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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

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 (Consolidated) February 18, 2005

ORDER
(Directing Staff To Assess Factual Issues Implicating National Defense)

In these consolidated proceedings, Safety Light Corporation -- the holder of two materials licenses -- challenges (1) the Staff's decision of December 10, 2004 denying Safety Light's request to renew its two licenses, and (2) the Staff's Order of December 10, 2004 that suspended, effective immediately, Safety Light's licenses.

For the reasons discussed below, we direct the Staff to provide an assessment -- in its written response due on March 2, 2005 -- of the accuracy of the factual assertions by Department of Defense contractors that: (1) Safety Light is the sole provider of critical components installed on numerous Government radar systems used by our military forces and FAA; (2) it would take several years to develop an alternate supplier for these components; and (3) if Safety Light is unable to continue manufacturing these components, our military will soon suffer shortages, thus jeopardizing our national defense and homeland security. Additionally, assuming arguendo that national defense and security concerns are appropriate factors to consider when evaluating the appropriateness of enforcement measures and when evaluating a licensee's exemption request, we direct the Staff to address how those factors apply here in light of the above factual assessments.

1. On January 18, 2005, Safety Light forwarded to the Staff and to this Board a letter from the President of Communications and Power Industries (CPI), which manufactures receiver protection devices for radar systems. See Letter from Don Coleman to Frank Costello (Jan. 11, 2005). In this letter, CPI explains that its "receiver protectors are installed in most Airborne, Shipboard, and Ground Based radar systems critical for our national defense. . . . includ[ing] the Navy's Aegis SPY-1 radar system, AWACS, Patriot, MK-92 and Phalanx. Other platforms include F-16, B-52, C-130, and B-2, as well as the FAA's Search Radars." Id. at 1. CPI states that it produces "over 350 replacement receiver protectors per month for the maintenance and repair of actively used Radar Systems," and that a "critical and necessary" component of its products is a tritium source it purchases from Safety Light. Ibid. According to CPI, Safety Light is the sole source for obtaining tritium foils, and CPI estimates it would require a "5 year supply [of foils] to make a reasonable transition to a new process or technology." Id. at 2. CPI states that *"[i]f we cannot manufacture receiver protectors because of lack of supply of tritium foils produced by Safety Light, our military will have critical shortages in only a few months. I'm sure you can understand the implications this may have for our military and homeland security."* Id. at 1 (emphasis added).

On January 26, 2005, Safety Light forwarded to the Staff and to this Board a letter from a Vice President of Northrop Grumman Corporation advising that Safety Light is "a sole source supplier for a highly specialized process known as 'tritiation of radioactive rods,'" which is utilized to produce critical components for all tracking and fire control radars, including radar on the following Department of Defense platforms: F16 Fighter Bomber, F22 Tactical Bomber, B1B Long Range Bomber, E3A AWACS Airborne Radar Station, TESAR Predator Unmanned Aircraft, and TPS63 Mobile Surveillance Radar. See Letter from Katie Gray to Nils J. Diaz at 1 (Jan. 25, 2005). Northrop Grumman indicates that these, and other, vital Government radar systems will be placed in jeopardy if Safety Light's license is not renewed, because Safety Light *"is the only location in the*

United States that is able to provide the required tritiation process. It is estimated that the development of alternative suppliers would take several years." Ibid. (emphasis added).

2. The above letters were provided to the Staff and the Board *after* the Staff had denied Safety Light's license-renewal request and *after* the Staff had issued the order suspending Safety Light's licenses. The Staff thus could not, and did not, consider these letters before it rendered its decisions.

This Board, in a prehearing telephone conference on January 25, 2005, asked the parties to address in their initial written submissions the impact of these letters on this proceeding. In particular, the Board asked the parties' views on whether national defense and security concerns are permissible factors to consider when evaluating the appropriateness of enforcement measures. See Tr. at 98-99. And although the Board did not expressly so state, it also wished to know whether national defense and security concerns are appropriate factors to consider when evaluating a licensee's exemption request.

3. Not surprisingly, in its submission, Safety Light argues that the Staff must consider the public interest when it crafts an enforcement measure and when it considers an exemption request. Issues relating to national defense and homeland security, states Safety Light, clearly are matters of public interest that must be considered in this proceeding. See Written Presentation of Safety Light Corporation at 32-33, 45 (Feb. 16, 2005).

4. In its submission, the Staff acknowledges that, in making enforcement decisions, it is responsible for "protecting the public health and safety, the common defense and security, and the environment"; however, it argues that enforcement measures are "a matter of the Staff's discretion, and the Staff is not obligated to consider the . . . impact on national security in its decision-making process." See NRC Staff Position And Presentation On Materials License Renewal And Materials License Suspension at 22, 23 (Feb. 16, 2005). Moreover, the Staff broadly

asserts that this Board "[lacks] jurisdiction to consider the impact on national security in reviewing the Staff's decision to issue the suspension order." Id. at 22.

5. We find the Staff's position puzzling. How can the Staff, on the one hand, acknowledge its responsibility for protecting the common defense and security during the enforcement process, yet, on the other hand, disavow any obligation to consider such concerns during the enforcement process? The latter approach -- that is, construing the Atomic Energy Act (AEA) in a manner that forecloses the Staff from considering national defense and homeland security in enforcement proceedings -- would permit the NRC to impose sanctions even where those sanctions will jeopardize service members' lives, threaten the military's mission, and impair our Nation's security. Such an approach, which seemingly would convert the AEA into a suicide pact, would be startling.[1]

However, resolution of this legal issue can wait until after the hearing, when it has been further developed and argued by the parties. For present purposes, and in furtherance of our responsibility to facilitate the compilation of an adequate record for decision, we believe it would be prudent to have the Staff's views on certain factual issues relating to the assertions made in the contractors' letters. We therefore direct the Staff to provide an assessment -- in its written response due on March 2, 2005 -- of the accuracy of the contractors' factual assertions that: (1) Safety Light is the sole provider of critical components installed on numerous radar systems used by the Department of Defense and FAA; (2) it would take several years to develop an alternate

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[1] In its written presentation, the Staff did not express a view on whether -- in denying Safety Light's request for an exemption from 10 C.F.R. § 30.35 and, thus, in denying Safety Light's license-renewal request -- it was obliged to consider how the denial would affect national defense and homeland security. We note, however, that the regulation governing the granting of exemptions expressly states that a factor to be considered is whether an exemption is "in the public interest" (10 C.F.R. § 30.11(a)). At first blush, it would appear that providing our service members with equipment that is vital to the effective accomplishment of the military mission is in the public interest and, accordingly, is a factor that must be considered in determining whether an exemption is warranted. But the Staff apparently declined to consider this factor.

supplier for these components; and (3) if Safety Light is unable to continue manufacturing these components, our military will soon suffer shortages, thus jeopardizing our national defense and homeland security. Additionally, assuming arguendo that national defense and security concerns are appropriate factors to consider when evaluating the appropriateness of enforcement measures and when evaluating a licensee's exemption request, we direct the Staff to address how those factors apply here in light of the above factual assessments.

IT IS SO ORDERED.[2]

FOR THE ATOMIC SAFETY
AND LICENSING BOARD[3]

/RA/

E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 18, 2005

[2] To avoid any confusion, we adamantly agree with the Staff's statement that a licensee's significant contributions to national defense do not excuse it from complying with Commission requirements. See Staff Presentation at 22 n.12. We likewise agree that the Staff's "'common defense and security' responsibilities do not translate into kid glove treatment for NRC licensees who supply national defense contractors, particularly at the expense of the NRC concerns about public health and safety." See id. at 24. Of course, a licensee cannot be permitted to continue to conduct licensed activity if the NRC concludes such activity poses a threat to public health and safety. That is not to say, however, that the NRC, in performing its statutory duties, is foreclosed from considering how its actions may affect the Nation's ability to equip its service members and accomplish its military mission.

[3] 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

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SAFETY LIGHT CORPORATION	)	Docket Nos. 30-5980/5982-MLA and
Bloomsburg, Pennsylvania Site	)	30-5980/5982-EA
	)	
(Materials License Amendment and	)	
(Materials License Suspension)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (DIRECTING STAFF TO ASSESS FACTUAL ISSUES IMPLICATING NATIONAL DEFENSE) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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30-5980/5982-EA
LB ORDER (DIRECTING STAFF TO ASSESS FACTUAL ISSUES IMPLICATING NATIONAL DEFENSE)

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[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 18th day of February 2005