. 04-833-07-MLA and
	:	05-835-01-EA
(Materials License Amendment and	:	
Materials License Suspension)	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 16th day of February, 2005, a true and correct copy of the foregoing "Commonwealth of Pennsylvania, Department of Environmental Protection's Initial Written Statement of Position" was transmitted electronically to the Office of the Secretary, Rulemakings and Adjudications Staff and U.S. mail to the following:

Administrative Judge Alan S. Rosenthal
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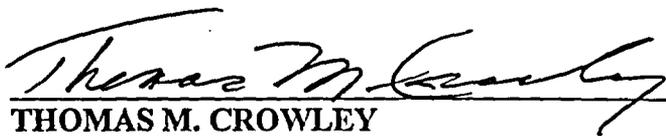
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Respectfully Submitted,

FOR THE COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION



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Dated: February 16, 2005