

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)

Safety Light Corporation)

United States Radium Corporation)

USR Industries, Inc.)

USR Lighting, Inc.)

USR Chemical, Inc.)

USR Metals, Inc.)

U.S. 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)

MEMORANDUM OF LAW IN SUPPORT OF THE MOTION OF
USR INDUSTRIES, INC., USR LIGHTING, INC.,
USR CHEMICAL PRODUCTS, INC., USR METALS, INC.,
AND U.S. NATURAL RESOURCES, INC. TO DISMISS THE
ORDERS ISSUED MARCH 16, 1989 AND AUGUST 21, 1989

I. Introduction

USR Industries, Inc., USR Lighting, Inc., USR Chemical Products, Inc., USR Metals, Inc. and U.S. Natural Resources, Inc. (collectively, "USR Industries") submit this memorandum of law in support of their motion to dismiss the immediately effective orders issued March 16, 1989, and August 21, 1989, by the Nuclear Regulatory Commission Staff ("Staff") against USR Industries and other parties named in the above-captioned action.

II. Procedural Background

On March 16, 1989 the Staff issued an Order Modifying Licenses (Effective Immediately) and Demand for Information (the "March Order"). The March Order required all named parties, including USR Industries, to prepare plans for site characterization and decontamination of the site of Safety Light Corporation ("SLC") in Bloomsburg, Pennsylvania (the "Bloomsburg site") and to specify the amount of funds that each party would provide for implementation of the plan.^{1/} The March Order also alleged that SLC and USR Industries had misled the Nuclear Regulatory Commission ("NRC") in certain prior communications and requested information on the corporate structure and relationship between USR Industries and SLC.

On April 17, 1989, USR Industries filed an answer and request for hearing in response to the March Order.^{2/} The answer raised questions about, among other things, the NRC's

^{1/} In 1983, USR Industries established an ownership interest in Pinnacle Petroleum, Inc., a publicly traded oil and gas exploration and production company based in Denver, Colorado. Pinnacle Petroleum, Inc. is neither an NRC licensee nor does it conduct active operations at the Bloomsburg site. By Order dated April 24, 1989, the NRC dismissed Pinnacle Petroleum, Inc. from this action.

^{2/} At the prehearing conference held October 19, 1989, the Board requested that USR Industries' current counsel review pleadings by USR Industries' former counsel to determine whether the new counsel take a different position. USR Industries' response to that request will be filed simultaneously with its motion to dismiss.

jurisdiction over USR Industries and the appropriateness of an immediately effective order. In addition, in response to the March Order, SLC took significant remedial measures at the Bloomsburg site, including erecting an eight foot fence topped with barbed wire around the perimeter of the facility; validating the location of the barrier with NRC personnel; posting warning signs throughout the facility at restricted areas; initiating a modified training program in accordance with NRC regulations; and continuing the SLC monitoring programs both inside and outside the facility. Transcript of July 6, 1989 Enforcement Conference at 11-14.

On June 2, 1989, a Joint Characterization Plan ("JCP") prepared by IT Corporation, a respected, independent technical consultant well known to the NRC, was submitted in partial response to the March Order. Given the limited available financial resources, the proposal focused on potential real problem areas at the site, rather than a broad characterization plan for which the necessary financial resources were not available. In response, the NRC asserted that the JCP did not satisfy the March Order.

While USR Industries' request for a hearing was pending on all issues related to the March Order, however, the Staff issued a second immediately effective Order dated August 21, 1989 (the "August Order"), requiring the parties to establish a one million

dollar trust fund to finance a broad plan to characterize the extent of contamination at the Bloomsburg site.^{3/} The NRC issued the August Order "because of the apparently limited financial resources of Safety Light Corporation, U.S. Radium Corporation, USR Industries, Inc. and their successor corporations and subsidiaries." NRC Office of Governmental and Public Affairs Press Release August 22, 1989.^{4/} On September 8, 1989, USR Industries filed a timely answer and request for hearing in response to the August Order. That answer again questioned whether the NRC has jurisdiction over USR Industries and the appropriateness of making the August Order immediately effective.^{5/}

^{3/} At the discretion of NRC Regional Administrator, that amount may be raised to \$1.3 million. See August Order at 12.

^{4/} Moreover, the Staff is well aware that USR Industries has no financial means of complying with the August Order. In the August Order, the Staff states that "USR Industries is presently running at a deficit." August Order at 5. In fact, for the last three years USR Industries has run at a deficit. If USR Industries were to comply with the August Order as presently drafted, it would be required to deposit between \$50,000 and \$100,000 per month over the next year into a trust fund. The result of that order is likely bankruptcy. For USR Industries, who has legitimate legal claims regarding the lack of NRC jurisdiction over the corporation and its subsidiaries, to contribute to a trust fund at this point would be economically crippling and could lead to the destruction of the business.

^{5/} In addition, in order to preserve its right to judicial review under the Hobbs Act, USR Industries filed a Petition for Review of the August Order in the United States Court of Appeals for the District of Columbia Circuit on October 19, 1989.

In the pre-hearing conference held October 19, 1989, USR Industries challenged both orders on several grounds, including:

- (1) whether the NRC has jurisdiction over USR Industries which is not now, nor has ever been, a named licensee at the site;
- (2) whether, in or around 1980, there was any regulatory requirement for prior NRC approval of a spin off of non-nuclear corporate assets to corporate shareholders;
- (3) whether the NRC consented to the change of ownership of stock in Safety Light Corporation, the licensee, by taking no action for five years, or more, after receiving notice, despite repeated physical inspections of the Bloomsburg site; and
- (4) whether the NRC had sufficient basis to make the March and August Orders immediately effective.^{6/}

^{6/} In addition, USR Industries raised other significant challenges to the March and August Orders at the prehearing conference, which are better addressed in an evidentiary hearing, if the Board determines that the NRC has jurisdiction over USR Industries. Specifically, the March and August Orders raise the following questions:

- (1) Does the NRC have the authority to order a site characterization study and the implementation of a decontamination program to make the site suitable for unrestricted access prior to the termination of the license;
- (2) Is the characterization study ordered by the NRC in the March Order unreasonably extensive and expensive; and
- (3) Is it reasonable for the NRC to require SLC, the licensee, and USR Industries to set

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In a telephone prehearing conference on October 27, 1989, the Board suspended the immediate effectiveness of the August Order pending its determination of a motion for stay filed by USR Industries and its determination of the Staff's challenge to the Board's jurisdiction to issue such a stay. On November 6, 1989, USR Industries and the Staff separately briefed the issue of whether the Board had jurisdiction to impose a stay. Both USR Industries and the Staff concluded that the Board had jurisdiction.^{2/}

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up a trust fund and immediately fund it, when it is undisputed that SLC and USR Industries are not financially capable of committing significant funds to complete an extensive site characterization contemplated by the March and August Orders.

^{2/} On November 6, 1989, USR Industries also submitted a motion to stay the August Order. As fully set forth in USR Industries' motion to stay, a stay of the August Order pending final disposition of the issues of NRC jurisdiction is appropriate because (1) USR Industries is likely to prevail on the merits of its case presented in this brief regarding the lack of jurisdiction of the NRC and the inappropriateness of an immediately effective order when there is no immediate health or safety threat at the site; (2) because USR Industries will be irreparably injured unless a stay is granted; (3) because the granting of a stay would not harm the NRC or the public; and (4) because the public interest lies with granting a stay.

III. Discussion

USR Industries, Inc. was established in 1980 as a holding company to own diversified interests. At that time, USR Industries, Inc. had one subsidiary, USR Industries Merger Company. Pursuant to an Agreement and Plan of Merger, on August 20, 1980, United States Radium Corporation ("USRC"), an NRC licensee, merged with USR Industries Merger Corporation and USRC became a wholly owned subsidiary of USR Industries, Inc. USRC, the NRC licensee, remained intact and fully operational as a separate corporate entity.

Following the corporate restructuring and pursuant to the Agreement and Plan of Merger, USRC was renamed Safety Light Corporation ("SLC"). By letter dated January 21, 1981, the NRC was notified that the name of the entity holding the license had been changed from U.S. Radium Corporation to Safety Light Corporation. A copy of the January 21, 1981 letter is attached hereto as Exhibit A. In addition, customers and creditors were simultaneously notified in writing. The change in name did not, however, disrupt the ongoing licensed operations of USRC; nor did it effect a change in technical or management personnel.

This transaction was described in a detailed proxy statement filed with the Securities and Exchange Commission ("SEC") and distributed to shareholders and the public, consistent with SEC

regulations. The transaction was approved by the shareholders on August 6, 1980.

Consistent with USR Industries' business plan to decentralize and diversify its operations, the assets and related liabilities of the chemical, lighting and metal products operations were transferred to three other USR Industries subsidiaries, i.e., USR Chemical Products, Inc., USR Metals, Inc. and USR Lighting, Inc. As a result, each subsidiary operated a distinct product line. In addition, a new subsidiary called U.S. National Resources, Inc. was established in contemplation of future operations, although it has never been active.^{8/} None of the new subsidiaries ever possessed or utilized radium or any substance regulated by the NRC.^{9/} SLC, the successor to, and the renamed USRC, continued to manufacture and distribute the nuclear-regulated safety lighting products.

In 1982, USR Industries sold one hundred percent of its stock interest in SLC to a group of investors led by its operating management acting through Lime Ridge Industries.^{10/} This

^{8/} Both U.S. Natural Resources and USR Chemicals are inactive corporations.

^{9/} USR Metals is a tenant of approximately 30,000 square feet of space at the Bloomsburg site. USR Metals' operations are, however, unrelated to SLC's regulated operations at the Bloomsburg site.

^{10/} Lime Ridge Industries is named by the Staff as a party in this proceeding. However, under the terms of the Stock

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sale of stock also did not affect the management or technical personnel or the operations at the site. SLC remained the same operating entity.

By letter dated November 23, 1983, SLC formally advised the NRC of the stock purchase. A copy of the November 23, 1983 letter is attached hereto as Exhibit B. The Staff did not respond to that letter, nor did it object to the validity of the stock sale and purchase until it did so in April 1988. In fact, between the time of the notification to the NRC in 1980 of the licensee's name change to SLC, until 1988, the NRC communicated solely with SLC as the licensee for the Bloomsburg site. Throughout this period, the NRC inspectors continuously made regularly scheduled and unscheduled visits to the site as the NRC deemed necessary or desirable.

A. The NRC Has No Regulatory Jurisdiction Over USR Industries And Its Subsidiaries.

USR Industries has never been a licensee of the NRC. Rather, USRC and its successor, Safety Light Corporation, have

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Transfer Agreement signed in connection with the sale of SLC stock, Lime Ridge Industries was dissolved 180 days after the transfer. Thus, Lime Ridge Industries is not an existing corporate entity.

been the sole consecutive licensees at that site.^{11/} In this proceeding, however, the Staff has attempted to establish NRC jurisdiction by (1) taking issue with publicly announced, SEC reviewed corporate transactions that are unrelated to licensed operations and unregulated by the NRC; (2) requiring USR Industries to accept the liabilities of its former subsidiary, contrary to long-standing principles of corporate law; and (3) raising questions about SLC's stock transfer about which NRC was notified over five years ago. None of these positions has any basis in fact or law.

1. An NRC Licensee May Transfer Non-Regulated Assets Without NRC Approval.

First, the Staff wrongly suggests that the reorganization in 1980 was improper, and that it was improper of USRC, SLC and USR Industries not to notify the NRC of specific aspects of the

^{11/} The issue of which corporation is USRC's successor has been considered before. On August 20, 1984, SLC, USR Industries, USR Chemicals, USR Metals, USR Lighting and U.S. Natural Resources sued numerous insurance companies seeking a declaratory judgment that the insurance companies must defend and indemnify them for any liability arising from a site in Orange, New Jersey operated by USRC between 1917 and 1926. USRC sold the property in 1943. By order dated December 19, 1984, in that action, the New Jersey District Court specifically determined that SLC was a successor corporation to USRC. A copy of that order is attached hereto as Exhibit C. Later in that proceeding, moreover, the court denied a motion for summary judgment made by the insurance companies requesting a ruling that USR Industries was USRC's successor. A copy of that order is attached hereto as Exhibit D.

restructuring.^{12/} The Staff apparently takes the untenable view that an NRC licensee may not sell its non-regulated assets without prior NRC approval. However, the Staff cites no NRC rule, regulation or order that requires a material licensee to give prior notice - or any notice at all - to the NRC before it sells or spins-off any non-nuclear related assets to its stockholders. There were, indeed, no such requirements.^{13/} There was, moreover, full and timely disclosure to cognizant regulatory agencies, including the SEC. In addition, following SEC review, detailed descriptions of the restructuring were disseminated to numerous stockholders. The transfer of USRC's non-regulated assets to other entities did not in any way grant the NRC jurisdiction over such entities. To conclude otherwise would result in the NRC gaining regulatory jurisdiction over all entities to

^{12/} The basis for the decision of USRC's management to create USR Industries and to transfer non-regulated assets to separate subsidiaries was sound business judgment: to prevent business collapse. The transfer of non-regulated assets to separate operating subsidiaries was intended to result in a more efficient, decentralized corporate structure in which management of each subsidiary was to be directly responsible for all aspects of its operations. Profitability was to be stimulated by direct profit-center accounting, management responsibilities and production controls. Moreover, the new structure was intended to limit the rights and liabilities associated with and employed by each business line. The plan is consistent with normal corporate business practice.

^{13/} Even if there had been such requirements, we find it difficult to imagine what possible justifiable action could have been taken by the NRC in connection with a lawful and sensible business arrangement of this sort.

whom its licensees donate or contribute any non-regulated assets of value.

2. USR Industries Is Not Responsible For The Liabilities Of Its Former Subsidiary.

In its opposition to USR Industries' motion to stay, the Staff attaches great significance to the fact that in the corporate restructuring, shareholders of USRC common stock became shareholders of USR Industries' stock on an initial share-for-share basis. That transaction did not affect USRC as an ongoing independent corporate entity. The Staff admits that USRC remained a separate corporation, incorporated under the laws of Delaware. Opposition to Motion to Stay at 5. The fact is that USRC remained an independent operating corporate entity. Effective management and technical control of USRC at the Bloomsburg site was unchanged.

USR Industries has never been a licensee at the Bloomsburg site, has never possessed NRC licensed material, and is not a successor to the former licensee, USRC. At most, USR Industries was the parent corporation of USRC, renamed Safety Light, for a brief period between 1980 and 1982. It is a well-settled principle of the law of corporations that "[u]nder ordinary circumstances, a parent corporation will not be liable for the obligations of its subsidiary." 1 Fletcher Cyclopedia of Corporations, § 33 at 472 (1983) ("the mere fact that there exists a parent-subsidiary relationship between two corporations does not

make the one liable for the torts of its affiliate") and 1989 Cum. Supp. § 43 at 238 ("accordingly, the separate existence of separate sister corporations should not be disregarded solely because the assets of one are not sufficient to discharge its obligations") It is clear that "[a] parent corporation, like an individual shareholder, ordinarily is not liable for the debts of a subsidiary beyond parent's investment in the subsidiary. It has the same protection of limited liability that an individual shareholder would have . . ." Olympic Equipment Leasing Co. v. Western Union Telegraph Co., 786 F.2d 794, 798 (7th Cir. 1986). See also Muniz v. National Can Corp., 737 F.2d 145, 148 (1st Cir. 1984) ("The parent-shareholder is not responsible for working conditions of its subsidiary's employees merely on the basis of a parent-subsidiary relationship. A parent corporation may be liable for unsafe conditions at a subsidiary only if it assumes a duty to act by affirmatively undertaking to provide a safe working environment at the subsidiary.") Thus, simply by its ownership of an NRC licensee during a two-year period, over seven years ago, USR Industries did not assume its former subsidiary's liabilities. Moreover, the NRC has no basis to pass liability for the Bloomsburg site to USR Industries' current subsidiaries,

who were merely former "sister" subsidiaries for a two-year period.^{14/}

The NRC has no basis for jurisdiction over USR Industries simply because it owned SLC between 1980 and 1982. USR Industries was never an NRC licensee and never was in possession of by-product, source, or special nuclear material. The Staff's attempt to construct jurisdiction through a short-lived corporate reorganization has no basis in fact or law.

3. The Sale Of SLC Stock To Its Executive Officers Did Not Require NRC Approval.

Finally, the Staff erroneously suggests that the sale of stock to SLC's executive officers in 1983 constituted an improper transfer of the license and that NRC approval was required prior thereto. This is simply incorrect. The entity holding the license, prior to the sale of the stock in SLC and subsequent thereto, was and remained the same legal entity--SLC. The

^{14/} The Staff cites a recent decision by the United States District Court for Rhode Island which determined under the particular facts of that case that a parent corporation was responsible under the Comprehensive Environmental Response Compensation and Liability Act for the liabilities of its subsidiary. United States v. Kayser-Roth Corporation, 1989 U.S. Dist. LEXIS 12906 (October 11, 1989). The facts in Kayser-Roth are significantly different than those in this proceeding. In Kayser-Roth, the subsidiary, who was not even a party to the action, had been dissolved ten years earlier; and the parent, in receiving the subsidiaries' assets, assumed "all liabilities and obligations" of the subsidiary. In this proceeding, SLC, USR Industries' former subsidiary, and the current NRC licensee, is an ongoing, active NRC-licensed corporation.

corporate executives and SLC personnel and their technical qualifications were unchanged. Thus there was no transfer of effective control of the licensed material or the licenses. Virtually all publicly owned entities holding NRC licenses have their stock bought and sold regularly without any assertion that the NRC must give each such transaction its prior approval. There is no transfer of effective control of a license caused by such transactions, and there was none here.

The NRC first issued guidance to its licensees that such stock sales could require prior NRC approval in an Information Notice issued, interestingly, just nine days prior to the March Order, and five years after SLC notified the NRC of the sale of its stock to its executive officers.^{15/} However, even if prior approval is now required, the concerns raised in NRC Information Notice No. 89-25 are satisfied in this case. Specifically, the Office of Nuclear Material Safety and Safeguards stated

Although it is not the intent of NRC to interfere with the business decisions of licensees, it is necessary for licensees to provide timely notification to NRC whenever such decisions could involve changes in the corporate structure responsible for management,

^{15/} Even the Staff does not construe the conveniently issued NRC Information Notice No. 89-25 to provide that a corporation must notify the NRC of the spin-off of non-nuclear assets of the corporation to its stockholders. Such notification would impose an unreasonable and unnecessary burden on licensees. Thus, the restructuring of USRC's non-regulated operating divisions in 1980 is unaffected by the Information Notice.

oversight, control or radiological safety of licensed materials. The purpose of such notification is to allow NRC to assure that radioactive materials are possessed, used, owned or controlled only by persons who have valid NRC licenses; materials are properly handled and secured; persons using such materials are capable, competent, and committed to implement appropriate radiological controls; and public health and safety are not compromised by the use of such materials.

NRC Information Notice No. 89-25 at 1-2 (emphasis added).

The Staff does not raise any of these concerns in connection with the Bloomsburg site. First, the NRC does not even question that the SLC license is valid. SLC and its predecessor, USRC, have held valid licenses at the Bloomsburg site since 1956. Second, the NRC does not contend that the materials at the Bloomsburg site are not properly handled or secured. Any issue of alleged contamination relates to a residual build-up rather than current safety measures. Third, the NRC has cited no evidence that SLC personnel are not capable, competent and committed to implement proper radiological controls. In its letter to the NRC on November 11, 1983, SLC stated quite clearly that 100% of its stock had been sold to a group of three SLC executive officers. In addition, SLC stated

Safety Light Corporation is the corporate entity which has full corporate power to carry on its business and is responsible for the properties and assets now owned and operated by it.

See Exhibit B at ¶ 3. There was no change in technical qualifications here; it was the existing management team that acquired the stock interests. Thus, there was no transfer of effective control of the license. In addition, the Staff repeatedly stated at the prehearing conference on October 19, 1989, that SLC was fully cooperative and committed to attempting to resolve the concerns raised in the March and August Orders. Finally, the Staff does not contend that the public health and safety are compromised by the use of the licensed materials. Rather, the Staff unequivocally stated at the prehearing conference that it considers the licensee authorized to continue operations at the site.^{16/}

Thus there is no basis for NRC jurisdiction over USR Industries. USRC, and its successor, SLC, have been the sole

^{16/} In any event, the Information Notice is merely a statement of the Staff's views, and without binding legal effect. Even if the NRC had issued a general statement of policy, it would "not create a 'binding norm' The agency cannot apply or rely upon a general statement of policy as law because a general statement of policy only announces what an agency seeks to establish as policy When the agency applies the policy in a particular situation, it must be prepared to support the policy, just as if the policy statement had never been issued." Pacific Gas & Electric Co. v. Federal Power Com'n, 506 F.2d 33, 38 (D.C. Cir. 1974) cited with approval in American Hospital Association v. Bowen, 834 F.2d 1037, 1046 (D.C. Cir. 1987). In Pacific Gas & Electric, the Court concluded, "[c]onsequently, a policy judgment expressed as a general statement of policy is entitled to less deference than a decision expressed as a rule or an adjudicative order." Pacific Gas & Electric, 506 F.2d at 40.

consecutive licensees at the Bloomsburg site. The Staff's concern about the transfer of non-regulated corporate assets is the proverbial "red-herring," because that type of transfer is not subject to any NRC rule, regulation or order. It cannot be construed as impermissible or improper in order to obtain jurisdiction for the purposes of this proceeding. Second, simply because USR Industries was the SLC's parent between 1980 and 1982, it did not thereby assume SLC's obligations and liabilities. To the contrary, well established principles of corporation law provide otherwise. SLC is now and has always been a separate and distinct corporate entity. Finally, the sale of SLC stock to its executive officers in 1982 was not a transaction subject to NRC approval: managerial and technical control of licensed operations remained unchanged. The NRC had no jurisdiction over the stockholders in SLC prior to the 1982 sale of the stock, and certainly the sale of the stock gave it no greater jurisdiction over the selling stockholder, i.e., USR Industries.

B. The NRC Has Known Of The Name Change To SLC And Subsequent Stock Transfer For Over Five Years, And By Its Inaction Acquiesced In It.

As a result of the notice by SLC that the name of the licensee had changed from U.S. Radium Corporation to Safety Light Corporation, the NRC changed the name of the licensee to SLC on all licenses for the Bloomsburg site. The NRC communicated solely with SLC on matters regarding the licensed activity for seven years. In addition, the NRC directed all communication

including inspection reports regarding regularly scheduled or unannounced physical inspections of the Bloomsburg site only to SLC, until April of 1988, when for the first time, without any prior contact or notice, it addressed a letter to USR Industries.

In his affidavit submitted with the opposition to USR Industries' motion to stay, even Francis M. Costello, "the principal inspector from 1980 through 1989 at the United States Radium (U.S. Radium) and Safety Light Corporation site in Bloomsburg, Pennsylvania," Costello Affidavit at ¶ 3, refers to USRC and Safety Light as licensees at the Bloomsburg site. During that nine-year period, Mr. Costello never once communicated with USR Industries in connection with the Bloomsburg site.^{17/}

The NRC was aware of the sale of USR Industries' stock interest to its operating management for approximately five years and, de facto, acquiesced in it, although the Staff cites no NRC rule, regulation or order requiring approval or acquiescence. As stated above, SLC advised the NRC of the purchase of the stock interests in SLC on November 23, 1983. Based on the documents in our possession, it appears that the NRC conducted inspections at the Bloomsburg site in June and November 1986. The inspection report that first raised this issue apparently was not written up

^{17/} While USR Industries has no reason to doubt that Mr. Costello was the inspector at the Bloomsburg site, it should be noted that the copy of the affidavit submitted to USR Industries has been neither signed nor notarized.

until March 22, 1988, and was not mailed to USR Industries until April 20, 1988, approximately 16 months after the second inspection. The 1988 letter was the first NRC communication with USR Industries regarding the Bloomsburg site.

Moreover, even if USR Industries somehow was subject to NRC jurisdiction through its stock interest in SLC, the NRC received notification of the sale of stock to SLC's executive officers, accepted that notification, acted in conformance with the transfer for over five years, and thereby acquiesced in the transfer. By its acquiescence the NRC has relinquished any jurisdiction it arguably may have had over USR Industries between 1980 and 1982 as a result of the 1980 reorganization. Thus, the Staff's attempt somehow to assert NRC jurisdiction over USR Industries in connection with the 1982 stock sale is untenable. That transfer, about which the NRC was fully informed, and as to which it acted without disapproval for five years, cannot be found to create jurisdiction over the former parent.^{18/}

The Staff has unreasonably delayed its action on the alleged violation, i.e., the supposedly unauthorized transfer of the license, in a manner that clearly prejudices USR Industries.

^{18/} Ironically, the Staff seems to argue both that the stock transactions in 1980 somehow created NRC jurisdiction over USR Industries because of the failure to either notify or obtain NRC approval, and that the stock transactions in 1982 did not relinquish NRC jurisdiction because of the failure to obtain NRC approval.

Under analogous circumstances, federal courts have construed section 706 of the Administrative Procedure Act, 5 U.S.C. § 706, to authorize a reviewing court to dismiss actions brought by an agency, upon a finding of unreasonable delay on the part of the agency, which causes prejudice to the defendant. See EEOC v. Exchange Security Bank, 529 F.2d 1214, on remand, EEOC v. First Alabama Bank of Birmingham, 440 F. Supp. 1381, aff'd mem., 611 F.2d 132 (5th Cir. 1980); EEOC v. Bell Helicopter Co., 426 F. Supp. 785 (N.D. Tex. 1976); EEOC v. Moore Group, Inc., 416 F. Supp. 1002 (N.D. Ga. 1976). Under this interpretation of section 706, in order for a court to dismiss a judicial action based on delayed administrative action "the aggrieved party must show that it was prejudiced by the delay." Panhandle Cooperative Association, Bridgeport, Nebraska v. Environmental Protection Agency, 771 F.2d 1149, 1153 (8th Cir. 1985) citing Estate of French v. Federal Energy Regulatory Commission, 603 F.2d 1158, 1167 (5th Cir. 1979); see also Exchange Security Bank, 529 F.2d at 1216 citing Chromcraft Corp. v. EEOC, 465 F.2d 745 (5th Cir. 1972) ("In reversing, this Court read the Congressional mandate of the Administrative Procedure Act, 5 U.S.C.A. § 706, which limits judicial review of agency action, to require a showing of

prejudice before agency action can be set aside for its lack of punctuality.")^{19/}

The Staff's inaction for over five years is patently unreasonable and seriously prejudices USR Industries. In reliance on the NRC's lack of any objection whatsoever to SLC's notification of the sale of stock and the NRC's consistent and uninterrupted communication with only SLC, USR Industries has completely divorced itself from nuclear regulated operations for almost six years. USR Industries had invested its capital in non-regulated areas; the vast majority of its operations are located thousands of miles from the Bloomsburg site; it has not been regularly informed by the NRC of inspections at the Bloomsburg site, and until this proceeding it had no occasion to employ counsel with expertise in NRC matters.

In addition, in reliance on the lack of response from the NRC to SLC's notification of the stock transfer and the NRC's consistent and uninterrupted communication with only SLC, USR Industries has filed at least five United States income tax returns that do not mention income or loss from the Bloomsburg

^{19/} Other federal circuits have similarly interpreted section 706(1). See Houseton v. Nimmo, 670 F.2d 1375, 1378 (9th Cir. 1982) ("A court may find agency inaction the equivalent of a dismissal or denial of the requested agency action only when the delay is unreasonable and results in serious prejudice to one of the parties"); see also City of Camden, New Jersey v. United States Department of Labor, 831 F.2d 449, 451 (3d Cir. 1987) citing Panhandle Coop Ass'n, Estate of French, and Chromcraft.

site. Similarly, USR Industries has made five or six annual reports to the SEC and its stockholders that do not mention its alleged responsibility for the separate regulated operations of its former subsidiary, or USR Industries' alleged status as a licensee.

The Staff would seem to say that all of these public filings are fraudulent. Even if the Staff were factually or legally correct, which it is not, USR Industries' reliance on the NRC's actions over the last five years could subject it to significant civil, if not criminal, penalties. Thus, USR Industries is clearly prejudiced by the Staff's raising questions about the stock transfer over five years after it was notified of that transfer. The Staff's failure to raise any objection to the stock transfer after express notification thereof, is clearly an acquiescence in the stock transfer to the SLC executive officers.

C. The Staff Had Insufficient Basis To Make Either The March Order Or The August Order Immediately Effective Pursuant to 10 C.F.R. § 2.204.

1. There Is No Public Health or Safety Threat At The Bloomsburg Site.

Section 2.204 provides that orders may be made immediately effective without affording the parties an opportunity for a hearing, "when the Commission finds that the public health, safety or interest so requires." This is not a case in which the public health, safety or interest requires an order that is immediately effective. The NRC has not cited a particular or

immediate threat to the public, nor is there one. To the contrary, the Bloomsburg site does not pose an immediate public health or safety threat, and SLC's extensive monitoring system does not indicate that there is a public health safety threat at the site.^{20/}

In Consumers Power Co. (Midland Plant, Units 1 and 2), CLI-73-38, 6 A.E.C. 1082 (1973), the Atomic Energy Commission ("AEC") discussed the authority of the Director of Regulation to issue an immediately effective suspension of a construction permit when the public health and safety so require. The AEC termed such summary administrative action "a drastic procedure." 6 A.E.C. at 1083 citing Fahey v. Mallonee, 332 U.S. 245, 253 (1947); Ewing v. Myttinger & Casselberry, Inc., 339 U.S. 594, 599 (1950); Davis, Administrative Law, § 7.08.

In Consumers Power, the Commission stated

Such action, unless warranted by compelling safety considerations, can have serious consequences. Unwarranted suspension of construction of a needed generating plant is contrary to the public interest. Moreover, a period of enforced suspension of construction may result in lay-offs and consequent hardship for employees at the site. And, obviously, an extended suspension may generate

^{20/} Moreover, at the time the Staff issued the August Order, the March Order was already the subject of a public hearing and all parties were working toward a site characterization plan that was mutually satisfactory. Given that these procedures were in progress, it was unnecessary and unreasonable to issue the August Order, which requires immediate funding for the site characterization at issue.

substantial additional costs which the consumer may ultimately bear through increased electricity rates.

6 A.E.C. at 1083 (emphasis added).^{21/}

The Staff has indicated that no immediate health and safety risk exists. First, by letter dated April 20, 1988, the NRC requested, among other things, "a decommissioning plan for the site which will permit the release of the site for unrestricted use The decontamination of the site may be gradual, extending over a period of ten years, but should be scheduled to begin within twelve months." April 20, 1988 letter to USR Industries, at Appendix B. (emphasis added) A copy of the April 20, 1988 letter is attached hereto as Exhibit F. The NRC does not specify any change in circumstance, nor is there any that would require the March or August Orders to be made immediately effective when the circumstances surrounding the April 1988 letter contemplated such a long-term resolution to decontamination problems.

To the contrary, SLC apparently has conducted operations at the site in conformance with NRC requirements. As recently as April 25, 1989, SLC was found to be free of violations by the NRC

^{21/} The "immediately effective" order in this proceeding would similarly "result in lay-offs and consequent hardships for employees at the site." The town of Bloomsburg relies heavily on Safety Light Corporation for its economic basis. The baseless "immediately effective" order could financially cripple the community.

inspectors. Moreover, Jack Miller, President of SLC, testified at the July 6, 1989 Enforcement Conference that SLC had extensively monitored the site, and the NRC had found no safety problems for over ten years:

We, Safety Light, contracted a radiation management company, Meisner & Earl Hydrogeologists, to erect some 20 bore holds [sic] on site. Those bore holes were positioned in locations that the hydrogeology study indicated are the main pathways of underground water flow.

We do have 10 years of data that has consistently said to me as President of Safety Light, that there is no movement within the, no significant movement, within the concentrations of these bore holes I know the inspectors over the last ten years have looked at the information closely. I have not heard to the contrary that anything indicating that my opinion was wrong on the movement, the migration in or out of these have hole samplings.

. . . .

The other thing that we have done for the last ten years at Safety Light is gone out and tested water sampling in the well water in the community offsite for tritium. What we have consistently found is, I think background is two or three thousand pico-curies per liter for this area? At times some of these well water samples have indicated four or five thousand. Again, well below the EPA standard of 20,000 pico-curies. July 6, 1989 Enforcement Conference Transcript at 22-23.

There is, therefore, no evidence of adverse safety concerns to support an order requiring that site characterization studies and funding be immediately effective.

Even as recently as November 16, 1989, Glen L. Sjoblom, who is currently the Deputy Director of the Division of Industrial and Medical Nuclear Safety of the Office of Nuclear Material Safety and Safeguards and who was the Director of the Division of Radiation Safety and Safeguards in the NRC Region I office in King of Prussia, Pennsylvania, admitted that there was no immediately public health or safety threat at the site:

Based on my current knowledge, I believe that members of the public are not in current danger from the site contamination, so long as the current controls remain in effect and barring information of the contrary developed during site characterization.

Affidavit of Glen L. Sjoblom at ¶ 18, attached as Exhibit 6 to the Staff's Opposition to Motion to Stay. Mr. Sjoblom's statement could apply to the site of any Part 30 licensee. Neither he nor the Staff has demonstrated any basis to single out the Bloomsburg site. Moreover, there is no reason to believe that current controls implemented by SLC will change, and if a site characterization demonstrates additional contamination, the NRC could take appropriate action with respect to the appropriate party at that time.

In the motion to stay, USR Industries cited testimony from a July 13, 1988 public meeting regarding problem sites at which the Staff stated quite clearly and unambiguously in response to direct questions by former Chairman Zech that no compelling safety considerations exist at the Bloomsburg site. Motion to

Stay at 16, 17 and 19. The Staff correctly points out that 10 C.F.R. § 9.103 provides that statements of Commissioners or NRC employees may not be cited, pleaded or relied upon in any proceeding under Part 2 of the regulations, except if the Commission provides otherwise. USR Industries is not, therefore, repeating that testimony here. However, as provided by Section 9.103, USR Industries requests that the Board ask the Commission for permission to rely on this material, because the Commission itself relied on the stated views in making its determination of problem sites. In the alternative, because the Staff included affidavits from NRC employees in its opposition to USR Industries' motion to stay, the substance of which apparently conflicts with the statements made to the Commissioners, USR Industries respectfully requests that the Board take notice of the prior statements in determining the weight to be afforded to those affidavits.

2. The Licensee Must Comply With Decommissioning Rules By July 27, 1990, Which Will Achieve The Same Purpose As the August Order.

10 C.F.R. §30.35 currently provides that Part 30 material licensees, like SLC, must create and implement a decommissioning funding plan by July 27, 1990. The regulation is intended "to assure that decommissioning of all licensed facilities will be accomplished in a safe and timely manner and that adequate licensee funds will be available for this purpose." 53 Fed. Reg. 24,018 (June 27, 1988). This regulation requires that a license holder submit a decommissioning funding plan or a

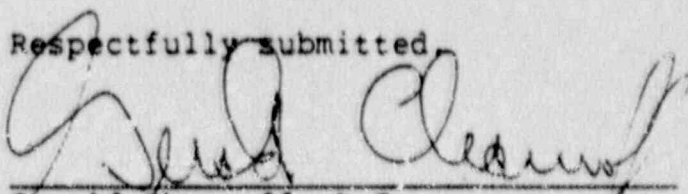
certification of financial assurance on or before July 27, 1990. In this case, the Staff's concern appears to be the lack of financial assurance from the licensee rather than any immediate health or safety threat. Section 30.35 directly addresses that concern. The NRC has given no reason, nor is there any, for the Bloomsburg facility to be treated differently from any other licensee.

Thus, there are two fundamental flaws to the invocation of Section 2.204 and the issuance of an immediately effective order. First, by the NRC's own admission there is no immediate safety concern calling for the "drastic measure" of an immediately effective order at the Bloomsburg site. Second, the NRC's concerns regarding funding for decommissioning are adequately, if not completely, addressed by the funding requirements of Section 30.35. No reason is given by the Staff, nor is there any for singling out this site and its licensee, SLC--much less USR Industries--for accelerated funding obligations.

IV. Conclusion

For the foregoing reasons, the March 16, 1989 Order and the August 21, 1989 Order should be dismissed with respect to USR Industries.

Respectfully submitted,



Gerald Charnoff, P.C.
Howard K. Shapar
Christine M. Nicolaides

Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8000

Attorneys for USR Industries, Inc.
USR Metals, Inc., USR Lighting,
Inc., USR Chemical Products, Inc.
and U.S. Natural Resources, Inc.

November 20, 1989

N:196CMN5440.89

SAFETY LIGHT CORPORATION
4150-A OLD BERWICK ROAD, BLOOMSBURG, PA 17815
717-784-4344 - TWX 510-655-2634

21 January 1981

Division of Fuel Cycle
and Material Safety
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

ATTN: Mr. Paul Guinn
Materials Licensing Branch

RE: USNRC License No. 37-00030-09G

Dear Sir:

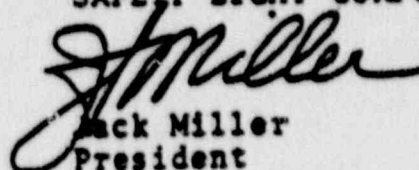
This is to advise you officially that, effective 24 November 1980, our Company name was changed from United States Radium Corporation to Safety Light Corporation.

Our facility location is the same as before, with the exception that the mailing address has been modified to specify our actual building, rather than the general plant site. Therefore, in future, kindly address all correspondence to the following:

Safety Light Corporation
4150-A Old Berwick Rd.
Bloomsburg, PA 17815

Our telephone number remains unchanged, as shown above.

Very truly yours,
SAFETY LIGHT CORPORATION


Jack Miller
President

mt

SAFETY LIGHT CORPORATION

4180-A OLD BERWICK ROAD, BLOOMSBURG, PA 17815
717-784-4344 TWX 510-655-2634

11 November 1983

U.S. Nuclear Regulatory Commission
Materials Licensing Branch
Division of Fuel Cycle & Materials
Safety
Washington, D.C. 20555

Gentlemen:

Safety Light Corporation has been requested by representatives of the Region I Office of the U.S.N.R.C. to clarify the following items:

1. As previously stated in correspondence of 21 January 1981 and properly incorporated into all our existing licenses, effective 24 November 1980, our Company name was changed from United States Radium Corporation to Safety Light Corporation. There were no organizational changes made due to the name change.
2. On 24 May 1982, USR Industries, Inc., 2203 Timerloch Place, The Woodlands, TX; finalized the sale of the stock of its wholly-owned subsidiary Safety Light Corporation to a group of executive officers of Safety Light Corporation.

The following individuals now own 100% of the stock of Safety Light Corporation:

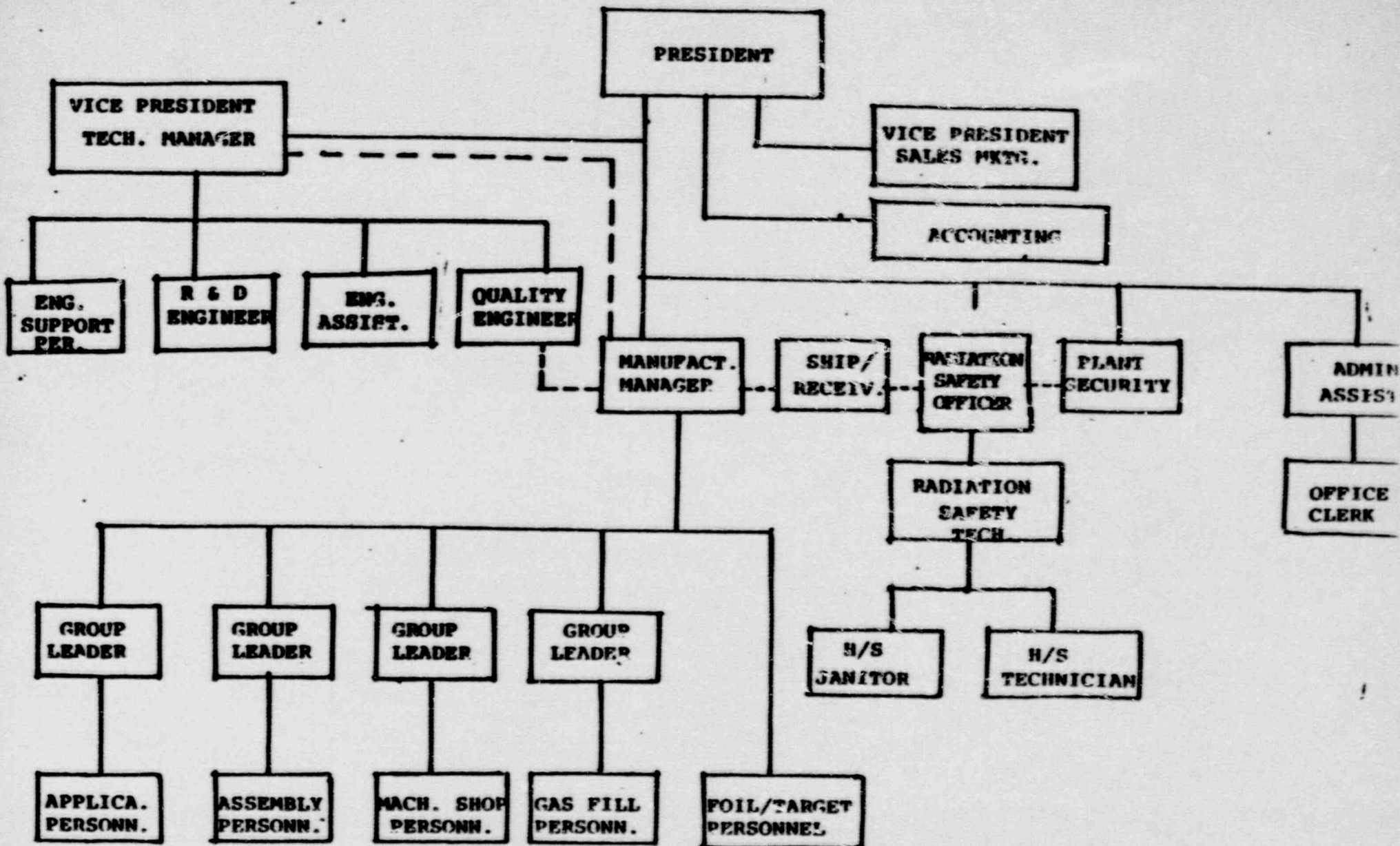
John T. Miller - President
David J. Watts - Vice President
Charles R. White - Vice President

3. Safety Light Corporation is the corporate entity which has full corporate power to carry on its business and is responsible for the properties and assets now owned and operated by it.
4. Please find attached a current Safety Light Corporation Organisation Chart.

We trust that the information supplied herein serves to satisfactorily clarify ownership and responsibilities of Safety Light Corporation.

Yours very truly,
SAFETY LIGHT CORPORATION


Jack Miller
President



SAFETY LIGHT CORPORATION
 ORGANIZATION CHART

L1224

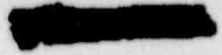
A57

RECEIVED

JAN 17 1985

Schmelzer, Walker & Sheppard, P.C.

FILED



STANLEY G. DEDFORD
J.S.C.

DUGHI AND HEWIT, ESQS.
50 Elmer Street
P.O. Box 516
Westfield, New Jersey 07091
(201) 654-4540
Attorneys for Defendant
Safety Light Corporation

T & E INDUSTRIES, INC.
Plaintiff

v.

SAFETY LIGHT CORPORATION, et al
Defendant

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
DOCKET NO.: L-41346-80

Civil Action

ORDER

This matter having been opened to the Court by Lowenstein, Sandler, Brochin, Kohl, Fisher, Boylan and Meanor, Esqs., Attorneys for plaintiff, T & E Industries, Inc., upon application for an Order granting Partial Summary Judgment against defendant, Safety Light Corporation, and the Court having considered the papers, and heard the argument of counsel, and good cause having been shown,

IT IS on this 19th day of December 1984.

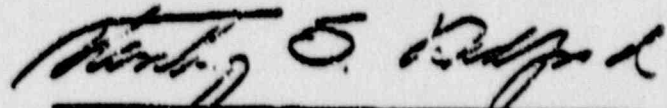
ORDERED AND ADJUDGED that Safety Light Corporation is a successor or a continuation of the United States Radium Corporation; and it is further

ORDERED AND ADJUDGED that the United States Radium Corporation placed hazardous wastes in the form of radium ore tailings on the real property located at 420-422 Alden Street, Orange, New Jersey; and it is further

ORDERED AND ADJUDGED that the plaintiff shall have the burden of proving at the time of trial the existence and extent of any alleged damages; and it is further

ORDERED AND ADJUDGED that the plaintiff shall have the burden of proving at the time of trial that any alleged damages were proximately caused by the placement by the United States Radium Corporation of the above specified hazardous wastes on the said real property; and it is further

ORDERED that a true copy of the within Order shall be served upon all counsel of record within Seven (7) days of the date hereof.


Stanley G. Bedford, J.S.C.

Papers Received and Reviewed:

Moving papers yes no

Opposition papers filed by plaintiff yes no

Reply papers filed by defendant yes no

Other

RECEIVED

FILED

MAR 17 1985

STANLEY G. BEDFORD
J.S.C.

10

LOWENSTEIN, SANDLER, BROCHIN, KOHL,
FISHER, BOYLAN & MEANOR
A Professional Corporation
65 Livingston Avenue
Roseland, New Jersey 07068
(201) 992-8700
Attorneys for plaintiff

20

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
DOCKET NO. L-41346-80

T & E INDUSTRIES, INC. :
Plaintiff, :
vs. :
SAFETY LIGHT CORPORATION, :
et al., :
Defendants. :

Civil Action
ORDER

30

The above matter having been opened to the Court by
Lowenstein, Sandler, Brochin, Kohl, Fisher, Boylan & Meanor, a
Professional Corporation, attorneys for plaintiff T & E Industries,
Inc., and the Court having considered plaintiff's moving papers
and all papers submitted in opposition thereto,

40

It is on this 17th day of March, 1985,

Revised
~~ORDERED AND ADJUDGED~~ that defendant USR Industries, Inc.

50

is a successor or continuation of the United States Radium Corpor-

LOWENSTEIN, SANDLER,
BROCHIN, KOHL,
FISHER, BOYLAN
& MEANOR
PROFESSIONAL CORPORATION
COUNSELLORS AT LAW
65 LIVINGSTON AVENUE
ROSELAND, N. J. 07068
(201) 992-8700

ation and is therefore jointly and severally liable with any and all other successors or continuations of United States Radium Corporation for any damages proximately caused to plaintiff by United States Radium Corporation's placement of hazardous wastes in the form of radium ore tailings on the real property located at 420-422 Alden Street, Orange, New Jersey.

Stanley G. Bedford
 Stanley G. Bedford, J.S.C.

10

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PAPERS CONSIDERED

	<u>Yes</u>	<u>No</u>	<u>Date</u>
Notice of Motion	<u>✓</u>	_____	_____
Movant's affidavits	<u>✓</u>	_____	_____ 30
Movant's brief	<u>✓</u>	_____	_____
Answering affidavits	<u>✓</u>	_____	_____
Answering brief	<u>✓</u>	_____	_____
Cross Motion	_____	_____	_____
Movant's Reply	<u>✓</u>	_____	_____
Other _____	_____	_____	_____ 40

OWENSTEIN, SANDLER,
 BROCHIN, KOHL,
 FISHER, SOYLAN
 & MEANOR
 A PROFESSIONAL CORPORATION
 COUNSELLORS AT LAW
 55 WESTBOSTON AVENUE
 ROSELAND, N. J. 07068
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50

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FISHER, BOYLAN & MEANOR
A Professional Corporation
65 Livingston Avenue
Roseland, New Jersey 07068
(201) 992-8700
Attorneys for plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
DOCKET NO. L-41346-80

T & E INDUSTRIES, INC., :

Plaintiff, :

vs. :

SAFETY LIGHT CORPORATION,
et al., :

Defendants. :

Civil Action

NOTICE OF MOTION
FOR PARTIAL SUMMARY JUDGMENT
AGAINST USR INDUSTRIES, INC.

TO: Frank Orbach, Esq.
Dughi & Hewit
50 Elmer Street
P.O. Box 516
Westfield, New Jersey 07091
Attorneys for defendants Safety
Light Corporation; USR Chemical
Products, Inc.; and U.S. Natural
Resources, Inc.

Kevin Bruno, Esq.
Hannoch, Weisman, Stern,
Bresser, Berkowitz & Kinney
744 Broad Street
Newark, New Jersey 07102
Attorneys for defendants
USR Chemical Products, Inc.
and U.S. Natural Resources, Inc.

Kenneth J. Fost, Esq.
130 Washington Street
Morristown, New Jersey
07960
Attorneys for USR
Industries, Inc.;
USR Metals, Inc.;
and USR Lighting

Paul Honigberg, Esq.
Schmeltzer, Aptaker &
Sheppard
Suite 500
1800 Massachusetts Ave.,
N.W.
Washington, D.C. 20036
Attorneys for defendants
USR Industries Inc.;
USR Metals, Inc.; and
USR Lighting Products,
Inc.

LOWENSTEIN, SANDLER,
BROCHIN, KOHL,
FISHER, BOYLAN
& MEANOR
A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW
65 LIVINGSTON AVENUE
ROSELAND, N. J. 07068
(201) 992-8700

SIRS:

PLEASE TAKE NOTICE that on Friday, February 15, 1985, at 9:00 a.m. in the forenoon or as soon thereafter as counsel may be heard, the undersigned, attorneys for plaintiff, will make application to the Honorable Stanley G. Bedford, Judge of the Superior Court of New Jersey, Law Division, Essex County, for an Order granting partial summary judgment on liability against defendant USR Industries, Inc. as a successor or continuation of the United States Radium Corporation.

PLEASE TAKE FURTHER NOTICE that in support of the within application defendants shall rely on the annexed Brief.

Oral Argument of this motion is requested.

LOWENSTEIN, SANDLER, BROCHIN, KOHL,
FISHER, BOYLAN & MEANOR
A Professional Corporation
Attorneys for plaintiff
T & E Industries, Inc.

By: _____
Robert D. Chesler

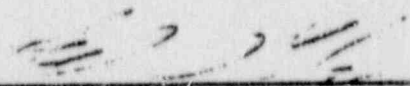
DATED: January 31, 1985

LOWENSTEIN, SANDLER,
BROCHIN, KOHL,
FISHER, BOYLAN
& MEANOR
A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW
45 LIVINGSTON AVENUE
ROSELAND, N. J. 07068
(201) 992-8700

CERTIFICATION

I hereby certify that the original of this motion was filed with the Clerk of the Superior Court, Trenton, New Jersey and a copy was filed with the Essex County Court Clerk. I further certify that copies were served upon all counsel by regular mail.

LOWENSTEIN, SANDLER, BROCHIN, KOHL,
FISHER, BOYLAN & MEANOR
A Professional Corporation
Attorneys for plaintiff
T & E Industries, Inc.

By: 
Robert D. Chesler

Dated: January 31, 1985

LOWENSTEIN, SANDLER,
BROCHIN, KOHL,
FISHER, BOYLAN
& MEANOR
A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW
85 LIVINGSTON AVENUE
ROSELAND, N. J. 07068
(201) 992-8700



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
675 ALLENOALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406

20 APR 1988

Docket Nos. 030-05980
030-05982

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

USR Industries, Inc.
ATTN: Mr. Ralph T. McElvenny
Chairman and Chief Executive Officer
2203 Yimerloch Place
The Woodlands, Texas 77380

RECEIVED
APR 27 1988
SAFETY LIGHT
CORPORATION

Gentlemen:

Subject: Ownership and organizational changes at United States Radium Corporation, its Successors, and Safety Light Corporation (SLC), Inspection No. 86-001, and how they relate to decontamination responsibilities at the Bloomsburg, PA site.

On January 21, 1981, the Nuclear Regulatory Commission (NRC) received notification that the NRC licensee known as United States Radium Corporation had changed its name to Safety Light Corporation (SLC). There was no indication that the change involved any ownership or organizational changes. The NRC more recently was informed that the entity previously known as United States Radium Corporation is now doing business as USR Industries, Inc..

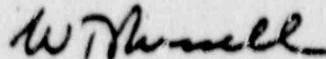
During an inspection on March 8, 1983, at the SLC facilities in Bloomsburg, Pennsylvania the NRC learned that SLC had been sold to three employees of the successor corporation that continued to conduct business as SLC. In a letter from the new company dated November 11, 1983, NRC Region I was informed that USR Industries, Inc. had completed the sale of SLC on May 24, 1983. The NRC did not receive prior notice of the transfer of rights under the referenced licenses and did not grant prior written approval of the resulting transfer of the licenses as required by 10 CFR 30.34(b). Prior to approving such a transfer, among the issues NRC would review would be the issue of whether, as a result of the transfer, SLC had reduced financial resources available to decontaminate the site.

Based upon the above, it appears that the licenses were transferred in violation of Section 184 of the Atomic Energy Act of 1954, as amended, 42 U.S. 2231 ("The Act") without the appropriate notification and approval required by 10 CFR 30.34(b). As a result of the above, you are hereby directed, pursuant to Section 182a. of the Act to provide answers, in writing, signed under oath or affirmation by a responsible officer of USR Industries Inc., to the questions set forth in Appendix B to this letter, to enable the Commission to determine whether the licenses should be modified, suspended or revoked. In addition, each of the companies listed in Appendix A may also respond to the questions in Appendix B either jointly or separately to the extent that they maintain an interest in the site at Bloomsburg, Pennsylvania.

Further, a safety inspection was conducted at the Bloomsburg facilities on June 19-20 and November 12, 1986. The results of this inspection and subsequent related correspondence relative to the Bloomsburg site are documented in Combined Inspection Report Nos. 030-5980/86-001 and 030-05982/86-001, a copy of which is enclosed with this letter. During the course of the inspection, two other apparent violations of NRC requirements were identified. Enforcement action relative to these findings, in addition to the apparent violation of 10 CFR 30.34(b) described above, is still under consideration and will be decided, in part, on the basis of your response to Appendix B to this letter.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, a copy of this letter and the enclosures will be placed in the Public Document Room. A response to this letter is required within thirty calendar days from the date of this letter.

Sincerely,



William T. Russell
Regional Administrator

Enclosures:

1. Appendix A
2. Appendix B
3. NRC Region I Combined Inspection Report Nos. 030-05980/86-001 and 030-05982/86-001

cc w/encls:

Public Document Room (PDR)
Nuclear Safety Information Center (NSIC)
Commonwealth of Pennsylvania
~~Metreal, Inc.~~
USR Lighting, Inc.
USR Chemicals, Inc.
USR Metals, Inc.
U.S. Natural Resources, Inc.
Metreal, Inc.

APPENDIX A

1. USR Industries, Inc.
2. USR Metals, Inc.
3. USR Lighting, Inc.
4. USR Chemicals, Inc.
5. U.S. Natural Resources, Inc.
6. Safety Light Corporation
7. Metreal, Inc.

APPENDIX B

Information needed relative to License Nos. 37-00030-02 and 37-00030-08:

1. Describe all relationships and transactions between USR Industries, Inc., United States Radium Corporation, and their successors and subsidiaries affecting the Bloomsburg, Pennsylvania site.
2. Describe the relationship of USR Industries, Inc. and its subsidiaries to United States Radium Corporation prior to November 24, 1980.
3. Identify all successors to United States Radium Corporation.
4. Provide a decommissioning plan for the site which will permit the release of the site for unrestricted use. This decommissioning plan should provide for a final radiological survey that will include all areas where licensed material has been used, stored or buried. The decontamination of the site may be gradual, extending over a period of ten years, but should be scheduled to begin within twelve months. Please include a proposed schedule for completion of the decontamination along with the decommissioning plan.
5. Provide an estimate of the cost of the decommissioning, including the cost of the disposition of the radioactive waste generated during the decommissioning effort.
6. Propose a method to ensure that sufficient funds will be available to implement the decommissioning plan. Include a discussion of any change in financial resources available as a result of the change in ownership. Specifically, you should submit a decommissioning funding plan or a certification of financial assurance for decommissioning in an amount to cover the estimated costs.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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.)	
U.S. NATURAL RESOURCES, INC.)	(ASLBP No. 89-590-01-OM)
LIME RIDGE INDUSTRIES, INC.)	
METREAL, INC.)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the motion to dismiss orders issued March 16, 1989, and August 21, 1989 and memorandum of law in support thereof, in the above-captioned proceeding, have been served on the following by deposit in the United States mail, first class, this 20th day of November, 1989:

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

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

Frederick J. Shon, Esq.
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
(Hand Delivered)

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

Atomic Safety and Licensing Appeal
Board Panel (6)
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

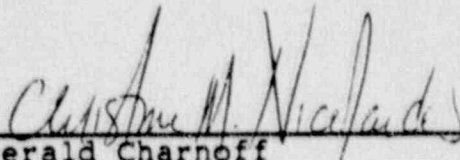
Adjudicatory File (2)
Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

D. Jane Drennan, Esq.
1615 L Street, N.W.
Washington, D.C. 20036
(Hand Delivered)

Robert M. Weisman, Esq.
Counsel
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852
(Hand Delivered)


Gerald Charnoff
Howard K. Shapar
Christine M. Nicolaides