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Agency: Nuclear Regulatory Commission
Title: Safety Light Corporation, United States Radium Corp., USR Industries, Inc., USR Lighting, Inc., USR Chemicals, Inc., USR Metals, Inc., USR Natural Resources, Inc., Lime Ridge Industries, Inc., Metreal, Inc.
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P R O C E E D I N G S

[10:30 a.m.]

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3 JUDGE HOYT: The hearing will come to order. This
4 hearing is a prehearing conference called by order of this
5 Board, dated October 12, 1989. This deals with Docket Number
6 030-05980-05981-05982-08335-08444. This is carried under two
7 numbers of this panel, ASLBP Number 89-590-01-OM and ASLBP
8 Number 90-598-01-OM-2.

9 At this time, we will take appearances of counsel.
10 We will start over on the left, for no other reason than we
11 have to start someplace. Mr. Charnoff.

12 MR. CHARNOFF: Good morning, Chairman Hoyt. I am
13 Gerald Charnoff of Shaw, Pittman, Potts and Trowbridge. With
14 me this morning is Howard Shapar, who is counsel to the firm
15 and Christine Nicolaides, a member of the firm. We are
16 representing USR Industries, USR Lighting, USR Chemical, USR
17 Metals and US Natural Resources.

18 JUDGE HOYT: Ms. Drennan.

19 MS. DRENNAN: My name is D. Jane Drennan. I am with
20 Wunder, Ryan, Cannon and Thelen, 1615 L Street, Northwest. I
21 am here on behalf of Safety Light Corporation.

22 MR. WEISMAN: Robert Weisman, representing NRC Staff.
23 Bernard Bordernick is also representing the staff.

24 JUDGE HOYT: Thank you. We have received yesterday,
25 a letter from Mr. Charnoff, representing USR Industries, et

1 cetera. I would like to inquire of counsel if the contents of
2 this have been made known to you. Ms. Drennan?

3 MS. DRENNAN: Yes, I received it this morning, Your
4 Honor.

5 JUDGE HOYT: Mr. Weisman?

6 MR. WEISMAN: Yes, the staff has received this letter
7 also.

8 JUDGE HOYT: The Board, as we have indicated in
9 telephone conversations with both Mr. Charnoff and Ms. Drennan
10 and Mr. Weisman, the Board simply feels at this time because we
11 are beginning to get new counsel in the case and are beginning
12 to get not only one Board but two Boards involved in this - two
13 cases rather - now joined before this one Board, it would serve
14 we think, the purposes of all the parties and the Board if we
15 were to inquire this morning just where we are with the case
16 and how best we can proceed in order to utilize the resources
17 of the Commission effectively and to provide counsel the
18 opportunity to present their cases fully and completely as they
19 need to be.

20 Mr. Charnoff, since your letter yesterday was the
21 last thing that we received and, therefore, we will start at
22 the beginning with the last and the first shall be last,
23 whatever that may be. We would like to determine from you
24 first of all, I notice that you have replaced counsel for the
25 USR Industries and the related companies somewhere in October.

1 MR. CHARNOFF: It was October fifth, yes.

2 JUDGE HOYT: The fifth, I believe, is correct or
3 thereabouts. There were some pleadings that I find in the
4 docket that had been submitted by counsel that had preceded you
5 in representing your client. Are those pleadings still to be
6 effective, insofar as --

7 MR. CHARNOFF: Insofar as I think so, in general,
8 yes. Insofar as those pleadings have requested hearings on the
9 two orders, the March 16th and the August 21 hearing and, also,
10 objective to the immediate effectiveness of those orders the
11 answer is yes. I don't know if you are referring to some other
12 documents in particular.

13 JUDGE HOYT: No, I am not referring to any other
14 documents, but I am referring to some of the representations
15 that were made by the counsel who preceded you in this case. I
16 think those were found in a pleading file titled Joint Motion
17 and Stipulation dated 8-2-89, a joint motion and stipulation
18 submitted by the prior counsel.

19 MR. CHARNOFF: That is different than the two letters
20 that I had in mine. Let me just get my copy of that.

21 JUDGE HOYT: That is really what we are trying to
22 determine. Let me do this, Mr. Charnoff, let me suggest to you
23 that you examine the documents that have been submitted by the
24 prior counsel and advise the Board either today later in this
25 hearing or by letter to the Board served on all parties as to

1 what differences you may find in them.

2 MR. CHARNOFF: To do that, Your Honor, if I may have
3 until Monday to that, I would appreciate that.

4 JUDGE HOYT: That is agreeable. Dr. Shon?

5 JUDGE SHON: I wanted to make sure that you also
6 address this answer from Hannock-Weisman signed by Mr.
7 Mitcherone dated April 17th. In that, in reply to the earlier
8 Commission order, he specifically went through and took a
9 position on each point in the order. Or, on behalf of USR
10 Industries, USR Lighting, USR Chemicals and so on.

11 MR. CHARNOFF: Yes, I had in mind that letter and the
12 letter dated September 8th, the April 17th and September 8th
13 letter. What was the date of the stipulation that you have in
14 mind?

15 JUDGE HOYT: The date of the stipulation that I have
16 made reference to, Mr. Charnoff, was dated 8-2-89 and it was
17 signed by prior counsel for USR Industries and Mr. Weisman. It
18 was a joint motion and stipulation.

19 MR. CHARNOFF: We will address those three documents.
20 What we have been doing, obviously, is catching up as quickly
21 as we can with the whole record. I think I have a pretty good
22 feel where the case is, but I am not ready to say that every
23 word stated before is exactly the way I would have said it or
24 otherwise.

25 JUDGE HOYT: That is the reason I think it would

1 serve the purposes of the Board and the parties if we knew
2 precisely where you are. We will dot all the i's and cross all
3 the t's at that time then.

4 MR. CHARNOFF: Thank you.

5 JUDGE HOYT: Ms. Drennan, as I mentioned to you when
6 you called about the conference, we realize that Safety Light
7 occupies a somewhat different relationship in this prehearing
8 conference this morning. That is, you are now in negotiations
9 with the Staff to settle the Safety Light feature of this joint
10 case.

11 MS. DRENNAN: Yes, Your Honor.

12 JUDGE HOYT: I assume that there is no change, and
13 that these are proceeding on target?

14 MS. DRENNAN: Yes, they are, Your Honor. I have told
15 Staff counsel that we are going to have to request another two
16 week extension in making one of our filings as to the work plan
17 because the contractor has some problem doing them. We are
18 basically, I think, on schedule; am I correct, Mr. Weisman?

19 MR. WEISMAN: We are pretty much on schedule. We are
20 continuing to negotiate and whatever differences we have, we
21 are working on resolving them.

22 JUDGE HOYT: You would not have been opposed to any
23 extension of time that counsel is proposing?

24 MR. WEISMAN: We haven't received the formal request
25 yet, but --

1 JUDGE HOYT: We are not asking you to predetermine
2 the issue before you have it then, although if you can, go to
3 it. I don't think that requires any action of the Board,
4 however.

5 MR. WEISMAN: No. The Director of the Office of
6 Enforcement or the Regional Administrator can grant that
7 request.

8 JUDGE HOYT: Thank you. It is not necessary that
9 counsel rise each time. This is an informal conference. We
10 assume that you are paying appropriate respect to the dignity
11 of this Board. The order of the Commission published in the
12 Federal Register on August 31, 1989 limits in Section 6 of that
13 order, this hearing to decide only the issue of whether or not
14 the order should be sustained.

15 The only issue before us really, is that. I think it
16 will probably take a multi-faceted approach, but at this time,
17 I would like to inquire of counsel how you would prefer to
18 proceed in this matter. As I indicated earlier, in order to
19 best utilize not only the facilities of the Board but also of
20 individual staffs.

21 Mr. Charnoff, you did lead us off. Would you like to
22 take that role now?

23 MR. CHARNOFF: If you don't mind, I would like to
24 stand.

25 JUDGE HOYT: As you like.

1 MR. CHARNOFF: Yes, I think that I would propose that
2 as I see this matter, there are some fundamental preliminary
3 questions that must be resolved relating to the jurisdiction of
4 the NRC over my clients. There is a significant question as to
5 whether or not we are licensees and whether we have transfer of
6 the license to the successor and to the US Radium Corporation,
7 namely Safety Light Corporation.

8 I think that that question fundamentally has to be
9 raised initially. We have tried to outline three questions in
10 effect in the letter that I sent to you yesterday that do
11 relate to that point. There is a related question, which is
12 that even if we were subject to the jurisdiction of the NRC for
13 purposes of the orders that were issued both in March and in
14 August, there is a question as to whether there is an adequate
15 basis for the NRC to make them immediately effective.

16 I suggested in my letter that I felt we ought to
17 address those kinds of legal questions first, before we get
18 into the fact contest as to whether the order in March was
19 reasonable and whether it was reasonable to issue the order in
20 August thereafter, which is related to the scope, obviously, of
21 the March order. Associated with that then, is the question as
22 to whether or not this Board would order or issue a stay of the
23 effectiveness of the August order. The August order did compel
24 my client to establish a trust by the first or second of
25 October, as I remember, and to begin to make payments into

1 that.

2 Obviously, if there is no jurisdiction of the NRC
3 over this entity, then it seems to me it is inappropriate to
4 begin to make fund contributions into that. We think that this
5 question of jurisdiction and immediate effectiveness must be
6 answered by this Board and the associated appeal entities
7 before the clients are asked to fund a trust in that regard.

8 Those are the questions I think that we really must
9 address on some sort of an expedited schedule, and we are
10 prepared as counsel to this group named targets of the orders
11 to deal with them. I proposed a schedule for briefing and
12 possibly oral argument, or otherwise, as you might wish.

13 JUDGE HOYT: Mr. Charnoff, there are five licenses
14 involved here. Were any of your clients, any of the USSR people
15 involved in - were any of the licenses issued to them?

16 MR. CHARNOFF: Here, I have to plead a little bit of
17 ignorance. We are such good licensees and subject to the NRC
18 order, we don't even have copies of those licenses. That goes
19 to the question of whether we really are licensees at all. I
20 have asked the staff to provide the licenses to us.

21 To the best of my knowledge, however - and the staff
22 will do that. Mr. Joiner has indicated he will send those to
23 me. Let me say too at the outset that, very quickly after we
24 were retained we met with Messrs. Weisman and Bordenick, and
25 they were very extraordinarily cooperative in one meeting with

1 us to give us the background of the case and making available
2 to us a substantial amount of their files in this case. Ms.
3 Drennan is doing the same for her client, so I appreciate that.

4 JUDGE HOYT: Mr. Charnoff, let me interrupt you here
5 a moment and inquire of Mr. Weisman, where are those licenses?
6 What party was the license issued to?

7 MR. WEISMAN: Originally, the licenses were issued to
8 US Radium, but the name on those licenses has been changed to
9 Safety Light Corporation.

10 JUDGE HOYT: You have some sort of a chain
11 establishing all of that?

12 MR. WEISMAN: I believe that I have copies of
13 licenses in my files, and I believe that Mr. Joiner also has
14 copies of licenses.

15 JUDGE SHON: Did I understand you to say that the
16 current version of the license lists only Safety Light?

17 MR. WEISMAN: I can't say that with 100 percent
18 confidence, but I believe that is the case.

19 JUDGE HOYT: Will you inquire of Mr. Joiner? I think
20 the Mr. Joiner that you are referring to is the gentleman from
21 the Regional Office; isn't he?

22 MR. WEISMAN: Yes. I will.

23 JUDGE HOYT: Why don't you bring him over to counsel
24 table, because he might need to be with you a little more in
25 this case.

1 MR. WEISMAN: Mr. Joiner informs me that his
2 recollection is that Safety Light is the only entity named on
3 the license currently.

4 JUDGE HOYT: Currently. Are there any copies of the
5 licenses that were originally issued? Are they available or
6 not available?

7 MR. WEISMAN: The staff has copies of those licenses
8 in the Regional Office, but we do not have them here with us
9 today.

10 JUDGE SHON: Do you also have some sort of
11 accountability trail that shows where and under what
12 circumstances the name of the licensee was changed?

13 MR. WEISMAN: I think we do have a trail of that.

14 JUDGE SHON: I would expect you to, but I just want
15 to make sure.

16 MR. WEISMAN: Yes. We have some understanding of
17 corporate transactions that took place in 1979, 1980, 1981, as
18 best we can tell from the SEC filings that were made and from
19 our own inspection reports.

20 JUDGE HOYT: The Securities and Exchange Commission
21 filings; is that what you are referring to?

22 MR. WEISMAN: That is correct.

23 JUDGE HOYT: When the order modifying the license was
24 prepared by Mr. Thompson, he recites in here all of the things
25 that each of these five licenses authorizes and permits the

1 holder to do. So, somebody must have them somewhere, and I
2 think it's about time that we get these in the record.

3 MR. WEISMAN: Yes.

4 JUDGE HOYT: I hope that Mr. Thompson will share them
5 with us. We would like to have also, the trail of how those
6 things have been handled from the time that they were
7 originally issued. I believe that some of these were issued in
8 1984. One was license number 37-00030, and was originally
9 issued in 1956. It has been renewed at least twice, once in
10 1979 and once in 1984, according to Mr. Thompson's order
11 modifying the license dated 21 August 1989. That is the
12 current order that we are talking about this morning.

13 MR. WEISMAN: That is correct.

14 JUDGE HOYT: Very well.

15 MR. CHARNOFF: Chairman Hoyt, on that question, I
16 wonder if to put some order into this because we are all
17 playing catch up here and I apologize for that, I wonder if we
18 could set a schedule --

19 JUDGE HOYT: Mr. Charnoff, we are doing the same
20 thing.

21 MR. CHARNOFF: I wonder if we could set a schedule
22 for the staff to provide to you and to us and Ms. Drennan, the
23 original licenses, if you will, the chain that they have
24 showing the change.

25 JUDGE HOYT: You want it today?

1 MR. CHARNOFF: No, but I would like to set a schedule
2 for that, including the current --

3 JUDGE HOYT: I assume it will be done as soon as they
4 can get it, which will be tomorrow or thereabouts. I am being
5 facetious on that.

6 MR. CHARNOFF: I wonder if it could be related to my
7 commitment to dealing on Monday with the filings by Hannock-
8 Weisman - I mean, I am prepared to do that based on what I
9 know, but I think it would be more effective if I could do that
10 five days after I got this chain of licenses.

11 I felt ignorant here looking at this file without
12 seeing the licenses. I wonder, if that wouldn't disturb the
13 Board schedule any, if we could have a couple of days after
14 receipt of these licenses to answer your question and Dr.
15 Shon's questions?

16 JUDGE HOYT: I think you are anticipating a bit -
17 yes, I certainly think that would be appropriate.

18 MR. CHARNOFF: Thank you.

19 JUDGE HOYT: Mr. Weisman, can you give us some
20 timeframe in which you could reasonably obtain these and get
21 them distributed to all the parties?

22 MR. WEISMAN: Yes. Mr. Joiner tells me that we can
23 begin to collect this information as early as this afternoon.
24 I would suspect it might take us a day or two to get it out in
25 the mail, so probably by next Monday or Tuesday. I would

1 imagine by Tuesday we should be able to.

2 JUDGE HOYT: We will say Wednesday of next week. I
3 must confess that I do not have a calendar.

4 JUDGE PARIS: Do you have to wait to get the orders
5 from the Regional office?

6 MR. WEISMAN: I don't believe that I have all of the
7 information in my file. I don't think that I have all the
8 original licenses, so we would have to wait and get those from
9 the Regional Office, that is correct.

10 JUDGE HOYT: Wednesday of next week, whatever date
11 that is, do you have a calendar so that we can put it on the
12 record?

13 MR. CHARNOFF: That would be the 25th of October.

14 JUDGE HOYT: October 25, we can expect you to
15 distribute those.

16 MR. WEISMAN: We should have no difficulty.

17 JUDGE HOYT: Fine. Mr. Charnoff, having interrupted
18 you twice, please would you continue, sir?

19 MR. CHARNOFF: I could, if I could remember what I
20 was saying. It is my impression, and it is an impression based
21 upon the review so far, that apparently the licenses were held
22 by US Radium Corporation. And then, sometime in the 1979 or
23 1980 timeframe, a new entity was created called USR Industries
24 which received the stock of US Radium Corporation. US Radium
25 Corporation became a subsidiary of USR.

1 At the same time USR spun off the non-regulated
2 enterprises that it had, the names of the companies that we
3 indicate here that we represent other than USR; US Lighting, US
4 Chemicals, USR Metals, US Natural Resources were spun off into
5 separate entities that were also held by USR, Inc. At that
6 point, as a holding company with USR, Inc. holding the stock in
7 each of those four companies including US Radium Corporation -
8 that was another company.

9 Subsequent to that, or almost coincident with that, I
10 don't remember the exact dates, there was a name change to US
11 Radium Corporation which held these licenses to Safety Light
12 Corporation. I believe the notice to the NRC of the name
13 change was given sometime in 1981, but I'm not sure about the
14 date. Subsequent to that, I think in 1982 or early 1983, the
15 stock ownership of Safety Light Corporation, formerly the
16 successor to US Radium Corporation was then sold to three
17 individuals in the name of another entity that they created,
18 the three individuals, and notice of that was then given to the
19 NRC.

20 We are looking at a circumstance where Ms. Drennan's
21 client, Safety Light Industries as we understand it, was the
22 successor to US Radium Corporation and was given whatever
23 assets and liabilities that entity then had, subject to
24 whatever the conditions were of the agreement of the sale.

25 JUDGE HOYT: Mr. Charnoff, may I interrupt you a

1 moment to ask you, am I correct in my understanding that USR
2 Industries divested themselves of all of the licenses and they
3 were all acquired by the company which is now called Safety
4 Light?

5 MR. CHARNOFF: USR Industries never had the licenses.

6 JUDGE HOYT: I'm sorry. US Radium, you are right. I
7 had misspoken.

8 MR. CHARNOFF: US Radium Corporation had the
9 licenses. As I understand it, all the licenses and the site
10 and premises and insurance policies associated with that, all
11 went to Safety Light which was, in turn, sold to the current
12 stockholders.

13 JUDGE HOYT: When was that transaction?

14 MR. CHARNOFF: It was 1982, I think, 1982. It might
15 have been early 1983, but I think it was 1982.

16 JUDGE SHON: Just to clear up one other little thing,
17 who are Lime Ridge Industries and Metreal, and are they
18 represented here at all?

19 MR. CHARNOFF: Lime Ridge Industries, and Jane
20 Drennan might help me on that. My understanding of the
21 documents is, Lime Ridge Industries was set up as an entity by
22 the three current stockholders of Safety Light, and that was
23 the entity that bought it. Then, they dissolved Lime Ridge
24 Industries, I think per the agreement in 60, 90 or 120 days
25 later. I am not even sure that Lime Ridge Industries exists

1 anymore.

2 JUDGE HOYT: We will let Ms. Drennan speak to that.

3 MR. CHARNOFF: I think it was a vehicle for the
4 acquisition of the stock. Whether it had other prior
5 activities or not, I don't know.

6 JUDGE PARIS: Is my understanding correct that Safety
7 Light Corporation was formerly United States Radium
8 Corporation?

9 MR. CHARNOFF: That is my impression, yes, sir.

10 JUDGE PARIS: My question is, why in the August 2,
11 1989 motion and stipulation and Safety Light Corporation and
12 United States Radium Corporation listed along with USR
13 Industries, Inc., and so on?

14 MR. WEISMAN: The staff's position is that the
15 transfer of the licenses was not in accordance with NRC
16 regulations. The transfer or corporation still held the
17 licences so that, any corporate reorganization, any successors
18 other than Safety Light were also subject to the NRC's
19 jurisdiction.

20 That was the reason that US Radium was named in the
21 order, was to make sure to pick up all successor corporations
22 other than Safety Light under NRC's jurisdiction.

23 JUDGE PARIS: I see, okay.

24 MR. CHARNOFF: I think just to complement what I
25 think Mr. Weisman said, I think the order of March 1989 listed

1 the entities that are listed in the stipulation in the caption.

2 MR. WEISMAN: That is correct.

3 MR. CHARNOFF: But I think you will notice that the -
4 and I am just looking at this very quickly now - at that
5 stipulation itself which is signed by Mr. Nucheone, he says -
6 it opens by saying counsel for USR Industries, US Lighting, USR
7 Chemicals, USR Metals and the NRC staff move that - and there's
8 no statement in there that either Mr. Weisman or Mr. Nucheone
9 were representing US Radium Corporation.

10 It simply is in the caption as a carry through from
11 the order of March of 1989. I wasn't there and I don't know,
12 but that is the way it reads to me.

13 JUDGE SHON: The March order also listed a Pinnacle
14 Petroleum Company.

15 MR. CHARNOFF: Pinnacle Petroleum is another
16 subsidiary of USR Industries. And, that was acquired by USR
17 Industries, I believe, in 1984 as part of a controlling
18 interest or majority interest. Pinnacle moved both in Court
19 and with the NRC to be dropped and deleted from this. In fact,
20 the NRC did delete Pinnacle from that order in that regard.

21 You had also asked, Mr. Shon, about Metreal.

22 JUDGE SHON: I don't know how to pronounce it.

23 MR. CHARNOFF: I don't know whether it is a - I
24 couldn't read it either on my copy.

25 JUDGE HOYT: It is M-E-T-R-E-A-L.

1 MR. CHARNOFF: Metreal. My understanding is that
2 that entity owned the land, was set up to own the land at the
3 site in Bloomsburg, and was owned by US Radium Corporation and,
4 in turn, by Safety Light. I think this transferred with Safety
5 Light. I am not certain about that. Perhaps Ms. Drennan could
6 comment on that.

7 MS. DRENNAN: I really don't know about Metreal
8 Corporation.

9 MR. CHARNOFF: It's hard to tell who the newest
10 counsel is around here, but we are trying.

11 MR. WEISMAN: My understanding is that Metreal is the
12 real estate holding corporation for Safety Light. I obtained
13 that information from Mr. Beecham, who was also counsel for
14 Safety Light.

15 MR. CHARNOFF: I think that is correct.

16 JUDGE SHON: Is it your understanding that they, in
17 fact, own the land at Bloomsburg?

18 MR. WEISMAN: Yes. Metreal, in fact, owns the land.

19 JUDGE HOYT: I strikes me that we are not having any
20 representation from them.

21 MR. WEISMAN: They are wholly owned by Safety Light.

22 JUDGE HOYT: Are you representing them as well then,
23 Ms. Drennan?

24 MS. DRENNAN: Yes, I am, Your Honor. As was stated,
25 I too, am the new counsel. I started working on this matter in

1 September and I really have no focus on Metreal or what its
2 relationship may be. From what I have read to date, I thought
3 it was all owned by Safety Light. I did not know there was some
4 subsidiary.

5 JUDGE HOYT: This is beginning to give new meaning to
6 the corporate veil, isn't it? I must confess that I came up
7 here with a very clear head as to exactly where we are going,
8 and I am sitting here becoming increasingly disturbed that I am
9 not sure where we really are and if anybody really knows where
10 we are.

11 MR. CHARNOFF: It is my impression that Metreal used
12 to be a baby food supplement, but I am not certain about that.

13 JUDGE HOYT: That is beside the point, isn't it.
14 Let's get the case back on track here by saying that I think we
15 have to sit down, all the counsel have to sit down and give us
16 a determination of who we are talking about in these companies.
17 I don't know how long that is going to take. I certainly think
18 we are reasonable in getting this done.

19 I want to know it is that we are discussing. I would
20 like to think that when we issue an order, it's going to be
21 directed toward somebody. I am seeing many, many vaporous like
22 figures out in front of me with no one to --

23 MR. CHARNOFF: That is precisely our concern here,
24 and why we think this question of jurisdiction has to be
25 resolved at the outset. We are under the impression that the

1 clients that we are representing here really shouldn't be here
2 at all, as much as I like to be in this hearing room. That is,
3 that we think we have been removed from this enterprise for
4 quite a number of years. That may be a matter of debate,
5 obviously, but I think the Board is entitled to an
6 understanding of what that corporate reorganization was all
7 about, and we would endeavor to provide that in our arguments
8 as to why we think there is no jurisdiction here with this
9 agency with respect to our clients.

10 JUDGE HOYT: How best we can proceed to get that
11 information before us in whatever appropriate manner is
12 available is, of course, the next question. I will take it
13 that you, Mr. Charnoff and Ms. Drennan are going to need some
14 time to determine really, who your clients are and what degree,
15 if any, they have violated any of the rules and regulations of
16 this Commission.

17 Let's look at a schedule to see when you could do
18 that. Do you have any fixed time for that?

19 MR. CHARNOFF: I had proposed that we would, in about
20 two weeks's time - I am sorry that we couldn't get to talk to
21 Mr. Weisman who was ill the last two days about a schedule, so
22 we tentatively proposed a rather expedited schedule I must say,
23 because the complexity of what we have just been addressing is
24 at the heart to some extent of the jurisdictional question.

25 JUDGE HOYT: Mr. Charnoff, --

1 MR. CHARNOFF: We were going to propose the briefs
2 that I identified on those issues in two weeks time or whatever
3 schedule is convenient for everybody.

4 JUDGE HOYT: Mr. Charnoff -- Ms. Drennan, could you
5 meet that schedule of filing a brief with us on November 2,
6 1989, dealing with the issues of first being the position of
7 these entities that we are hearing mentioned in this case and
8 who have indeed been cited in the styling of this case by the
9 Commission?

10 MS. DRENNAN: Your Honor, I will make every effort to
11 try and comply with that data. I have to state candidly that I
12 have not asked Safety Light about the subsidiary. I don't know
13 what type of documentation that they have or where it is. I
14 fact, I was just visiting with them this week, I have been with
15 them this week on settlement arrangements.

16 I have not focused on this issue, and I am not very
17 clear about what type of documentation is available. But, I
18 will try and make the deadline of November 2.

19 JUDGE SHON: Mr. Charnoff, as I understood your
20 letter, you really haven't proposed that Safety Light submit
21 that information?

22 MR. CHARNOFF: No. It was my impression that Safety
23 Light was subject to the stipulation that they had arrived at,
24 that Safety Light was free until April sometime, 1990 whenever
25 that is, to make its presentations. I understand Ms. Drennan

1 is here at the invitation of Judge Hoyt, and I am glad that she
2 is, but I am not sure that she needs to. I would be glad to
3 have Safety Light's contribution to the organizational
4 question.

5 I had not proposed that, simply because I had
6 understood that Ms. Drennan and her clients were free until
7 April 9 to see what else they might be able to do in terms of
8 this Board.

9 JUDGE HOYT: That is correct, Mr. Charnoff, they are.
10 The April whatever 1990 is, the next date that they have to
11 meet anything for the Board for. Still and all, I cannot hear
12 the names of these companies and the fact that they are related
13 to Safety Light without at least affording Safety Light an
14 opportunity to file a brief.

15 MR. CHARNOFF: May I suggest as a courtesy to her,
16 that we ought to file our filings on the second, if that's the
17 date that we proposed, and we will endeavor in dealing with
18 some of the questions I identified as issues to set forth our
19 perception of this corporate reorganization and who the
20 entities are just as the NRC, I suggested a reply brief a week
21 or two later. At that time, that might be more convenient for
22 Ms. Drennan to file her reply, either agreeing or disagreeing
23 with the statement of facts that we put forth.

24 Would that be helpful to you, Ms. Drennan?

25 MS. DRENNAN: That would be fine. I was really

1 responding, Judge, to fine the organizational information and
2 documentation that you have asked for. That would be very
3 helpful.

4 JUDGE HOYT: I see nothing wrong with that. We will
5 look at the date that you have proposed of November 16, 1989,
6 Mr. Charnoff for reply briefs by NRC to be also the response of
7 Safety Light.

8 MR. CHARNOFF: As I understand it, Safety Light
9 though is only putting in a response to deal with the corporate
10 organization and not dealing with the jurisdictional questions
11 of USR.

12 JUDGE HOYT: That is correct. That is what I
13 understand we are asking, at least that is what I intended to
14 think we had asked for.

15 MS. DRENNAN: Yes, Your Honor. It would not be a
16 brief in the sense of the Staff's brief that is due then. It
17 would only provide any information that may have - that is, if
18 we do not have any discrepancy with USR Industry. I doubt that
19 we will have that situation. In fact, I would like to make the
20 information that I have available as to our organization and
21 documentation available to the Staff counsel and USR Industries
22 at the earliest date that I can so that we can clarify this
23 matter.

24 MR. WEISMAN: Judge Hoyt, the staff, I think, would
25 like to make three points, the first one being that the

1 statement of the legal issue as statement number one contains
2 some assumptions of fact. Staff would not necessarily agree
3 with those assumptions of fact.

4 JUDGE HOYT: Let's see if we have finished with what
5 Mr. Charnoff wanted to talk about, and then we are going to
6 give you the opportunity to close up the matter, Mr. Weisman,
7 as the staff usually wants it, unless you want to jump in
8 before that.

9 MR. WEISMAN: No, I am quite willing to let Mr.
10 Charnoff finish.

11 JUDGE HOYT: Mr. Charnoff, anything else, sir?

12 MR. CHARNOFF: After this organization which is
13 obviously very simple and we all understand it took place in
14 the early 1980's, my clients at least had nothing more to do
15 with the Bloomsburg site or had no possession of radioactive
16 materials or anything of the sort.

17 JUDGE PARIS: When you say your clients, exactly who
18 are you talking about?

19 MR. CHARNOFF: Those that appear under my signature
20 on my letter to Judge Hoyt yesterday, sir. Then, of course,
21 there was the order that came out in March of 1989, requesting
22 a characterization study and triggering this proceedings and
23 making it immediately effective. Then, for some period of
24 time, our clients while putting in a request for a hearing and
25 challenging the immediate effectiveness did, in a spirit of

1 good faith, attempt to cooperate with the NRC staff and with
2 Safety Light in putting forth a characterization study which
3 was initially rejected. And then, it was expanded and then a
4 new study came forward which the NRC, I understand, has
5 basically accepted at this point.

6 The question, of course, goes to whether or not,
7 having proposed the study, whether the study will be carried
8 out, who will pay for it and once the study is done, who will
9 have to pay for implementation of the plan. Sometime during
10 the course of the discussions apparently the NRC came to a
11 correct conclusion, not the first correct conclusion ever
12 reached but a correct conclusion namely, that neither Safety
13 Light apparently and certainly not our clients had the funds to
14 carry out the large kind of study that was ultimately demanded
15 by the NRC staff.

16 They came out with the order in August to set up the
17 trust fund and asked for funds to be placed in that over the
18 next year. The problem, at least as our clients are concerned,
19 we just can't meet nor do we think we have a legal obligation
20 to do so. So, we asked for a hearing - apparently, Hannock-
21 Weisman asked for a hearing on the second order. This
22 automatically, it seems to me now, has brought us to the
23 posture as to whom these orders should have been addressed in
24 the first instance.

25 Our clients have tried to be cooperative. They,

1 obviously, -- these are difficult questions relating to these
2 troubled sites that exist in this country. The site, as I
3 understand it, was basically contaminated many, many, many
4 years ago, long before USR was created and long before the
5 principals in USR invested in US Radium Corporation and long
6 before Safety Light was named and formed.

7 There is this public policy question of who
8 ultimately has to be responsible for that question, whether it
9 is taxpayers or entities or entities that don't have any assets
10 to do it, and that is what this struggle is really all about at
11 this point. In a gesture of good faith, our clients were
12 willing to participate to some extent in an initial
13 characterization study at least to identify what they
14 considered to be the important issues associated with that.

15 We think there is already information in the record
16 by virtue of statements made by the NRC that we are not talking
17 about an immediate public health and safety threat. What we
18 are talking about I think, according to their statements and we
19 can dispute this but we don't have to resolve it today --

20 JUDGE HOYT: Mr. Charnoff, can I interrupt that point
21 and ask you how you can assume that when these orders are made
22 effective after a finding of --

23 MR. CHARNOFF: I assume that from the few documents
24 that I have already seen. One, in 1988, there was a letter
25 written by the staff to Safety Light which asked for a

1 characterization study and said you really ought to get started
2 on this in about a year's time and you have 10 years to clean
3 it up, which suggests something less than an immediate health
4 and safety threat.

5 More significantly, at a briefing of the Nuclear
6 Regulatory Commission by the staff sometime in the summer of
7 1988 where troubled sites as well as troubled plants were
8 discussed as the Commission does, I think, twice a year they
9 have meetings with the staff. A strong statement was made by
10 senior members of the NRC staff in response to questions by
11 then Chairman Lando Zech as to whether there is an immediate
12 threat or an immediate concern, and the answer that was given
13 was no.

14 The concern was who was going to clean this up over a
15 long period of time and when. Our point is that with those
16 statements in the record we believe, notwithstanding the
17 orders, that there really was an inadequate basis for making
18 these two orders immediately effective. That is the challenge
19 that we will put forward in our documents and in our briefs.

20 JUDGE SHON: Mr. Charnoff, I notice though that
21 Section 2.204 provides when the Commission finds that the
22 public health, safety or interest so requires. These were the
23 words in the order also, if I am not mistaken about the public
24 interest.

25 MR. CHARNOFF: That is one of the issues that I think

1 we have to debate. I think that we have, for example, we have
2 an NRC rule on the books addressed to licensees such as Safety
3 Light who own sites, who have licensed material on sites and
4 who were told that by June of 1990, I believe --

5 JUDGE SHON: I think it is July.

6 MR. CHARNOFF: Or by July of 1990 to come forth with
7 some funding program to deal with the ultimate clean up and
8 decommissioning of their sites. Why isn't that applicable to
9 Safety Light Corporation, and to the extent that we are swept
10 into that, why isn't it applicable to us? What is it that
11 makes this unique. There is nothing in the orders that tells
12 us that.

13 It is that kind of question - I can sympathize with
14 the purposes of that rule and the concerns this country has for
15 clean up of these sites and so does my client. However, there
16 ought to be something special here that suggests why this ought
17 to be done at this time. The only stated reason for that order
18 that we have found which was in a memorandum transmitting to
19 you the order of August, was a statement - I think it was
20 Safety Light as well as USR, and said these people don't have
21 enough funds and, therefore, we ought to insist that they put
22 funds into a trust agreement.

23 JUDGE SHON: Has that October 2nd payment of
24 \$50,000.00 been put into a trust fund?

25 MR. CHARNOFF: Not by USR, no, sir. I don't know

1 what has happened with Safety Light.

2 MS. DRENNAN: Your Honor, we have a trust agreement
3 set up. We are waiting to have our trustees sign it, and we
4 are going to deposit \$20,000.00 in the fund.

5 JUDGE HOYT: Is that part of the settlement agreement
6 that you are into now?

7 JUDGE SHON: No, this is part of the order of August
8 21st or whatever in Section 5(c)(1) of that order, the
9 corporation shall make payment into that trust fund in the
10 amount of October 7, 1989, \$50,000.00. I just notice that the
11 order is immediately effective, theoretically. It listed an
12 October payment and the date has passed.

13 I just wonder whether, indeed, the money has been put
14 into the pot?

15 MR. WEISMAN: Your Honor, the staff has granted
16 Safety Light a request for an extension of 30 days.

17 JUDGE SHON: That includes an extension of this?

18 MR. WEISMAN: Yes, sir.

19 MR. CHARNOFF: On the other hand, sir, our clients
20 have asked for a similar stay and were denied that. That is
21 why we are asking you here today for a stay pending
22 determination of the jurisdiction question.

23 JUDGE PARIS: Mr. Charnoff, under those outfits
24 listed under your signature on the October 18 letter, you list
25 US Natural Resources, Inc., and in everything else that I see

1 it is USR Natural Resources, Inc. I take it, that is the same
2 organization?

3 MR. CHARNOFF: Yes, it is. They are all owned by -
4 USR Industries is the parent, and these are all subsidiaries of
5 that. It is my understanding that USR Lighting, USR Chemicals
6 and US - it may be called USR Natural Resources, I'm not really
7 certain - those are Shell Companies. US Metals is an operating
8 entity.

9 JUDGE HOYT: That is what the order of Mr. Thompson
10 on August 21st addressed it as, USR Natural Resources.

11 MR. CHARNOFF: We may have just copied that name from
12 there.

13 JUDGE HOYT: No, you miscopied it, because they have
14 it as USR Natural Resources, Inc., and you have US - I don't
15 think that is a big thing.

16 MR. CHARNOFF: I think we are correct on that. I
17 think we are correct on that. Three of those four entities are
18 Shell. There is nothing there at the moment. Their assets
19 have been sold or disposed of.

20 JUDGE HOYT: I hope you are going to be prepared to
21 answer that argument, Mr. Weisman, when he is finished. Put
22 that on your agenda of things to respond to.

23 MR. WEISMAN: What exactly was the item?

24 MR. CHARNOFF: It was so compelling you had to
25 listen.

1 JUDGE HOYT: We will let you get it out of the
2 transcript, and we will recess in a couple of minutes so that
3 you can get it out after Mr. Charnoff is finished.

4 MR. CHARNOFF: I submit I think that is where we are
5 at. I think we really are at a fundamental crossroads. The
6 clients on our side and, as I understand it Safety Light, were
7 trying to negotiate an acceptable site characterization setting
8 and some definition of what their financial obligations would
9 be. That exercise apparently is still going on as far as
10 Safety Light is concerned.

11 The staff saw fit not to extend us any extensions
12 with regard to that matter, and we find the compulsion to put
13 up the money that we don't have into a trust fund sufficiently
14 onerous, given the fact that we don't feel that we have any
15 licensee obligation in that regard. We feel that it is now
16 appropriate - I was happy that the Board had the prehearing
17 conference scheduled for today to raise with you, both the
18 jurisdictional questions and the immediate effectiveness
19 questions.

20 JUDGE HOYT: It would take an awful lot to overcome
21 the immediate effectiveness --

22 MR. CHARNOFF: I don't know why the staff shouldn't
23 at least put in some reasonable showing as to why this entity
24 or these entities ought to be distinguished from the thousands
25 of other licensees who are subject to the rule which comes into

1 effect in about nine months.

2 JUDGE HOYT: It is immediate effective, and I am
3 speaking of the August 21st order now, as to all the entities
4 Mr. Charnoff. It did not distinguish between your clients and
5 the other parties in this case.

6 MR. CHARNOFF: That is exactly our problem.
7 Although, I must say, I could raise the question - I would let
8 Ms. Drennan speak for herself - I would raise the question even
9 on her behalf that as, I didn't see anything from my ten day
10 involvement in this that showed the need to do this at this
11 particular point in time other than some concern that we don't
12 have any money. Therefore, by some non-cicada we ought to put
13 money into something else.

14 That was a little bit troubling.

15 JUDGE SHON: Fundamentally, your argument is dulled,
16 is it not? It says first of all, the provision in 30.35 that
17 everyone should prepare a decommissioning and funding plan by
18 July of 1990, should at most be what is applicable to you and
19 everybody else in this.

20 MR. CHARNOFF: That is correct, to the extent that we
21 are involved. That is right.

22 JUDGE SHON: Second, to the extent that the way this
23 particular case has developed, Safety Light at least has been
24 granted some relief in the matter of funding and why shouldn't
25 you get it too; is that --

1 MR. CHARNOFF: Yes. I have a third point. The third
2 point is, an order came out in March of 1989 asking our clients
3 and Safety Light to develop a proposed site characterization
4 study and to tell the NRC how it might be funded. There was a
5 request for a hearing with regard to that, obviously related to
6 the scope of the characterization study. The difference, as I
7 recall it, was that Safety Light and our clients came forward
8 with a study that might have initially cost about \$115,000.00
9 and the two of them were prepared to do that whether they
10 agreed with it or not.

11 Then through negotiation with the staff which found
12 that study not as adequate as they thought the order required,
13 it has now been expanded to about \$1 million. I don't know
14 that. Meanwhile, there is a hearing pending before this Board
15 on the scope of that study. For some reason the staff, in the
16 middle of all of this, decides that somehow or the other we are
17 so impoverished we ought to be obliged to put up a trust fund
18 to deal with the study that is subject to the dispute before
19 the Hearing Board.

20 I find that rather odd, that here we are
21 theoretically in contest before you to decide whether the
22 appropriate study should be this big or that big, but then
23 along comes this regulatory agency rather arbitrarily I think,
24 and says put up the money for the big study.

25 JUDGE SHON: It's the Red Queen's justice with

1 sentence first, trial later?

2 MR. CHARNOFF: Something like that, yes, sir.

3 JUDGE HOYT: What's the matter with that procedure.

4 [Laughter.]

5 JUDGE HOYT: The provisions of Section 30.35 deals
6 with financial assurance and record keeping for decommission.
7 It requires that there be a specific plan developed. Was this
8 regulation issued after these companies had gone into business?

9 MR. CHARNOFF: This is 1988, and everybody was given
10 two years to --

11 JUDGE HOYT: I think this was issued in 1988. I
12 wondered whether it was a subsequent order or prior order in
13 effect before June 27, 1988. Was there, Mr. Weisman, if you
14 know?

15 MR. WEISMAN: I believe the regulation was issued in
16 June of 1988.

17 JUDGE HOYT: That's the first time that it appeared,
18 so it wouldn't apply to these licensees; is that right?

19 MR. WEISMAN: No, it would apply.

20 MR. CHARNOFF: It applies to both new licensees -

21 JUDGE HOYT: It will, but only effective July 27,
22 1990.

23 MR. WEISMAN: That is correct.

24 JUDGE HOYT: That has no bearing on this case, does
25 it?

1 MR. WEISMAN: I don't think so. It is
2 decommissioning. No one here is decommissioning.

3 JUDGE HOYT: But there were some financial records
4 that were required to be kept, that's what I was asking about.

5 JUDGE SHON: You said something Mr. Weisman a moment
6 ago that, of course, this Section 50.35 applies to
7 decommissioning.

8 MR. WEISMAN: Correct.

9 JUDGE SHON: And, no one is proposing to
10 decommission.

11 MR. WEISMAN: That is correct.

12 JUDGE SHON: Exactly what is occurring at the
13 Bloomsburg site? Are they running along and making use of all
14 these licenses or part of them being used and others are not;
15 what is the situation?

16 MR. WEISMAN: Safety Light is producing lighting
17 devices under I believe one or two of the licenses. They have
18 made no request to terminate a license. The decommissioning
19 rule only applies when a licensee comes in and requests
20 termination of a license, at which point the decommissioning
21 trust fund which this regulation requires to be established,
22 may be used to clean up any residual radioactive contamination
23 at the site.

24 JUDGE PARIS: Is Safety Light operating now at
25 Bloomsburg?

1 MR. WEISMAN: That is correct, they are operating.

2 MS. DRENNAN: Excuse me. We are not operating right
3 now.

4 MR. WEISMAN: Oh, all right.

5 MS. DRENNAN: We don't have any tritium. We have the
6 license so that we are able to put tritium into rods and ship
7 it to different people around the country. The Department of
8 Energy controls the sale of tritium, and our plant has not been
9 operating for three or four weeks now because the Department of
10 Energy is working out different regulations that apply to
11 different government sites.

12 We have had since July, we have only had one small
13 shipment of tritium.

14 JUDGE PARIS: With the River there, they are a little
15 short of tritium themselves I suspect.

16 MS. DRENNAN: Yes. There was some question about
17 whether they were measuring between Mounds and another facility
18 in Albuquerque, New Mexico. The question had been raised in
19 Europe and in California. So, in order to clarify that matter,
20 everything went on hold.

21 We were able to get a small supply at the end of July
22 and we haven't had any tritium shipped at all. We are hoping
23 that we will have some shipped next week, but we don't know
24 yet. Part of the regulatory process and getting approval, and
25 it has to get it from not just Oakridge and they ship it to

1 Mounds, but it also has to have approvals from New Mexico also.
2 This is one of the problems in funding the trust. We very much
3 want to operate our facility, Safety Light as it is now, but we
4 need tritium in order to keep the facility going. There have
5 been people, of course, laid off.

6 MR. WEISMAN: If I might clarify my statement.

7 JUDGE HOYT: Surely.

8 MR. WEISMAN: A license authorizes operation, and
9 there is yet no request pending to terminate that
10 authorization.

11 JUDGE SHON: As far as you are concerned, the
12 obligation under the regulations to submit a decommissioning
13 plan by July 1990 is an entirely separate thing, they have to
14 do that too.

15 MR. WEISMAN: That is correct.

16 JUDGE SHON: But the decommissioning or clean up plan
17 or at least the site characterization plan that is at issue in
18 this hearing is an entirely different requirement, if you will,
19 that you have imposed on them separate from that; is that
20 right?

21 MR. WEISMAN: That is my understanding, yes.

22 MR. CHARNOFF: I would like to raise a question, if I
23 may. It is my impression that somewhere in the documents, the
24 NRC has said the characterization study must be such as to
25 provide for decontamination to provide for unrestricted use of

1 the site. That may be a euphemism for something other than
2 decommissioning, but I think that is what it means.

3 I think we have to be careful with the use of
4 terminology here. One of the questions that reasonably could
5 be asked, which is one that I posed in the questions that we
6 posed is, this whole question of compelling a licensee to
7 decommission or decontaminate for unrestricted use. If we are
8 to have unrestricted use, then we are very close to
9 decommissioning.

10 I think that is a question. I can't say that it is a
11 declaration, but I think I can raise that as a question.

12 MR. WEISMAN: Perhaps I can respond to that by saying
13 that what the decommissioning rule anticipates is that a
14 licensee will receive a site in a pristine state,
15 uncontaminated. They will begin operations and the
16 decommissioning trust fund required by the decommissioning rule
17 will be adequate after years of operation to restore that site
18 for release for unrestricted use.

19 This site has a very significant amount of
20 contamination on it. The decommissioning rule would not be
21 adequate, would not provide adequate assurance that this site
22 could be returned for unrestricted use. Inasmuch as Safety
23 Light is authorized to continue operations at the site, the
24 staff wishes to restore the site to such a state that the
25 decommissioning rule would apply whenever Safety Light decided

1 to terminate its licenses, that it would be able to achieve its
2 purposes.

3 JUDGE SHON: I think Mr. Charnoff's point may still
4 have not been quite addressed here. He points out that in
5 general in an operating facility you are not required to be
6 able to show that it can be released for non-restricted use as
7 of now. It is only a projective vein in the future. Here you
8 seem to have asked them to prepare a plan that would permit
9 release for non-restricted use while they are still using it
10 and access is still restricted; is this not true?

11 MR. WEISMAN: In a sense, that is true, but I would
12 qualify that by saying that if there were an accident at a site
13 or if a significant amount of contamination that posed a danger
14 to public health and safety, either off site or to the people
15 working on site, the staff would require that to be cleaned up.

16 JUDGE SHON: For restricted access, I can understand
17 you might say this thing is a hazard, it is leaking into the
18 water table, what are you going to do about it. But the only
19 restricted use, if they are going to go on using tritium there,
20 that seems like over kill, doesn't it?

21 MR. WEISMAN: Well, there are other isotopes that are
22 contaminates there. The decommissioning rule could provide
23 funds to clean up tritium, but there is also cesium and
24 whatever else, radium. There are other isotopes that are
25 present on the site that are not now -- yes, the order says

1 cesium 137, radium 226 as well as tritium.

2 JUDGE SHON: Those are not currently being used.

3 MR. WEISMAN: Those are not currently being used.

4 MR. CHARNOFF: That is a rather restricted
5 interpretation. Are we now understanding that staff counsel is
6 suggesting that the characterization study that is called for
7 by the order is for all the isotopes other than tritium? I
8 must say that I never saw that.

9 Secondly, radium is not even subject to review by the
10 NRC. If we were worried about that in splendid isolation, that
11 is naturally occurring radium and one would have to look at
12 somebody else to take care of that, i.e., the State of
13 Pennsylvania. I don't know that we need to get into this
14 debate at this point, but I think there is a significant
15 question associated with this matter that I think does need
16 addressing.

17 MR. WEISMAN: I would agree with Mr. Charnoff that it
18 is a complicated factual situation, but staff is not saying
19 that Safety Light and USR Industries are not required to clean
20 up tritium now. There is tritium contamination and the staff
21 has required the licensees to clean up.

22 JUDGE SHON: Clean up, or just to characterize it for
23 us?

24 MR. WEISMAN: The March order not only requires
25 characterization but also, eventually, clean up.

1 JUDGE HOYT: I may be terribly dense and probably am,
2 Mr. Weisman, but I can't see how if Safety Light has this
3 license to continue operation and its counsel has represented
4 here this morning that they fully intend to exercise that
5 license once they get their tritium from the Department of
6 Energy, we are going to be back here every other month with
7 this same sort of argument, that they cleaned it up once and
8 now they have to clean it up again.

9 Then we get into the business of the decontamination
10 plan as Mr. Charnoff pointed out. We are getting close to
11 talking about a pristine site because if they have to clean it
12 up each time they use it -

13 MR. WEISMAN: I don't believe that is what the staff
14 position is. Let me consult with the technical staff for just
15 a moment.

16 JUDGE HOYT: Sure. Why don't we take a few minutes
17 recess, about 10 minutes, if you like.

18 [Brief recess.]

19 JUDGE HOYT: Let us reconvene. The Hearing will come
20 to order. All parties who were present when the hearing
21 recessed are again present. Counsel has taken their place at
22 the table and have been joined again by Mr. Joiner from Region
23 I, who is a consultant for the staff counsel, Mr. Weisman.

24 Ms. Drennan, I understand you have to depart fairly
25 quickly, so let's give you an opportunity to make any

1 additional input into this record that you may wish to do. If
2 you don't have anything else that you want to add, please don't
3 feel obligated. We want to provide you with that opportunity.

4 MS. DRENNAN: I will provide, as I said earlier, any
5 information and documentation as to the organization and
6 corporate reorganization that occurred in the period from 1979
7 through 1984 as it relates to Safety Light only.

8 JUDGE HOYT: I think you agreed to do that by the
9 date of November 16; is that right?

10 MS. DRENNAN: Yes. I will make it available to
11 counsel, the documentation before that time in order to assist
12 in his process.

13 JUDGE HOYT: Thank you very much. Anything thing
14 else then?

15 MS. DRENNAN: No, Your Honor.

16 JUDGE HOYT: Now, Mr. Weisman, would you like to play
17 clean up man here for us?

18 MR. WEISMAN: Yes. The first point is that in the
19 August order, if you look on page seven, the August order
20 requires funds - if you look on the first line of page seven -
21 to make sure that sufficient resources are made available by
22 the corporations to initiate and complete the site
23 characterization and take necessary remedial action for any
24 significant health and safety problems.

25 What the August order requires is funds for site

1 characterization, but it does give the staff and the licensees
2 the flexibility to use those funds to clean up any immediate
3 problem, immediate hazard that might be discovered during
4 characterization. The August order does not go to ultimate
5 clean up. That is the first point.

6 The second point is that the March order does not
7 require that the site be cleaned up so that it can be released
8 for unrestricted use. If you will refer to page eight of the
9 March order, it says that the presence of considerable known
10 contamination coupled with the uncertain extent of that and
11 other as yet unknown contamination requires that action be
12 taken immediately to survey, stabilize and clean up a site.

13 It says clean up the site, but it does not require
14 clean up for unrestricted use.

15 JUDGE HOYT: What are you reading from, Mr. Weisman?

16 MR. WEISMAN: That is page eight, first paragraph,
17 last sentence.

18 JUDGE HOYT: I have the Federal Register copy of
19 that.

20 MR. WEISMAN: I'm sorry. I am reading from the
21 actual order that the staff sent out, not the Federal Register.
22 Let me find that for you.

23 JUDGE HOYT: That's all right. If that is it, I
24 think we have that.

25 MR. WEISMAN: In the August order, it would be

1 Section 4, the next to the last - I believe it is the last
2 paragraph of Section. There is only one paragraph there. I
3 believe it is the next to the last sentence, is what I read to
4 you before. In the March order, I was referring to Section 6,
5 the last sentence.

6 I would also refer to Section 7 of that order, 7(d).
7 The requirement is that the corporations shall jointly submit
8 to the regional administrator, NRC Region I for his review and
9 approval, a single decontamination plan. The plan shall
10 include the rationale for the priorities established, et
11 cetera. That section does not require clean up for release for
12 unrestricted use.

13 Mr. Joiner, I think is correct in that, 7(b) does
14 refer to - it says the survey shall be sufficient to develop a
15 complete plan for decontamination, removal operations necessary
16 to permit unrestricted access to the site. But that applies to
17 the characterization plan.

18 JUDGE SHON: That characterization plan, that sounds
19 suspiciously like a decommissioning plan or a decontamination
20 plan; does it not?

21 MR. WEISMAN: The characterization plan must be
22 sufficient to develop a decontamination plan that would be
23 sufficient for decommissioning, that is true.

24 MR. CHARNOFF: That is exactly my point, and that's
25 why I had difficulty. Maybe I can get it explained to me, but

1 I had difficulty understanding the relationship then between
2 this order and the rule that requires licensees such as Safety
3 Light and others as well as new licensees to come in with the
4 funding programs required in July of 1990.

5 MR. WEISMAN: If I may respond to that, Your Honor.

6 JUDGE HOYT: Please.

7 MR. WEISMAN: The purpose of the study is to show how
8 much clean up or stabilization is required. The study itself
9 does not accomplish that clean up, it just shows how much is
10 required. In order to obtain that information, we have to
11 require the complete characterization plan. Doing a partial
12 characterization plan could miss significant problems.

13 I think that the point of the order is that because
14 we don't know the full extent of the contamination or where it
15 is located, it is important to immediately begin to find out
16 that information.

17 JUDGE SHON: Mr. Weisman, it sticks in my head again,
18 I have been reading an awful lot of things here and I can't
19 cite the exact location of it. There was mention, for example,
20 of ground water contamination off site in wells. Wouldn't it
21 make more sense if something were immediately effective to tell
22 them to do something about that if, indeed, anything can be
23 done about it and make that immediately effective and then make
24 them survey the whole site to see if maybe there is something
25 else too?

1 MR. WEISMAN: My understanding is that to do a
2 complete geohydrological study, you have to go through all four
3 seasons of the year because the ground water movement is
4 different depending on the rainfall and the season. That is
5 precisely the point of these orders, is to begin those studies
6 to obtain that information. Thereunder, the licensees are
7 under requirement to begin right away.

8 That happens to be a very expensive piece of work,
9 geohydrological study. Mr. Joiner tells me that the River that
10 joins the property, and that this summer low levels of
11 radiation were detected at the River. My understanding is that
12 Safety Light Corporation has bought a house that adjoins the
13 property and the well of the house where the tritium was found.
14 So, they have at least restricted access to that well. We
15 still do not know what the movement of the groundwater is off
16 the site.

17 JUDGE PARIS: So that, there could be other wells
18 contaminated that you don't know about?

19 MR. WEISMAN: That is possible, yes. I guess once
20 the characterization study is done, we could determine what
21 kind of stabilization or immediately clean up would be needed
22 to halt a movement of contamination in the groundwater.

23 JUDGE SHON: You are aware of course, and I am
24 certainly aware that one of the arguments that was presented in
25 the answer that was prepared by Shaw, Pittman's predecessor was

1 that you really ought to be concentrating on the things that
2 you know are wrong and dangerous now, rather than forcing them
3 to dilute their effort to see if maybe there is something else
4 somewhere that you haven't heard about. What is wrong with
5 that argument?

6 MR. WEISMAN: My understanding from the staff and,
7 perhaps I better consult with Mr. Joiner for just a moment.

8 JUDGE HOYT: Please.

9 MR. WEISMAN: I guess the answer is, to perform a
10 geohydrological study while performing a portion of it could be
11 useful, that portion would have to be completed when
12 characterizing the whole site. You have to do the whole site
13 over the four seasons in order to gain the information on where
14 the ground water is moving. Ground water could move one
15 direction during one season and move another direction during
16 another season.

17 The other point is that we have tritium contamination
18 that is documented moving off-site, there may be other kinds of
19 contamination that we don't know about that could be more
20 important that is migrating the ground water. The third point
21 is, there may be non-radioactive substances, solvents, et
22 cetera, migrating in the ground water. That could enhance or
23 it could retard ground water movement.

24 So, knowing those facts will tell us what is more
25 important to do first in terms of stabilizing and cleaning up

1 the immediate hazards. Does that answer your question?

2 JUDGE SHON: I don't want to pursue it too much
3 farther. Obviously, we are getting a little too close to the
4 bone of contention, the actual facts of the case. I don't want
5 to try the case this morning.

6 MR. WEISMAN: I was about to mention that perhaps Mr.
7 Joiner might speak directly to the Board to explain, if you
8 have no objection to him doing that, Your Honor.

9 JUDGE HOYT: Mr. Charnoff, would you have any
10 objection?

11 MR. CHARNOFF: No, I am perfectly happy to have Mr.
12 Joiner talk to the Board, as long as we can listen.

13 JUDGE HOYT: Mr. Weisman, you feel as much as I do
14 when we talk to these scientists, you get a little lost in
15 their jargon sometimes and I think if you would, Mr. Joiner.

16 MR. JOINER: Certainly, I will try to answer your
17 question, Judge Hoyt. Certainly, one option might be to direct
18 your resources to known areas of contamination. But by doing
19 so, you might overlook unknown or potentially and a long term
20 more dangerous areas of contamination that could exist on a
21 site. Certainly, radium and some of the other isotopes that
22 are known to be on the site but whose location is presently
23 unknown could present much greater hazards to the public off
24 site in the long term.

25 So, what we want to try to do in the short term is to

1 find out where those things are so that then, we might decide
2 where we need to apply resources in terms of the hazard. What
3 is the greatest hazard. This tritium, for example, while you
4 might use resources to clean that up, that might not be the
5 greatest long term hazard from migration off the site.

6 JUDGE SHON: I recognize the argument that says that
7 there might be something worse lurking and let's look.

8 MR. WEISMAN: I would like to make one further point.

9 JUDGE HOYT: Yes, please.

10 MR. WEISMAN: About this argument. That is, the
11 characterization plan is what is required to be adequate to
12 clean up for unrestricted use. But the decontamination plan is
13 not under the same requirement. That is, when an ultimately a
14 decontamination plan is submitted this order does not require
15 that it be adequate for release for unrestricted use. It is
16 only the characterization plan that has to meet that standard.

17 MR. CHARNOFF: My only comment in regard to that is,
18 I am not aware - perhaps I should be - I am not aware that the
19 other thousands of licensees are required to come up with
20 characterization studies to allow for clean up for unrestricted
21 use at this point in time either, so long as they have ongoing
22 licensed activities.

23 I am at somewhat of a quandary to hear this, and that
24 was my puzzle when I read the order and read the transcript of
25 the enforcement conference in July. There was a lot of

1 discussion of this unrestricted access question. The question
2 it seems to me the staff should answer is, why this licensee
3 and why not everybody else at this time?

4 JUDGE HOYT: Is this licensee unique in that you have
5 already found these substances in the ground or well water?

6 MR. WEISMAN: This licensee is different from all
7 other licensees for two reasons. One is the nature and the
8 extent of the contamination on site. The second one is, this
9 licensee didn't tell us what was going on in our view.

10 MR. CHARNOFF: I don't want to get into an argument
11 on that. I do want to quote simply Mr. Miller, who is the
12 President of Safety Light at the July conference saying that
13 they have 10 years of ongoing data, they are monitoring the
14 well water. This is not a licensee and I don't want to speak
15 for SLC at this point. They have some sort of ongoing
16 environmental program and monitoring program and he says I know
17 the inspectors over the last 10 years have looked at that
18 information closely. I have not heard to the contrary that
19 anything indicating my opinion was wrong on movement of
20 migration in or out of these bore hole samplings.

21 He earlier said there wasn't very much going on.

22 JUDGE HOYT: Who is this that you are quoting from?

23 MR. CHARNOFF: Mr. Miller is the licensee's president
24 at this meeting. This is the factual issue between us, Item
25 6(b) in my proposed set of issues, which I think is relevant.

1 All I am suggesting is that we can't resolve it now as you have
2 indicated, Mr. Shon. I think there is obviously some factual
3 dispute over the reasonableness of the characterization order
4 ordered by the staff in March, made immediately effective and
5 then just to turn the knife a little bit, asking us to fund
6 that study which we dispute in August and do it now, even while
7 we have a hearing pending with regard to the scope of that
8 order.

9 Obviously, there can be differences between the
10 technical people on either side as to what is appropriate.
11 There can be differences between us as lawyers, as to why this
12 licensee and why not everybody else and how does it fit into
13 the decommissioning funding requirement. These are the issues,
14 it seems to me, that this hearing will address.

15 MS. DRENNAN: Your Honor, I want to make one
16 statement for the record. We have done the monitoring program,
17 a very extensive one, and we are continuing to do that. We
18 have made all of our data available to the NRC on a consistent
19 basis. Just so that nothing is misinterpreted, the tritium
20 that has been found in some of the test ground water has been
21 at an extremely low level of tritium.

22 JUDGE HOYT: Our record indicates that too, Ms.
23 Drennan.

24 MS. DRENNAN: Thank you.

25 JUDGE HOYT: That was my understanding of what was in

1 the file that we seem to have. Is there anything further?

2 MR. WEISMAN: Mr. Joiner was pointing out to me that
3 part of the reason for this study is that those wells, they
4 were not drilled with a scientific basis for a monitoring
5 program. They were essentially arbitrarily placed. So, there
6 is no scientific basis to conclude that the data from those
7 wells is adequate to show that there is not a problem.

8 It does give some indication, yes, but the data is
9 incomplete.

10 JUDGE PARIS: These were existing water wells, that
11 is what they were?

12 MR. WEISMAN: I am not entirely sure.

13 MS. DRENNAN: They were drilled, Your Honor, for
14 monitoring purposes. As counsel for Safety Light, from what I
15 have available, there has been no formal statement to Safety
16 Light that I am aware of that their wells were not performing
17 the function that they were supposed to be performing in
18 monitoring the data. I think that the representations that I
19 have gotten from the Corporate officers is that they worked
20 very closely with the NRC over the last six or eight years and
21 provide the data that has been available.

22 It is ongoing technique, and this is the first time
23 that I have heard any indication that there was any problem
24 with our monitoring because we work very closely and the
25 President of our company is very shall we say confident, that

1 he has a very good open relationship with the NRC in reporting.

2 JUDGE HOYT: The property that you purchased and the
3 well, I think attached to it that we heard about a moment ago
4 here, was that off site?

5 MS. DRENNAN: That is right. It is right next to it.
6 It is a small area. The site is about this large and at a part
7 of that site corner there is a house on it. I am not even
8 sure that it is an acre, Your Honor. They just purchased it
9 because it was adjacent to the property site.

10 JUDGE HOYT: Did you have a monitoring well drilled
11 there, or was that --

12 MS. DRENNAN: I am not aware of that, Your Honor,
13 because I think they just purchased that property -

14 JUDGE HOYT: I don't want to pursue it. I just
15 wanted to see if I understood correctly. Mr. Weisman.

16 MR. WEISMAN: That house, the well was the house's
17 water well. It was the water supply.

18 JUDGE HOYT: That is where you found a trace of
19 tritium, not significant but --

20 MR. WEISMAN: Yes. Still below EPA standards,
21 correct, yes. We wouldn't necessarily dispute anything that
22 Ms. Drennan has said. Mr. Joiner just wanted me to make the
23 point that from the data that we have collected, we have
24 determined that it is not sufficient to - and based on the
25 seasonal flows as I was describing earlier, that data is not

1 sufficient to tell us what is going on in the ground water.

2 JUDGE SHON: Essentially then, your answer to Mr.
3 Charnoff's question which was why us out of all the many, many
4 licensees who have to submit plans to show how they can
5 decontaminate things in July of 1990, why do we have to submit
6 at least a characterization plan that would show how you could
7 characterize this site for unrestricted use, your answer is
8 that it is because you believe that this site is extremely
9 contaminated and that there are things there that you don't
10 know about; is that right?

11 MR. WEISMAN think that's a fair answer.

12 JUDGE SHON: That is fair?

13 MR. WEISMAN: Yes.

14 JUDGE SHON: Would you also then, perhaps you were
15 just about to do this, address his second point that the only
16 one who seems to have any real connection or control of the
17 site is Safety Light, and you have already given them until
18 April of 1990, very nearly the time when they would have to
19 submit a site characterization and decommissioning plan anyhow,
20 to come up with something; why do you then want the rest of
21 these people to put their money up front now?

22 MR. WEISMAN: Well, two points. The first one being
23 that we have not relieved Safety Light of complying with the
24 decommissioning rule when it applies to them. The second point
25 is, as Ms. Drennan pointed out earlier, Safety Light is

1 prepared to fund the trust fund with \$20,000.00 within the next
2 week or two.

3 JUDGE HOYT: That's less though than half of what
4 your immediate and effective order was asking for, Mr. Weisman.

5 MR. WEISMAN: That is true.

6 JUDGE SHON: It is less than half of what it asked
7 for at the beginning of this month. It is twice that much more
8 coming in another week or two.

9 MR. WEISMAN: That is correct, but it is \$20,000.00
10 more than USR has committed to put in the trust fund. And, we
11 believe that we can negotiate with Safety Light for continuing
12 payments before we get additional payments before April of
13 1990. They are jointly and severely liable. We think that
14 Safety Light is negotiating in good faith, and is attempting to
15 comply as best it can.

16 We have no such indication from USR that they are
17 attempting to comply.

18 JUDGE HOYT: Mr. Charnoff's reasons are a matter of
19 record, unless you wanted to add something at this point.

20 MR. CHARNOFF: No, I am happy with the record as it
21 stands. Go ahead, Mr. Weisman, if you have something else.

22 MR. WEISMAN: One of the notes that I wrote myself is
23 on the briefing schedule. The staff would like ask permission
24 to file its response just before Thanksgiving, say the 22nd.
25 Part of the problem is that I have a trial on the 15th and 16th

1 of November which is personal to me. I will not be
2 representing the Agency at that trial.

3 MR. CHARNOFF: I have no objection to that, if we
4 simply delay the responses by USR to the staff's filings by
5 some equivalent amount.

6 MR. WEISMAN: The second point --

7 MR. CHARNOFF: Excluding Thanksgiving weekend.

8 JUDGE HOYT: In other words, that would push your
9 date down to November the 25th, six days?

10 MR. CHARNOFF: No, I would like to do more than that,
11 because I would like to exclude Thanksgiving weekend. I think
12 that comes early, doesn't it?

13 MR. WEISMAN: The staff also would point out that the
14 regulations don't provide for a reply. If counsel would like
15 to file for leave, to file such a reply brief without attaching
16 's reply brief to that motion, the staff would respond to
17 that.

18 MR. CHARNOFF: I don't understand that at all. I
19 thought my letter did propose a schedule including a reply
20 brief. If you are objecting to that, then you might want to
21 put an objection on the record. My request is that I think
22 that given the state of the record, it is conceivable to me
23 that you may suggest that there that I don't know about. That
24 is perfectly reasonable at this point, and if you did, I would
25 like to have the privilege of responding to that.

1 If you would like to have a counter response
2 opportunity a week or two after I come in, I would be happy to
3 exceed to that. I have no problem in having the Board hear the
4 full record here.

5 MR. WEISMAN: The regulations just don't normally
6 provide for such a schedule. If I need to put an objection on
7 the record, I will go ahead and object to it now.

8 There may or may not be good reasons for doing it
9 that way, Mr. Charnoff. If there is a motion submitted
10 presenting those reasons to staff, we will respond to them.

11 MR. CHARNOFF: Do you want to run that one by us
12 again, Mr. Weisman.

13 MR. WEISMAN: My understanding is that - perhaps we
14 are passing each other somehow. The staff's understanding is
15 that the regulations don't provide for a response to our reply
16 brief.

17 MR. CHARNOFF: The Board has total discretion to
18 order briefs. I don't even think there is a regulation that
19 applies here.

20 JUDGE HOYT: Thank you, Mr. Charnoff. We are going
21 to get it one way or the other, Mr. Weisman. So, that answers
22 the question, I think.

23 MR. WEISMAN: The staff is always happy to comply
24 with the Board's order.

25 JUDGE HOYT: Surely. Is that all that you want to

1 put on the record at this point, Mr. Weisman? I will note
2 that counsel for Safety Light has withdrawn as pre-arranged
3 with the Board. Mr. Charnoff.

4 MR. CHARNOFF: I would like to make a suggestion, in
5 light of our discussion. I had suggested that Items 1 through
6 5 and 6(a) constitute legal issues. They may end up
7 developing that way.

8 JUDGE HOYT: One through --

9 MR. CHARNOFF: One through 6(a) in effect. I would
10 suggest that in light of the discussion we had on this whole
11 question of the appropriateness of an order to go at this time
12 to a licensee to provide that the site should be available for
13 unrestricted access which is really what 6(a) is all about, I
14 would suggest that 6(a) along with (b) be considered a factual
15 question, and that we only need to brief on this expedited
16 schedule Items 1, 2, 3 4 and 5.

17 We would hold 6(a) to go with 6(b) and 7 as factual
18 inquiries subject to a hearing. That question in 6(a) really
19 goes to a challenge of the scope of the characterization study.

20 JUDGE HOYT: Mr. Weisman.

21 MR. WEISMAN: I would argue that the legal issues as
22 framed in Mr. Charnoff's letter to the board contain factual
23 assumptions embedded in them, and that staff would take issue
24 with those assumptions.

25 JUDGE HOYT: Isn't that what you were going to do in

1 your brief?

2 MR. WEISMAN: Pardon me?

3 JUDGE HOYT: Isn't that what you are going to do in
4 your brief?

5 MR. WEISMAN: Yes, Your Honor.

6 JUDGE HOYT: Hopefully. Well, if we don't have
7 anything else, Mr. Joiner, can you give us any wisdom?

8 MR. JOINER: I wish I could, Your Honor.

9 JUDGE HOYT: We have come up with something like
10 this, if I understand what is going on. We are going to get
11 all these licenses as they have been issued through Mr. Joiner
12 and Mr. Weisman's staff and submitted to us by next Wednesday,
13 October 25, 1989. Those will be distributed, of course, to all
14 parties at that time.

15 The schedule, as proposed by Mr. Charnoff for
16 submission of briefs by US Industries and others on issues one
17 through five, do you want to slip that date a little bit, Mr.
18 Charnoff?

19 MR. CHARNOFF: Your Honor, if you would allow us to
20 deal with the licenses when they come in. We had proposed
21 November 2. If we could go to say November 8.

22 JUDGE HOYT: I don't think that is a great
23 difficulty.

24 MR. WEISMAN: First, if I may ask Mr. Charnoff a
25 question. That is, you said that you would file your briefs on

1 November 8, Wednesday?

2 MR. CHARNOFF: Yes.

3 MR. WEISMAN: Would that be in the mail, or would
4 that be --

5 MR. CHARNOFF: Hand delivered to you.

6 JUDGE HOYT: Let me add something that I like to do
7 in these cases, because I like to know when people get things.
8 I don't trust this business of putting them in the mail, and
9 you get three days. When we say November the 8th, Mr.
10 Charnoff, that means in hand to the parties on that date.

11 MR. CHARNOFF: That's fine, since we are all here in
12 Washington. Similarly, if all the dates would be that way, it
13 would be fine with me.

14 JUDGE HOYT: Because we are all in Washington, it is
15 easy to do in this case. That will be the same for any date
16 that we discuss here. It will be delivery in hand to the
17 parties on that day and to the Board on that day. That helps
18 your planning, it gives you a date certain. I don't like these
19 ones that are up in the air and you have to count them.

20 MR. WEISMAN: Normally, regulations provide that the
21 staff would have 15 days to respond to such motions. That
22 would be the 23rd, which is Thanksgiving. I would note that I
23 have at least two days that I will be out for a trial, and
24 there's a Federal Holiday, Veterans Day in that period. I
25 think the staff would probably request that our reply be due on

1 the 28th, Tuesday to give us enough time to put it together.

2 MR. CHARNOFF: I have no objection to that.

3 JUDGE HOYT: I have no problems with that.

4 MR. WEISMAN: Thank you.

5 JUDGE HOYT: I think we should also permit Safety
6 Light's counsel to have that same timeframe to work with. They
7 were going to give us something on that date as well. We have
8 the schedule of a brief from USR Industries on the 8th of
9 November, reply briefs on the November the 28th. That would
10 also be any reply that Safety Light wants to submit at that
11 time. Would you please advise counsel of that, because we are
12 not going to issue an order just for these dates. We will let
13 the record stand for itself.

14 MR. WEISMAN: I'm not sure. What is it that you want
15 us to do?

16 JUDGE HOYT: Would you advise the counsel for Safety
17 Light, Ms. Drennan, of these brief dates.

18 MR. WEISMAN: Yes, Your Honor. We would like to have
19 those licenses in hand on the 25th, but if there is difficulty,
20 give us a notice of that, Mr. Weisman.

21 MR. WEISMAN: We will certainly keep you informed.

22 JUDGE HOYT: Then you are going to need reply brief
23 time, Mr. Charnoff.

24 MR. CHARNOFF: If the staff needs 15 days, we will
25 require 13 days. We will do it on --

1 JUDGE HOYT: Why would you need 13 days?

2 MR. CHARNOFF: Just to be two better than the staff,
3 that's all.

4 JUDGE HOYT: One upsmanship makes no points at all,
5 Mr. Charnoff.

6 MR. CHARNOFF: I would say two weeks later would be
7 December 12. Safety Light

8 JUDGE HOYT: All right. December 12 then, and we are
9 going to permit that rebuttal brief. Very well, does that --

10 MR. CHARNOFF: I have one matter.

11 JUDGE HOYT: All right.

12 MR. CHARNOFF: We have requested a stay, and I am
13 concerned about the matter that Dr. Shon raised, which is this
14 question of this August order was made immediately effective
15 with regard to this compulsion to set up a trust fund for USR
16 Industries as well as Safety Light, and to begin to pay money
17 into that.

18 I would like to either request a stay here or when we
19 file our briefs to request a stay and, in the interim, to ask
20 this Board to suspend the effectiveness of that August order
21 until it rules on our motion to stay.

22 JUDGE HOYT: Let me ask Mr. Weisman, can we give USR
23 Industries and that group the same package that you have given
24 to Safety Light; can you give them those extensions that you
25 have given to Safety Light?

1 MR. WEISMAN: We have not given extensions to USR
2 Industries as we have given to Safety Light.

3 JUDGE HOYT: That is what I am asking you, can you
4 negotiate that out with them? Would the staff be willing to do
5 so? And, would you join in such negotiations to get the same
6 offer?

7 MR. CHARNOFF: I would be very happy to do so. I did
8 ask for it orally, as soon as I got into the case and I was
9 told that the staff would not do so.

10 JUDGE HOYT: Is it okay if we do that, Mr. Weisman?
11 I don't see any difference between the parties. I mean, at
12 least you haven't demonstrated anything here. That doesn't
13 mean that there isn't something. When you smile, I am sure
14 discretely knowing much more than I, but at this point on the
15 surface as I am looking at it, I don't see it. Therefore, -

16 MR. WEISMAN: My understanding from my client is that
17 they are not willing to give USR Industries the same kind of
18 stay that we have given to Safety Light. Safety Light
19 approached us --

20 JUDGE HOYT: I know, you are speaking of the good
21 faith offer. I recognize that.

22 MR. WEISMAN: That is right. I just wanted to make a
23 point that I think if the Board wants to consider a stay, that
24 we should have filings from the parties that address the
25 traditional stay standards of four factors, which I believe are

1 given at 2.788.

2 JUDGE SHON: The Virginia Jobbers case.

3 MR. WEISMAN: Pardon me?

4 JUDGE SHON: Virginia Jobbers.

5 MR. WEISMAN: Virginia Jobbers, precisely. The staff
6 does not believe that USR Industries has made a showing under
7 Virginia Jobbers that would lead the Board to grant a stay. We
8 think that a filing would be necessary to make that decision.

9 MR. CHARNOFF: I would be happy to make that filing
10 with our brief and that motion. All I am asking for is an
11 interim suspension by the Board of the immediate effectiveness
12 until it rules on the motion for a stay. One of those issues
13 under the Virginia Petroleum Jobbers Standard is likelihood of
14 success on the merits. Obviously, that is exactly the issue we
15 are going to be briefing with regard to the jurisdictional
16 question.

17 It seems to me that it would save us and the Board
18 time to examine that jurisdictional question in that context,
19 and I would be happy to deal with that brief on whatever that
20 date was, November 8. We would put in a brief requesting the
21 stay and simply have an interim suspension by the Board at the
22 moment until you rule on that motion.

23 MR. WEISMAN: The staff would argue that any interim
24 suspension is, in fact, a stay. If the legal requirements for
25 a stay are not met, then any interim suspension or stay should

1 not be granted.

2 JUDGE SHON: One other possibility with all of these
3 parties or one of these parties, I suppose there are only two.
4 As of now, the situation with Safety Light is that they have
5 established a trust fund and have said that they will deposit,
6 although they have not deposited anything as of yet; is that
7 right?

8 MR. WEISMAN: That is not quite correct. Safety
9 Light is still in the process of negotiating their trust
10 agreement. They have not executed the trust yet. My
11 understanding is that when the trust is executed, the money
12 will be funded.

13 JUDGE SHON: In the amount of \$20,000.00?

14 MR. WEISMAN: That is correct.

15 JUDGE SHON: And, how often thereafter?

16 MR. WEISMAN: That is something that is in
17 negotiation.

18 JUDGE SHON: What would either of you think of giving
19 the same sort of arrangement to USR Industries or to USR?

20 MR. WEISMAN: Well, I would have to consult with my
21 client to see if that would be acceptable.

22 JUDGE SHON: Mr. Charnoff?

23 MR. CHARNOFF: I would be glad to consult with my
24 client, to ask him to contribute as much to the trust fund. We
25 don't need two trust funds, but as much to the trust fund as

1 Safety Light contributes. We can do that. The Safety Light
2 obligation, as I recall seeing something in writing, was they
3 are going to impound one-half of their profits for use in this
4 purpose.

5 We would be glad to do that, because we are operating
6 at a loss. We could make that statement. It would be silly
7 and facetious for us to do that. I would be glad to ask my
8 client if he would like to be committed until you decide the
9 jurisdictional question to pay on the same schedule that Safety
10 Light is paying in, the same amount that is matching Safety
11 Light funds.

12 On the other hand, I would like one reservation
13 namely, if this Board agrees with us that the NRC has no
14 jurisdiction over USR Industries that we at least have the
15 right to withdraw the funds paid into the trust fund upon such
16 determination. Now, it is true that my client has, as his
17 manifestation of good faith was committed with Safety Light to
18 pay a share of the \$115,000.00 study that they proposed. I
19 just want the record to be clear. We were prepared, as simply
20 a token of good faith, to participate to that extent at that
21 point. The staff rejected that, so that is now off the table.

22 I would be glad to ask my client if the NRC would
23 accept it, to have us match the Safety Light contributions in
24 amount and time, subject to a determination by the Board of the
25 jurisdictional question. I must parenthetically exclude one

1 thing. Safety Light did inherit with all of the other values
2 that they got out of this transaction, they did inherit our
3 insurance policies. I want to exclude from that commitment
4 that I have just made, any monies that Safety Light might get
5 from the insurance companies because we are not beneficiaries
6 of that. If the insurance companies would put up a million or
7 a billion dollars, we are not going to match that.

8 JUDGE SHON: Well, if \$20,000.00 was better than
9 nothing, isn't \$40,000.00 twice as much better than nothing?

10 MR. WEISMAN: Twice as much better than nothing. We
11 would bring that to our client.

12 JUDGE SHON: But, there is no way that we can decide
13 that at present until both of you gentlemen speak to your
14 clients; is that right?

15 MR. CHARNOFF: I think that's right. What I would
16 like to do is have a suspension order from the Board today,
17 subject to telephone communications between the staff and
18 myself and their clients and my clients, and why don't we
19 suggest that next week on Monday or Tuesday we will get back to
20 you with some decision in that regard. I would be happy to
21 commit to that.

22 MR. WEISMAN: The staff would still oppose any
23 interim stay. There has been no basis shown that USR
24 Industries is complying or intends to comply. USR Industries
25 is in violation --

1 JUDGE HOYT: He intends to comply until he has had an
2 opportunity to discuss it with his client. We are sort of at a
3 Catch 22 here, Mr. Weisman.

4 JUDGE SHON: We can hear arguments on an interim stay
5 later, at some time.

6 JUDGE HOYT: We can do that by telephone conference
7 call if that is necessary. I don't think we want to grant an
8 interim stay today, but I think we will ask that the parties
9 get back to us by Tuesday of next week and let us know what you
10 have worked out with your negotiations. I don't think that
11 there is going to be any thrashing need of having a stay, Mr.
12 Charnoff right now, if we are this close to working something
13 through with the staff.

14 I think that our --

15 MR. CHARNOFF: I will be happy to talk with counsel
16 staff on Monday or Tuesday, and get back to you by Tuesday on
17 the results of that.

18 JUDGE HOYT: By Tuesday, that will be fine.

19 MR. CHARNOFF: I will have to talk to my client
20 before then, and I presume that they will talk to their client
21 before then.

22 MR. WEISMAN: The staff has no objection to
23 consulting with our clients and consult with counsel, and then
24 with the Board by conference call.

25 JUDGE HOYT: I think in discussing with your client,

1 Mr. Weisman, you should be aware that it is obvious that a
2 consensus of the Board is that we want to see that the same
3 treatment of the two entities is extended and not to make a
4 difference. I am sure that in litigation, the parties get very
5 oriented to a position and it is sometimes hard to knock off
6 that difficulty and get back into negotiations.

7 This is the government we are talking about now, and
8 you don't have that real luxury sometimes. I think we want to
9 get the parties out here working towards getting that settled
10 so that we can proceed with the substantive issues of this
11 case, which I think are both intriguing and certainly going to
12 make some new work for the appeal board probably.

13 MR. CHARNOFF: I have one last matter.

14 JUDGE HOYT: I say that facetiously. Yes, please.

15 MR. CHARNOFF: At the outset, you had asked us by
16 next week to react literally to each of the Hannock-Weisman's
17 submittals. I said I would do that, and I thought we ought to
18 see the licenses before we do that. Would the Board agree if
19 we did that coincident with our November 8 filing of our
20 briefs? We will have a special, separate filing?

21 JUDGE HOYT: I don't think that is unreasonable. I
22 think that is a very reasonable request, and I think that would
23 probably give us a better - whatever would improve the quality
24 and quantity of the submission would be very much in order, Mr.
25 Charnoff.

1 MR. CHARNOFF: Thank you so much.

2 JUDGE HOYT: Do we have anything else before we
3 adjourn this prehearing conference?

4 [No response.]

5 JUDGE HOYT: I do thank the parties for coming on
6 relatively short notice. I appreciate that fact that Mr.
7 Weisman has been ill and has come to this hearing this morning.
8 We do wish to lend the offices of the Board to proceeding in
9 settling whatever we can here and get to the substantive
10 issues, which I think will be very interesting, very
11 interesting to try. I look forward to it.

12 Thank you very much. We will adjourn.

13 [Whereupon, at 12:43 p.m., the prehearing conference
14 adjourned.]

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REPORTER'S CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission

in the matter of:

NAME OF PROCEEDING: Safety Light Corporation

DOCKET NUMBER: 030--5980

PLACE OF PROCEEDING: Bethesda, Maryland

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.



Mary Rosenberg
Official Reporter
Ann Riley & Associates, Ltd.