

June 20, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
SAFETY LIGHT CORPORATION)	Docket Nos. 30-5980-MLA
Bloomsburg, Pennsylvania Site)	30-5982-MLA
)	
(Materials License Amendments))	ASLBP No. 04-833-07-MLA
)	

JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT,
DISMISS HEARING REQUESTS, AND TERMINATE PROCEEDING

The Staff of the United States Nuclear Regulatory Commission (hereinafter "NRC Staff" or "Staff"), Safety Light Corporation (hereinafter "SLC"), and the Commonwealth of Pennsylvania Department of Environmental Protection (hereinafter "PADEP"), hereby jointly request that the Atomic Safety and Licensing Board (ASLB) enter an order approving the attached "Settlement Agreement," dated June 16, 2005 ("Agreement"), dismissing the hearing requests of SLC and PADEP, and terminating the above-captioned proceeding.

As grounds for this motion, the parties state:

1. By order dated November 9, 2004, LBP-04-25, 60 NRC 516 (2004), the ASLB granted the August 30, 2004, hearing request of PADEP that opposed SLC's April 22, 2004, application for renewal of Materials License No. 37-0030-08, which included a request for a continued exemption from financial assurance requirements for decommissioning and a reduced rate of contribution into the decommissioning trust fund;

2. On January 27, 2005, the Board granted SLC's request for hearing on the "Order Suspending License (Immediately Effective)," dated December 10, 2004, and SLC's request for hearing on the denial of its renewal applications for License Nos. 37-0030-02 and 37-0030-08.

Order (Order Granting Hearings, Consolidating Proceedings, And Establishing Hearing Schedule), dated January 27 2005 (unpublished). That order also consolidated the proceeding involving the suspension of the SLC licenses with the licensing proceeding.

3. In LBP-05-02, 61 NRC 53 (2005), the Board denied SLC's motion to set aside the immediate effectiveness of the order suspending the two materials licenses held by SLC. Subsequently, the Commission in CLI-05-07, 61NRC 69 (2005), exercised its supervisory role over licensing proceedings and lifted the immediate effectiveness of the Staff's December 10, 2004, license suspension order.

4. By letter dated February 25, 2005, the Staff withdrew the suspension order and the Board (LBP-05-08, 61 NRC 185 (March 4, 2004)) granted the joint motion of SLC and the Staff to terminate the enforcement proceeding (Docket Nos. 030-05980-EA and 030-05982-EA) as moot.

5. Subsequent to the February 16, 2005, filing of written presentations by the parties to the above-captioned proceeding, by Order dated March 2, 2005 (unpublished), the Board granted the parties' joint motion to hold this proceeding in abeyance for a period of time to allow them to pursue settlement negotiations. By orders dated April 7, 2005, May 23, 2005, and June 13, 2005, that time period was extended to June 20, 2005.

6. As a result of negotiations, the undersigned parties have concluded that, consistent with 10 C.F.R. § 2.338, it is in their respective interests to settle the matters at issue in the above-captioned licensing proceeding and executed the Agreement, which provides for a fair and reasonable settlement and resolution of, among other things, issues required to be adjudicated in this proceeding. SLC has agreed to make monthly payments to the decommissioning trust fund in amounts greater than required under its previous licenses. The Staff has agreed to issue SLC renewed licenses for terms expiring on December 31, 2007, and to grant SLC an exemption from the requirements in 10 C.F.R. § 30.32(h) and 30.35(a)

through (f) during this renewal period, provided SLC continues to make the prescribed monthly payments into the decommissioning trust fund. In addition, the Agreement specifies a process for adjustment of the payment schedule based on a showing of good cause.

7. The parties believe that the Agreement is consistent with the public interest in that it provides reasonable assurance that SLC can conduct licensed activities safely and in accordance with NRC requirements (including certain exemptions from financial assurance requirements for decommissioning) during the specified licensing term, provides for continuation of licensed operations with the accumulation of funds available for decommissioning the Bloomsburg site, and resolves their disputes without the need for further litigation.

8. In the Agreement, SLC and PADEP have agreed to and hereby withdraw their respective hearing requests and waive their right to challenge the settlement terms. Accordingly, subject to the approval of the Agreement, the Staff, SLC and PADEP waive their right to challenge or contest the validity of any order entered in accordance with the Agreement, and all rights to seek judicial review or otherwise contest the validity of such an order, and agree that any such order shall have the same force and effect as an order made after full hearing.

Inasmuch as the parties have decided to settle the matters at issue in this proceeding and such settlement is in the public interest, the parties request that the Board approve the attached Settlement Agreement, dismiss SLC's and PADEP's hearing requests with prejudice, and enter an order terminating the above-captioned proceeding. A draft order is appended hereto in accordance with 10 C.F.R. § 2.338.

Respectfully submitted,

/RA by Mitzi A. Young/

Mitzi A. Young
Kathleen A. Kannler
Counsel for NRC Staff

/RA/

Alvin H. Gutterman
Counsel for Safety Light

/RA by Martin Sokolow for/

Thomas M. Crowley
Counsel for Commonwealth of
Pennsylvania
Department of Environmental Protection

Dated at Rockville, Maryland
this 20th day of June, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
SAFETY LIGHT CORPORATION)	Docket Nos. 30-5980-MLA
Bloomsburg, Pennsylvania Site)	30-5982-MLA
)	
(Materials License Amendments))	ASLBP No. 04-833-07-MLA
)	

SETTLEMENT AGREEMENT

This AGREEMENT is made by and between the Staff of the United States Nuclear Regulatory Commission (hereinafter "NRC Staff" or "Staff"), Safety Light Corporation (hereinafter "SLC"), and the Commonwealth of Pennsylvania Department of Environmental Protection (hereinafter "PADEP"), to wit:

WHEREAS SLC is the holder of Byproduct Material License Nos. 37-00030-02 (the "- 02 License," which authorizes characterization and decommissioning of contaminated facilities, equipment and land) and 37-00030-08 (the "-08 License," which authorizes SLC to manufacture electron tubes, self-luminous devices, signs and other items containing tritium) at SLC's facility located in Bloomsburg, PA (the "Bloomsburg facility" or "Bloomsburg site");

WHEREAS, in April 2004, SLC filed applications for renewal of the -02 and -08 Licenses that were to expire on December 31, 2004, requesting a continued exemption from the requirements of 10 C.F.R. § 30.35 and a reduced rate of contribution to the decommissioning trust fund;

WHEREAS, by order dated November 9, 2004 (LBP-04-25, 60 NRC 516 (2004), the Atomic Safety and Licensing Board (hereinafter "Board") granted the August 30, 2004, hearing request of PADEP on the -08 License and that hearing request opposed SLC's requests for a continued exemption and a reduced rate of contribution into the decommissioning trust fund;

WHEREAS, on December 10, 2004, the NRC Staff denied the SLC renewal applications and issued an immediately effective order suspending the licenses (as of January 1, 2005), citing its determinations that SLC failed to submit a decommissioning funding plan as required by 10 C.F.R. § 30.35, SLC failed and willfully failed to make payments to its decommissioning trust fund as required by its licenses and SLC failed to demonstrate that an exemption should be granted;

WHEREAS, on January 27, 2005, the Board granted SLC's request for hearing on the "Order Suspending License (Immediately Effective)," dated December 10, 2004, granted SLC's request for hearing on the denial of renewal applications for the -02 and -08 Licenses, and consolidated the proceeding involving the suspension of the SLC licenses with the licensing proceeding. Order (Order Granting Hearings, Consolidating Proceedings, And Establishing Hearing Schedule), dated January 27 2005 (unpublished).

WHEREAS, on February 22, 2005, the Commission (CLI-05-07, 61NRC 69 (2005)), lifted the immediate effectiveness of the Staff's December 10, 2004, license suspension order;

WHEREAS, by letter dated February 25, 2005, the Staff withdrew the suspension order and the Board (LBP-05-08, 61 NRC 185 (March 4, 2004)) granted the joint motion of SLC and the Staff to terminate the enforcement proceeding (Docket Nos. 030-05980-EA and 030-05982-EA) as moot;

WHEREAS, subsequent to the February 16, 2005, filing of written presentations by SLC, PADEP and the Staff, the Board issued an order, dated April 7, 2005 (unpublished), granting the parties' joint motion to hold this proceeding in abeyance for a period of time to allow them time to pursue settlement negotiations (and that time period currently expires on June 13, 2005);

WHEREAS, as a result of the foregoing, the undersigned parties have concluded that it is in their respective interests, as well as the public interest, to settle the matters at issue in the above-captioned licensing proceeding and such settlement is encouraged by 10 C.F.R. § 2.338; and

WHEREAS, in consideration of the promises and representations in this document IT IS HEREBY AGREED AS FOLLOWS:

1. The NRC Staff will rescind its December 10, 2004 denial of SLC's applications to renew the -02 and -08 Licenses, issue renewed licenses (conditioned consistent with this agreement) with December 31, 2007 expiration dates, and grant SLC an exemption from the requirements in 10 C.F.R. § 30.32(h) and 30.35(a) through (f) during the aforementioned renewal period.
2. SLC will make monthly deposits into the decommissioning trust fund in the amount of \$12,000 per month payable by the 1st of each month during the license renewal period. Funds in the decommissioning trust fund may not be committed or used without the written permission of the Region I (RI) Regional Administrator and shall be used only for reasonable expenses directly associated with decommissioning activities (including disposal of tritium wastes from pre-2000 license activities) for the site and for maintenance of the perimeter

fence and warning signs. Legal fees and expenses of counsel shall not be chargeable against the decommissioning trust fund. Payments by SLC to another Federal or State agency in connection with decommissioning activities at the Bloomsburg site will be considered an offset against SLC's required monthly payments to the decommissioning trust fund.

3. SLC's obligation to make decommissioning trust fund payments shall commence June 1, 2005, however, SLC's June deposit into such fund may be made within 10 days after the date of issuance of a Board order approving this settlement agreement.
4. The NRC RI Regional Administrator may approve brief extensions in the decommissioning trust fund payment schedule upon SLC's demonstration of good cause (for example, through appropriate financial records or a showing of payments made to cover the cost of Bloomsburg site decommissioning activities undertaken by another Federal agency). If SLC submits such demonstration at least 7 days prior to the due date of any scheduled monthly payment, that payment will not be considered delinquent during the pendency of such request or when a revised payment schedule is approved.
5. SLC will report to the NRC and PADEP, within 10 days, any failure to make a payment to the decommissioning trust fund. The report shall discuss the cause of the failure, corrective actions to prevent repetition, and why the NRC should have confidence that SLC has sufficient resources to conduct licensed activities safely. SLC acknowledges that the NRC considers timely payment to the decommissioning trust fund to be significant. SLC agrees that any failure to make a payment when due that has not been cured by payment in full within 90 days of the due date shall result in the rescission of the exemption from 10 C.F.R. §§ 30.32(h) and 30.35(a) - (f) as well as the immediate suspension of the Licenses without further action by the NRC. If failure to make a payment is not fully cured with 90 days of the due date, SLC will immediately initiate any and all actions to comply with 10 C.F.R. § 30.36(b) and (c).
6. SLC will cease licensed activities at the Bloomsburg site by December 31, 2007 and agrees not to request renewal of its -02 and -08 Licenses beyond that date. SLC will develop a plan for orderly shutdown of its licensed activities at the Bloomsburg site and submit such plan by March 31, 2006 to the NRC RI Regional Administrator, for approval, with a copy provided to PADEP. SLC agrees to submit quarterly progress reports to NRC and PADEP (beginning on September 30, 2005) regarding the development and implementation of said plan. Consistent with the requirements of 10 C.F.R. § 30.36(c), this plan will include provisions to:

- a. cooperate fully with EPA emergency removal and remediation efforts, including continued security to assure safe conditions at the site and the removal and disposal of non-radiological waste on an ongoing basis;
 - b. Manage licensed material such that no licensed material inventory associated with tritium manufacturing operations, or tritium waste generated after September 30, 2004, remains at the site after December 31, 2007;
 - c. Notify, by August 30, 2007, SLC customers of exit signs and other devices containing licensed material that these signs and devices can no longer be returned to the Bloomsburg, PA facility after October 31, 2007. Any such signs or devices possessed by SLC must be transferred to an authorized recipient by December 31, 2007.
 - d. Notify, by October 31, 2006, tritium foil customers regarding the December 31, 2007 termination of licensed activities at the Bloomsburg facility.
 - e. Dispose of the pre-2000 tritium waste (i.e., solid waste now stored in the Waste Building and in hoods in the Tritium Processing Building) and tritium wastes generated during the renewal period. The approved plan may be included as a condition of the -08 License and shall provide for:
 - (1). Characterization of pre-2000 tritium waste by January 31, 2007, to the extent sufficient for waste disposal and development of a cost estimate for such disposal. This characterization is to be completed by January 31, 2007, provided sufficient funds are available in the decommissioning trust fund, or completed when sufficient sums subsequently become available in the decommissioning trust fund.
 - (2). Disposal of pre-2000 tritium waste, including obtaining any required allotment from the LLW disposal facility located in Barnwell, South Carolina, for any waste (e.g., foils and targets) that must be disposed of at this facility.
7. SLC understands that this settlement agreement does not relieve SLC of its responsibility as a Potentially Responsible Party for costs incurred by the EPA for remediation of the Bloomsburg site under CERCLA or relieve SLC of its responsibility under the PA radium license (PA -166). PADEP agrees, however, that SLC's responsibility for payment of fees under the PA radium license (PA-166) will not exceed \$5,000 in any year and that

SLC will not be required to pay any fees, penalties or other charges attributable to activities before the effective date of this agreement. This limitation on past and future radium license fees is effective so long as SLC complies with the terms of the settlement agreement relating to payments by SLC into the decommissioning trust fund.

8. SLC agrees to accept a Notice of Violation (NOV) (for failures characterized as a Severity Level III problem) concerning (1) the willful failure to make payments to the decommissioning trust fund in accordance with the schedules defined in License Conditions 16 and 20.A. of the -02 and -08 Licenses, respectively, and (2) the failure to dispose of pre-2000 tritium wastes in accordance with Condition 19 of the -08 License. The NRC agrees to acknowledge, in correspondence issuing the NOV, SLC's position that it was not able to make the required payments. The NRC also agrees to waive its right to issue any associated civil penalty. No SLC response to the NOV will be required.
9. SLC agrees to provide to PADEP, within 10 business days of the effective date of this agreement, full disclosure of relevant financial records of SLC that support its position that SLC lacks sufficient funds or is unable to secure a security bond or other financial assurance that meets the requirements of 10 C.F.R. § 30.35. PADEP agrees to assure that all such proprietary information is protected from public disclosure.
10. PADEP agrees to withdraw its intervention petition. SLC agrees to withdraw its hearing request on the license renewal denial. SLC and PADEP agree to waive any right to a hearing or to otherwise challenge the agreed upon settlement terms.
11. NRC agrees to consider, in accordance with applicable regulations, an SLC application for a new license to authorize its manufacturing activities at a new location. NRC anticipates that its review of a technically sufficient SLC application could be completed within 120 days. SLC understands that NRC intends to grant no further exemptions from financial assurance requirements to SLC.
12. Unless otherwise specified in this agreement, time periods in days denote calendar days.
13. Nothing in this agreement shall foreclose the Environmental Protection Agency from taking any action with respect to the Bloomsburg site.
14. In the event that the Commonwealth of Pennsylvania acquires, pursuant to an agreement with the NRC under Section 274b of the Atomic Energy Act, as

amended, regulatory authority over the above-mentioned licenses for the Bloomsburg site, all responsibilities of, and references to, the "NRC" specified in this settlement agreement shall be deemed to refer to the "Commonwealth of Pennsylvania" or the appropriate State agency.

IN WITNESS WHEREOF, the NRC Staff, SLC and PADEP have caused this AGREEMENT to be executed by their duly authorized representatives.

/RA/

_____ Date: 6/14/05

William E. Lynch, Jr.
Vice-President
Safety Light Corporation

/RA/

_____ Date: 6/16/05

Jack R. Strosnider, Director
Office of Nuclear Material Safety
and Safeguards
U. S. Nuclear Regulatory Commission

/RA/

_____ Date: 6/15/05

David J. Allard
Pennsylvania Department of
Environmental Protection
Director, Bureau of Radiation Protection

/RA/

_____ Date: 6/15/05

Thomas M. Crowley
Pennsylvania Department of
Environmental Protection

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)		
(Materials License Amendments))	ASLBP No.	04-833-07-MLA
)		

MEMORANDUM AND ORDER
(Approving Settlement and Terminating Proceeding)

On December 10, 2004, the NRC Staff denied the applications of Safety Light Corporation for renewal of its Licenses Nos. 37-0030-02 and 37-0030-08. Now, by joint motion, dated June 20, 2005, the parties (Safety Light Corporation (SLC), the Commonwealth of Pennsylvania Department of Environmental Protection (PADEP), and the NRC Staff) request that we approve a June 16, 2005 Settlement Agreement executed by the parties and terminate this proceeding without further adjudication of any of the legal or factual matters at issue.

Pursuant to our powers under 10 C.F.R. § 2.318 and the provisions of 10 C.F.R. § 2.338, we have reviewed the parties' settlement agreement to determine whether approval of the agreement and termination of this proceeding is in the public interest. On the basis of that review, and the consent of the parties, we have concluded that both actions are consistent with the public interest. Accordingly, we grant the parties' joint motion to approve the settlement agreement, dismiss the SLC and PADEP hearing requests, and terminate the proceeding.

For the foregoing reasons, it is this ____ day of ____, 2005, ORDERED that

1. SLC's and PADEP's requests to dismiss their respective hearing requests are *granted* with prejudice.

2. The June 20, 2005 joint motion of the parties is granted and we approve their June 16, 2005 "Settlement Agreement," which is attached to and incorporated by reference in this Memorandum and Order. In accordance with 10 C.F.R. § 2.338, the entry of this order has the same force and effect as an order made after a full hearing on the PADEP request for hearing on the SLC renewal application for Material License No. 37-0030-08, and the SLC hearing request on denial of it renewal applications for Materials License Nos. 37-0030-02 and 37-0030-08.

3. This proceeding is terminated.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
_____, 2005

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NUCLEAR REGULATORY COMMISSION

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Bloomsburg, Pennsylvania Site)	30-5982-MLA
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(Materials License Amendments))	ASLBP No. 04-833-07-MLA
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT, DISMISS HEARING REQUESTS, AND TERMINATE PROCEEDING", "SETTLEMENT AGREEMENT", and draft "MEMORANDUM AND ORDER" in the above-captioned proceeding have been served on the following by deposit in the United States mail or by deposit in the Nuclear Regulatory Commission's internal system, and by electronic email as indicated by a single asterisk (*) on this 20th day of June, 2005.

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