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November 6, 1989

LOCKEET
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'89 NOV -7 P12:38

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF CLERK
DOCKETING & SERVICE
BRANCH

In the Matter of	)	Docket Nos. 030-05980
SAFETY LIGHT CORPORATION	)	030-05982
UNITED STATES RADIUM CORPORATION	)	030-05981
USR INDUSTRIES, INC.	)	030-08335
USR LIGHTING, INC.	)	030-08444
USR CHEMICALS, INC.)	
USR METALS, INC.)	
USR NATURAL RESOURCES, INC.	)	(ASLBP No. 89-590-01-0M)
LIME RIDGE INDUSTRIES, INC.	)	and 90-598-01-0M-2)
METREAL, INC.)	
(Bloomsburg Site Decontamination))	

NRC STAFF'S BRIEF ON BOARD AUTHORITY TO CONSIDER STAY

I. INTRODUCTION

During a telephone prehearing conference held on October 27, 1989, the Atomic Safety and Licensing Board (Licensing Board) granted the request of USR Industries, Inc., USR Lighting, Inc., USR Chemicals, Inc., USR Metals, Inc., and USR Natural Resources, Inc. (the USR companies), for a stay of the Order Modifying Licenses (Effective Immediately) issued by the Nuclear Regulatory Commission (NRC or Commission) on August 21, 1989, and of the Order Modifying Licenses (Effective Immediately) and Demand for Information issued by the NRC on March 16, 1989, which are the subjects of this proceeding. The Licensing Board issued the stay pending the submission of briefs on the question of whether the Board has authority to stay the immediate effectiveness of those orders, and, if so, whether a stay is warranted at this time. For the reasons set forth below, the Licensing Board has the authority to stay the immediate effectiveness of

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both orders upon a determination that the factors set forth in Virginia Jobbers^{1/} as codified in 10 C.F.R. § 2.78b weigh in favor of such action.

II. ISSUES

The Licensing Board raises two issues that will be addressed below:

- 1) Does the Licensing Board have authority to stay an enforcement order issued by the NRC staff that is immediately effective?
- 2) If so, what standards must the Licensing Board apply to determine whether a stay is warranted?

III. BACKGROUND

On March 1, 1989, the NRC staff issued an Order Modifying Licenses (Effective Immediately) and Demand for Information to United States Radium Corporation, Safety Light Corporation, USR Industries, Inc., and their subsidiaries and successors (the Corporations). Both Safety Light and the USR companies requested hearings on this order. The Commission's Secretary, pursuant to 10 C.F.R. § 2.772(j) (1989), referred both those requests to the Atomic Safety and Licensing Board Panel and this Board was designated to consider these matters.

On August 21, 1989, the NRC staff issued a further Order Modifying Licenses (Effective Immediately) to the Corporations to assure that the

^{1/} Virginia Petroleum Jobbers Ass'n v. Federal Power Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958).

Corporations would make available funds adequate to comply with the March Order. Both Safety Light and the USR companies requested hearings on this Order. The Commission's Secretary referred both requests for a hearing on the August Order to the Atomic Safety and Licensing Board Panel. Additionally, the USR companies filed a Petition for Review of of the August Order in the United States Court of Appeals for the District of Columbia Circuit. ^{2/}

On October 19, 1989, the Board held a prehearing conference so that the parties could apprise the Board of the issues remaining in the case and for the Board to establish procedures for the proceeding in light of the issues. On October 24, 1989, the Board held a second prehearing conference by telephone in which a schedule was set for the parties to submit briefs in connection with the stay request raised by the USR companies, ^{3/} and in

^{2/} Petition for Review, October 18, 1989.

^{3/} Prehearing Conference Transcript, at 89, 95-99 (October 24, 1989). During September and October, 1989, the NRC staff granted Safety Light's requests to extend the time for Safety Light to comply with the August 21, 1989 Order. (See letters from Safety Light to the NRC dated September 8, 18, and 19, 1989, and responses of the NRC to Safety Light, dated September 11 and 21, 1989, enclosed as Appendix A.) Safety Light's requests to extend the time for compliance were coupled with substantial efforts to comply with the Order. While the USR companies also requested extensions of time, they made no representation to the staff that they would make any attempt to comply with the August order. (See letters from the USR companies to the NRC dated September 19 and 22, 1989, and the NRC responses to those letters dated September 21 and October 11, 1989, enclosed as Appendix B.) In fact, other than an offer to set up a trust similar to a trust being developed by Safety Light and to make an initial payment to fund such a trust, the USR companies have made no independent effort to comply with the August Order.

which it temporarily stayed the effect of the orders, pending the Board's receipt of briefs on the stay issue. ^{4/}

IV. DISCUSSION

A. The Licensing Board has authority to consider the USR companies' request for a stay.

The Commission's Rules of Practice state that "[a]n atomic safety and licensing board shall have duties and may exercise the powers of a

(Footnote continued from previous page)

It would appear from statements made by the Licensing Board members during the two prehearing conferences that the Licensing Board believes that the treatment being accorded Safety Light and the USR companies is unreasonably disparate. The staff notes that both the August and March orders hold Safety Light and the USR companies jointly and severally responsible for the site characterization and ultimate decontamination of the site and that the staff has not apportioned responsibility or financial liability between Safety Light and the USR companies. As will be more fully developed in the staff's response to the USR companies' request for a stay, the staff does have a basis for treating the two parties differently. Initially, the staff notes that, although it has extended some of the deadlines set forth in the August Order, it has not suspended Safety Light's obligation to comply with the terms of either order, but, in light of Safety Light's substantial efforts to comply, has attempted to cooperate with Safety Light to develop a satisfactory way for Safety Light to comply. The USR companies made no similar effort to comply with the orders. The USR companies' offer, which they first raised at the October 19, 1989 prehearing conference, differed substantially from Safety Light's proposals, in particular, failing to include funding of the trust beyond the initial payment and including a constraint on the use of funds during the pendency of this proceeding. The Staff believes that it is both unfair and unreasonable to allow the USR companies, which have made no effort to comply with the August Order, to be accorded the same treatment as Safety Light. The USR companies have made their position quite clear that they do not believe that the Commission has the authority to hold them responsible for characterization and decontamination of the Bloomsburg site and that the Commission had no basis to make that Order immediately effective. To that end, they have appealed the August order to the Court of Appeals for the District of Columbia Circuit. If they are successful in that appeal, the Court of Appeals will take appropriate action. In the meantime, unless the USR companies can establish that they meet the criteria for a stay, they have provided no basis for the staff to treat them like Safety Light.

^{4/} Prehearing Conference Transcript, at 101.

presiding officer as granted by § 2.718 [of this part]" ^{5/} and "[a] presiding officer [has all powers necessary] to conduct a fair and impartial hearing according to law, to take appropriate action to avoid delay, and to maintain order . . . including the power to . . . [t]ake any . . . action consistent with the [1954] Act, [Chapter 10 of the Code of Federal Regulations], and sections 551-558 of Title 5 of the United States Code." ^{6/} The power to stay the very order that is the subject of the proceeding is reasonably a power "necessary . . . to conduct a fair and impartial hearing according to law;" ^{7/} similar powers have long been recognized in equity by courts ^{8/} and by the Commission. ^{9/} Also, in

^{5/} 10 C.F.R. § 2.721(d) (1989).

^{6/} 10 C.F.R. § 2.718 (1989).

^{7/} Id.

^{8/} The All Writs Act, 28 U.S.C. § 1651(a) (1988), "provided statutory confirmation of [the courts' authority to issue stays pendente lite]." Sampson v. Murray, 415 U.S. 61, 73-74 (1974). See Virginia Jobbers at 923-35, supra, note 1. See also Niagara Mohawk Power Corp. v. Federal Power Comm'n, 379 F.2d 153, 157-160 (D.C. Cir. 1967) (attributing equitable powers to the FPC in assigning an effective date to a license); Cf. Ex Parte Peterson, 253 U.S. 300, 312-14 (1919) (recognizing a district court's authority to appoint an auditor to help simplify the issues in dispute).

^{9/} Natural Resources Defense Council, CLI-76-2, 3 N.R.C. 76 (1976); Wisconsin Electric Power Co. (Point Beach Nuclear Plant Unit No. 2), ALAB-58, 4 A.E.C. 951, 952-53 (1972); See Wisconsin Electric Power Co. (Point Beach Nuclear Plant Unit No. 2), ALAB-82, 5 A.E.C. 350, 351-52 (1972) (citing Niagara Mohawk, supra, note 8, with approval). Section 161 of the 1954 Act, in particular § 161(p), which states

(Footnote continued on next page)

staying the effect of the staff's order, the Licensing Board would be acting within the authority granted under § 10(d) of the Administrative Procedure Act (APA), ^{10/} which states that "[w]hen an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review." ^{11/} Accordingly, the Licensing Board in this case has the authority to consider a request to stay the orders.

This is not the first time that one of the Commission's adjudicatory boards has considered the question of the propriety of staying an immediately effective order where there had also been a petition for review filed with a Court of Appeals. For example, in a Seabrook case, ^{12/} the Appeal Board ruled that it had authority to stay an immediately effective order, notwithstanding the fact that the a party had

(Footnote continued from previous page)

that "the Commission is authorized to make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of [the 1954] Act," authorized the Commission to promulgate 10 C.F.R. §§ 2.721 and 2.718. 42 U.S.C. § 2201(p) (1982); 10 C.F.R. Part 2, at 39 (1989). See Mixed Oxide Fuel, CLI-78-10, 7 N.R.C. 711, 724-28 (1978). In Mixed Oxide Fuel, the Commission attributed to § 161(p) its authority to exercise its discretion to terminate proceedings in carrying out its common defense and security responsibilities; clearly, § 161(p) authorizes the Commission to adopt regulations that provide for fair hearings in the discharge of the Commission's responsibilities.

^{10/} 5 U.S.C. § 705 (1982).

^{11/} Id.

^{12/} Public Service of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-349, 4 N.R.C. 235, order suspended on other grounds, CLI-76-17, 4 N.R.C. 451 (1976) (hereafter Seabrook).

petitioned a court of appeals for review of the order. ^{13/} The Appeal Board stated that "[n]o time limitation has been imposed with respect to the exercise of that authority; i.e., Section 10(d) permits the issuance of an administrative stay either before or after the petition for review is filed [with the court of appeals]." ^{14/} Therefore, the USSR companies' petition for review in the court of appeals does not restrict the Licensing Board's authority to consider a stay in this case.

The Appeal Board in Seabrook also examined Commission cases and analyzed whether the relationship between an agency and a court of appeals would restrict the agency's flexibility in order to reach this conclusion. ^{15/} The Appeal Board determined that the agency's relationship to the court did not restrict the agency's flexibility. ^{16/} The staff sees no basis for dealing with this immediately effective enforcement order any differently than the Commission has dealt with other immediately effective orders. Accordingly, this Licensing Board has the authority to stay the effect of the March and August orders if, after analyzing the appropriate factors, it determines that a stay is warranted.

^{13/} In Seabrook, the order was an Atomic Safety and Licensing Board's initial decision to authorize the issuance of a construction permit that was made immediately effective by operation of 10 C.F.R. § 2.764. 4 N.R.C. at 238-39.

^{14/} Seabrook, 4 N.R.C. at 244.

^{15/} Seabrook, 4 N.R.C. at 242-45.

^{16/} Seabrook, 4 N.R.C. at 245.

pendente lite, the Commission applied the same logic as the D.C. Circuit summarized in Virginia Jobbers.^{21/} Although § 2.788 does not explicitly apply to enforcement orders, such as are the subjects of this proceeding, an immediately effective order has the same effect whether issued by an Atomic Safety and Licensing Board or by its staff; the same well-settled standard for granting the equitable remedy of a stay applies equally well to either case. Accordingly, although the Licensing Board may grant the extraordinary relief of a stay in this case, it should not do so unless and until it determines, under 10 C.F.R. § 2.788, that such relief is warranted.

V. CONCLUSION

Accordingly, as explained above, this Licensing Board may consider the USR companies' request for a stay, under the standards set forth in Virginia Jobbers, as codified in 10 C.F.R. § 2.788. Because no basis has been given for the "stay" granted by the Licensing Board during the October 24, 1989 Prehearing Conference, and until such time as a basis has been provided, that action should be vacated.

Respectfully submitted,

Robert M. Weisman
Robert M. Weisman
Counsel for NRC Staff

Dated at Rockville, Maryland
this 6th day of November, 1989

^{21/} Natural Resources Defense Council, supra, note 17; Point Beach, supra, note 17.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'89 NOV -7 P12:38

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING SERVICE
BRANCH

In the Matter of

SAFETY LIGHT CORPORATION
UNITED STATES RADJUM CORPORATION
USR INDUSTRIES, INC.
USR LIGHTING, INC.
USR CHEMICALS, INC.
USR METALS, INC.
USR NATURAL RESOURCES, INC.
LIME RIDGE INDUSTRIES, INC.
METREAL, INC.
(Bloomsburg Site Decontamination)

Docket Nos.: 030-05980
030-05982
030-05981
030-08335
030-08444

(ASLBP No. 89-590-01-0M)
(ASLBP No. 90-598-01-0M-2)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S BRIEF ON BOARD AUTHORITY TO CONSIDER STAY" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, or as indicated by a double asterisk by hand-delivery, this 6th day of November, 1989:

Helen Hoyt, Esq.**
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Oscar H. Paris**
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Frederick J. Shon**
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Atomic Safety and Licensing Board
Panel (1)*
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing Appeal
Panel (5)*
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Adjudicatory File (2)*
Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Office of the Secretary(2)*
U.S. Nuclear Regulatory Commission
Washington, DC 20555
Attn: Docketing and Service Section

Mr. William T. Russell
Regional Administrator
U.S. Nuclear Regulatory Commission
475 Allendale Road
King of Prussia, PA 19406

Mr. Ralph T. McElvenny
USR Industries, Inc.
550 Post Oak Blvd.
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Houston, TX 77027

Gerald Charnoff, Esq.**
Shaw, Pittman, Potts & Trowbridge
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D. Jane Drennan, Esq.**
Wunder, Ryan, Cannon & Thelen
1615 L. St., N.W. Suite 650
Washington, D.C. 20036

Robert M. Weisman

Robert M. Weisman
Counsel for NRC Staff

APPENDIX A

RW

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of:

SAFETY LIGHT CORPORATION,	)	DOCKET NOS.	030-05980
<u>et al.</u>	)		030-05981
	)		030-05892
	)		030-08335
	)		030-08444
	)	LICENSE NOS.	37-00030-02
	)		37-00030-08
	)		37-00030-07E
	)		37-00030-09G
	)		37-000030-10G
)		

MOTION OF SAFETY LIGHT CORPORATION
FOR AN EXTENSION OF TIME TO FILE
AN ANSWER AND TO REQUEST A HEARING

Pursuant to 10 C.F.R. § 2.711 (1989) of the Nuclear Regulatory Commission's ("NRC" or "Commission") Rules of Practice for Domestic Licensing Proceedings, Safety Light Corporation ("Safety Light") respectfully requests an extension of time to file an answer to the August 21, 1989 Order Modifying Licenses ("August 21 Order") in the above-captioned proceeding. Safety Light also requests additional time to consider whether to file a request for a hearing in the same proceeding.

In its August 21 Order, the Commission directed Safety Light and other interested parties to file an answer and/or request a hearing within 20 days from the issuance of the

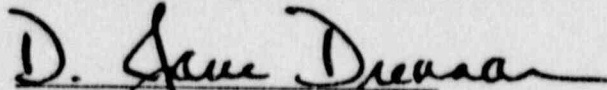
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instant order. To comply with the August 21 Order, Safety Light must file its answer or request for hearing by Monday, September 11, 1989.

On September 6, 1989 Safety Light retained the undersigned as counsel to represent the company in this proceeding. As Safety Light's Washington counsel, the undersigned has not had sufficient time to review the case and thus, is not prepared to file an answer on Monday, September 11, as required by the August 21 Order.

WHEREFORE, Safety Light requests the Commission for an additional 20 days to file its answer to the August 21 Order, and an additional 20 days to consider whether to request a hearing.

Respectfully Submitted,



D. Jane Brennan, Esq.
1615 L Street, N.W.
Suite 650
Washington, D.C. 20036
(202) 659-3005

Counsel For
SAFETY LIGHT CORPORATION

Dated this 8th day of September, 1989

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon the following by mail on this 8th day of September, 1989:


James Lieberman
Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
ATTN: DOCUMENT CONTROL DESK
Washington, D.C. 20555

Assistant General Counsel for Enforcement
Office of the General Counsel
U.S. Nuclear Regulatory Commission
ATTN: DOCUMENT CONTROL DESK
Washington, D.C. 20555

Hugh L. Thompson, Jr.
Deputy Executive Director for Nuclear Safety,
Safeguards and Operations Support
U. S. Nuclear Regulatory Commission
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William Russell
Regional Administrator
NRC Region I
475 Allendale Road
King of Prussia, PA 19406

Lee Bettenhausen
Division Director
NRC Region I
475 Allendale Road
King of Prussia, PA 19406


D. Jane Drennan

Dated: September 8, 1989

WUNDER, RYAN, CANNON & THELEN1818 L STREET, N.W., SUITE 650
WASHINGTON, D. C. 20036

(202) 658-3008

D. JANE DRENNAN

DIRECT DIAL
(202) 778-0888

September 18, 1985

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

RE: In the Matter of Safety Light Corp., et al.
Docket Nos. 030-05980, 05981, 05982, 08335
and 08444 (EA 89-29)

Dear Mr. Russell:

This letter is a first request by Safety Light Corporation ("Safety Light") for an extension of time in which to submit a "Work Plan" and proposed "Trust Agreement" to the Nuclear Regulatory Commission ("NRC"). Safety Light is requesting the additional time in order to (1) conduct discussions with USR Industries Inc. ("USR") to explore the potential for USR to participate jointly in the preparation of these documents and (2) insure that IT Corporation has adequate time to prepare a Work Plan which complies with the NRC's letter of September 11.

By Order Modifying Licenses, issued on March 16, 1989, the NRC directed Safety Light and USR to submit jointly site characterization and decontamination plans for the Bloomburg site. By a subsequent order, issued on August 21, 1989, the NRC directed the parties to establish jointly a "Trust Agreement" and to provide funding to implement the plan. In the latter order, the NRC estimated that a site characterization plan, which would meet the NRC's requirements, would cost approximately \$1,000,000 (plus or minus 30%) (Order at 6). In this same order, the NRC also expressed concern that Safety Light has very limited funds available to commit to the characterization plan.

Safety Light intends to comply with the NRC's rules and regulations; however, the company does have limited funds. During the period of 1985 to 1989, Safety Light's annual income has varied between approximately \$10,000 and \$200,000. It is, therefore, imperative that Safety Light make every effort to determine whether USR is prepared to assist in the funding of the Work Plan and the Trust Agreement. Additionally, efforts are

LAW OFFICES

WUNDER, RYAN, CANNON & THELEN

William T. Russell
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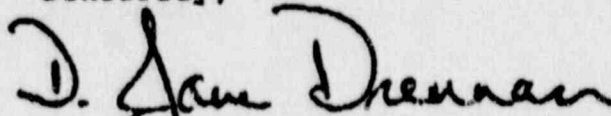
currently underway to negotiate partial or full funding of the Trust Agreement by the insurance companies who have had full coverage of the site for many years.

As of this date, Safety Light is uncertain what action USR intends to take with regard to both the Work Plan and Trust Agreement. Further, Safety Light has been unable to contact IT Corporation to determine its ability to fulfill NRC's request in a timely fashion and, in addition, to estimate the cost of the Work Plan. IT Corporation is under contract to Hannoeh and Weisman and thus, it is uncertain at this time what contractual arrangements will be necessary for IT Corporation to undertake the Work Plan.

Safety Light recognizes that it is jointly and severally responsible for compliance with the Atomic Energy Act and implementing regulations. Safety Light fully intends to use its best efforts and maximum resources to respond to the NRC's orders and requests in a timely fashion; however, it is requesting a 30 day extension of the filing dates for the Work Plan and proposed Trust Agreement in order to comply fully. Specifically, Safety Light proposes to submit the Trust Agreement on October 21 and the Work Plan on November 2.

If this letter is deficient in any manner to foreclose granting the requested extensions, please advise me on what additional information may be of assistance in your evaluation of this request. It is the intent of Safety Light to conduct discussions with the NRC in a forthright manner and to cooperate to resolve the issues raised by the orders.

Sincerely,



D. Jane Drennan
Counsel for
SAFETY LIGHT CORPORATION

September 19, 1989

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

Re: Docket Nos. 010-05980, 030-05981, 030-05982,
030-08335 and 030-08444 (EA 89-29)

Dear Mr. Russell:

This letter supplements the filing dated September 18, 1989, in which Safety Light Corporation ("Safety Light") requested an extension of thirty (30) days in which to submit the Trust Agreement referenced in the Order, dated August 21, 1989, issued by the Nuclear Regulatory Commission ("NRC").

Subsequent to filing our submittal on Monday, I learned that counsel for USR Industries, Inc. ("USR"), Hannech Weisman, has withdrawn from the above-captioned proceeding. At this time, USR is without legal counsel. Safety Light now must proceed in attempting to meet the NRC's requests which includes the establishment of a Trust and the submission of the Work Plan. Hannech Weisman had retained IT Corporation for all prior technical work submitted to the NRC. Safety Light now must establish a business relationship with IT Corporation, and execute a new contract with IT Corporation, and establish a schedule to perform the Work Plan.

As stated in previous submittals, on September 6th, Safety Light retained Washington D.C. counsel for this proceeding as part of its effort to improve communications with the NRC and to be more responsive to NRC's concerns. On September 11, the NRC granted Safety Light an extension until October 2nd to determine whether to submit an answer and to request a hearing in this proceeding. Since that date, Safety Light has communicated daily with the NRC to keep the agency apprised of its efforts to schedule the preparation of the Work Plan and to prepare a joint Trust Agreement with USR. This letter summarizes these discussions.

Safety Light has commenced drafting the Trust Agreement. Safety Light learned only yesterday, that USR did not have counsel

who could participate in this process. Safety Light will now proceed to finalize a Draft Trust Agreement that will be comparable to the example set forth in 40 C.F.R. § 264. It is anticipated that the draft of the Trust Agreement will be completed in the next seven (7) days and will be available for review by the Trustee who will administer it.

Safety Light has had preliminary discussions with several financial institutions concerning the Trust Agreement. Safety Light is also exploring the advisability of appointing a lawyer as Trustee. Safety Light expects to inform the NRC within the next two (2) weeks as to whom is the Trustee. Shortly thereafter, Safety Light intends to submit the Trust Agreement for NRC review. Once the Trust Agreement is approved by the NRC, Safety Light will then establish the Trust Account and make an initial deposit of 50 percent of the prior month's profits.

Safety Light's primary concern is the level of funding that it can dedicate to the Trust. In light of the withdrawal of USR's counsel, Safety Light must now fully fund the Work Plan. In the past four (4) months, Safety Light has expenditures of more than \$150,000 for legal and technical services related to these proceedings. Safety Light has not yet been able to ascertain what economic liability it may have for litigation services performed on its behalf in an effort to establish the liability of the insurance carriers with regard to this issue. This litigation is ongoing and necessary to ensure that the Trust is fully funded. Safety Light is also accruing substantial expenses in attempting to comply with all aspects of the NRC's recent orders.

Safety Light's available revenues to fund the Trust Agreement are not only being depleted by the foregoing, but are also subject to various fluctuations in the tritium market. The price of tritium increased substantially in 1988 and is expected to increase again in October 1989. The price increases adversely affect Safety Light's profits.

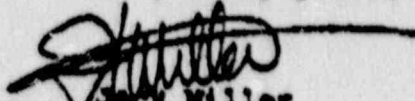
Because Safety Light is unable to project its available revenues for the next twelve (12) months, Safety Light proposes that it will commit 50 percent of its monthly profits to the Trust. During the period in which Safety Light is funding the Trust, Safety Light shall freeze the salaries of its officers and shall undertake to maintain its operating expenses at a reasonable level.

In light of the foregoing, Safety Light has attempted to respond to the NRC's oral request for a status report on its activities and a statement of its intention to proceed with the

William T. Russell
Page 3

establishment of the Trust and preparation of the Work Plan. Safety Light urges the NRC to grant the requested extensions to allow Safety Light and the agency to continue ongoing discussions and achieve a settlement on these matter.

Very truly yours,


Jack Miller
President

State of Pennsylvania)
County of Columbia) ss.:

Jack Miller, being duly sworn, deposes and says that he has read the foregoing letter; that to the best of his knowledge and belief, the statements and facts stated therein are true and accurate.

 PRESIDENT
Jack Miller

Subscribed and sworn to before
me this 19 day of September 1989.




Notary Public

My Commission Expires

Notarial Seal
Gray Whittell Liberer, Notary Public
South Centre Twp., Columbia County
My Commission Expires Dec. 31, 1991
Member, Pennsylvania Association of Notaries

cc: James Lieberman
Director, Office of Enforcement
U.S. Nuclear Regulatory Commission

SEP 11 1989

D. Jane Drennan, Esq.
1615 L Street NW
Suite 650
Washington, DC 20036

Dear Ms. Drennan:

We have considered your request for an extension of time to file an answer and a request for a hearing on behalf of Safety Light Corporation in response to the Order issued by the NRC on August 21, 1989.

Your request for an additional 20 days to file these documents is granted. Accordingly, any answer and/or a request for a hearing on behalf of Safety Light Corporation is due no later than October 2, 1989.

This extension is granted as to the filing of the specified documents only. All other provisions of the Order of August 21, 1989 remain in effect, and must be satisfied by the dates imposed therein unless the Order is relaxed or modified in writing on a showing of good cause. Any failure to create the trust and submit the trust agreement to the NRC by September 21, 1989, and to meet the payment schedule in the Order, will be considered a violation of the Order.

Sincerely,

**Original Signed By
James Lieberman**

James Lieberman, Director
Office of Enforcement

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
476 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406

SEP. 11 1989

Docket Nos. 030-05980
030-05982

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

Safety Light Corporation
ATTN: Mr. Jack Miller
4150-A Old Berwick Road
Bloomsburg, Pennsylvania 17815

Gentlemen:

Subject: Plan to Characterize Radioactivity at Bloomsburg Site

On March 16, 1989, the NRC issued an Order to Safety Light Corporation, USR Industries, Inc., U.S. Radium Corporation and their successor corporations and subsidiaries (collectively, the "Corporations"). The Order required, in part, that the Corporations submit, a joint plan to characterize the radioactivity at the Bloomsburg site by May 1, 1989. The Corporations subject to the Order subsequently requested, and were granted, an extension of time for the submission of the plan until June 2, 1989. On June 2, 1989, a Joint Characterization Plan (JCP) was hand-delivered to NRC Region I. On June 6, 1989, the appendices to the JCP were sent to NRC Region I by telecopier.

The NRC reviewed the June 2, 1989 JCP and the appendices and determined that it did not satisfy the requirements of the March 16, 1989 Order. On June 16, 1989 the NRC sent letters to the Corporations specifying the requirements of the Order which had not been met and describing technical deficiencies in the JCP. At an Enforcement Conference at NRC Region I on July 6, 1989, the NRC and the Corporations discussed the Corporations' failures to fully comply with the March 16, 1989 Order. A subsequent meeting was held at Region I on July 13, 1989, during which the deficiencies in the JCP were discussed in detail.

On August 11, 1989, NRC Region I received the Corporations' revised site characterization plan (the August plan), which was dated August 9, 1989. The NRC staff has reviewed this plan and has determined that it satisfies the technical criteria for a site characterization plan given in the March 16, 1989 Order. The August plan states that "specific procedures for performance of this site characterization effort will be generated for approval by the appropriate agencies and personnel." The August plan further states that these specific procedures, or "Work Plan" will be generated two weeks "after the scope of work for characterization of the Bloomsburg site has been approved". The NRC hereby approves the August plan, subject to correction of the deficiencies identified in the Enclosure. Accordingly, and pursuant to 10 CFR 30.32(b) the Work Plan is to be delivered to NRC Region I for review and approval by 21 days from the date of the letter. The Corporations may correct certain of the deficiencies by amending the August plan as noted in the enclosure and providing the amended plan to Region I on the same schedule, if they desire. The technical deficiencies in the Enclosure must be addressed.

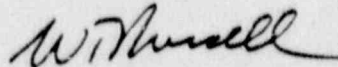
SEP. 1, 1989

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Section VII.C. of the March 16, 1989 Order requires that, within 180 days from the date the Regional Administrator approves the site characterization plan, all Corporations shall jointly submit to the Regional Administrator, NRC Region I, for his review and approval, a single report that contains a complete radiological characterization of the site, with a description of the location and level of all sources of radiation and contamination, including non-radiological hazards. Accordingly, with respect to the portions of this plan approved by this letter, this report must be submitted to NRC Region I within 180 days of the date of this letter. However, it may be impossible to submit some information within 180 days (e.g., the third and fourth seasons of hydrogeologic information). Section X of the March 16, 1989 Order states that the Regional Administrator of the NRC Region I may, in writing, relax or rescind any provision of the Order upon the timely showing, in writing, of good cause. You should promptly identify those items for which compliance with this requirement is impossible and request change of the required submission date.

In accordance with 10 CFR 2.790(a), a copy of this letter and the enclosure will be placed in the NRC Public Document Room.

Sincerely,



William T. Russell
Regional Administrator

Enclosure:

Technical deficiencies in the August 9, 1989 Site Characterization Plan

cc:

Public Document Room (PDR)
Nuclear Safety Information Center (NSIC)
Commonwealth of Pennsylvania

For Safety Light Letter:

Michael O'Donoghue, Esq.
Wister, Pearlstine, Talone, Craig & Garrity
515 Swede Street
Norristown, PA 19401-4880

Wunder, Ryan, Cannon, and Thelen
ATTN: Jane Drennan
1615 L Street, N.W.
Suite 650
Washington, D.C. 20036

For USR Industries Letter:

A. Patrick Nucciarone, Esquire
Harnoch Weisman, P.C.
4 Becker Farm Road
Roseland, New Jersey 07068-3788

ENCLOSURE

TECHNICAL DEFICIENCIES IN THE AUGUST 9, 1989 SITE CHARACTERIZATION PLAN

1. The Work Plan or amended site characterization plan must describe in general terms how the data obtained from the characterization effort will be used to develop a decommissioning and cleanup plan.
2. Since there are many uncertainties associated with contamination at this site, it will probably be very difficult to obtain definitive information on the extent of some areas of contamination on a single "pass" of monitoring and sampling. The Work Plan must include the flexibility for followup or additional measurements under a phased or interactive approach to assure that greater detail is obtained, when necessary.
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- E. Based on findings of elevated gamma levels in the drainage ditch originating near the lagoon area, the Work Plan must include the collection and analysis of sediment samples from this ditch and the outfall area at the river.
9. The Work Plan or amended site characterization plan must provide systematic approaches for utilizing existing on-site monitoring wells for hydrogeological characterization, including:
 - a. qualifying or rejecting existing wells for water quality data collection; and
 - b. considering possible methods for well reconditioning or re-completion; and
 - c. considering existing wells in selecting the locations of proposed wells.
10. The Site Characterization Plan dated August 9, 1989, indicates that additional information may need to be collected; however, it does not describe the criteria that will be used for deciding if additional information is needed. The Work Plan must describe the criteria that will be used to determine whether there is a need for: a) additional sampling; b) installation of additional wells; and c) conducting large-scale pump tests. The Work Plan or amended site characterization plan must provide the basis and rationale for the number and location of additional sampling wells. NRC believes that at least five (5) additional wells are needed within the flood plain near the old canal to better define the direction of groundwater flow and extent of contamination. Existing data suggests that contamination is moving oblique or perpendicular to apparent groundwater flow. Therefore, in locating the new wells, consideration should be given to the areas southeast of the disposal pits and offsite. Also, based on regional geological maps and water use in the area, a low shale aquifer is known to underlie the surficial aquifer at the site. In order to evaluate the water and hydrologic qualities of the lower aquifer, at least three (3) wells must be constructed with straddles or well nests to enable measurement of water quality and hydrologic parameters in both aquifers.
11. In locating new wells, the Work Plan must consider inaccuracies in the current conceptual model of site hydrology, especially when data suggest that at least some contamination is not moving in the assumed direction of groundwater flow.
12. The Work Plan must discuss plans for conducting surveys of off-site wells and water users, and include plans for monitoring existing off-site wells.

13. The Work Plan or amended site characterization plan must provide detailed procedures for obtaining and using existing records of regional and site specific information for the hydrogeological characterization. This should include published reports, inventory records, and data from the licensee and the USNRC.
14. The Work Plan or amended site characterization plan must describe plans for investigating regional and local hydrostratigraphy. Site studies should verify that deeper aquifers are not hydrologically connected to the surface aquifer.
15. The Work Plan must describe how data will be evaluated so that immediate hazards to workers or the public will be promptly recognized and an appropriate response developed.
16. The Work Plan must include providing split samples to the NRC for analysis.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

SEP 21 1989

Safety Light Corporation
ATTN: Jack Miller, President
4150-A Old Berwick Road
Bloomsburg, Pennsylvania 17815

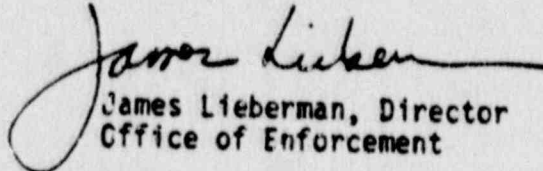
SUBJECT: ENFORCEMENT ACTION (EA 89-29) ORDER MODIFYING LICENSES
(EFFECTIVE IMMEDIATELY)

By letter dated September 19, 1989, you supplemented the September 18, 1989 request of your counsel for an extension of 30 days to comply with the Commission's August 21, 1989 Order in this matter. The August Order required, among other things, that a trust agreement be submitted by September 20, 1989 to establish over 12 months a \$1,000,000 fund to implement a site characterization plan for your Bloomsburg facility and for taking necessary immediate remedial action. Your counsel previously sought an extension of time to ask for a hearing and answer this Order. We granted this request on September 11, 1989.

Your responses state that you are in the process of developing a trust agreement and that you are prepared to provide 50% of Safety Light's monthly profits to the trust. In addition, Safety Light intends to freeze the salaries of its officers and maintain its operating expenses at a reasonable level.

We encourage you to continue your efforts to negotiate a trust agreement and obtain full funding of the agreement by your resources, insurance funds, and USR. Accordingly, we grant Safety Light an additional 30 days to satisfy the August 21, 1989 Order. We expect you to take further actions to comply with the Order including actions to obtain insurance funding. These actions and any additional commitments to demonstrate compliance with the Order should be described in writing, under oath or affirmation, and be in our hands by close of business October 23, 1989.

Sincerely,


James Lieberman, Director
Office of Enforcement

cc: D. Jane Drennan, Esq.
R. T. McElvenny

APPENDIX B

USF INDUSTRIES, INC.

550 POST OAK BOULEVARD / SUITE 548 / HOUSTON, TEXAS 77027

(713) 622-9171

September 22, 1989

Mr. James Lieberman, Director
Office of Enforcement
United States Nuclear Regulatory Commission
Washington, D.C. 20555

RE: In the Matter of Safety Light Corp., et al.
Docket Nos. 030-05980, 05981, 05982, 00335
and 00444

Dear Mr. Lieberman:

These Respondents were most disappointed to receive your response to our request for extension of time dated September 19, 1989. We believe it is necessary to define a range of problems through negotiation in order to reach realistic solutions to the complex insurance, corporate, legal and other issues inherent in this Matter. In the view of These Respondents, a rigid and extreme regulatory stance would not seem to serve the paramount regulatory objectives of protection of the public health and safety and of the environment.

These Respondents replied on September 19, 1989 in good faith and without benefit of counsel. Obviously, without retaining new counsel These Respondents are not in a position to either defend enforcement actions or to conduct substantive negotiations with the NRC. However, after rereading the request dated September 19, 1989 These Respondents would like to take this opportunity to emphasize that they are making most serious and active efforts (1) to arrange legal representation; (2) to work on a suitable Trust Agreement; (3) to increase liquidity so as to meet existing

obligations for legal fees brought on by suddenly increased bills for the NRC and insurance company litigation; and (4) to deal effectively with the insurance companies.

Without counsel These Respondents do not have the capability to put together a definitive Trust Agreement. However, a model Trust Agreement has been located and we are redrafting such to address specifically the particular requirements and considerations of this Matter. We understand that Safety Light Corporation is continuing efforts to develop a suitable Work Plan and a Trust Agreement of its own, and that Safety Light Corporation (which currently has competent NRC counsel) has been given additional time necessary to prepare these materials.

Without assistance from the insurance companies, Safety Light Corporation is in no better position to continue to pay huge legal fees or huge fees to independent technical consultants than are These Respondents. As evidenced by the seven figure sums made available for other environmental matters under the 1985 Defense Agreement it may be possible to arrange further insurance company assistance for this Matter. However, no major insurance company is likely to step forward upon request to meet the extreme time deadlines ordered by the NRC. Unlike either Safety Light Corporation or These Respondents, a major insurance company has on hand an internal legal department and is well financed and equipped to carry on protracted litigation with the NRC or any other party. These Respondents emphasize that the great progress achieved in other environmental matters under the 1985 Defense Agreement resulted from patient, methodical, realistic negotiations and "give and take" between These Respondents, Hannech Weisman and the major insurance companies which are signatories under that Agreement.

These Respondents desire to continue work in good faith on the Trust Agreement, the insurance litigation and other areas related to this Matter. On a current basis These Respondents are operating profitably (before charges for legal fees and consultants). However, they are under severe pressure to complete arrangements to meet even their existing obligations for legal and consulting services already rendered. Additional time is absolutely required to obtain counsel, and to complete the foregoing arrangements. These Respondents believe that extension of time to perform will promote rather than undercut the regulatory intent of the Order.

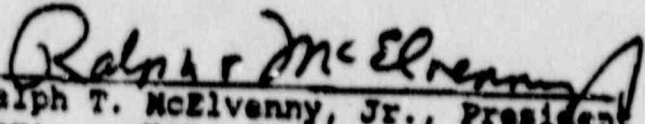
The position of the NRC seems to foreclose all negotiation, leaving no possibility even to work towards realistic solutions, including insurance company participation. If the only prospect is more legal fees to defend enforcement actions, the finite financial and managerial resources of These Respondents would be devoted to meeting yet greater legal fees, while financial and managerial resources available for insurance company negotiation and outside advice would be reduced or eliminated.

By letter dated September 19, 1989 a sixty day extension was requested by These Respondents. We understand that Safety Light Corporation was granted a thirty day extension, and These Respondents are willing to continue efforts under that same time frame.

Even without counsel, These Respondents submitted a request in good faith to the NRC. Work is underway on a draft Trust Agreement and These Respondents are proceeding to sell assets to create what is for them a substantial amount of liquidity. These Respondents now request the same time

extension as granted to Safety Light Corporation. Please advise as soon as possible so that These Respondents may know how to proceed.

Very truly yours,

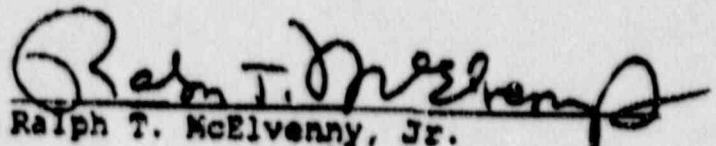


Ralph T. McElvenny, Jr., President
For: USR Industries, Inc., USR
Lighting, Ind., USR Chemicals, Inc.,
USR Metals, Inc. and U.S. Natural
Resources, Inc.

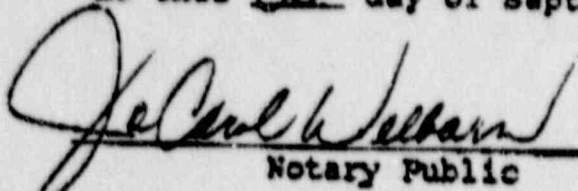
cc: Mr. William T. Russell
Mr. John T. Miller
D. Jane Drennan, Esq.

State of Texas)
County of Harris)

Ralph T. McElvenny, Jr., being duly sworn, deposes and says that he has read the foregoing letter; that to the best of his knowledge and belief, the statements and facts stated therein are true and accurate.


Ralph T. McElvenny, Jr.

Subscribed and sworn to before
me this 22 day of September, 1989.


Notary Public

My Commission Expires 12-06-90.



USR INDUSTRIES, INC.

550 POST OAK BOULEVARD / SUITE 545 / HOUSTON, TEXAS 77027

(713) 622-9171

September 19, 1989

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

RE: In the Matter of Safety Light Corp., et al.
Docket Nos. 030-05980, 05981, 05982, 08335
and 08444

Dear Mr. Russell:

This letter supplements the Answer and Request for Hearing ("Answer") on behalf of USR Industries, Inc. USR Lighting, Inc., USR Chemicals, Inc., USR Metals, Inc. and U.S. Natural Resources, Inc. ("These Respondents") filed on September 8, 1989 to the August 21, 1989 Order Modifying Licenses ("Order"), and requests extension of time in which to make further response thereto.

These Respondents require additional time to answer part of the Order for the following reasons:

(1) To complete arrangements to retain counsel to represent These Respondents in the above captioned matter ("Matter"), as the firm of Hanocho Weisman just days ago withdrew due to inability of These Respondents to pay Hanocho Weisman's substantial legal fees incurred primarily for this Matter and for offensive litigation to determine insurance defense and liability issues;

(2) To insure that International Technology Corporation ("IT Corporation"), Washington, D.C., an

independent technical firm of recognized expertise earlier retained by Hannoch Weisman on behalf of These Respondents and Safety Light Corporation ("Safety Light"), will agree to payment arrangements from a trust fund or otherwise for work performed in connection with the Bloomsburg, Pennsylvania site which is the subject of this Matter;

(3) To settle payment arrangements for prospective charges by IT Corporation for future technical evaluation and advice respecting the site. (Charges presented for work done by IT Corporation in response to this Matter total \$63,001.49, of which \$27,157.11 and \$22,860.98 were accumulated during April and July 1989, respectively);

(4) To negotiate on an emergency basis with representatives of five primary insurance companies which provided assistance of over \$2,000,000 pursuant to a Defense Agreement executed in 1985 between such insurers, Safety Light and These Respondents;

(5) To determine whether and to what extent Safety Light will agree to participate in costs including preparation of documents and work demanded in the Order, and for the costs of ongoing litigation to determine the duty to defend and coverage under the underlying insurance policies; and

(6) To complete the sale by These Respondents of interests in a limited partnership which owns a small commercial office building in Houston, Texas so as to provide immediate corporate liquidity.

Through Hannoch Weisman, These Respondents previously filed the Answer, which addresses most of the issues raised by the Order. A supplement to that Answer ("Supplement") was

drafted by Hannoch Weisman prior to that firm's withdrawal as counsel for These Respondents. These Respondents have redrafted the Supplement and desire that the amended Supplement be reviewed by counsel prior to filing. At the same time, These Respondents believe that, if emergency funding arrangements can be completed promptly, Hannoch Weisman may be willing to continue to represent These Respondents in the offensive litigation against the insurance companies. (While These Respondents paid \$20,000 to Hannoch Weisman during May 1989 and \$16,500 to Hannoch Weisman on June 30, 1989, in the interim the firm delivered additional bills and, as of July 31, 1989 These Respondents owed the firm \$67,857.19.) The need to retain counsel is of utmost concern to These Respondents, especially as These Respondents anticipate that Safety Light may soon be rendered unable to assist with partial reimbursement for the costs of the insurance litigation.

These Respondents are cooperating fully with the NRC. However, as public companies they also have responsibilities to persons including employees, customers, vendors, stockholders, outside financial institutions and with respect to other environmental litigation arising out of alleged occurrences dating back to the era of World War I. These Respondents respectfully submit that NRC demands that - without assistance from insurers - These Respondents pay for a site characterization plan which the NRC estimates will cost approximately \$1,000,000 (plus or minus up to \$300,000) are not realistic. These Respondents are now and throughout their corporate histories have been rather marginal companies. While very small, These Respondents provide meaningful employment in a rural area of Pennsylvania, and are operating profitably on a monthly cash flow basis (before legal fees). Like tens of thousands of other small companies

across the country, These Respondents depend upon liability insurance to cover potentially ruinous occurrences.

These Respondents have sustained losses from operations for many years and have a consolidated net worth of only approximately \$1.6 million. Facing severe difficulties in connection with this Matter, These Respondents intend to complete arrangements respecting sale of the limited partnership interest in the small Houston building as soon as possible.

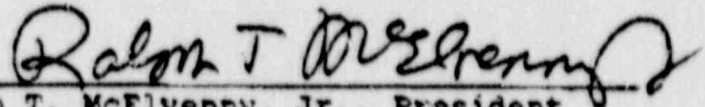
Intense efforts are being made to deal simultaneously with the legal and technical expenses suddenly brought on in response to the Order. These Respondents are in negotiation with primary insurance carriers which executed the 1985 Defense Agreement. Unfortunately, factors including the extreme time limits promulgated in the NRC Orders to date together with the extreme demands for technical evaluation and expenditures have disrupted orderly negotiations with the insurance carriers. These Respondents request that the NRC take notice that the negotiations which led to the successful Defense Agreement executed in 1985 required many months of work, careful application of the special legal expertise of Hannoeh Weisman and a good measure of negotiated "give and take." It is submitted that immediate negotiations with representatives of the insurers (particularly Guy Celucci, Esq. of White & Williams, representing the Insurance Company of North America) are necessary in order to avoid the virtual foreclosure of this vital source of potential assistance.

While These Respondents realize that this request falls near the deadline for response to the Order, Hannoeh Weisman has only recently withdrawn and direct demands from IT Corporation have been asserted only today. Although currently without counsel, these Respondents are making their

best efforts to respond to the Order on a timely basis. In order to retain new counsel to complete the Answer, to deal specifically with arrangements to establish a trust agreement and to move forward with substantive emergency negotiation as summarized above, These Respondents hereby request a sixty day extension of the filing dates set forth in the Order.

These Respondents desire and intend to conduct relationships with the NRC in a cooperative and realistic manner so as to pursue early and satisfactory resolution of the issues raised by the Order. If this letter is deficient in any manner so as to cause the NRC to determine that These Respondents should proceed without counsel please so advise the undersigned by FAX at your earliest convenience c/o (713) 963-8751.

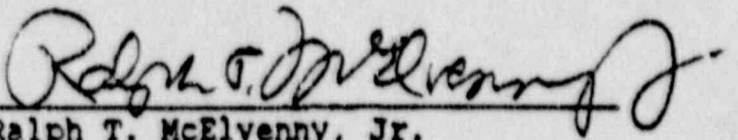
Very truly yours,




Ralph T. McElvenny, Jr., President
For: USR Industries, Inc., USR
Lighting, Inc., USR Chemicals, Inc.,
USR Metals, Inc. and U.S. Natural
Resources, Inc.

State of Texas)
)
County of Harris)

Ralph T. McElvenny, Jr., being duly sworn, deposes and says that he has read the foregoing letter; that to the best of his knowledge and belief, the statements and facts stated therein are true and accurate.


Ralph T. McElvenny, Jr.

Subscribed and sworn to before
me this 20th day of September, 1989.


Notary Public

My Commission Expires 12-06-90



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

SEP. 11 1989

Docket Nos. 030-05980
030-05982

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

USR Industries
ATTN: Mr. Ralph T. McElvenny, Jr.
550 Post Oak Boulevard, Suite 545
Houston, Texas 77027

Gentlemen:

Subject: Plan to Characterize Radioactivity at Bloomsburg Site

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On August 11, 1989, NRC Region I received the Corporations' revised site characterization plan (the August plan), which was dated August 9, 1989. The NRC staff has reviewed this plan and has determined that it satisfies the technical criteria for a site characterization plan given in the March 16, 1989 Order. The August plan states that "specific procedures for performance of this site characterization effort will be generated for approval by the appropriate agencies and personnel." The August plan further states that these specific procedures, or "Work Plan" will be generated two weeks "after the scope of work for characterization of the Bloomsburg site has been approved". The NRC hereby approves the August plan, subject to correction of the deficiencies identified in the Enclosure. Accordingly, and pursuant to 10 CFR 30.32(b) the Work Plan is to be delivered to NRC Region I for review and approval by twenty-one (21) days from the date of this letter. The Corporations may correct certain of the deficiencies by amending the August plan as noted in the enclosure and providing the amended plan to Region I on the same schedule, if they desire. Each technical deficiency in the Enclosure must be addressed.

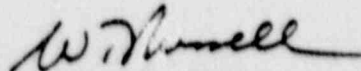
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Section 2.790(a) of the March 16, 1989 Order requires that, within 180 days from the date the Regional Administrator approves the site characterization plan, all Corporations shall jointly submit to the Regional Administrator, NRC Region I, for his review and approval, a single report that contains a complete radiological characterization of the site, with a description of the location and level of all sources of radiation and contamination, including non-radiological hazards. Accordingly, with respect to the portions of this plan approved by this letter, this report must be submitted to NRC Region I within 180 days of the date of this letter. However, it may be impossible to submit some information within 180 days (e.g., the third and fourth seasons of hydrogeologic information). Section X of the March 16, 1989 Order states that the Regional Administrator of the NRC Region I may, in writing, relax or rescind any provision of the Order upon the timely showing, in writing, of good cause. You should promptly identify those items for which compliance with this requirement is impossible and request change of the required submission date.

In accordance with 10 CFR 2.790(a), a copy of this letter and the enclosure will be placed in the NRC Public Document Room.

Sincerely,


William T. Russell
Regional Administrator

Enclosure:

Technical deficiencies in the August 9, 1989 Site Characterization Plan

cc:

Public Document Room (PDR)
Nuclear Safety Information Center (NSIC)
Commonwealth of Pennsylvania

For Safety Light Letter:

Michael O'Donoghue, Esq.
Wister, Pearlstine, Talone, Craig & Garrity
515 Swede Street
Norristown, PA 19401-4880

Wunder, Ryan, Cannon, and Thelen
ATTN: Jane Drennan
1615 L Street NW
Suite 650
Washington, D.C. 20036

For USR Industries Letter:

A. Patrick Nucciarone, Esquire
Hannoch Weisman, P.C.
4 Becker Farm Road
Roseland, New Jersey 07068-3788

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 - b. considering possible methods for well reconditioning or re-completion; and
 - c. considering existing wells in selecting the locations of proposed wells.
10. The Site Characterization Plan dated August 9, 1989, indicates that additional information may need to be collected; however, it does not describe the criteria that will be used for deciding if additional information is needed. The Work Plan must describe the criteria that will be used to determine whether there is a need for: a) additional sampling; b) installation of additional wells; and c) conducting large-scale pump tests. The Work Plan or amended site characterization plan must provide the basis and rationale for the number and location of additional sampling wells. NRC believes that at least five (5) additional wells are needed within the flood plain near the old canal to better define the direction of groundwater flow and extent of contamination. Existing data suggests that contamination is moving oblique or perpendicular to apparent groundwater flow. Therefore, in locating the new wells, consideration should be given to the areas southeast of the disposal pits and offsite. Also, based on regional geological maps and water use in the area, a low shale aquifer is known to underlie the surficial aquifer at the site. In order to evaluate the water and hydrologic qualities of the lower aquifer, at least three (3) wells must be constructed with straddles or well nests to enable measurement of water quality and hydrologic parameters in both aquifers.
11. In locating new wells, the Work Plan must consider inaccuracies in the current conceptual model of site hydrology, especially when data suggest that at least some contamination is not moving in the assumed direction of groundwater flow.
12. The Work Plan must discuss plans for conducting surveys of off-site wells and water users, and include plans for monitoring existing off-site wells.

13. The Work Plan or amended site characterization plan must provide detailed procedures for obtaining and using existing records of regional and site specific information for the hydrogeological characterization. This should include published reports, inventory records, and data from the licensee and the USNRC.
14. The Work Plan or amended site characterization plan must describe plans for investigating regional and local hydrostratigraphy. Site studies should verify that deeper aquifers are not hydrologically connected to the surface aquifer.
15. The Work Plan must describe how data will be evaluated so that immediate hazards to workers or the public will be promptly recognized and an appropriate response developed.
16. The Work Plan must include providing split samples to the NRC for analysis.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

SEP 21 1989

United States Radium Corporation
USR Industries, Inc.
USR Lighting, Inc.
USR Chemical, Inc.
USR Metals, Inc.
USR Natural Resources, Inc.
ATTN: Ralph T. McElvenny, Chairman
550 Post Oak Blvd., Suite 550
Houston, Texas 77027

Dear Mr. McElvenny:

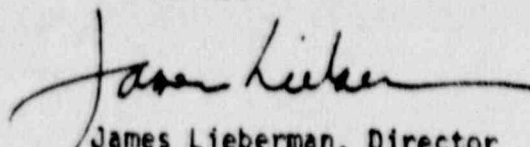
By letter dated September 8, 1989, Mr. A. Patrick Nucciarone, on your behalf, answered the Commission's August 21, 1989 Order which was immediately effective and required, among other things, that a trust agreement be submitted by September 20, 1989 to establish over 12 months a \$1,000,000 fund to implement a site characterization plan at your former Bloomsburg facility and for necessary immediate remedial action. The answer sought a hearing and a stay of the effectiveness of the Order pending the results of the hearing.

On September 19, 1989, you supplemented that answer with a letter that describes your difficulties in complying with that Order and seeks a 60 day extension of the filing dates in the Order.

We note that you have known since the late 1970's of the need to clean up the Bloomsburg facility. If the NRC were to grant your request, there would be no assurance that the funding requirements of the Order would be met. Therefore, your request for a 60 day extension is denied and the Order remains effective.

Within the next few weeks we intend to consider what enforcement action NRC should take to obtain compliance with the Order. Enforcement action could include referring this matter to the Department of Justice. The efforts made by USR to meet the requirements of the Order, including the required funding, will be considered in determining what enforcement action will be taken. In this regard, we encourage you to negotiate a trust agreement and obtain full funding of the agreement by your resources, insurance funds, and Safety Light.

Sincerely,


James Lieberman, Director
Office of Enforcement

cc: Jack Miller
D. Jane Drennan, Esq.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

OCT 11 1989

United States Radium Corporation
USR Industries, Inc.
USR Lighting, Inc.
USR Chemicals, Inc.
USR Metals, Inc.
USR Natural Resources, Inc.
ATTN: Ralph T. McElvenny, Chairman
550 Post Oak Blvd., Suite 543
Houston, Texas 77027

Dear Mr. McElvenny:

This responds to your letter of September 22, 1989, in which you renewed your request for an extension of time in which to file the trust agreement and otherwise comply with the Order issued August 21, 1989 by the NRC. Your latest request sought an extension of 30 days, the same amount of time that was granted to Safety Light Corporation. We have also received Mr. Charnoff's and Mr. Shapar's letter of October 5, 1989 advising of their representation and seeking additional time.

These letters describe the various problems that you face. However, the issues that you raise are similar to those raised in your letter of September 20, 1989. Unlike Safety Light Corporation, USR Industries has not made any specific substantive corporate commitments as to funding or as to how or when the Order will be satisfied. For example, Safety Light provided specific information describing the steps it is taking to finalize a trust agreement and made specific firm commitments to establish a trust account, make an initial deposit of 50% of the prior month's profits, and thereafter to commit 50% of its monthly profits to the trust. While these commitments, when satisfied, will not necessarily constitute full compliance with the August 21, 1989 Order, they do constitute good cause for Safety Light's requested extension. Because you have not made satisfactory firm commitments, you have not shown good cause for granting the requested extension.

It should be emphasized that the August 21, 1989 Order was immediately effective, your requests for an extension of time do not affect the immediate effectiveness of the Order, and the immediate effectiveness determination in that Order constitutes final agency action within the meaning of the Administrative Procedure Act and the Commission's regulations. Accordingly, you have 60 days from August 21, 1989, in which to file a petition for review of that Order in the appropriate U.S. Court of Appeals and the NRC does not have authority to change that deadline.

It should be clear to you that prompt action on your part is required to fully fund the site characterization plan. The NRC will consider the speed with which you develop and submit a trust agreement and commence setting aside funds, and the amount thereof, in determining appropriate enforcement action, including possible referral to the Department of Justice. In that regard, we encourage

USR Industries

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OCT 11 1989

you to take every possible step to fund and implement the site characterization plan. Likewise, we will consider any information your attorneys may wish to bring to our attention by way of an Answer to the Order; such consideration on our part, of course, does not stay the immediate effectiveness of the Order or relax its requirements.

Original Signed by
James Lieberman

James Lieberman, Director
Office of Enforcement

cc: Mr. Jack Miller
D. Jane Drennan, Esq.
G. Charnoff, Esq.