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NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD**

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ADJUDICATIONS STAFF

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. 030-05980-EA

030-05982-EA

030-05980-MLA

030-05982-MLA

ASLBP Nos. 05-835-01-EA

05-833-07-MLA

February 16, 2005

**WRITTEN PRESENTATION
OF
SAFETY LIGHT CORPORATION**

Alvin H. Gutterman
Susan H. Lin
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Phone 202.739.5468
Fax 202.739.3001

Counsel for
Safety Light Corporation

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WRITTEN PRESENTATION OF SAFETY LIGHT CORPORATION

I. INTRODUCTION

In accordance with the schedule established by the Atomic Safety and Licensing Board's Order dated January 27, 2005, Safety Light Corporation (SLC or the Company) hereby submits its written presentation relating to the Nuclear Regulatory Commission (NRC) Staff's Order suspending two of SLC's byproduct material licenses, the Staff's denial of SLC's request to renew its licenses, and the Pennsylvania Department of Environmental Protection (PADEP) contention relating to decommissioning financial assurance. As required by 10 CFR § 2.1207, this filing is a written presentation consisting of this argument as well as attachments with supporting facts and documentary data in the form of sworn written testimony and exhibits. The evidence demonstrates that (1) the SLC licenses should not be suspended; (2) the NRC should

renew the licenses; and (3) the NRC should exempt SLC from the regulations pertaining to financial assurance for decommissioning. Accordingly, the Staff order suspending the licenses and its denial of the license renewals should be overturned, and PADEP's contention should be dismissed.

The Staff actions and PADEP's contention stem from a common set of facts that are set forth more fully below but can be briefly summarized here as follows. In 1999, the NRC renewed SLC's licenses and exempted SLC from the NRC decommissioning funding regulations, conditioning these actions on SLC making monthly payments into a decommissioning trust fund (also called the "escrow account"). In some months during the term of the renewed licenses, SLC did not make the required payments. In other months, when its payments were in arrears, SLC made greater payments than required for the respective month. In November 2003, after finding that the escrow balance was insufficient to pay for the disposal of certain radioactive waste, SLC pointed out to the NRC that it was behind in its trust fund payments. The NRC responded by conducting an investigation, issuing a demand for information, conducting a predecisional enforcement conference, and ultimately issuing the Suspension Order and denial of license renewal at issue in this consolidated proceeding.

In its response to each of the Staff actions, SLC acknowledged its obligation to make the payments and explained that the reason it did not meet the payment schedule was a slowdown in its business activity that made it impossible for the Company to stay current with its obligation. Although the Company knew the escrow payments were required, during certain periods, after paying for the goods and services essential to its ability to continue production, there was no money left to deposit into the escrow account.

The Staff's investigation reviewed SLC's financial records and interrogated SLC's managers, and did not identify any questions regarding the sincerity or accuracy of SLC's explanation. Thus, there is no dispute regarding the basic facts. Nevertheless, the Staff's investigation concluded that because SLC knew the license requirements and that it was not making some payments on the required schedule, it committed a deliberate violation of the license conditions. The Staff's Suspension Order at issue here is based on this finding of a deliberate or willful violation and on the Staff's determination that the violation is significant to the public health and safety.

The Staff's denial of license renewal is based both on its conclusion that SLC failed to make escrow payments in accordance with the license conditions and on its conclusion that it does not have the requisite assurance of SLC's ability to comply with those requirements in the future. The Staff cites these conclusions as the basis for being "unable to make the requisite findings to grant an exemption."¹ Because SLC cannot comply with the decommissioning funding regulations and because the Staff concluded that it would not grant an exemption, the Staff denied renewal of the licenses.

PADEP contends that SLC should not receive any further exemption from the decommissioning funding requirements because the level of decommissioning funding proposed by SLC, or even at the level provided under the license conditions imposed in 1999, is not adequate to meet the cost of decommissioning. Based on this, PADEP maintains that a further exemption would be contrary to the public interest.

¹ Letter from Jack R. Strosnider, Office of Nuclear Material Safety and Safeguards Director, to C. Richter White, Safety Light Corporation President (Dec. 10, 2004) at 1 [hereinafter Denial Letter].

SLC maintains, and this presentation demonstrates, that it did not deliberately violate the license conditions, and that even if the Board finds that the undisputed circumstances do legally constitute a "willful violation," the nature of that violation does not evidence a want of character or integrity. The Company also maintains that the alleged violation did not cause a significant risk to the public health and safety. When all of the circumstances are considered, proper application of the NRC's Enforcement Policy would not result in a suspension order. Indeed, the circumstances show that suspension of SLC's licenses does not protect the public health and safety.

Contrary to the Staff and PADEP positions, SLC should be granted an exemption from the decommissioning funding regulations. SLC's inability to meet the decommissioning funding regulations is caused by the high cost of disposal of legacy wastes and remediation of contamination due to past operations, much of it involving radioisotopes that have not been used by SLC in several decades. Continued operation does not increase the cost of decommissioning, and while SLC's payments into the escrow account may never be adequate to pay for remediation of the contamination remaining from past operations, they are a positive contribution toward remediation of the site. Denial of the exemption and license renewal does not provide any funds for site remediation or further the common objective of protecting the public health and safety. While SLC is operating the Bloomsburg facility, it provides the necessary services and equipment to control the site and to prevent exposure of the public to the stored wastes and contamination. Denial of license renewal also denies SLC the income necessary for it to continue to fulfill this role. If SLC is unable to fulfill this role, the responsibility will fall on the government. For these and other reasons described below, the

Board should overturn the Suspension Order and direct the Staff to exempt SLC from the decommissioning funding regulations and renew the SLC licenses.

In Section II below, SLC summarizes the relevant history of its licensed activities at the Bloomsburg site and the procedural history of the instant proceeding. SLC sets forth the facts and legal analyses supporting its arguments with respect to the license suspension and renewal-denial portions of the proceeding in Sections III and IV, respectively.

II. BACKGROUND

SLC is the holder of two byproduct material licenses issued by the NRC pursuant to 10 CFR Part 30 for the facility at 4150-A Old Berwick Road near Bloomsburg, Pennsylvania. License No. 37-00030-02 (02 License) authorizes SLC to characterize and decommission its contaminated facilities, equipment, and land. License No. 37-00030-08 (08 License) authorizes the Company, among other things, to manufacture self-luminous safety signs and foils using tritium.

A. Site History

1. Historical Activities

As described by the NRC Staff in a memorandum to the Commission in 1999,² work with radioactive materials at the site began in 1948 when SLC, then known as United States Radium Corporation, relocated operations from Brooklyn, New York, to the Bloomsburg site. The Company's operations over the subsequent two decades involved the production of a variety of products for government and public use using radium-226, polonium-210, cesium-137,

² Memorandum from William D. Travers, Executive Director for Operations, to NRC Commissioners, regarding Renewal of the Safety Light Corporation Licenses At Bloomsburg, Pennsylvania, SECY-99-269 (Nov. 17, 1999), [hereinafter SECY-99-269]. This entire discussion of the historical activities is based on Attachment 1 of SECY-99-269.

strontium-90, tritium, krypton-85, and nickel-63. The Company disposed of the solid radioactive waste generated by its manufacturing and research activities in underground silos.

Since 1969, production at the site has not involved any radionuclides except tritium. In 1969, the Company's Atomic Energy Commission (AEC) license, the 02 License, was amended to cover contamination of the site from previous operations in anticipation of eventual site decommissioning and unrestricted release. During that same year, the AEC issued the 08 License for work at the site involving tritium. The Company erected a separate building at the site to house the tritium-related production operations.

2. Current Activities³

Today, the Company continues to manufacture products using tritium under its 08 License. SLC's business centers on the production of self-luminous safety signs. The light sources in the signs manufactured by SLC are received at the Bloomsburg facility as sealed tritium-filled tubes. Thus, the Company's production of self-luminous signs involves neither the handling of unsealed tritium nor the generation of a significant amount of radioactive waste. The principal source of waste associated with the safety lights results from the return of expired signs, which are shipped for disposal with the light sources intact.

The signs produced by SLC are marketed and distributed worldwide to meet building code requirements for illuminated exit signs and emergency lights in buildings and aircraft.

SLC also produces tritiated foils, rods, and targets that are used in various applications that require an ionized field. In this operation, SLC impregnates various materials with tritium. This activity is a primary source of the limited amount of radioactive waste generated by SLC's current activities.

³ This description of SLC's current activities is based on the Affidavit of William E. Lynch, Jr. (Feb. 16, 2005) ¶¶ 1, 4, 6, 7, 8 [hereinafter Lynch Aff.]

Among the customers for foils produced by SLC are Northrop Grumman Corporation and Communications & Power Industries (CPI), both of which utilize the foil in the production of receiver protectors that are critical components of radar systems they supply to the U.S. government for essential military and civilian applications.⁴ Northrop Grumman and CPI both state that SLC is the only U.S. manufacturer of these foils and that it would take several years to develop alternatives to SLC's foils. Both companies indicate that the loss of SLC as a source for these foils and rods will result in critical shortages within a few months that will impact our national security.

Thus, the Company's current activities generate only a small amount of radioactive waste, primarily in the production of tritiated foils and rods. While this activity represents a very small percentage of SLC's business income, and the Company could not survive solely based on this activity, it is of critical importance to the national defense and air-traffic safety.

B. Previous License-Renewal Proceedings

1. 1992 License-Renewal Denials and Settlement Agreement⁵

The Company applied for renewal of the 02 and 08 Licenses in the mid-1980s. During the Staff's review of the renewal applications, the NRC amended its regulations in 1990 to require decommissioning financial assurance as set forth in 10 CFR § 30.35.

In 1991, SLC submitted several letters to the NRC describing its attempts to secure financial assurance as required by 10 CFR § 30.35. In its letters, the Company asked the NRC to consider its coverage and claims under several insurance policies or, in the alternative, to grant an exemption from the requirements of 10 CFR 30.35. The NRC Staff determined that the

⁴ *Id.* ¶ 7; Lynch Aff., Attachment 1, Letter from Don Coleman, CPI President, to Frank Costello, NRC Region I (Jan. 11, 2005) at 1 [hereinafter CPI Letter]; Lynch Aff., Attachment 2, Letter from Katie Gray, Northrop Grumman Vice President, to Nils J. Diaz, NRC Chairman (Jan. 25, 2005) at 1 [hereinafter Northrop Grumman Letter].

insurance policies did not satisfy the financial assurance requirements, denied the Company's request for an exemption, and issued a Demand for Information (DFI) concerning when the Company would be in compliance with 10 CFR § 30.35.

Based on the Company's inability to meet the new requirements, the Staff denied the Company's renewal applications, and the Company requested a hearing. The hearing was resolved by a settlement agreement, pursuant to which the Staff granted the Company an exemption from the financial assurance requirements and renewed the 02 and 08 licenses for a five-year period beginning on January 3, 1995. Among other things, the agreement required SLC to set aside funds into a trust account for decommissioning, pursue insurance claims to obtain additional decommissioning funding, and perform a site characterization.

Pursuant to the settlement agreement, SLC also completed a site characterization study in 1995, and in 1998 it submitted a site Decontamination and Decommissioning Plan (D&D Plan) to the NRC. The D&D Plan outlined three major tasks related to site remediation: (1) remove the radioactive material from the underground silos; (2) remediate the contaminated soil; and (3) remediate the contaminated buildings.

2. 1999 License Renewals

The Company submitted applications for renewal of the 02 license in February 1999 and for renewal of the 08 license in April 1999. In both applications, SLC requested exemption from the Commission's financial assurance requirements.

The NRC Staff submitted SECY-99-269 to the Commission recommending that the licenses be renewed and exempted from 10 CFR § 30.35. SECY-99-269 discussed the alternatives of denying (option 1) or granting (option 2) license renewal, and recommended

⁵ This section is based on SECY-99-269, Attachments 1 and 3.

renewal (option 2) based on analysis of the pros and cons of both options.⁶ The Staff concluded that the NRC should exempt SLC from Section 30.35, because renewing the licenses would be a benefit to the government and would advance site remediation without significant risk to the public health and safety.⁷ The Commission unanimously approved license renewal, with the comments of various Commissioners emphasizing the benefit of having SLC continue to maintain the site and continue with its remediation activities.⁸ These Staff and Commission considerations are equally applicable in the current proceeding.

In the renewed licenses, the NRC imposed several conditions. Condition 13 on the 02 License required the Company to develop a schedule and plan for additional site characterization and for the development of revised cost estimates, including strategies for site cleanup that meet the license termination criteria of 10 CFR § 30.36.⁹ Condition 20.B of the 08 License required SLC to prepare a cost estimate for decommissioning the facilities and equipment associated with its ongoing tritium operations.¹⁰ And of particular importance here, Conditions 16 of the 02 License and 20.A of the 08 License both required SLC to contribute specified monthly payments to a decommissioning trust fund over the five-year life of the licenses. The schedule for these monthly payments, which was negotiated between SLC and the Staff, required the Company to deposit \$7,000 per month in 2000; \$8,000 per month in 2001 and 2002; and \$9,000 per month in 2003 and 2004.¹¹ Although SLC ultimately agreed to the payment schedule, it expressed

⁶ *Id.* at 2-5.

⁷ *Id.* at 5.

⁸ Commission Voting Record regarding Renewal of the Safety Light Corporation Licenses at Bloomsburg, Pennsylvania (Dec. 29, 1999).

⁹ Denial Letter, Enclosure 1 at 1.

¹⁰ *Id.*

¹¹ *Id.* at 2.

concern about its ability to make the deposits, noting that it would be "dependent on a stable growing economy in which [it could] continue to grow [its] business."¹²

Since the 1999 renewals, the Staff has conducted numerous inspections of both the 02 and 08 Licenses. These inspections have determined that radiation exposures to workers and the public, including releases to the environment, have met all applicable standards.¹³ In 2000, the Company retained GTS Duratek, Inc. to perform an independent decommissioning cost estimate for an unrestricted use termination. GTS Duratek estimated that it would cost approximately \$29 million to decommission the entire site.¹⁴ The Staff reviewed the GTS Duratek estimates and developed its own cost estimates. The Staff estimated the cost for unrestricted release of the site to be between \$94 million and \$120 million and the cost for restricted release to be between \$50 million and \$78 million.¹⁵ The difference between the Staff and SLC estimates can be attributed to differing assumptions concerning the depth and dispersion of soil contamination and differing views on site characterization.¹⁶

C. Decommissioning Activities

To date, the Company has spent more than \$1.6 million to remediate the legacy waste. The Company has removed the waste previously contained in the two 650-cubic foot underground silos, which, as agreed with by the NRC, represented the greatest potential threat to

¹² Lynch Aff. ¶ 12; Lynch Aff., Attachment 5, Letter from William E. Lynch, Jr., SLC Vice President, to George Pangburn, NRC Region I Division of Nuclear Material Safety Director (Aug. 3, 1999) at 2 [hereinafter Aug. 3, 1999 Letter].

¹³ Denial Letter, Enclosure 1 at 2.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

public health and safety.¹⁷ In 1999, the Company removed the silos and their contents from the ground and packaged the waste for disposal.¹⁸ Since then, SLC has shipped much of the waste offsite for disposal. The silo waste that remains at the site, in its current form, does not meet the acceptance criteria for any available disposal facility.¹⁹ All of this waste is properly stored in appropriate containers in an onsite building, the Pole Building, consistent with an October 2004 agreement among the Company, the Environmental Protection Agency (EPA), the NRC, and PADEP. In the Pole Building, the waste is isolated from employees and protected from exposure to the elements.²⁰ SLC understands that the EPA will assume responsibility for disposing of this waste.²¹

D. Decommissioning Trust Fund Payments

In its 2003 investigation, the NRC described SLC's history of payment pursuant to License Conditions 16 and 20.A as follows: During 2001 and 2002, the monthly deposits increased to \$8,000 per month.²² Although SLC did not to make four payments beginning in May through August 2001, its payments in September and October 2001 made up for three of the omitted payments.²³ During 2002, the Company did not to make the required payments in February and May but made double payments in April and October.²⁴ Thus, at the end of 2002,

¹⁷ Letter from William E. Lynch, Jr., SLC Vice President, to Betsy Ulrich, NRC Region I Nuclear Materials Safety Branch (April 22, 2004), ADAMS accession number ML041310328, at 1 [hereinafter 08 License Renewal Request].

¹⁸ *Id.*

¹⁹ Lynch Aff. ¶ 23.

²⁰ *Id.*

²¹ *Id.*

²² Lynch Aff. ¶ 16.

²³ *Id.*

²⁴ *Id.*

the Company was in arrears by \$8,000, or one payment from 2001.²⁵ In 2003, the Company's required monthly payments increased to \$9,000.²⁶ In January and February of that year, SLC made payments of only \$8,000, and did not make any payments in the five months from April to August or in October and November.²⁷ As a result, by the end of November 2003, SLC's payments were in arrears by \$81,000.²⁸ Each payment, or lack of payment, from SLC was reflected in monthly statements that the decommissioning trust fund trustee sent to both the Company and the NRC.²⁹

During this time, SLC acted decisively to reduce its expenditures, including imposing layoffs and salary cuts.³⁰ Nevertheless, in the months in question, it found that after paying the remaining employees' salaries, suppliers' bills, and other critical business expenses necessary to maintaining SLC as a functioning business, there was no money to deposit into the trust fund.³¹ Without a functioning business, the Company would not have been able to make further payments into the trust fund, and its payments into the fund would have fallen even further behind.³² When the Company was forced to miss the required payments, it fully intended to make the payments as soon as it had the necessary resources to do so.³³ Indeed, in 2001 and 2002 – long before the NRC opened its investigation into SLC's payment history, and without

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* ¶ 15.

³⁰ *Id.* ¶ 17.

³¹ *Id.*

³² *Id.* ¶ 18

³³ *Id.*

any prompting from the NRC, – the Company made up missed payments on four separate occasions, in September and October 2001, and in April and October 2002.

After November 2003, the level of SLC's receipts recovered, and SLC was able to make the required payments as scheduled for the remainder of the license term.³⁴ Starting in December 2003, SLC also began paying off the \$81,000 in arrears.³⁵ During 2004, SLC not only made each of its required payments but also made up for the amount that had been in arrears.³⁶ On December 29, 2004, SLC made a final payment in the amount of \$36,949.61, which brought its total contributions up to the amount required over the license term, including the interest that would have been earned if all of the deposits had been timely.³⁷

E. Office of Investigations Inquiry

In late November 2003, SLC management called the NRC to discuss the payment situation. The call was made on November 21 by Plant Manager Larry Harmon, who telephoned NRC Region I Staff member Marie Miller about the late payments.³⁸

In response to Mr. Harmon's call, the NRC Office of Investigations (OI) initiated an investigation on November 25, 2003 to determine whether SLC officials had deliberately failed to make the required trust-fund deposits and whether their failure to timely notify the NRC of the missed payments sooner constituted a violation of NRC requirements in 10 C.F.R. 30.9 to provide complete and accurate information.³⁹ During this investigation, the Company

³⁴ *Id.* ¶ 21.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* ¶ 19.

³⁹ NRC Staff Response to Safety Light Corporation Motion to Set Aside the Immediate Effectiveness of Order Suspending License, Attachment A, NRC Office of Investigations Report of Investigations, Case No. 1-2003-056 (Mar. 9, 2004) at 1 [hereinafter OI Report].

cooperated fully with OI investigators. SLC readily disclosed all of its pertinent business records indicating what funds it had received and what expenses were paid at the relevant times. In interviews with the investigators, Company management explained that the payment delays occurred because there was no money to deposit into the escrow account after SLC's minimum business expenses were paid.⁴⁰ These managers also indicated that if they had not paid these expenses, such as employee salaries and the vendors who supplied the materials needed for SLC's products, the Company would have gone out of business.⁴¹

After the conclusion of the investigation, the NRC send SLC a Demand for Information concerning the payment delays. In its January 16, 2004, response, SLC explained that a slowdown in business activity caused by a general economic downturn had made it impossible to stay current with its payment obligations.⁴² At the same time, the Company indicated that its aggressive marketing efforts, along with an improving economy, had led to an increase in order activity, which it expected to translate into an upturn in business.⁴³ Nevertheless, the Company indicated that it could not submit a detailed schedule for making overdue payments given its inability to accurately predict future sales and cash flow.⁴⁴

In a March 9, 2004, report, OI concluded that the payment delays constituted a deliberate violation of the license conditions, in that Company officials "admitted being familiar with the requirements of SLC's NRC license condition that specifically required monthly payments be made to a trust fund. . . . [and] knew that some of the required deposits were not being made to

⁴⁰ OI Report at 9.

⁴¹ *Id.* at 9-10.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Letter from William Lynch, Jr., SLC Vice President, to Frank J. Congel, NRC Office of Enforcement Director (Jan. 16, 2004), ADAMS accession number ML040210723 at 2 [hereinafter Jan. 16, 2004 Letter].

the trust fund.”⁴⁵ OI also concluded that although the Company had made a conscious decision not to affirmatively notify the NRC of the late payments until November 2003, the Company was not specifically required to do so by the reporting regulation, 10 CFR § 30.9.⁴⁶ The basis for the latter conclusion was that the information regarding the late payments “was not considered as posing a health risk to the public.”⁴⁷

F. Procedural History

SLC submitted its applications for renewal of the 02 and 08 Licenses on April 22, 2004.⁴⁸ As it had in previous renewal requests, the Company sought an exemption from the decommissioning financial assurance requirements set forth in 10 CFR § 30.35 for both licenses. In response to a June 30, 2004, notice of opportunity for hearing, PADEP filed a request for hearing contesting only the 08 License renewal and submitted six contentions for litigation.⁴⁹ In a November 9, 2004, Memorandum and Order granting the hearing request, the Atomic Safety and Licensing Board found that PADEP had standing to intervene and admitted Contention 3 for litigation in the proceeding.⁵⁰

In a December 10, 2004, letter to SLC, the Staff suspended the 02 and 08 Licenses and denied SLC’s license-renewal requests.⁵¹ The Suspension Order was based on the OI Report and relied on the Staff determination that the violation of the License Conditions 16 and 20.A was

⁴⁵ OI Report at 11-12.

⁴⁶ *Id.* at 12.

⁴⁷ *Id.*

⁴⁸ 08 License Renewal Request; Letter from Larry Harmon, SLC Plant Manager, to Marie Miller, NRC Region I Nuclear Materials Safety Branch (Apr. 22, 2004), ADAMS accession number ML041310318 at 1 [hereinafter 02 License Renewal Request].

⁴⁹ Commonwealth of Pennsylvania, Department of Environmental Protection Request for Hearing (Aug. 30, 2004) [hereinafter PADEP Hearing Request].

⁵⁰ LBP-04-25, 60 NRC __ (Nov. 9, 2004) (slip op.)

⁵¹ Denial Letter; *Safety Light Corporation*, Order Suspending License (Effective Immediately), EA-01-148 (Dec. 10, 2004) [hereinafter Suspension Order].

deliberate, in that SLC admitted knowledge of the requirement to make payments to the trust fund, yet failed to do so.⁵² The Suspension Order also concluded that the “deliberate failure by the Licensee has significant health and safety implications in that these regulatory requirements are intended to ensure the availability of adequate funds for characterization, packaging, and disposal of radioactive waste from the Licensee’s site.”⁵³ The Staff subsequently ordered the suspension of the 02 and 08 Licenses and ordered the Company to develop a plan for the orderly shutdown of its licensed activities.⁵⁴ In addition, based on its finding of the “willful” nature of the violation and the related effect on public health and safety, the Staff made the Suspension Order immediately effective.⁵⁵

With respect to the license-renewal requests, the Staff based its denial on the Company’s failure to make payments to the trust fund as required by the license conditions and its failure to demonstrate compliance with the financial assurance requirements of 10 CFR § 30.35.⁵⁶ In addition, according to the Staff, SLC had not provided any basis for an exemption from Section 30.35.⁵⁷ In connection with the denial of SLC’s renewal requests, the Staff ordered the Company to initiate procedures to terminate the licenses pursuant to 10 CFR § 30.36.⁵⁸

⁵² Suspension Order at 5.

⁵³ *Id.*

⁵⁴ *Id.* at 7.

⁵⁵ *Id.* at 6.

⁵⁶ Denial Letter at 1.

⁵⁷ *Id.*

⁵⁸ *Id.* at 2.

In accordance with 10 CFR § 2.202, SLC requested a hearing on both the Suspension Order and the Staff's denial of its license-renewal requests. On January 27, 2005, the Board granted the Company's hearing requests and consolidated the two proceedings.⁵⁹

III. SUSPENSION ORDER

Section 2.202(A)(4) of 10 CFR states that an enforcement order will specify the issues for hearing, and the Suspension Order does so. It states that "[i]f a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained."⁶⁰ Consequently, the Board should consider (a) whether the facts as stated in the Suspension Order are true; and (b) whether the proposed remedy is supported by those facts.⁶¹

A. De Novo Review

In this hearing, the Board must review both the facts and the remedy *de novo*.⁶² This is true despite an apparently contrary statement in the *NRC Practice and Procedure Digest*.⁶³ The *NRC Digest*, relying primarily on *Advanced Medical Systems, Inc.*,⁶⁴ states that "a presiding officer's review of an NRC Staff enforcement action would be limited to whether the Staff's choice of sanction constituted an abuse of discretion."⁶⁵ *Advanced Medical Systems, Inc.*, however, concerned only a presiding officer's consideration of a motion to set aside the

⁵⁹ Licensing Board Order (Order Granting Hearings, Consolidated Proceedings, and Establishing Hearing Schedule) (Jan. 27, 2005) (unpublished).

⁶⁰ Suspension Order at 9.

⁶¹ *Boston Edison Co. (Pilgrim Nuclear Power Station)*, CLI-82-16, 16 NRC 44, 45 (1982), *aff'd sub nom., Bellotti v. NRC*, 725 F.2d 1380 (D.C. Cir. 1983).

⁶² See, e.g., *Aharon Ben-Haim*, LBP-99-4, 49 NRC 55, 104-05 (1999) (Licensing Board reviewed the facts and determined that the Staff sanction was too severe), *pet. for review denied*, CLI-99-14, 49 NRC 361 (1999).

⁶³ NUREG-0386, *U.S. NRC Staff Practice and Procedure Digest: Commission, Appeal Board and Licensing Board Decisions* (June 2003) at General Matters-140 [hereinafter *NRC Digest*].

⁶⁴ *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-94-6, 39 NRC 285, 312 (1994), *aff'd*, *Advanced Medical Systems, Inc. v. NRC*, 61 F.3d 903 (6th Cir. 1995) (Table). The *NRC Digest* also cites unsupported dicta in *Indiana Regional Cancer Center*, LBP-94-21, 40 NRC 22 (1994), at 34 n.5.

⁶⁵ *NRC Digest* at General Matters-140.

immediate effectiveness of an order, and does not discuss the standard to be applied by a presiding officer in a hearing on an enforcement order. As this Licensing Board has previously recognized “[t]he lenient ‘adequate evidence’ standard that we apply in this case [concerning a motion to set aside the immediate effectiveness of an order] is not the standard for determining the ultimate merits of an enforcement order.”⁶⁶ As the NRC Staff has previously recognized, in the Board’s consideration of the Suspension Order, the Staff bears the burden of proof for sustaining the order.⁶⁷ Any requirement that the Licensing Board defer to the judgment of the Staff on the determination of remedy would relieve the Staff of its burden of proving, by a preponderance of the evidence, that the proposed penalty is appropriate, and place a heavy burden on SLC to prove that the Staff abused its discretion. Such a shifting of the burden to SLC would be inconsistent with the standard specified in the Suspension Order (quoted above) and Section 2.202, which provides for a right to a hearing on the enforcement order without any such limitation. Moreover, the Commission has consistently held that in a hearing on the merits of an enforcement order, the presiding officer must consider both (1) whether the facts, as alleged, are correct and (2) whether the proposed remedy is appropriate. Thus, in *Aharon Ben-Haim*, the Licensing Board heard testimony from the NRC Staff regarding how the Staff had applied the NRC Enforcement Policy to the facts and found that “the Staff considered factors appropriate in determining the sanction to be imposed against Dr. Ben-Haim. But it appears not to have considered, or at least to have de-emphasized, other relevant factors that we regard as worthy of consideration in this case.”⁶⁸ The *Ben-Haim* Licensing Board then discussed these additional

⁶⁶ LBP-05-02, 61 NRC __, __ (Jan. 24, 2005) (slip op. at 12).

⁶⁷ NRC Staff Response to Order Requesting Views On How To Proceed (Jan. 7, 2005) at 7. *See also* Dr. James E. Bauer (Order Prohibiting Involvement in NRC-Licensed Activities), LBP-94-40, 40 NRC 323, 332 (1994), *pet. for review denied*, CLI-95-3, 41 NRC 245 (1995).

⁶⁸ *Aharon Ben-Haim*, LBP-99-4, 49 NRC at 100.

considerations and decided to reduce the penalty.⁶⁹ The NRC Staff's petition for review of this decision, challenging the Board's reduction of the penalty, was denied by the Commission on the grounds that it did not raise a substantial question meriting the Commission's consideration.⁷⁰ Although the Commission's decision was based on the principle that licensing board decisions have no precedential effect, the Commission also commented that the Licensing Board's decision, on its face, did not appear unreasonable.⁷¹ The Commission would not have made such a comment if the Licensing Board's authority was limited to a determination of whether the Staff had abused its discretion. Similarly, in *Tennessee Valley Authority*, although the Licensing Board upheld the NRC Staff's finding of violation, it decided to reduce the civil penalty. The Licensing Board stated that:

NUREG-1600 permits adjustments of the civil penalties imposed based on discretion by the NRC. This discretion may be exercised by the NRC Staff or, in a proceeding such as this, by the Atomic Safety and Licensing Board designated to rule on appeals of the civil penalty.⁷²

On appeal, the Commission, while reversing other aspects of the Licensing Board's decision and remanding the mitigation decision in light of those other aspects, specifically reaffirmed that in enforcement proceedings, licensing boards must independently apply the Enforcement Policy to the facts:

Since 1982, presiding officers have been required to act in conformity with our Enforcement Policy Statements. But those Policy Statements establish substantive parameters for civil penalties and other enforcement actions. They do not abrogate licensing board's mitigation power nor convert the boards' role into a reviewer of Staff action.⁷³

⁶⁹ *Id.* at 100-104.

⁷⁰ *Aharon Ben-Haim*, CLI-99-14, 49 NRC at 364.

⁷¹ *Id.*

⁷² *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 & 2; Browns Ferry Nuclear Plant, Units 1, 2, and 3), LBP-03-10, 57 NRC 553, 606 (2003), *aff'd in part, rev'd in part*, CLI-04-24, 60 NRC 160 (2004).

⁷³ *TVA*, 60 NRC at 217 n.173.

Thus, although *TVA* concerned an order issued pursuant to 10 CFR 2.205(f), which is more explicit in stating that presiding officers may mitigate or remit Staff-imposed civil penalties, the same principle clearly applies to other enforcement actions, such as this proceeding under Section 2.202.

B. Suspension Order

The Suspension Order suspended both the 02 and 08 Licenses “[b]ased on the Licensee’s willful failure to make the required scheduled payments into the decommissioning trust fund as required by its licenses, and the resultant implication for public health and safety.”⁷⁴ According to the Suspension Order, because the alleged violation was willful, the Staff lacked reasonable assurance that the Company could conduct its operations in compliance with NRC regulations and protect the health and safety of the public and of SLC employees.⁷⁵

C. The Facts Do Not Support the Staff’s findings of a Willful License Violation or of Resultant Public Health and Safety Implications.

1. The alleged violation

The Company acknowledges that a number of its payments to the trust fund were untimely and that a few had still not been paid at the time of the Suspension Order. SLC has consistently explained that it was unable to make the payments because it did not have money to make the payments after paying the minimum business expenses, required to do to preserve the viability of its business.⁷⁶ Some of these expenses included costs associated with SLC’s compliance with various license conditions and NRC requirements, such as the salaries of personnel who conducted activities that are required, even if the facility is not operating. In

⁷⁴ Suspension Order at 5-6.

⁷⁵ *Id.* at 5-6.

⁷⁶ Lynch Aff. ¶ 17; OI Report at 9-10; Jan. 14, 2004 Letter at 1-2; Suspension Order at 3-4.

addition, if the business had failed, the Company would have been unable to make any further decommissioning payments.⁷⁷ The requirement to make monthly escrow payments should be interpreted in light of the Company's obligation to meet the various health and safety requirements and to preserve the viability of the business.⁷⁸

Long before it encountered any difficulty in making the monthly payments, the Company had twice pointed out to the Staff that SLC's ability to contribute to the escrow account was dependent upon its profitability, and the Staff did not object to this description. First, in a September 1, 1999, letter to NRC Region I, SLC expressly advised the Staff that "[d]ue to the uncertainty of continued economic growth and the normal challenges faced by [SLC] or any other business, *the profits required to fund [its] escrow commitment* are far from guaranteed."⁷⁹ Again, in a July 10, 2000 letter to the Staff, in which SLC noted that the sources of remediation funds were limited to insurance proceeds and "[e]scrow [f]unds which are generated from *ongoing profitability* of Safety Light Corporation."⁸⁰ This correspondence demonstrates that both SLC and the Staff understood that SLC's payment to the escrow account was directly linked to its generation of profits. And the Staff has not questioned SLC's representations that the Company did not generate enough profits to make its payments at certain times.

2. Alleged willfulness

As the Commission explains in the NRC Enforcement Policy,

⁷⁷ Lynch Aff. ¶ 18.

⁷⁸ The Staff also stated in the Suspension Order that the Company's failure to make the required payments voided its exemption from the financial assurance requirements and placed the Company in continued violation of the license conditions and 10 CFR § 30.35. Suspension Order at 5. Because this does not appear to be a separate basis for the license suspensions, the question of whether the exemption was voided is beside the point in both the suspension and renewal portions of this proceeding.

⁷⁹ Lynch Aff., Attachment 6, Letter from William E. Lynch, Jr., SLC Vice President, to George Pangburn, NRC Region I Division of Nuclear Material Safety Director (Sept. 1, 1999) at 1 (emphasis added) [hereinafter Sept. 1, 1999 Letter].

The term “willfulness” as used in this policy embraces a spectrum of violations ranging from deliberate intent to violate or falsify to and including careless disregard for requirements. Willfulness does not include acts which do not rise to the level of careless disregard, e.g. negligence or inadvertent clerical errors in a document submitted to the NRC.⁸¹

The payment delays were not deliberate or intentional. The Company had no intent – and the Staff has not argued to the contrary – to flout the requirements. Accordingly, for SLC’s actions to be considered “willful,” they must rise to the level of “careless disregard.”

The Commission has elaborated on the meaning of “careless disregard,” noting that it “connotes a reckless regard or callous . . . indifference toward one’s responsibilities or the consequences of one’s actions.”⁸² For example, in *MidMichigan Medical Center*, the Staff concluded that the individual had acted with reckless indifference as to whether a requirement would be violated by failing to consult a written directive, which was “more than just the result of negligence or oversight.”⁸³ In contrast, SLC clearly did not act with reckless regard or callous indifference to its responsibilities. Mr. Lynch attests that the Company was fully aware of its obligations under the license conditions but was unable to fulfill them.⁸⁴ The Company did not ignore the requirements; indeed, at various times before November 2003, when the NRC first responded to the payment delays, SLC made catch-up payments to the trust fund. Although the NRC received monthly account statements from the trustee, the NRC never raised any concern about the payment delays before November 2003.

⁸⁰ Lynch Aff., Attachment 7, Letter from William E. Lynch, Jr., SLC Vice President, to John Kinneman, NRC Region I (July 10, 2000) at 2 (emphasis added) [hereinafter July 10, 2000 Letter].

⁸¹ NUREG-1600, General Statement of Policy and Procedure for NRC Enforcement Actions (last revised Jan. 14, 2005) at 10 [hereinafter Enforcement Policy].

⁸² 52 Fed. Reg. 49,362, 49,365 (Dec. 31, 1987).

⁸³ Letter from R.W. Borchardt, NRC Office of Enforcement Director, to David Reece, MidMichigan Medical Center CEO, enclosing EA-99-215 Notice of Violation (Nov. 26, 1999) at 2.

⁸⁴ Lynch Aff. ¶ 17.

The payment delays were not voluntary; SLC did not have the ability to make the trust-fund payments on time. As previously mentioned, the NRC has never challenged the Company's assertion that it was critical to pay minimum business expenses before contributing to the trust fund. Accordingly, SLC's actions were involuntary and cannot be construed as intentional or deliberate conduct. While the Company has been unable to identify NRC or other Administrative Procedure Act (APA) cases addressing similar circumstances, in other circumstances, federal courts have recognized inability to pay as a defense to a charge of willful misconduct.⁸⁵ For instance, in a case the U.S. Court of Appeals for the Second Circuit has observed that "if a defendant is unable to pay even some of his past due child support obligations, his failure to pay cannot be either voluntary or intentional and thus cannot be willful within the meaning of the [statute]."⁸⁶

3. The Company's payment delays did not result in any public health and safety implications.

Although the Company was unable to make timely trust-fund payments during certain months, at no time was the public health and safety placed at risk. Indeed, during the course of the November 2003 OI investigation, the NRC's Division of Nuclear Materials Safety, Office of General Counsel, Office of Enforcement, OI, Region I counsel, and Region I Staff collectively agreed that the Company's site "was not considered as posing a health risk to the public" and that the Company's late payments did not have any significant implications for public health and safety or common defense and security.⁸⁷ Moreover, after the conclusion of a four-month integrated safety inspection of the Bloomsburg site that included reviews of site conditions, site

⁸⁵ *United States v. Mattice*, 186 F.3d 219, 227-29 (2nd Cir. 1999); *United States v. Poll*, 521 F.2d 329, 332-34 (9th Cir. 1975).

⁸⁶ *Mattice*, 186 F.3d at 228.

⁸⁷ OI Report at 12.

security, licensed activities, waste storage and management, and dose assessments, the Staff concluded in a November 4, 2004 report that the Company was adequately complying with Commission requirements.⁸⁸ These findings by various NRC departments and offices directly contradict the Suspension Order's assertion that the late payments had "significant health and safety implications."⁸⁹

D. The Staff's Decision to Suspend the Licenses Is Neither Reasonable Nor Equitable.

In determining whether the Suspension Order should be sustained, the Board must also review the appropriateness of the Staff-imposed sanction. In this regard, the Board should consider: (1) whether the Staff adhered to NRC Enforcement Policy guidance; (2) whether the severity of the sanction is proportional to the significance of the violation; and (3) whether the totality of the circumstances justifies the sanction selected.

1. The Staff did not adhere to Enforcement Policy guidance and provided no justification for its deviation from the policy.

The Enforcement Policy describes the policy and procedures the agency "intends to follow in initiating and reviewing enforcement actions in response to violations of NRC requirements."⁹⁰ As the Commission noted in CLI-04-24, quoted above, the Licensing Board must apply the Enforcement Policy to determine the appropriate remedy.⁹¹

⁸⁸ Safety Light Corporation Motion to Set Aside Immediate Effectiveness of Order Suspending License (Dec. 29, 2004), Exhibit D, NRC Inspection Report No. 03005980-2004001 (Nov. 4, 2004) [hereinafter Nov. 4, 2004 Inspection Report].

⁸⁹ Suspension Order at 5.

⁹⁰ Enforcement Policy at 3.

⁹¹ See also *Indiana Regional Cancer Center*, LBP-94-21, 40 NRC 22, 33-34 (1999) ("Although, in contrast to civil penalty actions, there generally is no specification of a "severity level" for the violations identified in an enforcement order imposing a license termination, suspension, or modification, . . . this evaluative process nonetheless is utilized to determine the type and severity of the corrective action taken in the enforcement order.").

Pursuant to the Enforcement Policy, the first question in the enforcement process, assuming there was a violation, is to assess the relative importance or significance of a regulatory-requirement violation.⁹² In reaching this determination, the policy requires consideration of: (1) actual safety consequences; (2) potential safety consequences; (3) potential for impacting the NRC's ability to perform its regulatory function; and (4) any willful aspects of the violation.⁹³

In this instance, the Company's payment delays had neither actual nor potential safety consequences. At no time did the payment delays result in any actual releases of radiation, radiation exposures, or other radiological emergencies.⁹⁴ Nor did the Staff identify any "credible scenarios with potentially significant actual consequences" resulting from the payments delays.⁹⁵ As discussed above in section III.C.3, various NRC departments and offices specifically concluded that the Company's payment delays did not have any significant implications for public health and safety or common defense and security.⁹⁶

In addition, the Company's violations did not negatively impact the NRC's ability to carry out its statutory mission.⁹⁷ According to the Enforcement Policy, a licensee's failure to provide complete and accurate information would be a specific example of a violation having this type of effect.⁹⁸ But as the OI Report indicated, because the Company was not required to

⁹² Enforcement Policy at 8.

⁹³ *Id.*

⁹⁴ *Cf. id.* at 9.

⁹⁵ *Cf. id.*

⁹⁶ OI Report at 12.

⁹⁷ *Cf.* Enforcement Policy at 9.

⁹⁸ *Id.*

notify the NRC of the payment delays, SLC did not violate the reporting requirements of 10 CFR § 30.9.⁹⁹

Finally, the Company did not violate the license conditions in a “willful” manner, such that the Company’s integrity and trustworthiness could be called into question. As described in the Enforcement Policy, “[w]illful violations are by definition of particular concern to the Commission because its regulatory program is based on licensees and their contractors, employees, and agents *acting with integrity and communicating with candor*.”¹⁰⁰ Here, the Staff has not called into question either the integrity or candor of SLC management.¹⁰¹ The Staff has not disputed the Company’s consistent explanation that, through no fault of its own, SLC was unable to make timely deposits at certain times because of economic conditions beyond SLC’s control.¹⁰² Nor has the Staff argued that the Company could have, but did not, make the payments on time.

Accordingly, consistent with the Enforcement Policy, the Staff should have determined that the Company’s violations were of relatively low significance (i.e., the equivalent of a Severity Level IV, or at most, a Level III violation).¹⁰³ In this regard, the Enforcement Policy provides specific examples of situations that might involve a Severity Level III designation for materials licensees, including:

A significant failure to meet decommissioning requirements including a failure to notify the NRC as required by regulation or license condition, substantial failure to meet decommissioning standards, failure to conduct and/or complete

⁹⁹ OI Report at 12.

¹⁰⁰ Enforcement Policy at 10 (emphasis added and footnote omitted).

¹⁰¹ Jan. 14, 2005 Tr. at 38-39.

¹⁰² *Id.* at 36-37.

¹⁰³ The Staff assigns violations a Severity Level depending on its significance, with a Severity Level I designation representing the most significant concern and a Severity Level IV designation representing the least significant concern. Enforcement Policy at 12.

decommissioning activities in accordance with regulation or license condition, or failure to meet required schedules without adequate justification.¹⁰⁴

Assuming, for the sake of argument, that the Company's payment delays would rise to the level of a Severity Level III violation, the Board should consider whether the sanction imposed by the Staff is appropriate for this type of violation.

Under the Enforcement Policy, once a Severity Level is assigned to a violation, the NRC may issue or impose non-cited violations, notices of violation, civil penalties, or orders.¹⁰⁵

Orders to modify, suspend, or revoke a license may be issued in lieu of, or in addition to, civil penalties.¹⁰⁶ Here, the Staff chose to issue a suspension order, which is permitted:

- (a) To remove a threat to the public health and safety, common defense and security or the environment;
- (b) To stop facility construction [in certain circumstances];
- (c) When the licensee has not responded adequately to other enforcement action;
- (d) When the licensee interferes with the conduct of an inspection or investigation; or
- (e) For any reason not mentioned above for which license revocation is legally authorized.¹⁰⁷

Because the NRC has already concluded that the Company's continued operations do not pose a threat to the public health and safety, common defense and security, or environment, the only apparent justification for the Staff's issuance of the Suspension Order would fall under the fifth category (a reason for which license revocation is authorized).

According to the Enforcement Policy, the Staff may issue a revocation order:

- (a) When a licensee is unable or unwilling to comply with NRC requirements;
- (b) When a licensee refuses to correct a violation;

¹⁰⁴ Enforcement Policy at 59.

¹⁰⁵ *Id.* at 16.

¹⁰⁶ *Id.* at 28.

¹⁰⁷ *Id.* at 28.

- (c) When [a] licensee does not respond to a Notice of Violation where a response was required;
- (d) When a licensee refuses to pay an applicable fee under the Commission's regulations; or
- (e) For any other reason for which revocation is authorized under section 186 of the Atomic Energy Act (e.g., any condition which would warrant refusal of a license on an original application).¹⁰⁸

Nothing in the record supports a revocation of the Company's licenses, and nowhere in the Suspension Order does the Staff make specific reference to any of the situations described above that would warrant a license suspension or revocation. Although SLC is unable to comply with NRC financial assurance requirements, as discussed below in section IV.C.3, the Company qualifies for an exemption from these requirements. Therefore, there is no basis for a revocation or suspension of the Company's licenses on this ground.

2. The severity of the license suspensions is grossly disproportionate to the significance of the violation.

In addition to there being insufficient justification for the Suspension Order, the sanction is unreasonably severe relative to the significance of the Company's violation, which would amount to – at most – a Severity Level III violation under the Enforcement Policy. If the Staff had elected to impose a civil penalty on SLC in lieu of, or in addition to, suspending its licenses, the base penalty for this type of violation would be \$3,250.¹⁰⁹ The penalty should be mitigated because SLC identified the payment delays as a regulatory issue, called the delays to the attention of NRC, and took corrective action by making up the amounts in arrears and proposing a reduction in the required amount to avoid future violations. Even if the penalty is instead escalated, ignoring the credit to the Company for self-identifying and taking corrective action on

¹⁰⁸ *Id.* at 29.

¹⁰⁹ *Id.* at 21.

the violation, civil penalty potential would be – at most – \$6,500.¹¹⁰ License suspensions will force the Company out of business.¹¹¹ It is inconceivable that a license suspension for conduct that would otherwise amount to a \$6,500 maximum penalty is justifiable and equitable.

Moreover, license suspension in the current circumstances is not consistent with NRC's enforcement actions in other cases. For instance, in *South Pittsburgh Cancer Center*, the Staff identified two deliberate violations relating to the licensee's unauthorized receipt and possession of depleted uranium and its transfer of depleted uranium to unauthorized individuals.¹¹² The NRC found the licensee's explanations not "credible based on a variety of reasons, including [its] inconsistent explanation at the [predecisional] conference."¹¹³ The Staff categorized the unauthorized transfer violation as a Severity Level II violation and proposed an \$8,800 escalated civil penalty.¹¹⁴ Similarly, in *Diagnostic Reagents, Inc.*, the Staff issued a Notice of Violation and proposed an escalated \$1,000 civil penalty for the licensee's willful violations.¹¹⁵ OI concluded that the licensee had possessed and used licensed material at an unauthorized location and altered its license so that it could possess and use licensed material at the unauthorized location.¹¹⁶

¹¹⁰ *Id.* at 22.

¹¹¹ Jan. 16, 2004 Letter at 3; Letter from William E. Lynch, Jr., SLC Vice President, to Samuel J. Collins, NRC Region I Administrator (Dec. 20, 2004), ADAMS accession number ML043560017 at 2-3 [hereinafter Dec. 20, 2004 Letter].

¹¹² Letter from Hubert J. Miller, NRC Regional Administrator, to Antonio J. Ambrad, South Pittsburgh Cancer Center, enclosing EA-01-132 Notice of Violation and Proposed Imposition of Civil Penalty -- \$8800 (Aug. 22, 2001).

¹¹³ *Id.* at 2.

¹¹⁴ *Id.*

¹¹⁵ Letter from A. Bill Beach, NRC Region III Administrator, to Thomas Kregoski, Diagnostic Reagents, Inc. President, enclosing EA-96-140 Notice of Violation and Proposed Imposition of Civil Penalty (Aug. 5, 1996).

¹¹⁶ *Id.* at 1.

Both of these cases involve willful violations that caused the NRC to question the licensees' character and integrity. Both cases also involve violations that have apparent actual or potential public health and safety consequences. But in neither case did the Staff suspend the license. Although the Licensing Board does have discretion in choosing the type of sanction to impose on a licensee, these cases clearly demonstrate that, assuming that SLC committed a willful violation, the severity of the Staff's Suspension Order in this proceeding – where the Staff has not challenged the integrity or candor of SLC management and where the violation had no actual or potential public health and safety significance – is grossly disproportionate to the actual violation committed.

3. In the totality of the circumstances, license suspension is not justified.

The NRC's selection of a remedy for a violation must be consistent with its obligation to protect the public health and safety, and the common defense.

a. The license suspensions jeopardize the public health and safety and environment.

The Staff's choice of sanction in this proceeding is directly contrary to the primary purpose of the NRC's enforcement regime, which is "to support the NRC's overall safety mission in protecting the public health and safety and the environment."¹¹⁷

(i) The license suspensions eliminate the sole source of decommissioning funding.

Suspension of the 08 License suspension will take away the Company's primary source of income, making it unlikely that SLC will have adequate revenue to survive as a business.¹¹⁸ If SLC cannot continue to earn income, it will soon be unable to continue to control the

¹¹⁷ Enforcement Policy at 4.

¹¹⁸ Dec. 20, 2004 Letter at 2-3.

Bloomsburg site, and the federal government will most likely assume this responsibility.¹¹⁹ It would not further the NRC's mission to drive a viable company out of business, eliminate the sole source of site-decommissioning funding, and instead, shift the full decommissioning burden to the taxpayers.¹²⁰

SLC is a viable company, and prior to the issuance of the Suspension Order, the management had been optimistic about the Company's short-term and long-term prospects.¹²¹ To illustrate, in the pre-decisional enforcement conference, SLC pointed out that for the period of January 1 to June 30, 2004, the Company's billings increased by 26 percent relative to the same six-month period in 2003.¹²² In addition, during the summer of 2004, the Company was filling the largest backlog of orders it had experienced in the past 19 years.¹²³ After the conference, SLC was able to catch up on the escrow payments, before the end of the license term. SLC's ability to recover from a severe economic downturn and current success demonstrates that the Company is producing valuable products that benefit the public health and safety. Suspending the licenses at a time when the Company is thriving and able to make timely payments does not enhance the public health and safety.

Moreover, without SLC's presence on the site and its ongoing trust-fund contributions, there is no assurance that the site will be properly secured, maintained, and remediated. The Company has committed to continue to provide security, heat, electrical power, and other utility

¹¹⁹ Jan. 14, 2005 Tr. at 42-43.

¹²⁰ Cf. SECY-99-269 at 2-5 (discussing pros and cons of SLC's continuing status as a licensee).

¹²¹ Lynch Aff., Attachment 9, Transcript of Safety Light Corporation Predecisional Enforcement Conference (July 20, 2004) at 20 [hereinafter July 20, 2004 Tr.].

¹²² *Id.*

¹²³ *Id.*

services to the site during the shutdown period as long as possible.¹²⁴ However, the Company has advised the Staff that after it is forced to cease production and the transfer of tritium devices on March 31, 2005, there is a substantial risk that its revenue will not be sufficient to support continued security and utility services to the site.¹²⁵ In addition, the Company has expressed concern that without its 08 License, it may not be able to operate the stack and monitoring systems in the Processing and Solid Waste Buildings.¹²⁶ In SLC's view, these systems are necessary to minimize the possibility of spreading contamination in the Processing Building and the possibility of a ground release from the Solid Waste Building.¹²⁷ Thus, suspension increases the risk to public health and safety.

(ii) The license suspensions will endanger the national security and defense.

Furthermore, the Company recently learned that it is the sole producer of a certain type of tritium foil that is an essential component of radar systems used in military aircraft and other vital applications.¹²⁸ SLC manufactures these foils for Northrop Grumman and CPI, contractors who provide radar systems to the to the U.S. Department of Defense.¹²⁹ SLC is the only U.S. manufacturer capable of producing such foils, and according to Northrop Grumman and CPI, it would take several years to develop an alternative to SLC's foils. Without these SLC-manufactured foils, the national defense and air traffic safety may be jeopardized. The Enforcement Policy does not identify such a concern as a factor in enforcement, but it also does not suggest that the NRC can or should ignore the impact of its enforcement decisions on the

¹²⁴ Dec. 20, 2004 Letter at 2.

¹²⁵ *Id.* at 2-3.

¹²⁶ *Id.* at 2.

¹²⁷ *Id.*

¹²⁸ Lynch Aff. ¶ 7.

public interest. Any argument that such impacts should be ignored would necessarily depend on a proposition that the NRC may not give due consideration to the totality of the circumstances in determining its actions. NRC precedent dictates the opposite result.¹³⁰

b. The circumstances do not justify destruction of SLC's business.

By suspending the Company's 08 License and eliminating its primary source of revenue, the NRC is putting SLC out of business. The owners of SLC have a substantial investment in the Company and a reasonable expectation of return on that investment. The employees of SLC depend on the Company as a source of livelihood. The Courts have recognized that, although a license conveys a privilege, a person who received a license has an interest in renewal or continuation that is akin to a property interest that is protected by law.¹³¹ While the NRC may suspend a license if it finds the public interest requires that result, in this case, the public interest is adversely affected by license suspension.

E. **Conclusion**

The relevant facts, which have not been disputed, do not support a finding of a willful violation. SLC's payment delays were not voluntary and were not willful. The payment delays also did not cause any risk to public health and safety. Even if these facts are ignored, however, license suspension is not consistent with the NRC's Enforcement Policy because SLC's candor and integrity are not implicated by the violation, and license suspension is contrary to the public health and safety and environment.

¹²⁹ CPI Letter at 1; Northrop Grumman Letter at 1.

¹³⁰ *Houston Lighting & Power Co.* (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 374 (1985).

¹³¹ *Martell v. Mauzy*, 511 F. Supp 729, 742-43 (E.D. Ill. 1981) (citing *Perry v. Sindermann*, 408 U.S. 593 (1972) and *Bell v. Burson*, 402 U.S. 535, 539 (1971)).

IV. DENIAL OF LICENSE-RENEWAL REQUESTS

A. Legal Standards

1. Burden of proof

Although SLC bears the ultimate burden of proof to show by a preponderance of the evidence that it is entitled to the license renewals, both the Staff and PADEP, as the parties asserting that SLC's license-renewal requests should be denied, have the burden of going forward with sufficient evidence to support their contentions.¹³²

2. Legal requirements for materials license renewal

NRC regulations provide that the agency will approve a renewal application for a materials license if the application meets certain requirements. Pursuant to 10 CFR § 30.33,¹³³

(a) An application for a specific license will be approved if:

- (1) The application is for a purpose authorized by the [Atomic Energy] Act;
- (2) The applicant's proposed equipment and facilities are adequate to protect health and minimize danger to life or property;
- (3) The applicant is qualified by training and experience to use the material for the purpose requested in such manner as to protect health and minimize danger to life or property;
- (4) The applicant satisfies any special requirements contained in parts 32 through 36 and 39; and
- (5) In the case of an application for a license to receive and possess byproduct material for the conduct of any activity which the Commission determines will significantly affect the quality of the environment, . . . the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. . . .

(b) Upon a determination that an application meets the requirements of the [Atomic Energy] Act, and the regulations of the Commission, the Commission will issue a specific license authorizing the possession and use of byproduct material.

¹³² *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-94-6, 39 NRC 285, 302 n.22 (1994) (burden of persuasion); *Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003, 1018 (1973).

¹³³ 10 CFR § 30.39 makes Section 30.33 applicable to license-renewal applications.

In addition, 10 CFR § 30.32(h) requires licensees seeking renewal to demonstrate compliance with, among other things, the decommissioning financial assurance requirements of 10 CFR § 30.35.¹³⁴

Under Section 30.35, an applicant must submit a decommissioning funding plan, which includes a decommissioning cost estimate and a description of how the applicant will obtain financial assurance for decommissioning.¹³⁵ As required by Section 30.35(f), applicants must provide assurance that they will be able to cover the costs to decommission their facilities through one or more of the following methods: (1) prepayment; (2) a surety method, insurance, or other guarantee method; or (3) an external sinking fund coupled with a surety method or insurance.

As discussed above in section II.B., in 1994 and 1999, the NRC granted SLC an exemption from the financial assurance requirements based, in part, on a recognition that SLC cannot provide financial assurance that meets the requirements of Section 30.35. Under 10 CFR § 30.11(a), the NRC may grant specific exemptions from any Part 30 requirement that “are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.”

As discussed below, the question of whether the Staff should grant SLC an exemption from the financial assurance requirements is a central issue in this portion of the consolidated proceeding.

¹³⁴ 10 CFR § 30.37 makes Section 30.32(h) applicable to license renewal applications.

¹³⁵ 10 CFR § 30.35(a)(1) and (e).

B. Staff and PADEP Positions**1. Basis for Staff denial of renewal requests**

In its December 10, 2004 letter, the Staff denied the Company's requests to renew the 02 and 08 Licenses, citing SLC's failure to comply with conditions imposed by the Staff at the time of the 1999 license renewal. Specifically, the Staff stated:

When your licenses were renewed in 1999, the NRC granted an exemption from the financial assurance requirements set forth in 10 C.F.R. § 30.35 provided that you: (1) make payments to the trust fund in accordance with the schedule contained in Condition 16 [of the 02 License] and Condition 20.A [of the 08 License], and (2) demonstrate compliance with 10 C.F.R. § 30.35 at the time of application for the next renewal. You complied with neither of these requirements. More[o]ver, you failed to provide a basis why an exemption is otherwise warranted. Accordingly, you have failed to satisfy the requirements for renewal of your licenses. Because you have not demonstrated compliance with the Commission's substantive requirements as described above, the staff does not have the requisite assurance in Safety Light's ability to comply with those requirements in the future. Consequently, the staff is unable to make the requisite findings to grant an exemption.

Accordingly, pursuant to 10 C.F.R. § 2.103(b)(2), your applications to renew [the 02 and 08 Licenses] are hereby denied.¹³⁶

Thus, the Staff based its decision to deny the renewal applications on its findings that SLC failed to comply with the license conditions and failed to provide a basis for exempting the Company from Section 30.35's requirements.

2. PADEP Contention 3

In challenging the 08 License renewal, PADEP contends that the Company "should not be granted any further exemption from financial assurance requirements or a reduced rate of contribution into the escrow funds," because "those requirements are the only assurance that [PADEP] has that Safety Light can meet its obligations to properly dispose of accumulated and

¹³⁶ Denial Letter at 1-2.

future tritium waste and properly decommission the site.”¹³⁷ According to PADEP, it will require “significant funds” to remediate the site, and the Company lacks sufficient funds to carry out site characterization and decommissioning activities.¹³⁸ In admitting Contention 3, the Board noted that its consideration of the merits of the contention would “be guided by section 30.11(a)” and that all relevant facts “will inform [its] application of 10 C.F.R. § 30.11(a) in determining whether granting Safety Light an exemption is authorized by law, will not endanger life, property, or the common defense and security, and is otherwise in the public interest.”¹³⁹

C. The 02 and 08 Licenses Should Be Renewed.

1. License renewal depends on SLC’s exemption from Section 30.35.

As discussed above in section II.B.2, in 1999, the Staff found that the Company met all of the requirements for the renewal of its licenses, with the exception of the decommissioning financial assurance requirements. Here too, neither the Staff nor PADEP has identified any basis for either denying or challenging SLC’s license-renewal requests, other than the Company’s compliance with Section 30.35 and related license conditions. Thus, the financial assurance requirements are the only requirements that have been put into issue by the Staff and PADEP. And as SLC demonstrates below, although it is unable to comply with Section 30.35, it should be granted an exemption from those requirements.

2. The Company is unable to comply with the financial assurance requirements of Section 30.35.

As discussed above in section IV.A.2, Section 30.35(e) requires applicants to submit a decommissioning funding plan that includes a decommissioning cost estimate and a description of financial assurance to cover the costs of decommissioning. Neither of SLC’s license-renewal

¹³⁷ PADEP Hearing Request at 20-21.

¹³⁸ *Id.* at 21.

requests included a decommissioning funding plan. Instead, SLC pointed out – as it had on previous occasions in 1991 and 1999 – that it could not provide such funding because the funding requirements far exceeded the Company’s assets, and the Company’s previous attempts to secure a surety were unsuccessful.¹⁴⁰ It was, and still is, impossible for SLC to meet the decommissioning funding requirements.¹⁴¹ Consequently, the Company explicitly acknowledged that it could not comply with this requirement and requested an exemption for both licenses.¹⁴²

3. Granting the Company an exemption from Section 30.35’s requirements is fully consistent with Section 30.11(a).

An exemption from the financial assurance requirements is justified, because the exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest.

a. An exemption is authorized by law.

Section 81 of the Atomic Energy Act (AEA) provides, in part:

The Commission is authorized to establish classes of byproduct material and to exempt certain classes or quantities of material or kinds of uses or users from the requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of such material or such kinds of uses or users will not constitute an unreasonable risk to the common defense and security and to the health and safety of the public.¹⁴³

Thus, the AEA authorizes the Commission to exempt a materials licensee from the applicable financial assurance requirements provided that the exemption “will not constitute an

¹³⁹ LBP-04-25, 60 NRC at __ (slip op. at 16, 17).

¹⁴⁰ Lynch Aff. ¶ 13.

¹⁴¹ *Id.*

¹⁴² 02 License Renewal Request at 1; 08 License Renewal Request at 1.

¹⁴³ 42 U.S.C. § 2111.

unreasonable risk to the common defense and security and to the health and safety of the public.”¹⁴⁴

- b. If granted, an exemption will not endanger life or property or the common defense and security.

An exemption from Section 30.35’s requirements will not endanger life, property, or the common defense and security, because continued operations without financial assurance will not create additional decommissioning liability and will not diminish the Company’s ability to protect public health and safety.

- (i) The Company’s continued operations will not increase its decommissioning liability.

Condition 18 of the 08 License requires disposal of wastes generated by ongoing operations within two years of their generation.¹⁴⁵ SLC’s compliance with that requirement is the subject of a non-cited violation in a November 4, 2004 Inspection Report. That report states that certain wastes which were required to be removed from the site in 2003 were not removed until 2004.¹⁴⁶ NRC found that the delay, which SLC attributed to unavailability of an allotment for land disposal at a reasonable cost, was of low safety significance and had been corrected.¹⁴⁷ SLC has paid for disposal of the waste created since 1999 using funds from its operating budget.¹⁴⁸ Thus, even during periods of extreme financial hardship in 2002 and 2003, the Company was able to meet its obligation to dispose of the contemporaneous waste properly. The Company’s continued operations have not, therefore, added to its decommissioning burden.¹⁴⁹

¹⁴⁴ *Id.*

¹⁴⁵ Nov. 4, 2004 Inspection Report at 6.

¹⁴⁶ *Id.* at 7.

¹⁴⁷ *Id.* at 6-7.

¹⁴⁸ RAI Response at 3, 9; Lynch Aff. ¶ 23.

¹⁴⁹ Lynch Aff. ¶¶ 9, 23.

And if the exemption is granted, the Company will continue to timely dispose of the tritium waste it accumulates. During the previous five-year license period, the Company accumulated an average of only 40 cubic feet of waste containing 14 curies each year as a result of its 08 License activities.¹⁵⁰ Even if unforeseen circumstances prevented SLC from disposing of the waste it might accumulate during a two-year period, cost of disposal would clearly be an insignificant addition to the overall decommissioning cost estimate.

(ii) The Company will continue to protect public health and safety.

SLC has controlled the site and conducted its operations in accordance with all NRC regulations. According to the NRC, SLC has appropriately limited radiation exposures to both its employees and to members of the public.¹⁵¹ NRC records also indicate that the Company has limited releases to the environment.¹⁵² Indeed, the Staff has stated that since 1999, the Staff has conducted numerous inspections of the SLC site and has concluded that radiation exposures and environmental releases have remained well below NRC limits.¹⁵³ Moreover, on November 4, 2004, the Staff reported the results of a four-month integrated safety inspection of the Bloomsburg site that included reviews of site conditions, site security, licensed activities, waste storage and management, and dose assessments, and concluded that the Company was adequately complying with Commission requirements.¹⁵⁴ The Company's record of compliance is a strong indication that if exemptions are granted, SLC will continue to operate its facility safely and in compliance with NRC regulations during the next license period.

¹⁵⁰ Lynch Aff. ¶ 9; Lynch Aff., Attachment 4, Letter from William E. Lynch, Jr., SLC Vice President, to John Kinneman, NRC Region I Nuclear Materials Safety Branch 2 Chief, enclosing request for additional information (RAI) responses, (Oct. 26, 2004) at 9 [hereinafter RAI Response].

¹⁵¹ SECY-99-269, Attachment 1.

¹⁵² *Id.*

¹⁵³ *Id.*

In addition, during the next license period, SLC will continue to maintain and provide physical security for the site. SLC has procedures in place to control visitor and contractor access to site and to the site's restricted areas.¹⁵⁵ In addition, the Company regularly inspects the fence surrounding the tritium compound.¹⁵⁶ SLC also restricts access to the tritium waste storage and tritium processing buildings and closely monitors its inventory of tritium receipts, shipments, and tritium-filled tubes.¹⁵⁷ As part of its ongoing environmental monitoring program, the Company conducts weekly inspections of the former silo waste for signs of leakage or tampering.¹⁵⁸ SLC also surveys the amount of radiation present near the site perimeter fence on an annual basis.¹⁵⁹ All of these measures were found by the Staff to satisfy NRC requirements.¹⁶⁰

(iii) The Company will continue to store and dispose of pre-2000 radioactive waste safely and properly.

Currently, the Company has approximately 16,313 curies of pre-2000 tritium waste stored on site.¹⁶¹ A portion of this onsite waste dates back to waste that was generated before 1979.¹⁶² As described more fully in Attachment 4 to Mr. Lynch's Affidavit, the Company has conducted an inventory of the type of waste, curie content, and volume, to the greatest extent practicable.¹⁶³ The portion of the onsite tritium waste that can be readily inventoried consists of

¹⁵⁴ Executive Summary of Nov. 4, 2004 Inspection Report.

¹⁵⁵ RAI Response at 4-6.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ See Denial Letter (bases for denial all related to decommissioning and related license conditions).

¹⁶¹ RAI Response at 9.

¹⁶² *Id.* at 2.

¹⁶³ *Id.*

8,175 curies and 1,791 cubic feet of waste.¹⁶⁴ According to a contractor cost estimate, it will cost \$593,393 to dispose of all of the waste, provided that there is available space at the Barnwell, South Carolina, low-level radioactive waste disposal facility.¹⁶⁵

But even putting aside the issue of disposal-space availability, the Company has not been able to dispose of the pre-2000 tritium waste, because by agreement with the NRC and PADEP, the silo wastes were given higher priority for allocation of decommissioning funds.¹⁶⁶ If SLC were permitted to use the decommissioning funds generated by the 08 License to dispose of 08 License-generated waste, SLC would have been able to ship all of the onsite waste due to 08 License activities to an offsite disposal facility.¹⁶⁷ To date, however, funds from the trust account have only been used to remediate the legacy waste generated under the 02 License.¹⁶⁸

Even before the 1999 license renewals, the Company took steps to reduce the volume of tritium waste generated by its operations.¹⁶⁹ In this regard, the Company discontinued its practice of accepting foil waste from its customers, which has comparatively large curie content, although its volume is relatively small.¹⁷⁰ SLC's record provides reasonable assurance that if the Staff exempts SLC from the financial assurance requirements, SLC will continue to dispose of and store radioactive waste properly and safely.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 2-3.

¹⁶⁷ *Id.* at 3.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* For instance, among SLC's inventory of tritium waste stored onsite is waste from foils and targets, which account for only 8.6 cubic feet of volume but 11,225 curies of waste. *Id.* at 2.

c. An exemption is in the public interest.

The Company's continued operations will benefit the public interest, because SLC will continue to make deposits into the decommissioning trust fund, manufacture products critical to the national defense and security, offer customers a safe disposal method for used tritium signs, and contribute significantly to the local economy.

(i) The Company will continue to make trust fund deposits to ensure the availability of decommissioning funding.

During the next license period, the Company will continue to make payments into the decommissioning trust fund. SLC is now current on its trust fund deposits, and since 1995 has contributed a total of \$792,000 into the trust fund from ongoing operations, and a substantially greater amount from insurance proceeds.¹⁷¹ As discussed above in section III.D.3.a(i), if the Company's 08 License is not reinstated and renewed, the Company is unlikely to be able to contribute to the decommissioning fund – a result that is decidedly contrary to the public interest.

In its license-renewal requests, the Company proposed that it continue monthly deposits for the next license period, but at \$5,000 per month, the level set by the NRC for the period from 1995-1999.¹⁷² At the time of the 1999 license renewal, the NRC exerted a great deal of pressure on the Company to increase the level of its escrow funding.¹⁷³ With some reluctance, SLC ultimately agreed to a graduated funding increase that represented a 64 percent increase in the total amount of funding over the previous five-year license period (i.e., \$300,000 contribution during 1995-1999 versus \$492,000 contribution during 2000-2004) and an 80 percent increase in the monthly commitment for the 2003-2004 time period over the monthly commitment for the

¹⁷¹ Lynch Aff. ¶ 21.

¹⁷² 08 License Renewal Request at 3.

¹⁷³ RAI Response at 7.

previous license period (i.e., \$5,000 per month during 1995-1999 versus \$9,000 per month during 2003-2004).¹⁷⁴ The Company noted in an August 3, 1999, letter to the NRC that its ability to make the payments would be “dependent on a stable growing economy in which [it could] continue to grow [its] business.”¹⁷⁵ Thus, even before the downturn occurred, SLC had advised the NRC that its ability to make increased deposits was dependent upon a growing economy and growing business.

Contrary to the Staff’s suggestion in SECY-99-269 that higher monthly payments are necessary to demonstrate good faith on the Company’s part,¹⁷⁶ SLC’s proposal that the level of its monthly payments revert to an earlier level is not an attempt to avoid its responsibility to provide funding for decommissioning. Rather, the Company only seeks a more reasonable funding level that takes into account the commercial realities of the domestic and global economies, just as it attempted to do in 1999 – before it experienced any effects of the economic downturn. Currently, the Company’s business is strong and growing, but the Company cannot forecast with any degree of certainty how future domestic and global economic conditions will impact SLC’s projections and profits over the next five years.¹⁷⁷ On the other hand, based on the Company’s current book of business and projected business over the next five years, SLC is confident that it can contribute \$5,000 per month to the trust fund.¹⁷⁸ Although this represents a significant reduction from the \$9,000 monthly payments SLC made in 2004, a \$5,000 monthly payment is more realistic if SLC must be able to make the escrow payments, even if it

¹⁷⁴ *Id.*

¹⁷⁵ Aug. 3, 1999 Letter at 2.

¹⁷⁶ SECY-99-269 at 4.

¹⁷⁷ RAI Response at 8.

¹⁷⁸ *Id.*; Lynch Aff. ¶ 24.

experiences another business downturn.¹⁷⁹ Under this proposal, SLC would contribute an additional \$300,000 to the trust fund over the next five years.

Alternatively, the Company proposes to link its payment levels to the success of its business, as it proposed to the Staff in 1999.¹⁸⁰ This arrangement would result in increased payments if business continues to grow, but reduced payments if there is another downturn.¹⁸¹

Because the Staff previously rejected such a variable funding level, SLC proposes to revise License Conditions 16 and 20.A as follows:

Pursuant to 10 CFR 30.11, the licensee is exempted from the provisions of 10 CFR 30.32(h) and 30.35(a), provided that the licensee sets aside from operating funds or any other funds, except insurance litigation funds, \$5,000 per month for a total of \$300,000. These funds shall be deposited into the T/A SAFETY LIGHT, USR INDS, MB TRUST FD escrow account held by J.P. Morgan Bank.

If the Board finds that the licenses should be renewed in all respects, with the exception of the payment level, the Company requests that the Board order the parties to reach a mutually agreeable payment arrangement.

- (ii) The Company is the sole manufacturer of a product that is critical to the national defense and security.

As discussed above in section III.D.3.a.(ii), the Company is the sole producer of a certain type of tritium foil that is an essential component in radar systems that are used in military aircraft and other critical applications. If SLC is not permitted to continue manufacturing the foils, the lack of foils would adversely affect national defense and public safety.

¹⁷⁹ Lynch Aff. ¶ 24.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

- (iii) The Company manufactures a product that is important to public safety.

SLC manufactures self-luminous signs for use in commercial and industrial buildings.¹⁸²

The Company's signs are an accepted alternative in all code occupancies that require illuminated emergency exit signs.¹⁸³ Unlike other types of safety signs that require external power or batteries as a power source, SLC's low-maintenance tritium signs remain reliably illuminated for their design life, without maintenance.¹⁸⁴ Because it is common for building managers to neglect the required maintenance for electric signs, self-luminous signs are more reliable and provide increased safety.¹⁸⁵

- (iv) The Company provides a safe method for the disposal of depleted tritium in used self-luminous safety signs.

SLC has a policy of accepting expired safety signs from its customers, offering them a safe and convenient method for disposing of the depleted tritium.¹⁸⁶ Because of their radioactive content, used self-luminous signs must be shipped to a facility that is licensed to handle low-level radioactive waste. The Company removes this burden from its customers and ensures that the public health and safety is protected by accepting expired self-luminous signs.¹⁸⁷ The Company's procedures for handling and returning the waste to the supplier are described more fully in Attachment 4 to Mr. Lynch's Affidavit.¹⁸⁸

¹⁸² *Id.* ¶ 4.

¹⁸³ *Id.*

¹⁸⁴ *Id.* ¶ 5.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* ¶ 10.

¹⁸⁷ *Id.*

¹⁸⁸ RAI Response at 3.

Under this program, the Company has returned 356.86 cubic feet of material containing 281,953.03 decayed curies to its supplier since January 1, 2000.¹⁸⁹ Thus, by ensuring that expired light sources are disposed of in properly-licensed facilities, the Company's recycling program provides a significant benefit to the public health and safety. Because there are limited options for proper disposal of these signs, if SLC no longer provides this service, there will be an increased risk that used signs will be mishandled, and members of the public will be at a greater risk of inadvertent exposure to tritium.

(v) The Company plays an important role in the local community and economy.

Finally, SLC is a valuable contributor to the local community and economy. The Company employs 28 people and has an annual payroll of \$800,000.¹⁹⁰ If the Staff does not grant the exemptions, the Company would be forced to lay off all of its employees, which would obviously cause great hardship on the employees, their families, and the community.¹⁹¹ In addition, the Company spends more than \$2 million each year on raw material purchases.¹⁹²

4. Violation of a license condition does not justify denial of a license-renewal request.

Quite apart from the issue of whether the Staff should grant an exemption from the financial assurance requirements is the issue of whether the Staff's decision to deny the Company's license renewals is justified by its finding of a willful license-condition violation. The Staff based its decision in part on the Company's failure to "make payments to the trust fund in accordance with the schedule contained in Condition 16 ([02 License]) and Condition 20.A

¹⁸⁹ Lynch Aff. ¶ 10.

¹⁹⁰ *Id.* ¶ 11.

¹⁹¹ *Id.*

¹⁹² *Id.*

([08 License]).”¹⁹³ Although the Staff may modify, suspend, or even revoke a license because of license-condition violations,¹⁹⁴ there is no statute, regulation, NRC precedent, or guidance document that compels a denial of license renewal based on a license-condition violation.

The discussion in section III.C.2 above shows that the Company did not willfully violate the license conditions, and that even if the payment delays are classified as willful violations, they do not raise any question of SLC’s character or integrity. Moreover, the questions raised about whether the NRC can rely on SLC to be able to make the trust-fund payments arise from required payment levels that were set without regard for the realities of a global economy and competitive markets. SLC’s record over the course of the past decade shows that it is a successful company that has been able to weather significant economic challenges. Consequently, there is reasonable assurance that the Company will be able to make these monthly payments. Nor has the Staff demonstrated that the Company cannot be relied upon to comply with NRC requirements. Therefore, the Staff should not have denied the Company’s renewal requests on this basis.

D. Conclusion

An exemption from the decommissioning financial assurance requirements should be granted, because the Company’s continued operations will neither create additional decommissioning liability nor diminish the Company’s ability to protect public health and safety. Indeed, continued operations are in the public interest, because during the next license term, SLC will continue to ensure the availability of decommissioning funding, manufacture products essential to public safety and national security, provide for safe disposal of expired signs, and

¹⁹³ Denial Letter at 1.

¹⁹⁴ AEA §§ 186a, 187, 42 U.S.C. §§ 2236(a), 2237.

contribute to the local community and economy. Thus, the Company has satisfied all of the applicable requirements for license renewal.

V. CONCLUSION

The pleadings and correspondence disclosed in this hearing do not reveal any significant factual disputes. The dispute regarding whether SLC deliberately or willfully violated the license conditions is a question of law, not fact. The terms of the license conditions and the actual schedule of SLC's payments are both clear. The Staff has not claimed that SLC converted its limited funds for improper purposes instead of making the escrow payments. Nor has the Staff questioned SLC's conclusion that its business would have failed if it had not made the payments for goods and services in the months when its escrow payments were deferred.

Instead, the Staff based its finding of willful or deliberate violation on SLC's acknowledgements that it knew of the requirements and that certain of its payments were not made on the required schedule. These facts do not constitute a willful or deliberate violation. Neither SLC's cash flow difficulties nor its resulting inability to meet the payment schedule was voluntary. SLC's payment of its essential expenses also was not voluntary and was not a violation of the decommissioning trust fund payment conditions. Those conditions were not intended to force SLC out of business in the event of such cash flow problems.

Even if, in some sense, the circumstances could be classified as a willful violation, they do not put SLC's character and integrity into question. Nothing in the NRC Enforcement Policy compels license suspension in the event of a willful violation. The Enforcement Policy, like the APA, reserves broad discretion to fashion sanctions in response to willful violations. Moreover, while those provisions explicitly mention license suspension or revocation as potential sanctions

for willful violations, such sanctions are intended for violations that raise character and integrity issues. Nothing in the current circumstances justifies license suspension.

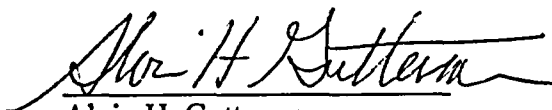
The primary purpose of the NRC's Enforcement Policy is to support the NRC's overall safety mission in protecting the public health and safety and the environment. License suspension is contrary to that purpose and certainly does not support it. License suspension deprives SLC of the resources needed for it to fulfill its responsibilities under the NRC regulations and the Suspension Order, to maintain site security, to provide necessary utilities, and to control the site to protect the public from exposure to the radioactive materials. In addition, it bars SLC from production that is important to protection of the public and defense of the nation.

SLC should be exempted from the regulatory requirements regarding financial assurance for decommissioning because it meets the requirements for such an exemption. As discussed above, such an exemption and renewal of the licenses is necessary to enable SLC to maintain and control the site to protect the public from exposure to the radioactive materials that already are present. In addition, it will enable SLC to continue production that is important to protection of the public and defense of the nation. Most importantly, the NRC should grant the exemption and renew the licenses because SLC is dependent on the licenses, and there is not adequate justification for putting SLC out of business and putting its employees out of work.

For these reasons, the Suspension Order and the Staff's denial of the license renewals should be overturned.

Respectfully submitted,

SAFETY LIGHT CORPORATION



Alvin H. Gutterman

Susan H. Lin

Morgan Lewis & Bockius LLP

1111 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

Telephone: (202) 739-5468

Facsimile: (202) 739-3001

E-mail: agutterman@morganlewis.com

Counsel for Safety Light Corporation

Dated: February 16, 2005

Exhibit 1

Affidavit of William E. Lynch, Jr.

I, William E. Lynch, Jr., being duly sworn, depose and state as follows:

1. I am the Vice-President of Safety Light Corporation (SLC). I have been in this position since 1996. In this position I am responsible for the management of SLC's operations, marketing, and financial performance. In conjunction with this position, I am a member of Underwriters Laboratories Standards Technical Panel for Emergency Lighting and on their Industry Advisory Council.
2. SLC owns and operates a facility near Bloomsburg, PA, at which it manufactures self-luminous signs and other products. Tritium is an essential part of all of the SLC products. Nuclear Regulatory Commission license number 37-00030-08 (the 08 license) authorizes SLC to possess and use tritium. Without this authorization, SLC would not be a viable business.
3. SLC and its predecessor company, US Radium, have conducted manufacturing activities at the Bloomsburg site using radioactive materials since 1948. During the first two decades, US Radium worked with a variety of radioactive materials, including radium-226, strontium-90, cesium-237 and americium-241. Although none of these radionuclides have been used since the 1960s, they are still present onsite in the form of stored waste and ground and building contamination. These wastes are often referred to as the legacy waste. NRC license number 37-00030-02 (the 02 license), which once authorized the use of these radionuclides, now restricts SLC's use of these materials to characterization and decommissioning.
4. SLC's principal product is self-luminous signs, which are used as exit signs to meet fire-safety requirements of building codes, both in the United States and

internationally. They are accepted for this purpose in all code occupancies that require illuminated emergency exit signs, and are used in every type of occupancy where illuminated egress lighting is required, including schools, hospitals, retail stores, hotels and even in the Library of Congress.

5. Our self-luminous products offer significant benefits, compared to the alternative types of emergency lighting systems available in the marketplace. Unlike electric signs, self-luminous signs require no external power or batteries, no maintenance and are always on, making them the most reliable, energy efficient exit sign available today.
6. Since 1992, in anticipation of the US Department of Defense's decision to discontinue the sale of tritium for commercial purposes, we have relied on a foreign manufacturer for the supply of the gaseous tritium light sources (GTLS) that are used to illuminate our safety signs. As we are no longer filling tubes at our facility, the radioactive waste generated by our sign assembly operations is quite minimal.
7. While self-luminous exit signs make up the largest part of our business, we also produce tritiated foils, rods and targets. In this operation, we impregnate a foil or rod, usually quartz, nickel or titanium, with tritium to create a product that generates an ionization field. We have a limited number of customers for these products who use them for research activities, oil and gas exploration, and as components in manufactured items.
8. While this production accounts for only a small percentage of our income, and SLC could not survive solely based on this activity, we have learned that it is of critical importance to the national defense. In January 2005, after we had started to inform

SLC customers that as a result of the NRC's Suspension Order and denial of license renewal we would no longer be able to supply their needs, we learned that the foils and rods that we produce for two of our customers, Northrop Grumman and Communications and Power Industries (CPI), are critical components in the assembly of radar systems that they supply for military and non-military applications. Both companies sent letters to the NRC expressing concern about the effect of SLC's shutdown on their ability to produce radar systems for both military and non-military applications (Attachment 1 and 2). Representatives of both companies have made similar statements to me.

9. In addition to the production of self-luminous signs and the aforementioned foils and targets, the only other activity that we perform is the receipt and dismantling of expired self-luminous signs. Three months prior to the expiration of the effective life of our signs, we contact our customers to advise them of their disposal obligations and replacement options. This policy encourages sales and increases the assurance of proper disposal of expired signs. With this program, during the last license period, we have taken back thousands of expired signs and assured the proper disposal of 281,953.03 curies of tritium.
10. The categories of waste at the Bloomisburg site are described in correspondence between the NRC and SLC in connection with our applications for license renewal. After reviewing SLC's renewal applications, the NRC sent SLC a request for additional information (Attachment 3). SLC's response (Attachment 4) describes various waste handling activities. In particular, it states that the waste generated by activities under the 08 license since the renewal in late 1999 have been shipped

off-site for disposal. This is consistent with a condition of the license, which requires disposal of radioactive waste from ongoing activities within two years of generation.

11. Overall, the amount of radioactive waste due to current production is very small in comparison to the tritium wastes from pre-2000 operations. As Attachment 4 shows, we have approximately 16,313 curies (not considering decay) onsite relating to production activities prior to 2000. Since that time we accumulated only 70 curies, all of which has been shipped off-site.
12. SLC employs 28 people in its manufacturing activities at the Bloomsburg facility, with an annual payroll of approximately \$800,000. If those activities are shutdown, as required by the NRC Suspension Order, the present job responsibilities of these employees will be eliminated. SLC has not yet determined whether it could assign any of these employees to other responsibilities, but there is obviously a significant risk that many of these employees would lose their jobs. This would cause an economic hardship for the employees, their families and the community. In addition to our annual payroll, our operations contribute more than \$2,000,000 a year to the community in raw material purchases. As a result, shutdown of SLC's activities would obviously impact both the local economy and our vendors.
13. Condition 16 of the 02 license and condition 20.A of the 08 license required SLC to make certain monthly payments into a decommissioning trust fund or escrow account. These conditions resulted from my negotiations with the NRC staff in 1999 concerning renewal of these licenses. During those negotiations, the NRC Staff made it clear that our license renewal would be largely dependant on our

agreement to increase our level of contributions over that which we contributed during the previous license period. At the conclusion of these negotiations, we reluctantly agreed to the escalating contribution levels that became part of our renewed license. At the time, we expressed concern that our ability to meet these increased contribution levels would be dependant upon a stable growing economy that would allow us to continue to grow our business. Attachments 5 and 6 are copies of letters in which I specifically mentioned this concern.

14. These license conditions granted SLC an exemption from the NRC decommissioning financial assurance regulations that would otherwise be applicable to SLC. This exemption is necessary because the total decommissioning cost estimate is so much larger than the value of SLC's assets and income that SLC could not possibly meet the requirements of those regulations. Both license conditions state that the exemption is valid until license expiration or the date of any failure to comply with the respective license conditions. We did not negotiate about this aspect of the conditions, and I do not recall any discussion with the NRC concerning what would constitute a failure to comply, or what requirements would apply if SLC ever failed to comply with the conditions.
15. Soon after the 1999 license renewal, it became clear that the funds in the escrow account would not be adequate to cover the cost of removing the existing onsite waste, which included the legacy waste and tritium waste generated prior to 2000. In a June 26, 2000, meeting with the Staff and a July 10, 2000, letter to the Staff (Attachment 7), I explained that the funds to dispose of this existing waste could

only come from the funds obtained from SLC's settlements with its insurers or "escrow funds which are generated from ongoing profitability of Safety Light Corporation." Since the available funds were devoted to remediation of legacy waste, which the NRC and SLC agreed to give higher priority based on the relative hazards associated with the material, there was no money left for disposal of the stored pre-2000 tritium waste. The NRC did not raise any questions with SLC regarding this response.

16. In early January 2005, I received a copy of the NRC Staff's response to SLC's motion to set aside the immediate effectiveness of the December 10, 2004 NRC order suspending SLC's licenses. The NRC's response included a copy of an NRC investigation report concerning an allegation that SLC deliberately violated the license conditions regarding the decommissioning funding exemption. Until then, I had never seen that investigation report. I have now reviewed that report, and the report of an interview of NRC Region I Staff member Marie Miller that is included as Exhibit 5 of the investigation report. Ms. Miller described in some detail the history of SLC's payments to the escrow account since the licenses were renewed. I assume that Ms. Miller based her statements on a detailed review of the monthly statements from the escrow account trustee, and have no reason to doubt that her description is accurate.
17. Ms. Miller found that in four months of 2001, from May to August, SLC did not make its payments, but that its payments in September and October made up three of the omitted payments. For 2002, she found that SLC did not make required payments in February and May, but made up these omitted payments in

April and October. For 2003, Ms. Miller found that SLC's payments in January and February were each \$8000, although the license conditions required the monthly amount to increase to \$9000 starting in January. She also found that SLC did not make any payments for the five months from April through August, or in October and November. As a result, by the end of November, 2003 SLC's payments were in arrears by \$81,000.

18. During this entire period, I was aware that the NRC licenses required monthly deposits into the decommissioning trust fund. I also knew of each instance when we did not make those payments on time. The reason that SLC did not make all of the payments on the specified schedule was that SLC did not have the necessary funds to make the payments on schedule. Although we had agreed to the payment schedule with some reluctance, we had been optimistic about being able to meet it. From 1998 through August 2001, we experienced a consistent demand for our self-luminous products. Then, after the terrorist attacks of September 11, 2001, SLC experienced a difficult business environment that resulted in its cash flow being insufficient to support the payment schedule. In 2002, in particular, shipments for the year dropped a precipitous 20% from the previous year. To combat the negative effects of this fall-off, we implemented lay-offs of our hourly workers and salary reductions for all management and administrative personnel. The negative effects of 2002's downturn were felt well into 2003 as cash flow was reduced and it became increasingly difficult to meet our obligations in a timely manner. We also pared other expenditures to the minimum necessary to allow the businesses to continue during this difficult period. At first I expected that the business would

recover in a few months, but the downturn lasted longer than I expected, and even after our sales picked back up, there was a significant delay in being able to translate orders into cash. When the cash flow was not adequate for SLC to pay all of its obligations, I had detailed discussions with Larry Harmon, SLC's General Manager, about the bills that were due to determine how to allocate our limited resources. In some months, there was no cash left to make the escrow payments after we paid the bills that had to be paid to keep the Company in business and products going out to its customers, such as employee salaries and the vendors who supplied the materials needed for our products. SLC would not have been able to stay in business if it did not pay the salaries of its employees or the bills of its suppliers.

19. Obviously, if the business had failed, SLC would not have been able to make any further payments into the decommissioning trust fund. It was necessary to sustain the business during the downturn if SLC was going to be able to make all of the required payments. At no time did I or anyone else in SLC management intend to flout or ignore the license requirement to make the monthly deposits. When we were forced to miss required payments, we fully intended to make the payments as soon as SLC had the necessary resources, and SLC did make those payments when it was able to do so.
20. Although SLC's payments were reflected in the monthly statements that SLC and the NRC received from the decommissioning trust fund trustee, I was aware that SLC was not discussing the missed payments with the NRC. In November 2003, there was a meeting among SLC and the government agencies about disposal of

the packaged silo waste, in which SLC learned that there was not enough money in the escrow account to cover the cost of disposal . Since part of the shortfall was due to the fact that we were behind on our payments, we decided that SLC should discuss this situation with the NRC. The next day, Mr. Harmon telephoned Ms. Marie Miller in the NRC Region I office to discuss this situation with her.

21. In retrospect, I realize that SLC should have been more proactive in dealing with the licensing implications of our inability to meet the required payment schedule. If SLC is permitted to continue to operate, I will make sure that SLC notifies the NRC promptly if it appears that SLC may encounter difficulty in making a required trust fund payment.
22. Since November 2003, the level of SLC's receipts has recovered, and SLC has been able to make the required payments. Starting in December 2003, SLC was also able to make a payment on the amount in arrears, and during 2004 SLC not only made the required payments but also paid the amounts that had been in arrears. The final payment (\$36,949.61) was sent to the fund trustee on December 29, 2004. As a result, over the course of the five-year license term, SLC paid all of the required payments, and it also deposited into the trust fund the amount that would have been earned in interest if its deposits had been made on time.
23. Throughout my involvement with SLC, the Company has been very conscientious about meeting NRC requirements. This includes not only the conduct of manufacturing operations, but also the decommissioning activities. I believe that SLC's record of compliance with NRC requirements has been quite good. The

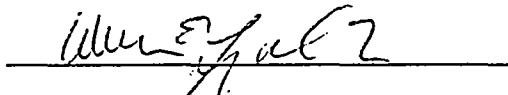
current issue about the late payments into the decommissioning trust fund is the only significant NRC enforcement issue that has occurred at SLC during this time.

24. The decommissioning trust funds are being used to fund decommissioning activities, in accordance with plans that are approved by the NRC. These plans have given priority to the legacy wastes, which primarily relate to the activities under the 02 license. As discussed above, current manufacturing operations contribute very little to the overall site contamination. The cost of handling and disposal of the radioactive wastes that result from current SLC manufacturing operations are being paid out of SLC's operating budget. To date, The decommissioning trust fund has been exclusively for the costs associated with the remediation of the legacy waste.
25. In its license renewal applications, SLC proposed that its payments into the escrow account during the period of the renewed license be set at \$5000 per month, which represents a significant reduction from the \$9000 per month that SLC paid during 2004. The reason for proposing this reduction is to provide assurance that SLC will continue to be able to make the escrow payments, even if we experience another downturn in our business. I am confident that if the payments are set at \$5000, SLC will be able to make them consistently as we had during the license period that ended in 1999. It should be noted that In 1999, during the negotiations of the increased contribution levels, I had suggested that the monthly contributions be linked to our corporate sales or profits in order to account for any potential changes in business conditions. This type of arrangement might have eliminated the problems created by the obligation of a high contribution level required during

times of very difficult business conditions. Unfortunately, at the time, the NRC staff was uninterested in pursuing this type of arrangement. We would still be interested in a payment requirement based on business success. This would result in increased payments if our business continues to grow, but reduced payments if there is another downturn.

26. The transcripts of my December 15, 2003, interview with the NRC Office of Investigations (Attachment 8) and the July 20, 2004, predecisional enforcement conference (Attachment 9) discuss many of the subjects mentioned above, and provide some additional details.

The matters stated above are true and correct to the best of my knowledge, information and belief.


 William E. Lynch, Jr.

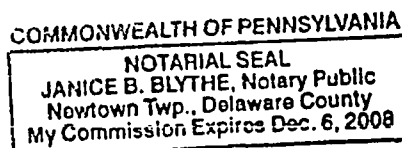
ACKNOWLEDGMENT

Subscribed and sworn to before me

This 16 day of February 2005.

 Notary Public

My commission expires: Dec 6 2008



Attachment 1



Frank Costello
US Nuclear Regulatory Commission
475 Allendale Road
King of Prussia, PA 19406-1415

January 11, 2005

RE: Safety Light License # 30-00030-08

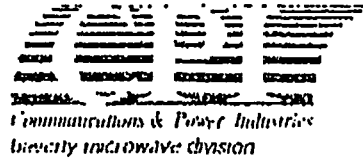
Dear Mr. Costello,

Safety Light located in Bloomsburg, PA, NRC License # 30-00030-08, informed us last week that the NRC has decided not to renew their materials license. This came as a complete and unexpected surprise to CPI and to other customers. This action has caused a critical situation for CPI and all branches of the U.S. Armed Forces

Communications and Power Industries is the worlds' largest manufacturer of receiver protector devices, a component of all radar systems. Our products are an integral and critical component required to insure proper operation of radar systems. CPI's receiver protectors are installed in most Airborne, Shipboard, and Ground Based radar systems critical for our national defense. Some of the applications include 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. This is just a small sampling of potentially affected radar systems.

An integral component of our products is a tritium source we purchase from the Safety Light Corporation in Bloomsburg, PA. The tritium foil we purchase from Safety Light is a critical and necessary component that allows our products to operate correctly and reliably.

CPI produces over 350 replacement Receiver Protectors per month for the maintenance and repair of actively used Radar Systems. If 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.



We have made attempts over the last 10 years and in the past few days to find an alternate source for tritium foils. This effort has been unsuccessful. All foil replacement techniques will require a great deal of research, development and re-qualification by the military and system manufacturers. Consequently, in the near future we are completely dependent on Safety Light to provide this vital component. CPI estimates a 5 year supply would be necessary to make a reasonable transition to a new process or technology.

In consideration of the importance of Safety Light's product to Communications and Power Industries and to the Nation's defense, we would like you to reconsider your decision not to renew their materials license. We understand the importance of the issues surrounding your decision not to renew the license, but due to the importance of Safety Light's product to all branches of the U.S. (and Allied) Military Forces, we must find a way to insure Safety Light's compliance with NRC requirements while allowing them to continue to supply tritium foils to CPI.

Please call on us to help in any way possible. Thank you for your consideration in this critical matter.

Sincerely,

Don Coleman,
President

cc: Mike Grabko, CPI
Larry Harmon, Safety Light Corp. ✓

Attachment 2

NORTHROP GRUMMANNorthrop Grumman Corporation
Electronic SystemsP.O. Box 1693
Baltimore, MD 21203

January 25, 2005

Nils J. Diaz, Ph.D.
Chairman, Nuclear Regulatory Commission
Region 1
Washington, D.C. 20555

Dear Dr. Diaz:

Northrop Grumman Electronic Systems would like to take this opportunity to provide the Nuclear Regulatory Commission information pertaining to our supplier relationship with Safety Light Corporation (SLC) located in the South Centre Township of Bloomsburg, Columbia County, Pennsylvania. Safety Light Corporation is a sole source supplier for a highly specialized process known as "tritiation of radioactive rods." This process is utilized for the production of Receiver Protectors, which are critical assemblies in the operation of all tracking and fire control radars. These radars are utilized on numerous major Defense platforms and Air Traffic Control systems that Northrop Grumman provides to The United States. Our nation's defense and homeland security rely upon on the performance of these systems.

Safety Light Corporation 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.

The NRC's licensing action against Safety Light Corporation affects Northrop Grumman's ability to comply with contractual delivery requirements for radars on the following DoD and other Government platforms:

<u>Program</u>	<u>Description</u>
F16	Multi-role Fighter Bomber for air-to-air and air-to-ground fighting
F22	Advanced Tactical Fighter for air-to-air and air-to-ground fighting
B1B	Long Range Bomber air-to-ground bomb delivery
E3A	AWACS Airborne Radar Station used to control battlefield
TESAR	Predator Unmanned Aircraft used for battlefield surveillance
TPS63	Mobile Surveillance Radar used to control battlefield activities
ASR9	Airport Surveillance Radar used for airport air traffic control
Long Range Radar	Used for air traffic control between airports

FROM : ISOLITE

FAX NO. : 6102968952

Jan. 26 2005 01:37PM P3

01/26/2005 12:34 410-765-2690

K A GRAY

PAGE 02/02

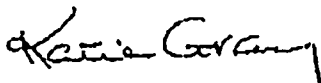
January 25, 2005

Page 2

This represents a sample of Government radar systems that will be placed in jeopardy and clearly illustrates the critical need to maintain Safety Light Corporation as a provider of the tritiation process.

Northrop Grumman would like to thank you in advance for your consideration in the matter at hand. If you have any questions, please do not hesitate to contact me for any further clarification.

Sincerely,



Katie Gray
Vice President, Electronic Systems
Procurement and Material Management

cc: Mr. George Pangburn
Director, Division of Nuclear Safety
U.S. Nuclear Regulatory Commission
475 Allendale Road
King of Prussia, PA 19406

Attachment 3



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

August 18, 2004

Docket Nos. 03005980
03005982
Control Nos. 134920
134921

License Nos. 37-00030-02
37-00030-08

Larry Harmon
Plant Manager
Safety Light Corporation
4150-A Old Berwick Road
Bloomsberg, PA 17815

SUBJECT: SAFETY LIGHT CORPORATION, REQUEST FOR ADDITIONAL
INFORMATION CONCERNING APPLICATION FOR RENEWAL OF LICENSE,
CONTROL NOS. 134920 AND 134921

Dear Mr. Harmon:

This is in reference to your letters (ML041310318 & ML041310328) dated April 22, 2004 requesting to renew Nuclear Regulatory Commission License Nos. 37-00030-02, and 37-00030-08. To accommodate a more efficient review, this letter combines our requests for additional information regarding both application. A Notice of License Renewal Application and Opportunity to Request a Hearing was published in the Federal Register on June 30, 2004 (Volume 69, Number 125, pages 39515 - 39517). We have completed the acceptance review of your applications for renewal of these licenses, and are prepared to continue with the full review.

In order to continue our review, we need the following additional information:

1. 10 CFR 30.32(i)(3) describes the information required for an emergency plan for responding to a release of radioactive material. The most recent update of your plan, titled "Radiological Contingency Plan," was submitted to the NRC on October 28, 1999. This plan describes the Safety Light facility, activities, accident scenarios, detection and response procedures, only as relates to the tritium processes of License No. 37-00030-08. The regulations specify that an emergency plan must include identification of each type of radioactive materials accident for which protective actions may be needed, which would include consideration of the stored radioactive waste and other materials of decommissioning. Provide confirmation that your Radiological Contingency Plan has been updated, is ready to implement, and includes consideration of the other regulated material on-site (i.e., stored silo waste).

2. 10 CFR 30.32(i)(3)(xii) describes the requirement to perform "biennial onsite exercises to test response to simulated emergencies." Section 7.2 of your most recent Radiological Contingency Plan (dated October 29, 1999, ML003727436) states that you perform an annual evacuation drill which, biennially, is expanded into such an exercise. Provide the date and results of your last-performed Contingency Plan exercise, along with the scheduled date for your next drill and your next exercise.
3. Condition 18 of License No. 37-00030-08 requires that radioactive waste generated after January 1, 2000 from operations under that license be disposed of within two years of generation, providing a waste disposal site is open. Additionally, Condition 19 requires that waste generated prior to January 1, 2000, be disposed of or otherwise removed from your site by December 31, 2004. In your application dated April 22, 2004, you state that you have not been able to dispose of waste generated under License No. 37-00030-08 due to the diversion of all waste-disposal funds to the remediation conducted under License No. 37-00030-02. Although you have provided previous submissions detailing radioactive waste generation, this request is for a single, consolidated submission. Please provide:
 - a. A table showing all waste generated under License No. 37-00030-08, by year, since the license renewal in 1999. Include curie content and volume, as well as a description of the work-activity which resulted in the generation of the waste.
 - b. A table showing all waste generated under License No. 37-00030-08 that has been shipped since the last license renewal in 1999. This table should include shipping date, curie content, and volume.
 - c. An inventory of all waste generated under License No. 37-00030-08 currently held in storage, characterized by type of waste (e.g., columns, foils, paper waste, etc.), curie content, and volume. This inventory should be decay-corrected to show a curie content as of a specific date in 2004.
 - d. A detailed estimate of the cost for disposal of all tritium waste currently on the site, and a discussion of what waste cannot be disposed under current conditions, and why it cannot be disposed.
 - e. A discussion of how you handle, recycle, and/or dispose of returned signs containing tritium, including a statement of the curie content and volume of tritium signs that have been returned since the last renewal in 1999.
 - f. A discussion of actions you have taken to dispose of all waste generated under License No. 37-00030-08, any additional efforts that can be made to dispose of this waste, and your actions to minimize the generation of additional radioactive waste.

4. 10 CFR 20.1101(b) requires a licensee to implement procedures and engineering controls to achieve occupational doses As Low As Reasonably Achievable (ALARA). In consideration of this criterion, provide a discussion of the additional exposure to workers under License No. 37-00030-08 from the silo waste stored pursuant to License No. 37-00030-02.
5. 10 CFR 20.1302(b)(2)(i) requires demonstration of compliance with the annual dose limit for individual members of the public by maintaining releases of gaseous and liquid radioactive effluents below specified levels in table 2 of Appendix B to part 20. NUREG-1556, Vol. 12 "Consolidated Guidance About Materials Licenses : Program-Specific Guidance about Possession Licenses for Manufacturing and Distribution," Section 8.10.5 and Appendix M contain additional discussion of this subject. Provide a table summarizing all releases of radioactive material to the environment from activities under License No. 37-00030-08 since the last renewal in 1999. Please include a description of the release pathway, radionuclide(s) released, release amount (in curies and volume), and the estimated annual dose.
6. 10 CFR 30.33(a)(2) requires that a licensee's equipment and facilities adequately "protect health and minimize danger to life or property." NUREG-1556, Vol. 12, Section 8.9 and Appendix G provide a description of the information to submit in support of this requirement. Using this guidance, provide the following information:
 - a. Provide a map of your facility clearly showing the locations of the Restricted Area(s) and Unrestricted Area(s), as defined in 10 CFR 20.1003. (Note, a Restricted Area is one to which access is restricted by the licensee to prevent undue exposure to radiation and radioactive materials).
 - b. With respect to the material controlled under License No. 37-00030-02, provide a description of the areas that are designated as Radioactive Material and/or Radiation Areas as defined by 10 CFR 20.1003 and 10 CFR 20.1902.
 - c. Describe any planned facility changes and provisions to maintain exposures ALARA. In particular, describe plans to improve the storage condition for the containers of packaged silo waste that are stored outside. The containers should be protected from weathering, so that the drums remain intact and the labels are legible. Facility changes should also address possible dose rate controls to reduce exposure to workers and to the public.
7. 10 CFR 20.1003 requires that a licensee control access to Restricted Areas. Related to this requirement, please provide the following information:
 - a. Your document, "Procedure For Controlling Access to Restricted Industrial Area Owned by Safety Light Corporation," (dated 4/9/1999, ML 003727438) states that all entrances to the restricted area will be locked "other than during normal working hours." Describe how access to the Restricted Area is controlled when the entrances are unlocked. Also, describe the frequency with which the fenced boundaries are inspected for vulnerabilities or evidence of tampering.

- b. The "Procedure For Controlling Access to Restricted Industrial Area Owned by Safety Light Corporation" and the Health and Safety Program state that visitors to the Restricted Area are accompanied by an employee. The General Employee Training (dated 4/9/1999, ML 003727438) states that contractor personnel or visitors may be permitted unescorted access if they have the same knowledge and qualifications as Safety Light Corporation Employees. Describe how visitors are processed and what access or exposure controls apply to such individuals.
 - c. Describe how access to areas with radioactive material or radioactive waste are controlled to prevent the unauthorized removal of radioactive material. Include an accountability program for assuring that the licensed material remains in secure storage (e.g., an annual inventory, record and audit of inventory records).
 - d. Describe the control of keys to the gates bounding the restricted area, and to the six locked buildings. Include the title of the individual responsible for the keys and describe any tracking performed of keys issued.
8. 10 CFR 20.1301(a)(2) requires licensees to conduct operations such that the dose in any unrestricted area does not exceed 0.002 rem in any one hour. Describe the frequency with which Restricted Area Boundaries are surveyed to ensure compliance with this requirement. NUREG-1556, Vol.12, Appendix M provides additional discussion on this subject and may assist in your response.
9. 10 CFR 20.1802 states that a licensee shall control and maintain constant surveillance of licensed material that is located in an unrestricted area and is not in storage. Describe the staging locations for incoming and outgoing radioactive material shipments. If these locations are outside the Restricted Area, describe the controls used for the materials. If the locations are within the Restricted Area, describe the access controls used for the carriers during the shipments.
10. 10 CFR 19.12 describes the instruction that must be provided to workers likely to receive in excess of 100 mrem of occupational exposure in a year. Identify the individuals who will be responsible for maintaining control of the radioactive material and radioactive waste under License No. 37-00030-02. In general, the responsible individual should have a working knowledge of basic radiation safety practices and the regulatory requirements associated with the material being stored (cesium-137, tritium, strontium-90, americium-241, and radium-226). Also, describe how the individuals responsible for this radioactive material will be monitored or evaluated for purposes of occupational personnel exposure monitoring and controls.

L. Harmon
Safety Light Corporation

5

11. Describe your contamination control program with respect to activities performed under License No. 37-00030-02, and measures to prevent the spread of contamination. Include the following:
 - a. Describe your contamination survey schedule for work and storage areas, and the criteria for remediation of areas that are accessible to workers and the public.
 - b. Describe your procedures for entry into contaminated areas that may be required to enter in response to emergency conditions, affects from storm damage, or vandalism.
12. With respect to your request for exemption of the decommissioning funding program, please provide the basis for reducing the funding level from \$9000 per month to \$5000 per month. Demonstrate that projected profits over the next two to five years support this funding level.
13. Please describe your plans to deal with potential impacts to operations under both licenses if the Environmental Protection Agency (EPA) were to initiate remediation activities during the period of the requested license renewal.
14. Since you may not be able to conduct further site characterization and decommissioning, we are considering whether to issue License No. 37-00030-02 for possession-only rather than for characterization and decommissioning. However, it is the current NRC policy for Possession-Only licenses to be reviewed and renewed every two years. Please comment on whether this change in license authorization is appropriate and describe the impacts (e.g., financial, labor, and/or material resources) of having to renew this license every two years.

The identified information should be provided within 30 days of the date of this letter. Please note that the technical review may identify additional omissions in the submitted information or technical issues that require additional information.

L. Harmon
Safety Light Corporation

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In accordance with 10 CFR 2.790, a copy of this letter and your response will be placed in the NRC Public Document Room and will be accessible from the NRC Web site at <http://www.nrc.gov/reading-rm.html>.

If you have any questions regarding this letter, please call Marjorie McLaughlin at (610) 337-5240.

Sincerely,

Original signed by John D. Kinneman

John D. Kinneman, Chief
Nuclear Materials Safety Branch 2
Division of Nuclear Materials Safety

Enclosures:
10 CFR 19
10 CFR 20
10 CFR 30
NUREG-1556, Vol. 12

cc:
William E. Lynch, Vice-President
Norman G. Fritz, Radiation Safety Officer

L. Harmon
Safety Light Corporation

7

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NAME	MMcLaughlin /MMM3/		MMiller /MTM1/		JDKinneman /JDK/			
DATE	08/18/2004		08/18/2004		08/18/2004			

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Attachment 4

October 26, 2004

Mr. John Kinneman
Chief, Nuclear Materials Safety Branch 2
US Nuclear Regulatory Commission-Region 1
475 Allendale Road
King of Prussia, Pa. 19406-1415

Reference: Docket Nos. 03005980 / 03005982
Control Nos. 134920 / 134921

Dear Mr. Kinneman:

The following is the additional information that you requested in your letter of August 18, 2004.

ITEM 1. 10CFR30.32(i)(1) requires a licensee to prepare a Radiological Contingency Plan only if radio-nuclides exist in excess of the quantities listed in paragraph 30.72, Schedule C. According to the waste characterization data produced for Safety Light Corporation (SLC) by Solutient Technologies, SLC has 10.46 curies of strontium-90, 5.679 curies of cesium-137 and 3.803 curies of radium-226. In addition, there is a quantity of americium-241 which is on metal foils or within sealed sources. Due to its' makeup, the total activity for americium-241 has not been precisely determined, however, based on previous processing records the activity is most likely less than 1 curie. Therefore, the values for strontium-90, cesium-137 and americium-241 are all below the quantities specified in Section 30.72, Schedule C. Although a value for radium-226 is not listed in Schedule C, the sum of the ratios for the multiple radionuclides is less than one.

It should be noted that all the material listed above is in concrete, moist soil, sealed devices, or affixed to metal foils. All of the material is contained within steel B-12 boxes, steel B-26 boxes, or steel 55 gallon drums. The material is not readily dispersible even if a number of containers were to be destroyed. A discussion with our Health Physics Consultant indicated that given the way this material is packaged and with its physical/chemical properties, the material would be below the release limits listed in 10CFR30.72, Schedule C and could not cause a radiation dose as high as one (1) rem to any person offsite. Based on this information we conclude that a contingency plan is not needed for this material.

ITEM 2. The last Contingency Plan Exercise was September 30, 2002. SLC based the drill on Accident Scenario 2.8 of our Radiological Contingency Plan, Fire in Solid Waste

Building. We discovered through this exercise that gas was turned on to a heater inside the Solid Waste Building that wasn't being used. SLC made the decision to cut off the gas outside the solid waste building to prevent this from being a possible source of fire or a source that, if ruptured during a fire, would be a supply source to aid the fire. All the contact numbers were verified that are listed in our Plan. The short duration of such an event and its location precluded the need for evacuation. Everyone with responsibilities listed in the Contingency Plan performed their duties flawlessly. It is clear that the exercise reinforced our individual and collective responsibilities and, more importantly, kept them fresh in the event that something does happen at SLC.

In the two years previously, SLC used the actual house fire that occurred on the site as our drill and evaluated everything that happened that day. The actual experience of having that fire demonstrated that everything worked smooth under those conditions and the fire was out in 45 minutes after it was first noticed. SLC's next drill will be done before the end of the year.

ITEM 3.a & 3.b. See Table One. The large curie amounts are attributable to our foil and target operations and consist mostly of scrap foils while the large volumes are attributable to paper waste including paper towels for hand drying in the active area, step pads, etc. The active area is used primarily for the preparation of foils and targets and for cleanup of contaminated devices and device parts.

ITEM 3c. A portion of the tritium waste that is onsite dates back to before 1979 and before I was associated with the company. Health Physics kept a log for all deposits and withdrawals from the Solid Waste Building. At present it is impracticable to do a physical inventory in the Solid Waste Building of all the material that is stored there. Some waste was put into 55 gallon drums and compressed ready for shipment under the regulations at that time. All that waste will have to be unpacked to do a physical inventory. In keeping with ALARA, SLC doesn't feel that it is something that should be done until we are ready to ship that waste.

The following is a breakdown of what was easily inventoried. Foils and Targets 8.6 Cubic Ft. - 11,225 curies, Paper bagged LLRW 480 Cubic Ft. - 2.1 Curies, Scrubber Columns, Mol. Sieve and silica gel 42 Cubic Ft. - 2,205 curies, Tube Stubs 18 Cubic Ft. - .52 curies, Empty Scintillation Vials 47 Cubic Ft. - < 1 curie, Paper Bagged LLRW in 30 and 55 gallon drums compressed 1025 Cubic Ft., Sign Frames 168 Cubic Ft. - 1.68 Curies, Aircraft leaking signs .5 Cubic Ft. - 82.6 Curies, Leaking Glass Tubes 1 Cubic Ft. - 910.37 Curies., and Broken tubes 1 Cubic Ft. - < 1 curie. Using the figure that's been reported to the NRC and decaying that figure, SLC has 8,175 curies of waste on site.

ITEM 3d. Chase Environmental quoted a price of \$593,393 to dispose of the above material. Their quote is predicated on their ability to obtain the required allotment of space from Barnwell. If the required space is unavailable at Barnwell, we know of no other disposal facility that could accept this of waste.

Within this total quantity, there is a large volume of waste that could go to Envirocare, but it only amounts to a little over 5 curies. The quoted estimate to dispose of this limited quantity is \$319,043.

While the availability of disposal space is potentially one hurdle that must be overcome, the funding of this disposal must first be addressed. Our 08 licensed activities generate income while the 02 license does not. Nevertheless, as you are aware, SLC has been required to divert the cash generated from the 08 license to an escrow account being used toward the cleanup of the waste generated by the 02 license. If SLC could have used that money for the 08 license that generated it, SLC would have had enough money to ship the tritium waste to a proper disposal facility.

ITEM 3e. When commercial exit signs are returned to SLC, we dismantle them to remove the tritium light sources. These light sources are then packed and returned to our light source supplier in Canada, Shield Source Inc. and handled under their license. Because aircraft signs are more difficult and time consuming to dismantle, they are returned intact. With this program, since January 1, 2000, SLC has returned 308.22 cubic feet of material amounting to 251,082.25 decayed curies to our supplier.

ITEM 3f. All waste generated by our 08 licensed activities since our last renewal has now been shipped off-site.

Long before our last license renewal, we evaluated our operating practices with the goal of reducing waste generation. The most significant impact was derived from our decision to discontinue taking back foil waste from licensees. As you can see from 3c above, the large curie amount of waste, representing the smaller volume, is all foil and target waste. Table One shows our volume of waste growing a little larger if you look at the volume of waste shipped after the first two years compared to the volume of waste shipped the next two years. This is basically due to paper waste being generated in the gas fill active area due in part to the handling of more returned signs and in part to an increase in filling government defense contractors' needs with foils that can't be obtained anywhere else.

ITEM 4. The waste from the silos was placed as far away from the onsite employees as possible given the restrictions of the site. Our calculable dose to those we have determined to be most impacted by the stored waste is right at the 100 mrem dose rate that requires training. The three personnel determined to be near this threshold have been trained. To further aid in our assessment, we installed a program using film badges for these same three people. The first month's readings have been evaluated and only one of the three had a one mrem dose, the other two had no dose. As we obtain some history on these people, we will be better able to make assessments to the exposure of the other individuals. ITEM 6 will discuss proposed changes to the way the waste is situated.

ITEM 5. Our dose rate calculation is based upon the most likely individual uptake offsite. Table Two lists the amount of curies released through our stack and the dose

calculated in mrem that the most likely individual would receive. Also on the chart is the amount of curies discharged to the Susquehanna River. Due to the very low concentrations and the vast dilution of the Susquehanna, we do not do dose calculations for this effluent stream.

ITEM 6a. A clearly defined map showing restricted areas is included with this letter.

ITEM 6b. As this moment, Safety Light Corporation has only two radiation areas on site that apply to our 02 license. One is the pole building directly behind the Main building. This has a rope barrier extending from the west side and continuing around the back of the building designating the 5 MR barrier. The second is located to the southeast of the Processing building inside the perimeter fence. This also has a rope barrier around it designating the 5 MR barrier. Stored in both of these areas is the waste removed from the silos. SLC has been authorized to proceed with a proposal that would eliminate the radiation area southeast of the Processing Building. A timeline has not yet been determined.

SLC has numerous other locations around the site that are marked "Caution Radioactive Material". Most, if not all, of those signs have been up before anyone who is currently working here was hired, with the exception of one part time employee and the current production manager. SLC has no way of determining whether any of these areas are above the limits where posting is required. We do know there is contamination in all these areas. Our training program for the workers on site warns them that there are higher radiation levels in those locations and are advised not to frequent or spend a lot of time in those areas.

The radiation levels on this site are minimal with the exception of the silo waste. Although these levels are extremely low, SLC has always erred on the side of rational conservatism when it came to protecting people from even low levels of radiation.

ITEM 6c. SLC has received approval to ship the silo waste that can be shipped. This shipment will then allow us to move the remainder of the material stored outside away from our workers in the processing building and into the pole building where it will be protected from exposure to the weather. The proposal we have from the contractor will have them retain the integrity of the 100 mrem reading presently at the shipping/receiving dock location.

ITEM 7a. All entrances to the restricted area are locked with the exception of the northeastern gate and the gate into the tritium area which is located within the perimeter fence. Delivery and shipping carriers are the only ones that are allowed free access to the shipping and receiving dock. All employees are instructed to question anyone else they see inside the restricted area that is not accompanied by an employee and instruct them to come to the office. If they refuse, the employee is instructed to contact the office and notify us of an unauthorized person on site. The NRC had verified at the inspection that employees were following that instruction.

It should be noted that the northeastern entrance gate opens to a 15 foot wide road which runs between the main building where SLC's administrative offices are located and the fenced tritium compound. (This is the most widely used area of foot traffic by SLC employees.) The road then continues behind the main building to the shipping and receiving dock which is another area of high concentrations of employees. It is unlikely for someone unaccompanied not to be noticed and approached as to their business.

The fenced boundaries are inspected when unusual events occur such as windstorms or severe thunderstorms. They are also inspected during bore surveys. Without going into details because of security concerns, it is very unlikely that a breach in the fence along the river would result in any significant theft of material.

ITEM 7b. All visitors to the site are instructed by a sign on the fence at the northeastern gate that they must enter through the main entrance to the main building. There is a bell for access beyond the first set of doors that require someone to answer the door. The buzzer is located in the office area. Beyond the buzzer and the first set of double doors is another set of double doors that are locked. If the person requires access beyond this point they are told they must sign the visitor's register before entering the building. They will then proceed with an SLC employee. Employees who have had radiation training escort all visitors on the site. Visitors to the site are normally salespeople who have limited access to the office area or the processing building or utility meter readers. No visitors to the site have any need to be anywhere else on the site. We don't consider NRC, EPA or PADEP officials to be visitors as far as training is concerned, however, they are required to sign in and in most cases are accompanied by either the RSO or Assistant RSO. Someone who has had radiation training concerning the Bloomsburg site always accompanies PADEP employees that work in the hazmat branch of PADEP.

Contractors that are here to do work on the site such as restoring the fence, working on the air conditioning, doing electrical work, testing the sprinkler system, testing the security system etc. are given verbal radiation orientation concerning the Bloomsburg site at the discretion of the RSO depending upon length of time to be spent doing their function, areas where work is being done and frequency of return visits. All these contractors are required to sign in and out. These contractors are told of the hazards on the site and are told not to go into any areas that were not previously approved. Knowing the radiation readings of the areas that they will be in and making determinations of the dose they would likely receive, if any, controls exposure.

ITEM 7c. The waste building that houses the tritium waste is kept locked at all times and is only entered by Health Physics. SLC keeps a running inventory of receipts and shipments by curie amounts. A separate running inventory by number of tubes is kept on inventory cards. At the end of every month we check inventory cards against running inventory numbers to check if there are any gross errors between the two. Outside of waste, ninety nine percent of the tritium that we process is in the processing building which is locked and under security except when we are working. The aircraft signs that have tritium in them that are traveling between the processing building,

machine shop and application departments are followed by work orders which list the quantities of signs that should be following that work order. If a sign is misplaced or stolen there wouldn't be enough signs being returned to sign assembly to complete the order or enough signs to conduct the next operation before returning to sign assembly. This shortage, if it were observed anywhere in the process, would be immediately reported to the supervisor who would conduct an investigation into why there was a shortage. If a reason could not be determined, they would then contact the management.

We are doing a weekly inspection of the silo waste both in the yard and also in the pole building. We look for leaks and to see if the waste has been disturbed. At a meeting held at SLC, which included the NRC, EPA, an EPA Contractor and PADEP radiation branch on October 15, 2004, a plan was put in process that would eliminate the yard waste and confine the remainder of the silo waste to the pole building. At that time EPA will take over control of the silo waste in the pole building and will have 24-hour/7 day a week surveillance of this waste.

ITEM 7d. Norman Fritz, the Radiation Safety Officer of Safety Light Corporation, controls the keys. There is a list of individuals at Safety Light Corporation that have keys to the gates of the restricted area. In addition, the two managers of USR Metals have keys to the front door only, which is keyed differently from the gates. The locks are rekeyed at times that we feel are needed. This was last done on February 6, 2003.

No one has keys to any of the locked buildings that doesn't also have access to the restricted area. Not everyone that does have access to the restricted area has keys to all of the locked buildings.

ITEM 8. A radiation survey of the perimeter fence is conducted annually. If changing conditions warrant then surveys are made at that time.

ITEM 9. The staging locations for inbound and outbound radioactive material shipments are located in the restricted area. There are no access controls for carriers. Shipments received in the shipping/receiving area are inspected by Health Physics according to SLC's Health and Safety Plan and then taken to the processing building for further dissemination. Outgoing shipments are not placed on the dock but are kept by the receiving/shipping office for pickup inside the main building. Ninety eight per cent of SLC's shipments go via FEDX or UPS. All shipments for the two carriers use computer generated labels that are scanned at pickup and checked against the printed shipment list from the computer. If that list didn't match we would know immediately that something was missing. The other two percent go via trucks. These shipments are placed on skids and shrink wrapped when they are brought to the shipping area via the shipping/receiving employee.

ITEM 10. The individuals responsible for maintaining control of the radioactive waste under license 37-00030-02 are the Radiation Safety Officer and the Health Physics Technician. We are recording their doses with the use of film badges. In Item 4 above,

we noted that the individuals that we identified as being potentially close to the 100 mrem dose already have the necessary instruction. In the very near future we anticipate that the EPA will be responsible for the silo waste. See item 7C above. SLC will still monitor the situation as far as SLC's employees are concerned.

ITEM 11a. Safety Light Corporation surveys several areas on a scheduled basis for Alpha, Beta, Gamma and for Alpha using a proportional counter. The areas are: outside former screening room, the pole building, selected main building areas, selected etching building areas, the metal silo and the pipe shop. As soon as the silo waste in the pole building becomes the responsibility of the EPA, SLC will no longer survey the inside of the pole building. SLC also surveys equipment and personnel that may be subjected to building or ground disturbances.

The 02-license material on site is static or has been, to my knowledge, since 1979 with the exception of the silo waste. Most areas are locked and not accessible to employees or the public. Items that are found to have any removable contamination on them are labeled, cordoned off if we feel it is necessary or moved to a locked area. The 02 materials in the pole building are locked and not accessible to unauthorized individuals. The 02 materials in the yard are marked off with barrier rope. Employees are instructed as to the contents and limits at the rope barrier. Employees other than the Health Physics Technician and the employee taking care of the grass are the only employees that have a need to be at the rope barrier. This area is out in the open and is easily monitored throughout the day. Again as spelled out in ITEM 7c, the yard waste is going to be moved to the pole building in the near future and will be under EPA control.

ITEM 11b. The management of Safety Light Corporation, including the RSO, Health Physics Technician and the Production Manager, know the site well and know what the radiation levels are at various parts of the site. With the exception of the silo waste, the rest of the areas are static in so much that we don't handle those radio-nuclides that are listed in the 02 license. There is nowhere on site with the exception of the pole building and waste in the yard where one would have to take special precautions. (Again, refer to item 7c for changing conditions in the near future.) If emergency personnel such as firemen or police have to enter our site to fight a fire or pursue vandals, as best we are able, we will advise them of the special circumstances of our site. After they have concluded their required on-site activities, we will assess their potential dose based upon what areas they were in and what estimated time they were in those areas. We would also do a complete contamination survey on their person, clothes and equipment and would not let known contamination be carried offsite.

ITEM 12. At the time of our last license renewal there was a great deal of pressure on us to increase the level of our escrow funding. In the end, we agreed to a graduated funding increase that represented a 64% increase over the previous 5 year license period which culminated in an 80% increase in the monthly commitment for the period of 2003-2004 as compared to the monthly commitment of the previous license period (\$9,000 per month vs. \$5,000 per month). As we wrote in our letter of August 3, 1999: "it is with some trepidation that we make this proposal, as we will be dependant on a

stable growing economy in which we can continue to grow our business to fund this aggressive escrow increase." Unfortunately, the economy faltered and we fell behind in our funding obligation. Despite the fact that this funding shortfall will soon be rectified, we do not want to find ourselves in a similar position again where we are unable to fulfill the obligations of our License.

Although our current business is strong and growing, we have unable to forecast, with any degree of certainty, the domestic and global economic conditions that impact our projections and profits. However, based on our current book of business and what we anticipate will be available to us during the next five years, we believe that we will be able to meet the proposed monthly contribution of \$5,000.

ITEM 13. As expressed in our License Renewal Application, it is our desire to continue our self-luminous sign manufacturing and distribution activities. Based on our conversations to date with various members and divisions within the EPA, we are confident that we can work cooperatively with the EPA and/or their designated contractors in the event that they decide to initiate remediation activities to insure that our operations continue while making sure that our workers are protected.

ITEM 14. We are unsure how to answer this question and don't feel qualified to comment on the appropriateness of changing the 02 License to a Procession-Only License. If this proposed change only requires that we send in a renewal application every two years then this does not appear to be an onerous requirement. However, we are uncertain as to how this license change would impact our ability to perform additional remediation activities as funds become available from our escrow fund. Additionally, we do not know what impact our potential inclusion onto the National Priorities List would have on this issue.

Very Truly Yours,

Larry Harmon,
Plant Manager

In Mr. Harmon's absence this letter is signed by William E. Lynch Jr. – Vice President

TABLE ONE

DATE	WASTE CURIES*	TOTAL CURIES ACCUMULATED	CURIES SHIPPED	VOLUME SHIPPED CUBIC FT.	CURIES ENDING
1/1/2000	16313	-----	-----	-----	16313
1/1/2000-12/12/2000	16313	7	-----	-----	16320
12/13/2000-1/28/2001	16320	4	11	79.5	16313
11/29/2001-12/16/2002	16313	53	-----	-----	16366
12/17/2002-11/19/2003	16366	5	<1	122	16371
8/16/2004	16371	-----	51**	-----	16320
11/20/2003-10/18/2004	16320	<1	7	***	16313

* Curie values are not decayed and are rounded off.

** 51 curies were found to be reusable foils and were sold to one of SLC's customers. See our letter to Donna Janda NRC dated August 19,2004.

*** Volume to be determined at time of shipment.

If waste was shipped in any given year, the last date in the date column is the date the waste was shipped.

ALL WASTE OF SIGNIFICANCE ACCUMULATED SINCE THE DATE OF OUR LAST LICENSE RENEWAL HAS BEEN DISPOSED OF.

TABLE TWO – RELEASES TO THE ENVIRONMENT

YEAR	H3 CURIES RELEASED VIA STACK	MREM DOSE TO MOST LIKELY RECIPIENT	H3 CURIES RELEASED VIA TANK DISCHARGE INTO RIVER
2000	15.9	0.13	0.019
2001	4.9	0.05	0.022
2002	4.8	0.06	0.047
2003	4.3	0.01	0.091
2004*	-----	-----	-----

* 2004 is not yet completed. As of 8/25/04, curies out stack is 1.65. As of 7/28/04, curies released via tank discharge is 0.036.

Attachment 5

SAFETY LIGHT CORPORATION

4150-A OLD BERWICK ROAD, BLOOMSBURG, PA 17815
717-784-4344 FAX 717-784-1402

030-05980

J7

August 3, 1999

Mr. George Pangburn
Director, Division of Nuclear Material Safety
United States Nuclear Regulatory Commission - Region 1
475 Allendale Road
King of Prussia, PA 19406-1415

Re: Our letter dated February 11, 1999 - Docket #030-05980 -Control #126551

Dear Mr. Pangburn,

We understand, from our telephone conversation of August 2, 1999, that you now believe our license renewal will be dependent upon our ability to reduce the remediation liability at the Bloomsburg site by approximately 25% at the end of five years. This is to be accomplished through a combination of dollars expended toward the clean-up and available funds remaining at the end of this five-year period. With an estimated clean-up cost of approximately \$13,745,000, our expenditures and available funds would therefore have to total approximately \$3,400,000 at the end of five years.

Our financial calculations are based on the following:

1. As of June 30, 1999, our total of available funds including both the escrow fund and the insurance fund was \$1,890,135.00.

2. Additionally, we now propose increasing our escrow contributions as follows:

January 1, 2000, and each month thereafter, for 12 months - \$7,000

January 1, 2002, and each month thereafter, for 24 months - \$8,000

January 1, 2004, and each month thereafter, for 24 months - \$9,000

These contributions total \$492,000, representing an increase of more than 40% or \$144,000 over our earlier proposal.

3. These funds are to be held in an interest-bearing fund with a projected annual rate of return of 8%.

4. The clean-up of the silos will proceed as soon as possible with total payments of \$738,000 to be made to IT Corporation and the waste burial sites in February 2000.

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EXHIBIT 4

PAGE 1

OF 3

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Based on the assumptions outlined above and with no other expenditures made during this five-year period, the remaining funds would total \$2,502,924.68 on January 1, 2005. See Attachment #1.

If we then calculate the total of the funds spent and the remaining balance, we will have committed \$3,240,924.68 toward the site remediation. This represents approximately 24% of the estimated liability.

Also, please note that the above calculations do not take into account the possibility of additional funds coming from Allendale Insurance nor the possible expenditure of funds for the Maxey Flats settlement or legal fees. This calculation is meant solely to demonstrate what our funding commitment could accomplish. Nevertheless, it remains our goal to use available funds to do as much clean-up as possible within the existing financial constraints. As discussed, as soon as the silo remediation is complete, we would then submit a request to you to begin another clean-up project. The next area to be addressed would be determined by a mutually agreed prioritization of existing potential threats. Obviously, any monies spent over and above the \$738,000 for the silos will negatively impact the remaining cash balance on January 1, 2005.

We have carefully evaluated our ability to contribute to the escrow fund and believe that the above contributions represent a significant increase from our earlier proposal. However, it is with some trepidation that we make this proposal, as we will be dependent on a stable growing economy in which we can continue to grow our business to fund this aggressive escrow increase.

We look forward to discussing this with you at your earliest convenience.

Regards,


William E. Lynch Jr.
Vice President

Attachment 6

SAFETY LIGHT CORPORATION

4150-A OLD BERWICK ROAD, BLOOMSBURG, PA 17815
717-784-4344 FAX 717-784-1402

37-00030-02

September 1, 1999

Mr. George Pangburn
Director, Division of Nuclear Material Safety
United States Nuclear Regulatory Commission - Region 1
475 Allendale Road
King of Prussia, PA 19406-1415

Re: Docket #030-05980 -Control #126551

Dear Mr. Pangburn,

As requested, we have re-evaluated the escrow funding proposal outlined in our letter of August 3, 1999.

Based on our analysis, we are unable to increase our contributions over and above those outlined in our letter. Due to the uncertainty of continued economic growth and the normal challenges faced by ours or any other business, the profits required to fund our escrow commitment are far from guaranteed. While we are confident in our business and our abilities, there is no doubt that we will have to work diligently in order to fulfill this already increased escrow commitment. The total contributions of \$492,000 are the most that we feel we can commit to with reasonable confidence of performance.

As discussed, the other possibility that we could envision would involve removing the fixed nature of our escrow contribution and instead linking it in some way to revenues. In this scenario, if we were successful in growing the business, we would be able to possibly increase our contributions. However, this would also have to apply in reverse, meaning if revenues decrease, our contributions would decrease. During our conversation, neither you nor Mr. Bellamy expressed any interest in pursuing this approach.

Therefore, based on the above, if we re-calculate our total contribution toward the site remediation, including our existing balance of \$1,890,135, our escrow contributions of \$492,000, a revised interest rate of 6%, and an expenditure of \$738,000 on the silo remediation, we will have committed a total of \$3,003,071 over the next five years. This represents 22% of the estimated liability and will allow us to make a significant positive impact on the site.

We sincerely appreciate the efforts of you and your staff in working with us on our license renewal application. Please contact me if you have any additional questions.

Regards,

Bill
William E. Lynch Jr.
Vice-President

EXHIBIT 4
PAGE 3 OF 3 PAGE(S)

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Attachment 7



RECEIVED
REGION 1

2000 JUL 17 PM 4: 47

030-05982

July 10, 2000

United States Nuclear Regulatory Agency
475 Allendale Road
King of Prussia, Pa. 19406
Attention: John Kinneman

Re: Letter from Judith Joustra dated May 9, 2000 concerning License Condition 19 of License No. 37-00030-08

Dear Mr. Kinneman,

As you are aware, upon receipt of the above-mentioned letter we requested a meeting with your office. This meeting was held on Monday, June 26, 2000. The purpose of the meeting was to bring all interested parties up to date with the status of the current silo remediation project, pending litigation with Allendale Insurance, and to discuss how to respond to this letter.

At the present time we do not know how we will be able to fund the requirement of License Condition 19. Our previous estimate to dispose of this waste was approximately \$750,000. This figure is again being analyzed in conjunction with our current effort to estimate the cost to decommission our tritium facility as required by License Condition 20.B. This cost estimate is being prepared by GTS Duratech and will be completed before December 31, 2000. Nevertheless, irrespective of what the new estimate for the disposal of this old waste is, there are presently no funds in place set aside for this specific expense.

The funds to comply with this License Condition 19 can only come from the following:

1. Existing Insurance Settlement Funds
2. Escrow Funds which are generated from ongoing profitability of Safety Light Corporation
3. Potential Funds which may result from ongoing litigation with Allendale Insurance.

It has been our intention to use the Existing Settlement Funds and Escrow Funds for the clean-up of the site. Based upon the fact that our funds are limited, we have prioritized our clean-up activities based upon the perceived threat to the health and safety of the general public. As you are aware, the first project undertaken was the remediation of the underground silos. After completion of this project, which we anticipate will include

NMSS/RGN MATERIALS-002

the off-site disposal of the waste from the silos, we will then address where next to proceed.

If it is agreed that the tritium waste referenced in License Condition 19 is a bigger threat than others on site or if it is determined that there may only be enough funds remaining to satisfy this Condition 19, we may then request the use of the remaining funds for this purpose. The only other known source of potential funds would be a successful result in our litigation with Allendale Insurance.

Please contact me if you have any questions concerning the above.

Sincerely,


William E. Lynch Jr.
Vice-President

Attachment 8

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
+ + + + +
OFFICE OF INVESTIGATIONS
INTERVIEW

-----X
IN THE MATTER OF: :
INTERVIEW OF: : Case No. 1-2003-056
WILLIAM LYNCH :
(CLOSED) :
-----X

Monday, December 15, 2003

Safety Light Corporation (SLC)
4150-A Old Berwick Road
Bloomsburg, PA 17815

The above-entitled interview was conducted
at 10:00 a.m.

BEFORE:
Special Agent JEFF FERICH

EXHIBIT 6
PAGE 1 OF 12 PAGE(S)

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P-R-O-C-E-E-D-I-N-G-S

10:00 a.m.

SPECIAL AGENT FERICH: Okay, today is December 15th and it's approximately 10 o'clock, December 15, 2003. My name is Jeff Ferich and I'm a Special Agent with the NRC Office of Investigations, Region 1, King of Prussia, Pennsylvania.

The interview is being conducted with Mr. William Lynch. The interview is being conducted regarding an allegation that Safety Light Corporation failed to make the numerous deposits into the NRC trust fund, as required by the condition of the NRC license.

In addition to failing to make the required payments, Safety Light Corporation also failed to notify the NRC that the payments were not being made.

This investigation is being conducted under potential violations of 10 CFR 30.9, completeness and accuracy of information, and 10 CFR 50.10, deliberate misconduct.

Mr. Lynch, as explained prior to going on the record, the interview will be conducted under oath. Do you have any objection to providing the information under oath?

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1 MR. LYNCH: I do not.

2 SPECIAL AGENT FERICH: Okay. In addition
3 to that, prior to going on the record, I showed you my
4 NRC credentials. Did you have an opportunity to
5 review them?

6 MR. LYNCH: I did.

7 SPECIAL AGENT FERICH: Okay. Can you
8 raise your right hand and repeat after me. Do you
9 swear that the statement you give to me is the truth,
10 so help you God?

11 MR. LYNCH: I do.

12 SPECIAL AGENT FERICH: Okay. And Mr.
13 Lynch, I'd like to ask you some questions for
14 identifying purposes. What is your full name and
15 please spell your last name?

16 MR. LYNCH: My full name is William Earl
17 Lynch, Jr., L-Y-N-C-H.

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

SPECIAL AGENT FERICH: And your current position at Safety Light?

MR. LYNCH: Vice President of Safety Light Corporation.

SPECIAL AGENT FERICH: And how long have you held that position?

MR. LYNCH: Approximately seven years.

SPECIAL AGENT FERICH: Okay. And how long have you worked for Safety Light Corporation?

MR. LYNCH: Approximately seven years.

SPECIAL AGENT FERICH: Okay. And prior to that position, what did you do, who did you work for?

[REDACTED]

[REDACTED]

SPECIAL AGENT FERICH: Okay. Regarding education background, can you just go into a little bit of detail on your education?

[REDACTED]

[REDACTED]

SPECIAL AGENT FERICH: Okay. Any military background?

MR. LYNCH: No.

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1 SPECIAL AGENT FERICH: Okay. With that,
2 we're going to go into some of the questions.. Are you
3 familiar with the conditions of the Safety Light
4 Corporation license and the license is 37-00030-02 and
5 I believe it's dated February 6 of 2002?

6 MR. LYNCH: We have a number of licenses
7 there and I'm not sure exactly which one that is but
8 in general, yes, I am.

9 SPECIAL AGENT FERICH: Okay. And that
10 license was granted by the NRC?

11 MR. LYNCH: Correct.

12 SPECIAL AGENT FERICH: Okay. And in that
13 license, the license specifies that Safety Light
14 Corporation make deposits on a monthly basis to a
15 trust fund. Were you aware of that?

16 MR. LYNCH: Yes, I am.

17 SPECIAL AGENT FERICH: Okay. My question
18 is why weren't the deposits made after Safety Light
19 Corporation agreed to the terms of the license?

20 MR. LYNCH: Well the deposits have been
21 made for the past three and a half plus years, so it
22 wasn't as though we've been trying to avoid this from
23 the beginning. Business conditions have had a great
24 impact on cash flow, and made it impossible for us to
25 keep current.

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1 SPECIAL AGENT FERICH: Okay. Were you
2 aware that some of the required monthly payments were
3 not being made?

4 MR. LYNCH: I was aware.

5 SPECIAL AGENT FERICH: Okay. Who makes
6 the decision whether or not to make the monthly
7 payments?

8 SPECIAL AGENT FERICH: That decision is
9 largely mine in conjunction with conversations with
10 Larry Harmon, who is responsible for the operation of
11 the plant.

12 SPECIAL AGENT FERICH: Okay. Now who's
13 Larry Harmon?

14 MR. LYNCH: Larry Harmon's the general
15 manager of Safety Light Corporation.

16 SPECIAL AGENT FERICH: In Bloomsburg?

17 MR. LYNCH: Correct.

18 SPECIAL AGENT FERICH: Okay. So how is it
19 determined whether a payment is made or a payment is
20 not made?

21 MR. LYNCH: We look at our payables and
22 determine what we're going to have to pay in order to
23 keep the doors open, and keep the product going out to
24 our customers so that cash can continue to come in.
25 And those are the determining factors really. If we

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1 were to have paid the NRC payments ahead of those
2 vendors, we could have possibly had problems in
3 staying in business.

4 SPECIAL AGENT FERICH: Okay. So in the
5 months where the payments to the trust fund were not
6 made, did Safety Light Corporation make any payments
7 to any other creditors?

8 MR. LYNCH: Certainly we made payments to
9 our trade vendors, yes.

10 SPECIAL AGENT FERICH: Okay. And you said
11 trade vendors, what do you mean by trade vendors? The
12 folks that you get the materials from?

13 MR. LYNCH: Sure. The suppliers of raw
14 material from whom we buy the product to make the
15 product that we sell.

16 SPECIAL AGENT FERICH: Okay. Was there
17 any discussions within Safety Light, I guess between
18 yourself and other folks, regarding what would happen
19 if the payments were not made? Was that ever
20 considered?

21 MR. LYNCH: Yes, it was considered.

22 SPECIAL AGENT FERICH: And what was the --

23 MR. LYNCH: It has always been our
24 intention to get caught up as quickly as we could, and
25 didn't think it was going to be a big issue. We'd

1 hoped it would not come to where it is today.

2 SPECIAL AGENT FERICH: Okay. So in
3 summary, see if I understand this, in summary the
4 reason why the payments weren't made was because of
5 the business environment?

6 MR. LYNCH: That's correct.

7 SPECIAL AGENT FERICH: There just wasn't
8 enough business?

9 MR. LYNCH: Cash flow did not permit us to
10 make those extra payments.

11 SPECIAL AGENT FERICH: Okay. Just a
12 couple of other questions. Why didn't Safety Light
13 Corporation notify the NRC that the payments, on a
14 certain month that they didn't make the payments,
15 would not be made?

16 MR. LYNCH: Well we did notify the NRC.
17 We didn't notify it the first month because we always
18 thought we were going to catch up, and we really got
19 ahead of ourselves in our expectation that we'd be
20 able to catch up, and the business just didn't allow
21 it. And, unfortunately, it took us longer than it
22 should have to notify the NRC, but we were the ones
23 who came forward. They didn't tell us that we were
24 behind, we told them.

25 SPECIAL AGENT FERICH: Okay. Do you

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1 remember when you told them that you were behind?

2 MR. LYNCH: The conversation was between
3 Larry Harmon and Marie Miller. I think it took place
4 roughly a month ago.

5 SPECIAL AGENT FERICH: All right. We'll
6 get into that a little bit more. Okay. During 2003,
7 you met with Marie Miller, I believe it was
8 approximately on three occasions and you spoke with
9 her on approximately ten occasions. At any time why
10 didn't you notify her that the payments weren't being
11 made, if you were meeting with her and if you were
12 speaking with her?

13 MR. LYNCH: No particular reason other
14 than we thought we'd be able to catch up.

15 SPECIAL AGENT FERICH: Okay. Just to get
16 back that you had notified the NRC, and you said it
17 was approximately one month ago, ballpark round one
18 month ago.

19 MR. LYNCH: Right.

20 SPECIAL AGENT FERICH: Are you familiar
21 with your payment schedule? Are you familiar with
22 the payments that you missed and the ones that you
23 didn't miss?

24 MR. LYNCH: No, not the specifics of them.

25 SPECIAL AGENT FERICH: Okay. Let's see

1 here.

2 MR. LYNCH: I certainly have access to
3 those records, but as we sit here I don't have them in
4 front of me.

5 SPECIAL AGENT FERICH: Right. I believe
6 that SLC missed the required payments for April 2003,
7 May 2003, June 2003, July 2003 and August 2003. Then
8 a payment was made September of 2003, and in October
9 of 2003 and November of 2003 they were missed again.
10 And then the NRC was notified in November of 2003, or
11 I believe it was maybe November/December of 2003. My
12 question is, once again, why wasn't the NRC notified?
13 You know, here's a stretch of five months, why weren't
14 they notified back then that the payments would not be
15 made?

16 MR. LYNCH: No good excuse, other than we
17 had hoped to catch up and not bring it to anybody's
18 attention.

19 SPECIAL AGENT FERICH: Okay.

20 MR. LYNCH: We assumed they were also
21 getting notified from the bank because they also have
22 access to those bank informations. We assume that
23 even though they didn't hear it from us, they would
24 obviously have known it from their own sources.

25 SPECIAL AGENT FERICH: Okay. Right. So

1 what's the outlook for SLC?

2 MR. LYNCH: Well, we made a payment last
3 week of \$13,500 dollars, which is a payment and a
4 half. SLC is having a difficult year, sales have been
5 relatively good, an improvement over last year,
6 although the margins have been difficult to maintain
7 because of the competitive environment we're in.

8 We just recently signed a big contract for
9 next year to do all the Wal-Mart stores, which we
10 expect will be a very big bonus to us. So the short
11 term prospect is still difficult with cash flow,
12 although we expect next year to be a better year.

13 SPECIAL AGENT FERICH: Okay. That's all
14 I have.

15 Just in summary here, have I threatened
16 you in any manner during this interview?

17 MR. LYNCH: No.

18 SPECIAL AGENT FERICH: Okay. Have you
19 been offered any reward in return for the information
20 that you have provided during this interview?

21 MR. LYNCH: No.

22 SPECIAL AGENT FERICH: Have you offered
23 the information freely and voluntarily?

24 MR. LYNCH: Certainly.

25 SPECIAL AGENT FERICH: Is there anything

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1 else that you would like to add at this time?

2 MR. LYNCH: I just want to make it
3 perfectly clear that we were the ones who came forward
4 to the NRC, and brought it to their attention that we
5 were behind in our payments. Now we did not do it in
6 as timely a fashion as maybe we should have, but this
7 is not a function of the NRC finding out about it and
8 then coming to us and asking us why it didn't happen.
9 I mean we came forward.

10 SPECIAL AGENT FERICH: Okay.

11 MR. LYNCH: Later than we should have. In
12 Larry Harmon's defense, he had said to me, you know,
13 numerous times, maybe we should bring it to their
14 attention, maybe we should bring it to their
15 attention. And I said, well, we're hoping to get the
16 cash in here to bring it current so let's not rock the
17 boat.

18 SPECIAL AGENT FERICH: Okay. Anything
19 else you'd like to add at this time?

20 MR. LYNCH: No.

21 SPECIAL AGENT FERICH: Okay. The
22 interview is concluded. It's now 10:10 a.m. on
23 December 15, 2003.

24 (Whereupon, the above-entitled matter went
25 off the record at 10:10 a.m.)

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Attachment 9

CERTIFICATE

This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission
in the matter of:

Name of Proceeding: Interview of

William Lynch

Docket Number: 1-2003-056

Location: Bloomsburg, PA

were held as herein appears, and that this is the
original transcript thereof for the file of the United
States Nuclear Regulatory Commission taken by me and,
thereafter reduced to typewriting by me or under the
direction of the court reporting company, and that the
transcript is a true and accurate record of the
foregoing proceedings as recorded on tape(s) provided
by the NRC.

Olwen Price

Olwen Price
Official Transcriber
Neal R. Gross & Co., Inc.

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1. U.S. NUCLEAR REGULATORY COMMISSION

2 REGION I

3 - - - -

4
5
6 PREDECISIONAL ENFORCEMENT CONFERENCE
7 SAFETY LIGHT CORPORATION
8 No. EA-03-219

9 - - - -

10 Tuesday, July 20, 2004

11 1:00 p.m.

12 475 Allendale Road

13 King of Prussia, PA

14 - - - -

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22 ALL POINTS REPORTING

23 723 Erlen Road

24 Plymouth Meeting, PA 19462

(610) 272-6731

ORIGINAL

1 PRESENT:

2 GEORGE PANGBURN, Director, DNMS

3 MARIE T. MILLER, Chief, Decommissioning
4 Branch, DNMS

5 JOSEPH NICK, Enforcement Specialist

6 KARL FARRAR, Regional Counsel, Region I

7 CHRIS NOLAN, Chief, Enforcement Policy and
8 Program Oversight

9 GREG MORELL, Enforcement Specialist

10 DAN HOLODY, Team Leader, ENF/ALLEL

11 SAM COLLINS, Deputy Executive, Director,
12 Reactor Programs13 FRANK COSTELLO, Deputy Division Director,
14 DNMS

15 VICKIE FORD, Law Clerk, Region I

16 KRISTIN MONROE, Special Agent, OI, Region I

17 ERNEST WILSON, Field Office Director, OI,
18 Region I19 JOHN D. KINNEMAN, Chief, Materials Safety
20 Branch, Region I

21 ROBERT C. MAIERS, Chief, BRP, PA DEP

22 LINDA DIETZ, Remedial Project Manager,
23 Superfund Program, U.S. EPA, Region 3

24 STEPHEN H. LEWIS, Senior Attorney

WILLIAM LYNCH, Vice President, Safety Light

LARRY HARMON, Plant Manager, Safety Light

1 BY TELEPHONE:

2 DOMINIK ORLANDO

3 SALLY MERCHANT

4 THOMAS CROWLEY

5 C. R. WHITE

6

7 MR. PANGBURN: My name is George
8 Pangburn. I'm the director of the Division
9 of Nuclear Materials Safety, Region I office
10 in King of Prussia. And today we're here for
11 a predecisional enforcement conference
12 between NRC and representatives of Safety
13 Light Coropration.

14 We have a number of people here today
15 in the office as well as on the phone. I'm
16 going to suggest first that we go around the
17 table and have the folks introduce themselves
18 and their affiliation. Then we'll come back
19 and get the folks who are on the phone and,
20 finally, the people who are here in the room
21 that are not up here at the table. We also
22 have representatives here from the
23 Commonwealth of Pennsylvania and the U.S.
24 Environmental Protection Agency. So we'll

1 begin around the table with Marie Miller.

2 MS. MILLER: Marie Miller. I'm
3 presently the chief of the Decommissioning
4 Branch and project manager for Safety Light
5 Coropration.

6 MR. NICK: My name is Joe Nick. I'm
7 an enforcement specialist here in the Region
8 I office.

9 MR. FARRAR: My name is Karl Farrar
10 Region I counsel.

11 MR. NOLAN: Chris Nolan. I'm the
12 chief of the enforcement policy program,
13 oversight section.

14 MR. HARMON: Larry Harmon, plant
15 manager for Safety Light Coropration.

16 MR. LYNCH: Bill Lynch, vice
17 president, Safety Light Coropration.

18 MR. COSTELLO: I'm Frank Costello,
19 deputy division director, DNMS.

20 MR. COLLINS: I'm Sam Collins, deputy
21 executive director, reactor programs.

22 MR. HOLODY: Dan Holody, team leader,
23 ENF/ALLEL.

24 MR. MORELL: Greg Morell, enforcement

1 begin around the table with Marie Miller.

2 MS. MILLER: Marie Miller. I'm
3 presently the chief of the Decommissioning
4 Branch and project manager for Safety Light
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16 MR. LYNCH: Bill Lynch, vice
17 president, Safety Light Coropration.

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19 deputy division director, DNMS.

20 MR. COLLINS: I'm Sam Collins, deputy
21 executive director, reactor programs.

22 MR. HOLODY: Dan Holody, team leader,
23 ENF/ALLEL.

24 MR. MORELL: Greg Morell, enforcement

1 specialist out of headquarters.

2 MR. LEWIS: Steve Lewis, Office of
3 General Counsel, NRC.

4 MR. KINNEMAN: I'm John Kinneman,
5 chief, Nuclear Materials Safety Branch,
6 Region I.

7 MR. MAIERS: Bob Maiers. I'm chief
8 of the Division of Decommissioning and Bureau
9 of Radiation Protection.

10 MS. DIETZ: I am Linda Dietz,
11 remedial project manager, Superfund program
12 from the U.S. Environmental Protection
13 Agency.

14 MR. WILSON: I'm Ernie Wilson, field
15 office director, Office of Investigation here
16 in Region I.

17 MS. MONROE: Kris Monroe, special
18 agent with Region I.

19 MS. FORD: Vickie Ford, law clerk.

20 MR. PANGBURN: On the phone, I'm
21 going to start at NRC headquarters.

22 MR. ORLANDO: Nick Orlando, Division
23 of Environmental Protection and Waste
24 Management headquarters.

1 MS. MERCHANT: Sally Merchant, Office
2 of Enforcement headquarters.

3 MR. PANGBURN: Mr. Crowley?

4 MR. CROWLEY: Tom Crowley, Office of
5 Chief Counsel, Pennsylvania DEP.

6 MR. PANGBURN: And Mr. White?

7 MR. WHITE: Rick White, Safety Light
8 Coropration.

9 MR. PANGBURN: Thank you very much.
10 I thank everyone for their presence and
11 participation today. This conference is
12 being transcribed and is not open to the
13 public. It is a closed conference. The
14 purpose of the conference here today is
15 really to provide an opportunity for Mr.
16 White, Mr. Lynch and Mr. Harmon, representing
17 Safety Light Coropration, with an opportunity
18 to address issues that were identified in the
19 July 1 letter that we sent to Safety Light.
20 In that letter, NRC identified a finding made
21 by the Office of Investigations relating to
22 the failure to make payments, deposits of
23 money to a trust fund for decommissioning for
24 the Bloomsburg, Pennsylvania, facility.

1 Those findings were identified in the factual
2 summary that was included with the July 1
3 letter. And specifically, the officials of
4 Safety Light deliberately failed to make the
5 required contributions into the trust fund in
6 violation of the conditions of their
7 license. It is OI's conclusion that the
8 factual summary led us to conclude that a
9 violation may have occurred as a result of
10 those alleged activities. And Ms. Miller
11 will talk in a few moments about that
12 apparent violation. Anytime OI, the Office
13 of Investigation, makes a deliberate finding,
14 it's something of a concern to us. We have
15 high expectations of licensees and we rely on
16 licensees and their employees to abide by the
17 commitments of their licenses as well as NRC
18 regulations. This particular instance, the
19 failure to make contributions to the trust
20 fund, is of particular concern because it was
21 a key part of the Commission's
22 decision-making process in 1999 that allows
23 its license to be renewed under an exemption
24 from the decommissioning financial assurance

1 requirements.

2 So today we're going to be looking
3 for Safety Light to provide your perspective
4 on what OI had to say as placed in that
5 factual summary. Specifically we're looking
6 for you to talk about why we should have
7 confidence that Safety Light can comply with
8 the conditions of its license and perform
9 license activities safely in light of some of
10 the financial difficulties your company has
11 had in appropriating monies for the fund.
12 We're also looking for any additional
13 information that you might be able to provide
14 on the circumstances under which these
15 activities took place, any mitigating
16 factors. To a certain extent, you've already
17 addressed these in your response to the
18 demand for information that we sent you in
19 December of 2003, but circumstances may have
20 changed since that time, particularly with
21 respect to business conditions. And any
22 light you can shed on those would be
23 helpful.

24 In a moment, Mr. Nick will provide an

1 overview of the enforcement process within
2 the NRC. And after that, as I mentioned, Ms.
3 Miller will talk about the apparent
4 violation. After that, the floor will be
5 yours to talk with us. It's really your
6 conference and your opportunity to speak with
7 us. We'll do our best not to interrupt you
8 but we may have to throughout in order to
9 make sure we have a complete understanding of
10 what you're telling us. And our questioning
11 will fundamentally come from people here at
12 the table.

13 If we need to caucus at some point to
14 make sure that we've got all the information
15 that we need today, we may step outside the
16 room briefly and come back and resume the
17 conference.

18 Having said that, I'll let Joe Nick
19 go ahead, unless you have any questions at
20 this moment.

21 MR. LYNCH: No, sir.

22 MR. PANGBURN: Joe?

23 MR. NICK: Good afternoon. My name
24 is Joe Nick. I'm an enforcement specialist

1 here in Region I. Part of my job is to
2 coordinate the enforcement actions in the
3 region. As Mr. Pangburn said, this afternoon
4 the NRC is conducting this predecisional
5 enforcement conference with Safety Light
6 Coropration to discuss an apparent deliberate
7 violation associated with a failure to make
8 several of the required monthly deposits into
9 the NRC decommissioning trust fund. A letter
10 describing that apparent violation was sent
11 to Safety Light on July 1, 2004, and that
12 letter also included a factual summary of
13 NRC's Office of Investigations report. Prior
14 to the NRC investigation, I think, as George
15 also mentioned, the NRC sent Safety Light a
16 demand for information that was dated
17 December 19, 2003, to obtain more information
18 regarding the failure to comply with the
19 condition of the licenses. Safety Light
20 responded to the DFI in a letter dated
21 January 16, 2004, and stated that a slowdown
22 in business activity made it impossible to
23 stay current with payment obligations.

24 Since this conference is being held

1 based on the finding from an OI
2 investigation, it's not open to the public
3 and it's being transcribed. And I would like
4 to take a few minutes to briefly provide some
5 background on the NRC's policy, program and
6 process as it applies to today's enforcement.

7 The enforcement process began with
8 the NRC's evaluation of the findings of the
9 OI investigation as well as the
10 identification of the apparent violation.
11 Based on the safety and regulatory
12 significance, the apparent violation is
13 preliminarily categorized into one of four
14 severity levels, with severity level 1 being
15 the most significant and severity level 4
16 being the least significant. For any
17 potential severity level 1, 2 or 3 violation,
18 a predecisional enforcement conference may be
19 held. The enforcement conference is
20 essentially the last step of the process
21 prior to NRC deciding an appropriate action.

22 The primary purpose of the
23 predecisional enforcement conference is to
24 listen to any information provided by you

1 regarding the apparent violation in addition
2 to the information you've already provided in
3 your January 16, 2004, letter. During this
4 conference, you should discuss the apparent
5 violation, significance, the reason the
6 violations occurred, including any apparent
7 root causes that you've identified and any
8 actions that you've taken to correct the
9 violation and prevent it from happening
10 again. During the conference, the NRC will
11 explore any information that we deem relevant
12 to help us either decide on mitigation or
13 escalation of any resulting enforcement
14 action. Safety Light is invited to provide
15 us any information that you consider relevant
16 to the NRC making its decision. You can also
17 take issue with any of the facts or findings
18 we've previously described in our letter sent
19 to you on July 1, 2004. And we can discuss
20 any of the bases of those challenges.
21 However, I do want to emphasize that the
22 purpose of today's meeting is not to
23 negotiate an enforcement sanction but rather
24 the conference is to provide us information

1 that will be considered by the NRC in their
2 decision-making process.

3 While occasionally there's additional
4 inspection or investigation that can occur
5 after the conference if it is necessary, we
6 typically discuss the apparent violations
7 during this conference and this may be
8 subject to change and a final decision
9 regarding the appropriate action will be made
10 by the Region I office in coordination with
11 many of our other offices that are present
12 here today. That's why we have so many
13 people here attending.

14 Prior to turning the meeting back
15 over to Mr. Pangburn and Ms. Miller, I would
16 like to note that any statements or opinions
17 made by the NRC staff at today's conference
18 should not be taken as our final NRC position
19 nor should the lack of an NRC response to a
20 Safety Light statement be viewed as an NRC
21 acceptance of any position. With that said,
22 I'll turn the conference over to Ms. Miller.

23 MS. MILLER: I'm Marie Miller,
24 decommissioning branch. I'll discuss the

1 apparent violation of condition 16 of your
2 license 370003002 and condition 20 of your
3 license 370003008, providing that Safety
4 Light make monthly deposits to the NRC
5 account as described in our letter dated
6 August 3, 1999. This agreement specified in
7 part deposits of 7,000 each month through the
8 year 2000; 8,000 from January 1, 2001, and
9 each month thereafter for 24 months; and then
10 9,000 from January 1, 2003, and each month
11 thereafter for 24 months. The financial
12 assurance exemption was valid until December
13 31, 2004, which is the date of the license
14 expiration or the date of any failure to
15 comply with license conditions. Monies
16 deposited to the NRC controlled account,
17 called the NRC trust account, was to be used
18 for site remediation projects.

19 During an inspection conducted by NRC
20 Region I on November 20, there were inquiries
21 made by NRC staff regarding the funding
22 status of the NRC trust account. The
23 following day, Safety Light Coropration
24 management informed NRC Region I that Safety

1 Light had not been depositing these
2 decommissioning funds into the trust fund as
3 required by the NRC license. Several
4 deposits were not made by the licensee,
5 required by its license condition number 16
6 and number 20. Specifically Safety Light
7 Coropration failed to deposit 8,000 in
8 accordance with the prescribed schedule on
9 May 1, 2001, and then three additional
10 deposits of 8,000 each were not made in
11 accordance with the prescribed schedule
12 between the period of June 2001 and February
13 2002. But all of the arrear payments were
14 made by February 3, 2003.

15 Subsequently the licensee failed to
16 deposit 9,000 in accordance with the schedule
17 on January 1, 2003, and then missed eight of
18 10 monthly deposits of 9,000 each during the
19 period from February 2003 through November
20 2003. On December 12, 2003, and February 2,
21 2004, two deposits of 13,500 each were
22 deposited into the NRC trust account.

23 The failure to make the prescribed
24 deposits resulted in a total deficit of

1 72,000 plus interest to the NRC trust fund as
2 of June 30, 2004. This violation is of
3 particular concerns because it may have
4 involved deliberate or willful action on the
5 part of Safety Light personnel. Both the
6 vice president and plant manager for Safety
7 Light Coropration admitted they were familiar
8 with the requirements of the Safety Light
9 license conditions that specifically required
10 monthly payments to be made to the NRC trust
11 fund and that these individuals were aware
12 that some of the required payments were not
13 being made.

14 That's the statement with regard to
15 the apparent violation.

16 MR. PANGBURN: Unless there are any
17 questions from you here, I'm going to turn it
18 over to you, Bill, Larry and Mr. White, for
19 your response.

20 MR. LYNCH: Very good. My name is
21 Bill Lynch. I'm the vice president of Safety
22 Light Coropration. I must admit I'm rather
23 intimidated by the numbers against me today.
24 But we'll forge ahead anyway.

1 I'd like to preface my remarks by
2 reading from a letter that I wrote to the NRC
3 in August of 1999, an excerpt from that
4 letter describing the negotiation for the new
5 escrow payments. I read as follows: "We
6 have carefully evaluated our ability to
7 contribute to the escrow fund and believe
8 that the above contributions represent a
9 significant increase from our earlier
10 proposal. However, it is with some
11 trepidation that we make this proposal as we
12 will be dependent upon a stable growing
13 economy in which we can continue to grow our
14 business to fund this aggressive escrow
15 increase." And the escrow increases we're
16 referring to are the 7,000, 8,000 and 9,000
17 numbers.

18 Now, as we all know, after September
19 11 of 2001, the U.S. economy was greatly
20 impacted. The lighting industry also felt
21 the impact of the economic recession that
22 followed.. And we had struggled mightily
23 through this period to keep afloat, to keep
24 signs going out the door, to keep people

1 employed and to keep the business
2 functioning. During that time period, we had
3 temporary layoffs. We had salary cuts. We
4 did many different things to combat the
5 economic recession that we were in. We felt
6 a downturn in our business of approximately
7 20 percent in gross receipts. This obviously
8 has a major impact in our cash flow and our
9 ability to meet our obligations. I must
10 confess and I have confessed that I was well
11 aware of our obligation to make escrow
12 payments, as we had been making them on a
13 timely basis for the entire period of my
14 employment at Safety Light, which is
15 approximately eight years, with some
16 exceptions, which were noted, which we caught
17 up with. However, we found ourselves in a
18 difficult position in 2003 after having
19 struggled through a very difficult year in
20 2002 and we did not have the cash flow, the
21 extra cash flow available to make the monthly
22 deposits of \$9,000. Larry and I conferred
23 about this situation and we made the decision
24 or I made the decision, I should say, to make

1 sure that our vendors were paid, our
2 employees were paid and that the business had
3 an ongoing value rather than divert funds to
4 the escrow payments instead of to those
5 things which would keep us as a viable
6 business. And we did this for a period of
7 nine months. We brought it to the attention
8 of the NRC. Although I must say that we had
9 presumed the NRC was already aware of the
10 failure of ourselves to make these
11 contributions because they also sent
12 statements, to the best of our knowledge,
13 from the bank that holds the escrow funds.
14 But nonetheless we're not denying
15 responsibility. We were well aware that
16 these payments were missed and it was largely
17 because our cash flow would not support it.
18 We, as I mentioned, suffer a significant
19 downturn in our business, which made it
20 impossible to have the extra \$9,000 per month
21 required to make these payments.

22 In December, I believe, we made an
23 additional payment of \$4,500 and we did it
24 again in one additional month to bring the

1 arrears from 81,000 down to 72,000. And we
2 have made a commitment to continue to try to
3 pay additional sums as we are able. The good
4 news is that business has responded very well
5 over the past six months. I can gladly state
6 that we have seen an increase of 26 percent
7 in our billings for the period January 1 to
8 June 30, 2004, versus 2003. While this
9 doesn't immediately turn into available cash,
10 it will in the not-too-distant future help us
11 to recover from the difficult period we were
12 in. Our short-term prospects and long-term
13 prospects are both very promising. Business
14 looks to be very strong. In fact, as I sit
15 here today, we have the largest backlog of
16 orders that we have ever had, certainly in my
17 eight years of experience, and I believe in
18 Mr. Harmon's as well, which is over 20
19 years. So we're very encouraged by that.

20 We have fought very diligently to
21 retain market share, to know and to grow our
22 business for the benefit of our employees,
23 the local area in which we operate, and also
24 to allow us to get current with our

1 responsibility with our escrow payments. We
2 don't take this lightly in any way, shape or
3 form. We recognize that it is an obligation
4 of our license and we have every intention to
5 become current at the earliest time
6 available. It would be lovely if I could
7 write a check today for \$72,000 and make all
8 this problem go away. Unfortunately, we
9 don't have such a surplus or have such an
10 ability.

11 So that, briefly stated, is the
12 situation, which we've gone over in our
13 deposition with the Office of Investigation.
14 We've provided the records which substantiate
15 our statements that no funds were going
16 anywhere other than to the required vendors
17 to keep sign parts coming in and signs going
18 out to our customers. We're here today to
19 answer any questions regarding what got us
20 into this position and certainly to work
21 toward a solution going forward. With that,
22 I have no further comments and I welcome your
23 questions.

24 MR. PANGBURN: Larry, anything?

1 MR. HARMON: I don't have anything to
2 add to that.

3 MR. PANGBURN: Mr. White, anything?

4 MR. WHITE: No.

5 MR. PANGBURN: We have a couple
6 things. We'll start here, and others from
7 the NRC staff can certainly join in here. I
8 guess Mr. White, a question for you, if I
9 may. In the reply that was sent in to the
10 NRC demand for information, it was stated
11 that it was never really a conscious decision
12 to ignore the funding obligation and that
13 Safety Light, as Bill put in his letter to
14 us, optimistically expected to be able to
15 catch up. But there were several months in
16 2003 where the payments were not made. Did
17 Bill or Larry Harmon discuss with you the
18 inability of Safety Light to make these
19 payments and possibly some business strategy
20 that might enable them to catch up?

21 MR. WHITE: I don't recall our
22 discussion about payments in arrears until
23 late in '03. I had no idea to what extent we
24 were in arrears. And shortly before we

1 notified the NRC, Bill Lynch and I discussed
2 the matter and decided to notify the NRC,
3 even though we thought the NRC had prior
4 knowledge of that. But I did not know the
5 extent that we were in arrears at all.

6 MR. PANGBURN: Part of the question
7 when OI was talking with you, Bill and Larry,
8 I think Larry may have stated that in the
9 process of making monthly payments, all the
10 payments to vendors and so forth, that he
11 would talk with Mr. Lynch about how much
12 money was needed to keep the business going
13 and then money would be deposited in the
14 account. But if there wasn't enough money,
15 then Safety Light had to juggle things in
16 order to pay the vendors. I guess I'm kind
17 of questioning where funds come from to be
18 placed into the accounts payable account that
19 seems to be talked about here.

20 MR. LYNCH: Funds come from Safety
21 Light's customers.

22 MR. PANGBURN: So you're simply
23 taking internal revenues, not from any other
24 sources?

1 MR. LYNCH: No, it's from the
2 customers of Safety Light who are paying
3 their invoices in the due course of business.

4 MR. PANGBURN: Okay.

5 MS. MILLER: The question I have is
6 in the 2001, 2002 time frame, you had caught
7 up but then there were several months that
8 had gone in 2003. Were you looking at any
9 specific business strategies to give some
10 weight to the optimism that you had that you
11 would be able to catch up and did you discuss
12 that at all?

13 MR. LYNCH: Which time period are you
14 referring to?

15 MS. MILLER: In 2003, when you were
16 missing several months in a row where you
17 were not able to make the payment.

18 MR. LYNCH: We, unfortunately, have
19 neither a crystal ball nor the ability to
20 generate sales at will. We have to compete
21 in a very competitive marketplace for our
22 products. When the construction industry is
23 down, we suffer. And in 2001, 2002, there
24 was a recession in this country that just

1 affected every industry, not just the
2 lighting industry and not just Safety Light.
3 As buildings were postponed in 2001 and 2002,
4 we don't feel the effects until later on.
5 We're usually the last items sent into a
6 building. So we don't feel it until a little
7 bit later on in the process and that's why we
8 felt it worse probably than some companies
9 that are in the early stages of a product
10 development or building.

11 Our strategy has always been to be as
12 aggressive as we can be to generate sales.
13 Meanwhile we imposed strategies upon
14 ourselves in which we had layoffs, we had
15 salary reductions, we did those steps that
16 prudent management would do to control
17 overhead in a time of decreasing revenues.
18 So there were a number of strategies that we
19 used, some with more success than others.
20 We're generally optimistic people. We like
21 to think that we sell a good product and it's
22 well received in the marketplace. We have
23 worked very diligently to improve our
24 international sales and our market acceptance

1 within other lighting companies. And without
2 boring you on all the details, the answer is
3 yes, we employed lots of different ways to
4 try and grow our business.

5 MS. MILLER: I appreciate that.
6 During the joint meeting in July 2003, a
7 meeting where we were in attendance also --
8 it was actually held at the EPA Region 3
9 office in Philadelphia. NRC was there. We
10 had discussions regarding the funding
11 balances in both the insurance fund as well
12 as the NRC trust fund. And it was at that
13 time that you stated that you, based on the
14 expected and present invoices that you had
15 received from your contractor with respect to
16 the remediation work, that most likely the
17 insurance fund would be accepting some
18 specific amounts that you were requesting to
19 hold back and that the NRC trust fund would
20 have to be used to pay the contractor.
21 That's just to set the background. Is that a
22 discussion you recall in July?

23 MR. LYNCH: I don't recall the
24 specifics. I do recall in general that we

1 knew we were going to have to dip in the
2 trust fund to pay these bills. I don't
3 dispute that.

4 MS. MILLER: While you did not
5 disclose at that time that there were missed
6 payments, there was recognition that you
7 would be using the trust fund, is that
8 correct?

9 MR. LYNCH: I believe so.

10 MS. MILLER: Then obviously in
11 November 2003, when we had the inspection and
12 the waste was packaged and ready to go, it
13 was at that time that we didn't have the full
14 funding amount available in the trust fund.
15 In fact, it was at that point that the trust
16 fund was short 81,000 and the shortfall
17 precluded the ability to ship waste that was
18 packaged and characterized. But since
19 December, you were able to make additional
20 payment. Could you discuss what changes were
21 made by Safety Light so that you could make
22 those payments?

23 MR. LYNCH: I'd like to go back and
24 discuss our meeting with the EPA, if I

1 could. At that time, we did provide balances
2 in the escrow funds and we gave you actual
3 numbers, not numbers missing. Those were
4 factual numbers, not projected numbers, just
5 so we're clear on that.

6 As far as what we did specifically in
7 those two particular months to make the extra
8 payments, I can't point to any specific
9 situation other than we worked very
10 diligently to make sure we can squirrel away
11 some extra cash to take care of that. There
12 was not one specific action that makes this
13 possible.

14 MS. MILLER: I was trying to set a
15 background, obviously, for people that
16 weren't there, that it was crucial to have
17 the additional funds to be able to ship the
18 additional waste while the contractor was on
19 site. Is there anything that could have been
20 done to get that money into the account so
21 that additional waste could have been shipped
22 in December?

23 MR. LYNCH: Well, at the time of our
24 meeting, we certainly didn't know if that

1 amount of monies was going to make a
2 difference because we didn't know what the
3 bill was going to be at that particular point
4 in time. Larry, correct me if I'm wrong. We
5 had no idea that the difference was going to
6 be 100,000, 300,000 or 50,000. So there was
7 no idea at that point that specific shortfall
8 was going to cause any sort of a problem.
9 And you're asking me, if I may paraphrase,
10 what we could have done to come up with the
11 extra monies to bring it current?

12 MS. MILLER: Well, just to be able --
13 at that time, in early December, is when the
14 shipments were being made and the contractor
15 was there, and then yet within the next
16 month, the next two months, you were able to
17 make two payments of 13,500.

18 MR. LYNCH: There's a significant
19 difference between an extra \$4,500 over a
20 60-day period and coming up with \$81,000 at a
21 specific point in time. There's no specific
22 remedy. Our sales are not a constant. They
23 go up and down. Our cash flow is not a
24 constant. The customers don't always pay at

1 a specified point in time. We have to chase
2 them to get money oftentimes. So there's no
3 specific remedy that would have made that
4 problem go away.

5 MS. MILLER: So again, the funds came
6 from the customers, the additional funds?

7 MR. LYNCH: That's correct.

8 MR. PANGBURN: We've been working, as
9 you point out in the DFI, we have been
10 working closely together since 1999 on the
11 renewal decisions. And I guess one question
12 that comes to mind to me is, when you really
13 knew in the beginning of 2003 that you were
14 having difficulty making payments on a fairly
15 continuous basis, why didn't someone give us
16 a call and try to work through a strategy?
17 Even if it had been \$1,000 a month, some kind
18 of strategy to let us know, A, the problem
19 exists; and B, George or Ron or Marie, we
20 want to let you know we're having these
21 difficulties and we're trying to work through
22 a solution to see if we couldn't work out a
23 solution. Is there any --

24 MR. LYNCH: Well, I have no good

1 excuse to offer. Sometimes when you get
2 behind, you're optimistic that it's going to
3 be a short situation. In retrospect, we
4 should have told you long before we did. No
5 question about that. That's an absolute
6 certainty, we should have. We did think you
7 knew about it, although we hadn't brought it
8 to your attention. That part is absolutely
9 true. And we were doing everything we could
10 to make it happen. We didn't think there was
11 anything you could do from your side that was
12 going to make our business better or increase
13 our cash flow or help us sell more signs,
14 although I do believe that Larry mentioned
15 one possible solution to our problem would be
16 for the government to buy all their signs
17 from us. If you could make that happen, we
18 might be out of this problem in no time at
19 all.

20 MR. PANGBURN: I'm not sure that was
21 an option available to us at that time.

22 MR. LYNCH: There's no excuse. We
23 optimistically felt we could work our way out
24 of it and didn't think there was anything you

1 could do from your prospective to help our
2 sales.

3 MR. HARMON: We never felt that we
4 were not going to pay this bill at some
5 point.

6 MR. HOLODY: You talked earlier, when
7 there was a downturn in the business post
8 9/11, you made a conscious decision to pay
9 the vendor, pay the employees, to make sure
10 the business had value. What did you mean by
11 the latter?

12 MR. LYNCH: To make sure the business
13 could be an ongoing concern.

14 MR. HOLODY: And in financial terms,
15 what did that mean?

16 MR. LYNCH: Just so we could keep the
17 doors open and keep paying people and keep
18 signs going out the door. That's all that
19 means. That's all I meant by it.

20 MR. HOLODY: Just the cost of running
21 the business besides paying the vendors,
22 besides paying the employees, were there
23 additional monies available?

24 MR. LYNCH: No. And I think that

1 it's verified through the accounts payable
2 and other information we provided. There
3 wasn't any money going anywhere else except
4 paying employees and keep product going out
5 the door.

6 MR. PANGBURN: You mentioned salary
7 deductions. Who did those apply to?

8 MR. LYNCH: Everybody. There were
9 layoffs. We have a union shop up there.
10 Some of the production workers are union. So
11 with the union, we don't have -- correct me
12 if I'm wrong -- the luxury of salary
13 reductions. Instead, with the union, we had
14 to have layoffs, which we did. The salary
15 reductions were for all of our salaried
16 employees and that includes everyone.
17 Myself, Larry, Rick White, everybody.

18 MR. PANGBURN: All right. In your
19 opening remarks, you talked about the
20 significantly improved business projection
21 even from what you had said in January in
22 your response to the DFI. I guess overall
23 you're looking for being in a better position
24 than you were six months ago, is that

1 accurate?

2 MR. LYNCH: Yes, it is accurate. Our
3 business in terms of revenues or sales, let's
4 say, is up 26 percent the first six months of
5 this year versus the first six months of last
6 year. Now, a sale doesn't necessarily mean
7 cash right away but it is an indication of
8 the business environment that we're in, what
9 we've been able to achieve in the sales
10 front. And, as I mentioned, our order
11 backlog is at historic highs. So that means
12 not only today are we ahead 26 percent but we
13 anticipate being ahead all year.

14 MR. PANGBURN: Have you ventured into
15 new areas, new sectors of the economy with
16 your sign sales?

17 MR. LYNCH: No.

18 MR. PANGBURN: Simply an increase in
19 market share?

20 MR. LYNCH: Yes.

21 MS. MILLER: Have you been able to,
22 with this improved business outlook, restore
23 salaries or hire additional people?

24 MR. LYNCH: Yes, we have restored

1 salaries. We have brought people back who
2 were laid off. And we also hired additional
3 people to take care of the backlog we have,
4 help take care of the backlog we have.

5 MS. MILLER: And I know while you are
6 unable to commit to a schedule for making up
7 your arrears payment, the fact you have made
8 one payment, is there any forecast as to when
9 the arrears can be made up?

10 MR. LYNCH: Well, frankly, we're
11 working on that now, trying to determine cash
12 flow based on historic cash flow, which is
13 not always a good indicator when your
14 customers are going to pay you. But it is
15 still going to take many months before we can
16 take care of the \$72,000 remaining. And I
17 think we mentioned in our license renewal
18 request we anticipate this carrying over into
19 the next license period, provided we have a
20 next license period, which we're hoping for.
21 And largely it would depend upon what the
22 demands are of the escrow payments at that
23 time. I mean, if they stay at a high or
24 maybe I use the term "onerous" level, it may

1 be more difficult to take care of the arrears
2 than if they were at a more workable level
3 based on the volume of our business.

4 MR. PANGBURN: Is there any reason to
5 think you won't be able to make payments, the
6 required payments, not the arrears payments,
7 for the remainder of this year?

8 MR. LYNCH: No, sir.

9 MR. HARMON: I don't think we can
10 make that statement.

11 MR. LYNCH: He asked me is there any
12 reason to believe, and I said no, there's no
13 reason to believe.

14 MR. HARMON: Not right now.

15 MR. PANGBURN: I'm not asking for a
16 guarantee. I'm asking, is there anything you
17 know of?

18 MR. HARMON: Obviously if they blow
19 up the San Francisco bridge, we're going to
20 be in the same boat.

21 MR. PANGBURN: I understand.

22 MR. LYNCH: The input we have from
23 our reps and customers today, we see a good
24 year and we see no reason why we'll have any

1 problem in meeting our current obligation.

2 MR. COSTELLO: A couple questions.
3 Is Shield Source the principal supplier of
4 transidium that you use in Canada?

5 MR. LYNCH: Shield Source is the
6 principal supplier of light sources.

7 MR. COSTELLO: And Isolight, the
8 business you do through them, what fraction
9 of your sales goes through Isolight?

10 MR. LYNCH: I don't have that number
11 at my fingertips. It's a large percentage,
12 more than 50 percent.

13 MR. COSTELLO: Would you say your
14 principal customer is Isolight?

15 MR. LYNCH: Yes.

16 MR. COSTELLO: Since they share
17 ownership -- I think Shield Source is a
18 supplier. Isolight is a distributor. Can
19 you talk about the relationship between these
20 three companies? How does that work? What
21 does it mean for Isolight not to pay Safety
22 Light?

23 MR. LYNCH: Well, there is a
24 commonality of ownership, although they're

1 not the same owners of each business. Shield
2 Source is a supplier of transidium light
3 sources. We were unable to continue to
4 produce light sources at Safety Light due to
5 the U.S. government's decision to discontinue
6 the sale of transidium commercially. So
7 Safety Light purchases its light sources that
8 go into its signs from Shield Source. Safety
9 Light then markets and distributes its
10 products through Isolight as one channel and
11 other customers as well.

12 MR. COSTELLO: Was Shield Source one
13 of those vendors that needed to be paid
14 during this period of time that we're talking
15 about?

16 MR. LYNCH: Yes and no. I mean, we
17 did certainly have to pay for some of the
18 transidium that came in. But the vendors
19 that are outside of the Shield Source group
20 are the ones that were of higher priority,
21 the people we buy the aluminum frame from,
22 the stencil faces from, all the parts that go
23 into our signs. But certainly Shield Source
24 was a vendor that we pay.

1 MR. COSTELLO: Why would they be of a
2 higher priority?

3 MR. LYNCH: Maybe I shouldn't say
4 higher priority because we have to pay
5 everybody.

6 MR. HARMON: But for making the tubes
7 to put out the product, they were a priority
8 as far as keeping their business going, as
9 far as paying for materials. That was
10 required for them to provide materials to us,
11 just like any of the other vendors.

12 MR. COSTELLO: Did you consider, in
13 terms of raising revenues for Safety Light to
14 pay the escrow fund, charging more to
15 Isolight? Was that an option?

16 MR. LYNCH: Well, it would be an
17 option if Isolight could charge more to the
18 market for its products. However, the
19 emergency lighting business has seen a
20 significant drop in its sales prices for
21 products over the past five years. As an
22 example, an OED classic exit sign which we
23 could sell five years ago for \$54 is now
24 selling for \$18. So with the competitive

1 pressure of all the emergency lighting
2 products, the answer is no, they couldn't
3 charge more.

4 MR. COSTELLO: And was it during this
5 time that -- and I'm not exactly sure of the
6 ownership of [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 MR. COSTELLO: Yes. What's their
11 relationship to Isolight?

12 MR. LYNCH: There's no relationship.
13 They're a customer of Safety Light.
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 MR. COSTELLO: Do they have a
18 competitive relationship?

19 MR. LYNCH: They do.

20 MR. COSTELLO: So that would be
21 another one of your customers?

22 MR. LYNCH: That's correct.

23 MR. COSTELLO: Thank you. That's
24 all.

1 MR. FARRAR: Just one question with
2 regard to the waste that you're generating in
3 your current business. What are you doing
4 with that? How do you dispose of it?

5 MR. HARMON: We have been given --
6 it's in our license that every two years,
7 accumulated waste, every two years we have to
8 get rid of it. We have been getting rid of
9 it except this last time, I think it was like
10 54 curies of transidium takes up a small
11 volume that we couldn't get rid of at this
12 time. There was no place to dump that waste,
13 the foils. And so we accumulated that. But
14 all the other waste that we accumulate we got
15 rid of.

16 MR. FARRAR: How do you propose
17 getting rid of the foils?

18 MR. HARMON: Right now there's no way
19 to get rid of it at the present time.
20 There's no place accepting them.

21 MR. PANGBURN: Barnwell maybe?

22 MR. HARMON: We never had a license
23 at Barnwell. Barnwell, I understand, has to
24 have certain -- you have to tell them how

1 many cubic feet and pay for that --

2 MR. PANGBURN: Allocation.

3 THE WITNESS: -- allocation. And we
4 never applied for that. So we don't have an
5 allocation at Barnwell. We never shipped
6 waste to Barnwell since I've been there in
7 '79. We went to Washington at the time when
8 they were going to have their own compactor
9 and we were sort of idle at that time waiting
10 for the compactor to open up, which obviously
11 never happened.

12 MR. NOLAN: I guess you spared the
13 details but details sometimes are important.
14 And if you could talk about the numbers of
15 layoffs and the extent of the salary
16 reductions and the time frames that they
17 occurred, that might be useful. I realize
18 the details might not be on the top of your
19 head and you may have to provide it at a
20 later time. But those kind of details are
21 useful because they're indicators of your
22 business. You're talking in a lot of
23 generalities. And there are some things that
24 we have to look at to make sure of our own

1 assessment. So if you want to speak to that,
2 that's something that would be of interest to
3 me.

4 MR. LYNCH: This is Bill Lynch for
5 Safety Light. Unfortunately, that
6 information is not resting on the top of my
7 mind. However, I will give you a general
8 picture and provide detail for you later if
9 you'd like. My recollection is that all
10 salaried employees took a 20 percent pay cut
11 for a period of many months. The number of
12 months, I'll have to get back to you. I
13 don't know. It's a 20 percent pay cut across
14 the board.

15 MR. NOLAN: In the 2003 time frame?

16 MR. LYNCH: This was in the 2002 time
17 frame when business was at its most
18 difficult. The layoffs occurred during the
19 same time period. And I don't know the
20 numbers of people affected by this and how
21 much they were off. We can certainly provide
22 that information.

23 MR. NOLAN: The other question that
24 comes to mind, just for clarification on my

1 part, is you talked a number of times about
2 optimism for the future and you indicated
3 there's no reason that you wouldn't make your
4 required payments for the remainder of the
5 year. Is there any initiative on your part
6 to actually look at making gains on those
7 payments and sharing your plans with the
8 NRC?

9 MR. LYNCH: Certainly we'll be happy
10 to do that. We are trying to formalize cash
11 flow now to give us some indication of what
12 we can project we'll be able to pay in
13 addition to our normal payment. I'm not
14 prepared at this particular juncture to share
15 that. I don't have it with me. But
16 certainly I would be happy to.

17 MR. NOLAN: Okay, that's all.

18 MR. NICK: This is Joe Nick. One
19 question. I guess we could refer to it as
20 corrective actions. If this were to happen
21 again, a situation similar, what would you do
22 differently? I think you mentioned it a
23 little bit. But what would you do
24 differently in the same situation now with

1 the knowledge that you have today?

2 MR. LYNCH: I would call you the
3 first day that we missed a payment.

4 MR. NICK: Just call for
5 informational purposes?

6 MR. LYNCH: I would call to alert you
7 to the fact that our business conditions were
8 such that cash flow made it impossible to
9 meet that month's payment and I would provide
10 whatever information you requested during
11 that phone call and would call you as
12 regularly as you would like with an
13 indication of what the prospects were.

14 MR. NICK: Okay.

15 MR. PANGBURN: Sam?

16 MR. COLLINS: A couple quick
17 questions for you. Who makes decisions
18 within the corporation whether or not to
19 comply with a license?

20 MR. LYNCH: Well, we are in
21 compliance with every condition of those that
22 affect the safety and operations of the
23 plant. Larry oversees the plant. He is very
24 dutiful in that regard.

1 As far as the payables are concerned,
2 of which this escrow payment is one, Larry is
3 intimately aware of which vendors need to get
4 paid right away, which product we're running
5 low on and so on. But he confers with me on
6 a regular basis as to how much monies we can
7 wrestle away from our customers and try to
8 pay. So Larry and I make those decisions.

9 MR. COLLINS: So, Bill, if I heard
10 you right, you appear to --

11 MR. LYNCH: I'm ultimately
12 responsible.

13 MR. COLLINS: Thank you for that.
14 You appear to make a cut in compliance with
15 the license of what's a safety decision
16 versus what's a payment decision.

17 MR. LYNCH: I only make that
18 distinction because it seemed to be a
19 distinction made in the OI factual report.
20 They're all license conditions that we're
21 obligated to take care of. Although I do
22 read in the fact finding from OI, if I may,
23 I'll read from that. As I read this, it
24 says, "Based on the information developed

1 during this investigation, OI also concluded
2 that although officials made a conscious
3 decision not to notify the NRC of the missed
4 payments until November 2003, there was no
5 specific requirement to do so nor was the
6 failure a violation of 10CFR30.9."

7 MR. COLLINS: As far as notification.

8 MR. LYNCH: Right.

9 MR. COLLINS: I understand. But the
10 payment --

11 MR. LYNCH: The payment was
12 absolutely an obligation of ours.

13 MR. COLLINS: I guess I'm
14 searching -- what corporate philosophy is
15 there that allows you to want to comply with
16 one part of the license but not another?

17 MR. LYNCH: Well, this, like any
18 private business or many public businesses,
19 is one that relies on revenues to be
20 generated to generate the cash to meet its
21 obligations. This was an obligation that
22 Safety Light has and we don't deny that
23 responsibility. But our first goal in any
24 time of difficulty is to make sure that we

1 can continue to be viable, continue to make
2 sure that we have product going out the door
3 that can generate sales, that will in some
4 time give us the cash to meet this
5 obligation. And, as mentioned in my letter
6 of August 1999, which I referred to
7 initially, it was with some trepidation that
8 we entered into the agreement because they
9 were rather large increases, as far as we
10 were concerned, as far as the increases in
11 escrow, which were going to depend upon a
12 stable and growing economy. And we certainly
13 did not have either a stable or growing
14 economy during this time period.

15 MR. COLLINS: I understand. Did you
16 or have you ever as a corporation considered
17 alternate sources of funding such as
18 commercial lines of credit? Have you ever
19 done that as a business?

20 MR. LYNCH: Yes, we have.

21 MR. COLLINS: And that was not
22 considered in this case?

23 MR. LYNCH: No, it was not.

24 MR. COLLINS: Why?

1 MR. LYNCH: Well, it didn't seem as
2 though adding debt to our situation was going
3 to make it better.

4 MR. COLLINS: Well, you yourself say
5 that you may eventually and you would hope
6 to, as remaining a viable organization, pay
7 that off. Wouldn't that also be true in the
8 commercial line of credit?

9 MR. LYNCH: Yes. And it could
10 possibly be considered now that business is
11 stronger again. During the heat of the
12 battle when this time was going on, it was
13 not considered because we didn't think during
14 those economic conditions that a bank was
15 going to lend us money. But certainly, as we
16 sit here today, it may very well be an option
17 available to us.

18 MR. COLLINS: But you're not telling
19 me that you attempted to do that?

20 MR. LYNCH: We have not attempted to
21 do that yet, that is correct.

22 MR. COLLINS: Thank you.

23 MR. LEWIS: Bill or Larry, could you
24 help me get some kind of an idea of what

1 Safety Light can expect to or has
2 historically generated as debt income after
3 taxes on an annual basis? What are we
4 talking about?

5 MR. LYNCH: Well, it's been up and
6 down depending on the economy. I can tell
7 you that in 2002, Safety Light posted a loss
8 of \$46,000. I can tell that you in 2003, we
9 made a profit. I'm going to be close but not
10 exactly accurate, \$38,000. We have made
11 profits as high as probably \$150,000 in the
12 past probably six, seven, eight years. Does
13 that answer your question sufficiently.

14 MR. LEWIS: Well, yes. I didn't know
15 what exact information you had. So obviously
16 your fiscal year 2003 is closed?

17 MR. LYNCH: That's correct. We are
18 not a big business, by any means. We're
19 anticipating revenues this year of just over
20 \$4 million and we expect to make a profit
21 based on those revenues.

22 MR. COLLINS: Bill, the charges for
23 the decommissioning, how is that considered
24 in your corporation? Is that considered

1 chargeable against past practices?

2 MR. LYNCH: Actually, that \$36,000
3 profit includes the expensing of our escrow
4 payments. Even though they weren't paid,
5 they were expensed. So the \$36,000 profit is
6 really after the expense of the escrow
7 payments.

8 MR. COLLINS: So that number would be
9 incorporated post tax?

10 MR. LYNCH: That is correct. I'm not
11 an accountant, but I think I said that
12 correctly.

13 MR. PANGBURN: Any questions from the
14 folks on the phone? Sally, Nick, Tom?

15 MS. MERCHANT: I don't have any.
16 This is Sally.

17 MR. ORLANDO: This is Nick. None
18 from me.

19 MR. WHITE: I have none. And,
20 frankly, I couldn't ask any anyway.

21 MR. PANGBURN: I'm going to suggest
22 that we go off line here for just a moment.
23 I want to step outside with the NRC folks and
24 just caucus for a moment and we'll be back in

1 just a moment.

2 - - -

3 (Recess.)

4 - - -

5 MR. PANGBURN: This is George again.
6 We've asked a lot of questions here and you
7 talked about the things that you've done over
8 the last couple years. We're in a conundrum,
9 for lack of a better phrase. It's a
10 situation with continued non-compliance with
11 regard to your license situation. You're
12 aware of it. You talked about your plan to
13 look at cash flow and where you stand from a
14 business perspective. And I guess, being in
15 a situation of non-compliance, it does put us
16 in a difficult position, part of the reason
17 we're around the table here today. What's
18 your plan to move forward in terms of getting
19 back to us with a commitment where you're
20 going to be making up payments? When do you
21 think you will have something together?

22 MR. LYNCH: By a week from Friday. A
23 week from this Friday, I will have to you a
24 proposal of how we intend to make up the

1 arrears. I don't know what that date is.

2 MR. NICK: The 30th.

3 MR. PANGBURN: I would encourage you
4 to be creative in what you're considering in
5 terms of options. I heard some talk here
6 about commercial lines of credit. Whatever
7 opportunity you can avail yourself of in
8 order to make up this financial difference.
9 And, Mr. White, I'm speaking to you as well
10 as to Mr. Lynch here. I would be less than
11 candid with you if I didn't say this, and
12 probably against the advice of others, I'm
13 going to say it anyhow. The fact of the
14 matter is we're only six months away from a
15 decision on what to do with your license and
16 the fact of the matter is we've had a
17 continuing non-compliance thing going on here
18 for a number of months. And that
19 non-compliance has to do with, as I mentioned
20 in my opening remarks, with the central point
21 of the Commission's decision on the renewal
22 last time, which means we can exempt you from
23 this financial assurance requirement if and
24 only if you can put funds away to help try to

1 make up that delta. And we need -- I will be
2 candid. The staff has to look at this, in
3 all candor, has to look at how you stand with
4 your compliance history as we would with any
5 decision. This particular one, because it is
6 so pivotal, is particularly important. So I
7 encourage you to put that plan together and
8 look as expansively as you can at what
9 options you have available to you to fund the
10 payments that are in arrears.

11 MR. WHITE: Mr. Pangburn, could you
12 give us maybe between now and a week from
13 Friday, work with us, giving us maybe some
14 direction on how to proceed? We don't want
15 to come back to you with something that might
16 be within our budget that's unreasonable to
17 you. Maybe we would like to get some of your
18 ideas in the next week to 10 days.

19 MR. PANGBURN: Frankly, I think I've
20 probably just given those to you at this
21 point.

22 MR. WHITE: I meant more monetarily.

23 MR. PANGBURN: At this point, we know
24 the amount is clear, \$72,000 plus interest,

1 the amount that's in arrears. And that plus
2 the payments that remain for the remainder of
3 this year are what you need to be looking at
4 being able to fund through whatever kinds of
5 arrangements you want to come up with. I'm
6 sorry I can't be more specific but, believe
7 me, you don't want my financial advice.
8 Others here? Steve?

9 MR. LEWIS: George, I think you're
10 exactly correct. I mean, we're really not in
11 a position to offer them business advice, for
12 lack of a better term.

13 MR. PANGBURN: I think Mr. White was
14 looking for just how much money is it that
15 they have to make up, and I think that's up
16 to your straight line projection, what's
17 here, what's owed for the rest of the year
18 and what's owed in arrears.

19 MR. LYNCH: We fully understand the
20 situation. We certainly understand the
21 severity of the situation. We will make
22 every effort to fix this problem that we have
23 created. We have enjoyed a good relationship
24 with the NRC for 20-plus years. We have

1 operated the plant and the facility in a
2 responsible manner for that entire period, in
3 compliance with all the safety and
4 radiological issues. We have stubbed our toe
5 here. As the economy faltered, we faltered
6 also. And in hindsight, we should have been
7 more proactive in discussing this with you,
8 discussing possible ways to either
9 renegotiate the terms of our license
10 requirement or whatever. I can tell you we
11 have learned from this experience. This will
12 never be repeated. And we will come back to
13 you by a week from Friday with some ideas as
14 to how we propose to go forward and alleviate
15 this problem.

16 MR. PANGBURN: Thank you, Bill. Joe,
17 did you want to make closing remarks?

18 MR. NICK: Yes. This is Joe Nick
19 again. I have a few remarks regarding again
20 the enforcement process. After today's
21 conference, the NRC will make a final
22 decision on whether or not the violation
23 we've been discussing today actually
24 occurred, the significance and willfulness of

1 that violation and what enforcement action is
2 warranted. As I said earlier, this decision
3 is made in coordination with many of the
4 other offices that are represented here
5 today. We will take into consideration the
6 findings of our OI report and as well as the
7 information you presented today and
8 previously.

9 MR. PANGBURN: And what you provide.

10 MR. NICK: Correct, what you have
11 promised to provide to us. But there are
12 basically four options available to the NRC.
13 So I wanted to go through those. The first
14 option is to issue an order to Safety Light
15 to modify, suspend or revoke the NRC
16 license. The second option is to issue a
17 civil penalty. The third option is to issue
18 a written notice of violation without a civil
19 penalty. And the fourth action is really to
20 take no action at all.

21 MR. LYNCH: Do we get to vote?

22 MR. NICK: You can certainly give us
23 your opinion. If an order or civil penalty
24 is issued, we will issue a press release.

1 The NRC will issue a press release. This is
2 a standard NRC practice and it's
3 non-negotiable. If we do not issue a notice
4 of violation -- I'm sorry, if we do issue a
5 notice of violation or no further action is
6 taken, we usually do not issue a press
7 release. Once the NRC has made our final
8 decision, we will notify Safety Light
9 Corporation in writing. We typically try to
10 do this within 30 days after the conference.
11 Obviously we want to wait for your further
12 information because that's very relevant to
13 our decision. So it might take a little bit
14 longer than 30 days. Are there any other
15 questions about our process?

16 MR. LYNCH: No, sir, not from me.

17 MR. NICK: Larry?

18 MR. HARMON: No.

19 MR. NICK: Rick?


20 MR. WHITE: No.

21 MR. PANGBURN: Thank you. I guess
22 that's it. We're adjourned for today.
23 Thanks, everyone.

24 (Conference concluded at 2:30 p.m.)

C E R T I F I C A T I O N

I HEREBY CERTIFY that the foregoing
is a true and correct transcript of the proceedings
held in this matter, as transcribed from the
stenographic notes taken by me on July 20, 2004.


BRAD TRATENBERG
Court Reporter - Notary Public

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**UNITED STATES OF AMERICA
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)

SAFETY LIGHT CORPORATION)

Bloomsburg, Pennsylvania Site)

_____))
(Materials License Amendment and)
Materials License Suspension))

Docket Nos. 030-05980-EA
030-05982-EA
030-05980-MLA
030-05982-MLA

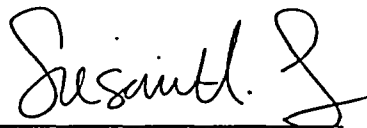
ASLBP Nos. 05-835-01-EA
05-833-07-MLA

February 16, 2005

NOTICE OF APPEARANCE

The undersigned, an attorney at law in good standing and admitted to practice before the courts of Georgia, hereby enters her appearance as legal counsel on behalf of the Licensee, Safety Light Corporation, in the above-captioned proceeding.

Respectfully submitted,



Susan H. Lin
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: (202) 739-5456
Facsimile: (202) 739-3001
E-mail: susan.lin@morganlewis.com

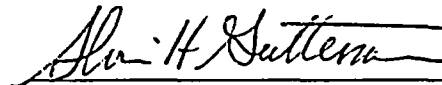
Counsel for Safety Light Corporation

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

Michael A. Woods
Mitzi A. Young
Counsel for NRC Staff
Office of General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: maw2@nrc.gov)
(E-mail: may@nrc.gov)

Assistant General Counsel for
Materials Litigation and Enforcement
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(Email: OGCMailCenter@nrc.gov)

Regional Administrator, Region I
U.S. Nuclear Regulatory Commission
475 Allendale Road
King of Prussia, PA 19406



Alvin H. Gutterman
Counsel for Safety Light Corporation

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