

ORIGINAL

OFFICIAL TRANSCRIPT OF PROCEEDINGS

37-00030-02
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Agency: Nuclear Regulatory Commission

Title: Safety Light Corporation, United States Radium Corp., USR Industries, Inc., USR Lighting, Inc., USR Metals, Inc., USR Natural Resources, Inc., Lime Ridge Industries, Inc., Metreal, Inc.

Docket No. 030-05980, 030-05981, 030-05982, 030-08335, 030-08444
ASLBP No. 89-590-01-OM
ASLBP No. 90-598-01-OM-2

LOCATION: Bethesda, Maryland

DATE: Wednesday, November 29, 1989 **PAGES:** 106 - 152

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

- - - - - X

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|-----------------------------|---|--------------------------|
| In the matter of: | : | |
| SAFETY LIGHT CORPORATION | : | |
| UNITED STATES RADIUM CORP. | : | Docket Nos. 030-05980 |
| USR INDUSTRIES, INC. | : | 030-05981 |
| USR LIGHTING, INC. | : | 030-05982 |
| USR CHEMICALS, INC. | : | 030-08335 |
| USR METALS, INC. | : | 030-08444 |
| USR NATURAL RESOURCES, INC. | : | ASLBP No. 89-590-01-OM |
| LIME RIDGE INDUSTRIES, INC. | : | ASLBP No. 90-598-01-OM-2 |
| METREAL, INC. | : | |

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US Nuclear Regulatory Commission
 Fifth Floor Public Hearing Room
 4350 East-West Highway
 Bethesda, Maryland
 Wednesday, November 29, 1989

A further prehearing conference in the above-entitled
 matter convened, pursuant to notice, at 1:30 p.m.

1 BEFORE:

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HELEN F. HOYT, Chairman

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Atomic Safety & Licensing Board

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U. S. Nuclear Regulatory Commission

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Washington, D.C. 20555

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DR. FREDERICK J. SHON, Member

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Atomic Safety & Licensing Board

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U. S. Nuclear Regulatory Commission

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Washington, D.C. 20555

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1 APPEARANCES:

2 On behalf of Safety Light Corporation:

3 D. JANE DRENNAN, ATTORNEY

4 Sixth Floor, Tycon Tower

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7 On behalf of USR Industries, et al.:

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9 CHRISTINE M. NICOLAIDES, ATTORNEY

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11 2300 N Street, N.W.

12 Washington, D.C. 20037

13 On behalf of the U.S. Nuclear Regulatory Commission:

14 ROBERT M. WEISMAN, ESQUIRE,

15 BERNARD M. BORDERNICK, ESQUIRE, and

16 PHILIP M. HARRISON

17 U. S. Nuclear Regulatory Commission

18 Washington, D.C. 20555

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P R O C E E D I N G S

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2 JUDGE HOYT: The meeting will come to order.

3 This hearing is convened by order of this Court dated
4 November 22, 1989, in the matter of Safety Light Corporation,
5 et al., Byproducts Material License No. 37-0030-02, et al.,
6 Dockets Nos. 030-05980, 81, 82, 08335, and 08444. These are
7 carried under the Atomic Safety and Licensing Board No. 89-590-
8 01-OM and 90-598-01-OM-2.

9 As a result of the order we issued on November 22,
10 1989, we had convened this hearing for the purposes of
11 establishing an expedited hearing schedule for the conduct of
12 this proceeding. We will assume that each of the parties here
13 have pretty much worked out a schedule. I hope that you have
14 conferred with one another and have come up with an agreeable
15 schedule that will satisfy the needs of all parties.

16 We would like the proceedings to be as expeditiously
17 held as possible in order to satisfy, I think, both the needs
18 of the staff and to ensure that the USR Industries and their
19 counsel have ample time to do any discovery and other
20 procedures that they may wish to conduct.

21 Also I would like to note for the record that this
22 hearing is being conducted with the two judges present as a
23 quorum. Judge Paris will not be with this proceeding today. I
24 don't think I hear any objections. Do I?

25 (No response.)

1 JUDGE HOYT: None having been noted, let me start
2 first with the staff and determine, Mr. Weisman, do you have
3 any proposed schedule that you would want to offer?

4 MR. WEISMAN: Yes, Your Honor. We have a proposed
5 schedule here which Mr. Bordernick will bring up to you.

6 We propose this with the idea that all of the parties
7 are going to need an opportunity to create a complete record so
8 we allow what the staff believes to be a minimum time necessary
9 to do that.

10 I have talked with Mr. Charnoff and we essentially
11 agreed on the schedule. I haven't had the opportunity to
12 confer with Ms. Drennan on the acceptability of the schedule
13 but I have given her a copy of it today.

14 JUDGE HOYT: Mr. Charnoff.

15 MR. CHARNOFF: That schedule that the staff has
16 proposed is fine with USR Industries. I would just like to
17 point out that, of course, we have an ongoing briefing schedule
18 with regard to our claim that the Board has no jurisdiction
19 over USR Industries.

20 We're perfectly willing to cooperate with an
21 expedited hearing schedule as called for by the Board and as
22 proposed by the staff. We would hope, however, that early on
23 or soon after the briefs are done that the Board could rule on
24 our motion because this is not an inexpensive proposition and
25 in fact as we submit the NRC does not have jurisdiction over

1 USR Industries, then as much as we enjoy these public hearings,
2 we'd rather not participate.

3 But subject only to that observation and until the
4 Board rules, favorably I hope, on that motion we certainly
5 would participate actively in the context of the schedule that
6 the staff has proposed.

7 JUDGE HOYT: The motion you're speaking to,
8 Mr. Charnoff, if you'll refresh my memory while I try to find
9 it in my papers?

10 MR. CHARNOFF: Yes. We filed a brief a few weeks ago
11 contending that this agency, with all due regard to its
12 majesty, does not have jurisdiction over my clients for the
13 reasons stated in our brief. Now, the staff has yet to reply
14 to that and we have yet to reply, respond obviously to their
15 reply.

16 But our contention in that brief which we filed about
17 two weeks ago is that this agency for a variety of reasons set
18 forth no longer has jurisdiction over USR Industries and never
19 did have.

20 JUDGE HOYT: When is your brief due on that,
21 Mr. Weisman?

22 MR. WEISMAN: Our brief is due on the 11th of
23 December, our answer.

24 JUDGE HOYT: I had forgotten what the date was. So
25 your brief is due December 11?

1 MR. WEISMAN: That's correct. I think, if I might,
2 this might be an opportune time to ask for two more days to
3 file that brief in view that we had to prepare for this
4 prehearing conference which has taken a little bit of time away
5 from our preparation of that brief.

6 I had talked to Mr. Charnoff about that. We would,
7 of course, agree to allow them to have two more days to prepare
8 their reply and he indicated he had no objection to that.

9 MR. CHARNOFF: Our reply is now due December 26 and
10 that would be moved up to December 28 and we have no objection
11 to that.

12 JUDGE HOYT: In other words he's ratcheting his date
13 forward. You're saying the same as he's ratcheting his forward
14 you want to?

15 MR. WEISMAN: Correct.

16 MR. CHARNOFF: So you're proposing December 13,
17 Mr. Weisman?

18 MR. WEISMAN: That is correct.

19 MR. CHARNOFF: And then what I was suggesting is that
20 I would hope you would be so convinced by our briefs that
21 perhaps soon after the 28th of December you would be able to
22 say that as much as it is nice Shaw, Pittman here at these
23 hearings it wouldn't be necessary for us to be here any longer.

24 MR. WEISMAN: And of course our position is that of
25 course you would desire Shaw, Pittman to be in these hearings.

1 JUDGE HOYT: I probably shouldn't say anything at
2 this point because these records sometimes get misunderstood
3 later on but I must say that your arguments are very appealing
4 in a small way.

5 The Board has no objection. As a matter of fact
6 that's fine with us if you would like an additional two days.
7 It seems to me that you may even want to ratchet it forward a
8 bit longer than that in view of the holiday season and the fact
9 that it's difficult not so much to get yourself motivated to do
10 these tremendously deep and very thorough briefs but sometimes
11 it's hard to get staffs in to do the mechanical work in the
12 Christmas season. So if you want to go a little bit further on
13 that, I think we can even look at that favorably.

14 "Go for it," Mr. Weisman, is what I'm telling you.

15 MR. WEISMAN: We would be happy to have our brief due
16 on the 15th, the end of that week.

17 MR. CHARNOFF: Let me only make an observation. I
18 don't mind another two days.

19 JUDGE HOYT: Then there's no observation, is there?

20 MR. CHARNOFF: No. But I would like to say that we
21 really are interested in a determination as soon as we can on
22 the agency's jurisdiction over USR Industries. So within those
23 limits another two days doesn't really much matter.

24 JUDGE HOYT: You want to make yours, then, the 30th,
25 Mr. Charnoff?

1 MR. CHARNOFF: Fine.

2 Well, the 30th is a Saturday. That would carry us
3 over to -- we're not going to do much work that weekend,
4 Mr. Weisman.

5 How about January 3rd?

6 MR. WEISMAN: The staff has no objection to that,
7 Your Honor.

8 JUDGE HOYT: That does give him a little bit more
9 time.

10 MR. WEISMAN: That's all right.

11 JUDGE HOYT: All right. We will grant those two
12 requests.

13 Now to the order again that we want to put out in a
14 proposed schedule, commencing on December 26, what,
15 Mr. Weisman, in the sample copy that you have given us kind of
16 puts it forward to --

17 MR. WEISMAN: That was assuming that Mr. Charnoff's
18 brief would be due on December 26. So the plan was to begin
19 discovery as soon as his brief was submitted.

20 JUDGE HOYT: His reply brief?

21 MR. WEISMAN: His reply brief to our answer. That
22 way we'd have a few days to prepare our first document request
23 and any interrogatories.

24 JUDGE HOYT: Then we're going to have to change these
25 dates, aren't we?

1 MR. WEISMAN: Perhaps we should move them back, say,
2 -- I don't know -- a week?

3 MR. CHARNOFF: Unless we just go to the following
4 Monday which would be January 8. Is that all right?

5 MR. WEISMAN: I have no objection to that.

6 MR. CHARNOFF: That's slipping everything about six
7 days. If we slipped every date about six days, that would be
8 fine.

9 MS. DRENNAN: Excuse me. If we slip days only six
10 days then the exchange of the first document request would be
11 January 8 and the Board would have only received the series of
12 briefs on January 3 which gives them a relatively short time to
13 review them and make their ruling.

14 MR. CHARNOFF: Well, I was saying while I would like
15 a decision by the Board as soon as possible on the
16 jurisdictional question, we would be willing to cooperate in
17 terms of the Board's desire for expedition to start our
18 involvement with the process. I don't expect you to make a
19 decision within days after the last brief. But in the interest
20 of expedition I would be prepared to put our first document
21 request and interrogatories in on the 8th and hopefully
22 sometime during the month of January the Board will have
23 decided the jurisdictional question.

24 MS. DRENNAN: The only thing I would point out for
25 the record is that we could start this exchange of information,

1 the Court may find that USR was not jurisdictional, then the
2 whole proceeding would be dismissed at that time.

3 MR. CHARNOFF: At least as far as USR Industries is
4 concerned that's correct.

5 JUDGE HOYT: We have to assume at this time that
6 they're into this and involved. We won't know, there's no
7 decision. These are planning and wise decisions to make in
8 advance in order to have a schedule that can be implemented
9 immediately.

10 MS. DRENNAN: I just wanted to point out that was a
11 possibility that is the way it could work out.

12 JUDGE HOYT: Now having heard back and forth here,
13 where does that leave us on commencing on December 26? Do you
14 want to leave that date alone?

15 I can't really say I followed your argument too well,
16 Mr. Charnoff. I was trying to split my attention.

17 MR. CHARNOFF: I would delete the first line as being
18 unnecessarily confusing. Mr. Weisman's only point was that --
19 when he talked to me he didn't want to begin any discovery
20 process while we were still in the briefing process.

21 JUDGE HOYT: Is that all right with you, Mr. Weisman?

22 MR. WEISMAN: Yes.

23 MR. CHARNOFF: So, then, that would make the
24 exchanging of the first document request and interrogatories
25 January 8, the next line: "Identify potential witnesses, if

1 known," would be January 8;

2 and the next line, "Produce documents and respond to
3 interrogatories," would probably move forward to February 1;

4 and "Begin depositions," instead of being the 14th,
5 which happens to be a Sunday -- wait a minute. I'm looking at
6 the wrong year. Sorry.

7 MR. WEISMAN: Pardon me, Mr. Charnoff. I believe
8 producing documents then would be January 31.

9 MR. CHARNOFF: "January 31." I was looking at the
10 wrong year. Sorry.

11 JUDGE HOYT: We're down to "Begin depositions."

12 MR. WEISMAN: February 20.

13 MR. CHARNOFF: You're just adding six days. Right?

14 MR. WEISMAN: Right.

15 MR. CHARNOFF: "End depositions" would be March 20.

16 "March 21" becomes "March 27."

17 And "March 28" becomes "April 3."

18 "Submit written testimony" instead of the 10th would
19 be the 16th.

20 And the "Motions to strike, April 17," would be April
21 23.

22 The April 27th date becomes May 3.

23 I told Mr. Weisman I didn't understand why the staff
24 needed five days more but he told me that the rules contemplate
25 the staff needs five days more than the rest of us to do things

1 and I said to him "that's probably true."

2 JUDGE HOYT: Having been employed in the capacity of
3 a government's attorney, if they need it, Mr. Charnof, they'll
4 get it.

5 MR. WEISMAN: Thank you, Your Honor.

6 MR. CHARNOFF: Instead of "May 2" it's the 8th.

7 The "Rule on motion to strike" that's really a Board
8 decision obviously. All we can look at is a probable date, I
9 think, about the 15th.

10 MR. WEISMAN: What I was suggesting there was if one
11 the parties made a motion to strike a particular witness'
12 testimony in whole we ought to know that before the hearing so
13 that the witness doesn't have to come if that motion were
14 granted.

15 JUDGE HOYT: I think that's a fair request.

16 MR. CHARNOFF: Then the hearing instead of beginning
17 on the 14th would begin on Monday, the 21st.

18 JUDGE HOYT: Of May.

19 MR. CHARNOFF: The week of May 21.

20 JUDGE HOYT: At least it looks as though we'll finish
21 in this century.

22 You have one note here, Mr. Weisman, on the proposed
23 hearing schedule -- and I'll ask that you give a copy of this
24 to the reporter to be included in the record, attached to the
25 record, that isn't marked up the way the one I have in my hand

1 is being marked up -- and that's the last expression of the
2 page which reads: "This schedule is subject to extension for
3 good cause."

4 (The document referred to is attached
5 at the end of this transcript.)

6 JUDGE HOYT: I don't know how to caution parties any
7 more than just flatly to tell you that we don't look with great
8 favor to any extensions. Once we have worked out this
9 schedule, we expect each of the parties to adhere to it. And
10 it's going to take an awful lot of proof to get us past that
11 good cause.

12 MR. WEISMAN: Yes, Your Honor.

13 JUDGE HOYT: We are going to strictly enforce this
14 schedule as you have agreed to it. We think we have given you
15 time to work it out and we have done some adjusting here today.
16 And I think that we have competent counsel in this case and
17 they should be able to adhere to it and they will adhere to it.

18 MR. WEISMAN: Pardon me, Your Honor. I just wanted
19 to note the reason I put that phrase in there was for --

20 JUDGE HOYT: It's not a criticism. It's just an
21 additional expression of concern that we have and the Board
22 that this be carried forward as expeditiously as possible.

23 This case has a lot of interesting and very strange
24 turns and twists to it and I think it's going to be looked at
25 very closely. We want to be sure that we've got a good record

1 for the Commission to go on.

2 I've just been reminded of something that I didn't
3 mention earlier in this meeting with you today and that is,
4 when we drafted this order on November the 22nd, the prime
5 concern we had was to get the order out to you to let you know
6 where we were and to let you start taking actions on it.

7 We did not -- and it was done intentionally, we did
8 not try to discuss the criterias in the Virginia Java case.
9 However, if anyone wishes us to do so, we could prepare a
10 memorandum and give it to you if you wish to have it.

11 I'm not trying to solicit Board business but I think
12 we more or less met, without being very specific, much of the
13 Virginia Java concerns in our order. However, we are aware
14 that you may wish to have an additional explanation. If you
15 do, we will. If you don't, there's nothing necessarily to be
16 gained from it.

17 MR. WEISMAN: Your Honor, not meaning to add to your
18 heavy workload but I believe that the staff would be interested
19 in seeing such a memorandum.

20 JUDGE HOYT: Mr. Charnoff, what about you?

21 MR. CHARNOFF: I don't want you to do anything just
22 for the staff. So if you write something, which is not
23 essential to us, but if you write something we'd like to see
24 it, too.

25 JUDGE HOYT: If we --

1 MR. CHARNOFF: From my client's standpoint we are
2 satisfied with the results and it's up to you.

3 JUDGE HOYT: Yes. We'll do that. We'll prepare a
4 memorandum discussing the manner in which we looked at the
5 situation.

6 MR. WEISMAN: Thank you, Your Honor.

7 (Pause.)

8 MS. DRENNAN: Your Honor?

9 JUDGE HOYT: Yes.

10 MS. DRENNAN: I have two matters I would like to seek
11 clarification on while you're checking on that additional
12 issue. It's just for purposes of the order that you issued on
13 the 22nd.

14 Is my understanding correct that when the hearing
15 begins or commences that the scope of the hearing is going to
16 be -- assuming you do not rule that USR is not subject to your
17 jurisdiction, assuming you make that ruling that you do not
18 find that it is nonjurisdictional -- would the scope of the
19 hearing include both the question of jurisdiction and the
20 question of the scope of the study to cover the Bloomsburg
21 site?

22 The reason I'm raising this now is that it is an
23 issue that I've discussed with the staff and also Mr. Charnoff
24 -- the reason that I'm raising this is because you will have
25 ruled on a motion to dismiss and we will be setting about doing

1 our discovery for purposes of the case that we're going to
2 bring before the Board. And I wanted to make sure that my
3 understanding is correct that USR will be allowed to bring
4 forth any evidence on jurisdiction if their motion was not
5 approved, and secondly, the other issue as to the scope of the
6 study would be also an issue that would be before the Board.

7 (Pause.)

8 MS. DRENNAN: Your Honor, if I could add one more
9 point as to the reason it's so significant. I want to put this
10 on context.

11 As we read your order we are currently -- we are not
12 only to the fact that the effectiveness of the August 21 order
13 is stayed as to USR, the effectiveness is also stayed as to
14 Safety Light. Safety Light would be actively participating at
15 the hearing proceeding if the scope of the order entails what
16 the scope of the study itself, the scope of the study is from
17 the order of August 21.

18 So that's why it's so important to us to know how
19 you're going to conduct this proceeding.

20 JUDGE SHON: Mr. Weisman, as the Board understands
21 it, the matter before us is whether or not the orders should be
22 sustained.

23 Now, implied in at least the second order was the
24 notion that the plan submitted between the two of them was not
25 sufficient in the staff's view. Is that not correct?

1 MR. WEISMAN: Correct.

2 JUDGE SHON: Therefore in the view of the staff do you
3 think that the matter of the scope of the site characterization,
4 for example, is an inherent portion of that second order and in
5 ruling whether or not it should be sustained do we have to rule
6 upon an appropriate scope?

7 I mean, the staff wrote the order that we are now
8 examining and must know what it means.

9 MR. WEISMAN: I just want to make sure I'm answering
10 your question. Let me think about that for just a second.

11 (Pause.)

12 JUDGE HOYT: I have one matter here with
13 Mr. Charnoff.

14 Mr. Charnoff, we asked that within 30 days from
15 service of that order on November 22 that you would submit a
16 statement to the Board and we have listed those things we want
17 you to respond to in there.

18 Can you do that within the 30 days? I haven't heard
19 anything from you this morning on that.

20 MR. CHARNOFF: I've asked for information in an
21 effort to get it together so that we can try to meet your
22 schedule. If I have a problem with that, I'll let you know.

23 I must submit to you that I appreciated your footnote
24 that indicated the request does not prejudice in any way the
25 jurisdictional question.

1 But I must submit to you that from the little I now
2 know the answering question with regard to the first, proceeds
3 from insurance policies, is going to be an extraordinarily
4 difficult undertaking and I will give you all the information I
5 have on that but you must understand that I think it was in the
6 staff's filing with you that they tabulated a whole list of
7 relevant insurance policies that are either made out to US
8 Radium Corporation or Safety Light or USR or some are
9 altogether. And there is litigation pending in New Jersey
10 courts with regard to those insurance policies: would they
11 still apply, to whom they apply, and to what sites they apply,
12 or whether they apply to all of them.

13 All I can do is -- what I plan to give you, which may
14 or may not be sufficient for your purposes, what Plan to give
15 you is something essentially along the lines of what USR
16 Industries at least has recorded in its 10K forms and to its
17 stockholders on the status of the litigation. It's
18 extraordinarily complex with insurance policies that range way
19 back to the 1920s. The insurance companies are taking
20 different positions with regard to the applicability of those
21 policies today and to the Bloomsburg site as well as sites in
22 New Jersey.

23 What I plan to do is try to give you a summary of
24 that litigation. I honestly do not know how to answer the
25 question any more definitively than that at the moment.

1 I have asked counsel in New Jersey representing the
2 various companies in that litigation to try and help out and I
3 have gotten from my clients the annual reports and the 14Ks
4 they've filed with the Securities and Exchange Commission and
5 that will give you a sense of how complicated that is but it
6 may not give you a number. But I'm trying my best to answer
7 that.

8 As to Items B and C which related to current accounts
9 and noncash assets, I'm going to give you current financial
10 statements of USR Industries in the form of balance sheets and
11 profit and loss statements which I think will demonstrate that
12 this is not an extraordinarily wealthy set of clients here.
13 And I'm going to give that to you but I don't know how I can
14 tell you where money comes from.

15 We would hope that if we have an obligation, which I
16 can tell you in all sincerity I think we do not, but if we have
17 an obligation here, we're going to try our darndest to recover
18 from our insurance policies for that to the extent we even have
19 insurance policies in effect.

20 If we had to look at our current cash accounts and
21 noncash assets, you're looking at a rather weakly financed
22 institution in the form of USR Industries.

23 I don't know how to define it any better than that
24 and I don't want to argue that now. That's not the purpose of
25 my response. But within those limitations I must say to you

1 that if I had 60 days or 30 days or 5,000 days I'm not sure I
2 could give you a better answer than the one I'm going to give
3 you.

4 So I'm going to try and give you an answer within 30
5 days and then if you have other questions, I'll be responsive
6 to those.

7 JUDGE HOYT: May I suggest that we're going to get it
8 in 30 days?

9 MR. CHARNOFF: That's a short-form answer, yes. If I
10 have any difficulty, I will ask you for more time but I'm
11 planning to try to respond on time.

12 JUDGE SHON: As long as we've spent this time giving
13 you some time to think, Mr. Weisman, perhaps if I rephrase the
14 question the exchange will come out a little more easily.

15 What I'm asking is: Since the staff wrote the order
16 whose enforcement is at issue here, does the staff believe
17 that, inter alia, the scope of the site characterization and
18 the scope of the cleanup are also at issue since the staff has
19 demanded to a larger scope the person or persons against whom
20 the orders were directed could say "the scope is too large and
21 it should not be enforced to this extent"? Do you see?

22 MR. WEISMAN: Yes, I believe I understand.

23 I will comment by saying that the August order was
24 issued to enforce the March order and to the extent that the
25 March order wasn't satisfied, the basis for the August order is

1 what wasn't satisfied, and that was exactly the site
2 characterization plan.

3 I think that that answers your question.

4 I'll also add that I have a question for the Board in
5 the same regard and that is: the November 22nd order says
6 essentially the stay of the order dated August 21, 1989 will
7 remain in effect pending resolution of this proceeding.

8 I understand that the stay of the order dated
9 March 16, 1989 would not remain in effect. Is that correct?

10 JUDGE SHON: Well, let's clear this other matter
11 first. I do want to ask one question of Ms. Drennan.

12 The staff has issued an order. You have objected and
13 have said that the order should not be upheld.

14 Is one of your objections, one of your defenses, so
15 to speak, that you in your opinion the scope of the study
16 demanded is too large?

17 MS. DRENNAN: Well, before the order was issued at a
18 prehearing conference it was stated there and we have stated
19 that also again on the record in this case. And it also
20 appeared to be that USR in the filings that they have addressed
21 to the Board in the recent month or two have also raised the
22 issue of the size of the study.

23 When I talked to Mr. Weisman earlier today, he was
24 under the understanding, you know, that this proceeding that
25 we're scheduling today was going to include also the issue of

1 the size of the characterization study -- the plan, that we
2 were going to look at that. It's all right for counsel,
3 they're not sitting on the Board, to discuss the issue with
4 each other. But really I wanted to clarify it for my purposes
5 from the Board itself.

6 (Pause.)

7 MR. CHARNOFF: May I be heard on this?

8 JUDGE HOYT: Yes.

9 MR. CHARNOFF: I had written a letter to the Board
10 dated October 18 before the last prehearing conference in which
11 I submitted a series of seven issues that I thought were
12 appropriate for the Board. The first five or so were legal
13 issues which I thought were appropriate for briefing and
14 basically relate to the justification for immediate
15 effectiveness and challenges to the jurisdiction and I
16 submitted those could be done by briefing.

17 But I also included two issues which really were fact
18 questions which I thought had to be resolved in an evidentiary
19 hearing assuming that the arguments with regard to jurisdiction
20 by my clients were lost.

21 One of those was whether the characterization study
22 ordered by the NRC was unreasonably extensive and expensive;
23 i.e., putting into issue the scope of the study ordered by the
24 NRC. I think that's appropriate because in the March order
25 there was a requirement that there be a characterization study

1 submitted. In fact a study was submitted. The staff didn't
2 like it and in turn expanded the study that was submitted.

3 As I recall it, the first proposed characterization
4 study cost about \$115,000. The staff felt that study was
5 insufficient in response, even though it was still subject to a
6 request for hearing. A new study was submitted which would
7 cost about a million dollars. And it was in a sense in part a
8 response to that by the staff which resulted in the August
9 order which said "now put up the million dollars for that
10 study."

11 Now obviously both SLC, Safety Light Corporation, and
12 USR Industries have challenged both the March and the August
13 orders. Obviously the scope of the hearing is directly at
14 issue if we're also challenging whether the money should be put
15 up because certainly there's a large difference between putting
16 up \$115,000 and a million dollars for a study by an ongoing
17 licensee.

18 We also raised the issue, by the way, in my cover
19 letter as to whether it's appropriate for an ongoing licensee
20 to have to do this kind of thing at this time. That's a second
21 issue in the hearing.

22 But I must say that I think the jurisdictional
23 questions are primarily a legal issue which I hope, as I said,
24 you would resolve favorably to us and that the evidentiary
25 hearing would primarily be the scope of the study ordered and

1 desired by the staff and that is an issue that I think the
2 Board does have to resolve.

3 MR. WEISMAN: If I may comment, I had told
4 Mr. Charnoff that that was what I anticipated the hearing being
5 on.

6 JUDGE SHON: I think that's what the Board
7 anticipated, also, but we wanted to get you to state your
8 position once more; so that the scope of the study would,
9 indeed, be a proper subject for the hearing.

10 MS. DRENNAN: Your Honor, just one final question,
11 the second question I posed earlier. In staying the immediate
12 effectiveness of the order, as you remember during our prior
13 prehearing conference we had stayed the order as to both USR
14 and Safety Light.

15 Am I correct in interpreting that this order also
16 provides that the stay is effective to USR and Safety Light
17 during the period of this proceeding?

18 (Pause.)

19 JUDGE HOYT: Yes.

20 MS. DRENNAN: Thank you, Your Honor.

21 JUDGE HOYT: I must say there are many twists and
22 turns to this case.

23 All right. Are there any other problems that we need
24 to discuss?

25 MS. DRENNAN: I just want to take one second, Your

1 Honor. The tritium is still not being received by Safety
2 Light. Oak Ridge still has all the tritium. So we have not
3 commenced production. And I just want to keep you apprized of
4 that during the proceeding because that really affects the
5 revenue flow of the company.

6 JUDGE HOYT: I don't think this is out of line to
7 ask, Ms. Drennan, is Safety Light on operation there, not on
8 the manufacturing side but do they have staff on site and are
9 those wells and those other facilities that you have on site to
10 maintain the monitoring of it still going on or do you stil
11 have even a skeleton staff there?

12 MS. DRENNAN: Well, we have a management staff only
13 because all of the workers in the manufacturing process have
14 been laid off, if you may, for more than two months now.

15 However, we have people that come in and do the
16 measurement of the monitoring and that is continuing on an
17 ongoing basis.

18 So as far as the allegations towards NRC in these
19 matters, they're all being fulfilled.

20 JUDGE HOYT: Are those records being made available
21 to the inspectors of NRC?

22 MS. DRENNAN: Yes. In fact in the last three days
23 inspectors have been out to the site and were satisfied with
24 the process that was going on.

25 I just think it's helpful to the Board to know that

1 we are still in a position where all the employees are laid off
2 and although daily DOE assures they're going to allow Oak Ridge
3 to ship, in fact they have not.

4 MR. WEISMAN: If I may comment, Your Honor, I do know
5 that there was a team of inspectors out at the Bloomsburg site
6 within the last two or three weeks. While I have not received
7 an inspection report, I know that they did observe Safety Light
8 personnel monitoring for radiation, doing surveys.

9 MR. CHARNOFF: That brings up a point I'd like to
10 raise. I'd like to make it clear -- and I hope this all right
11 with Ms. Drennan -- I plan in filing discovery requests early
12 in January to address discovery requests both to the staff and
13 to Safety Light.

14 As you know, it's our position we're not a licensee.
15 We have no records. And we don't even know what's going on at
16 the site. So one of the issues I'm going to put forward with
17 regard to the scope of the monitoring program or
18 characterization study that the NRC is seeking is to determine
19 whether based upon the existing program any more needs to be
20 done. To make that contention I will be asking Safety Light as
21 well as the NRC to make available to us all of their records of
22 the last numbers of years of the existing monitoring program
23 and so on.

24 JUDGE HOYT: I would guess that would be the way you
25 would proceed, Mr. Charnoff.

1 MR. CHARNOFF: We have no way to operate other than
2 that.

3 JUDGE HOYT: Judge Shon.

4 JUDGE SHON: I'd like the parties' response to the
5 notion that it might be useful to produce what are in effect a
6 set of contentions either by stipulation or by having USR
7 Industries and Safety Light produce something, something very
8 like Mr. Charnoff's list of questions to be considered which
9 all of us could agree upon. I'm used to the kind of case in
10 which the contentions are set out to begin with and everyone
11 knows exactly who is trying to prove what.

12 I'm rather concerned that we are as close as we are
13 to setting a schedule for discovery when it may be that the
14 issues have not been as exactly defined as they should be.

15 The primary issue is whether or not these orders
16 should be sustained but there are clearly subsidiary issues
17 which could be listed.

18 I'd like to hear your opinion as to how we could go
19 about generating such a list.

20 MR. WEISMAN: Well, Your Honor, I believe that the
21 technical issues are set out in the orders and that if USR
22 Industries and Safety Light take issue with those conclusions,
23 it's their duty to set out the issues. They've asked for the
24 hearing. I think that Mr. Charnoff has done that and USR
25 Industries' previous counsel has also done that in their

1 request for a hearing.

2 MS. DRENNAN: Your Honor, I am willing to work with
3 Mr. Weisman and/or Mr. Charnoff to try and reach the objective
4 by setting forth what the issues are.

5 JUDGE SHON: I'm looking toward generating something
6 like Mr. Charnoff's list of issues. I don't think we really
7 have that in the order itself. Perhaps we do, but if so, it's
8 deeply enough buried so that it's not in a nice clean, separate
9 list.

10 MR. WEISMAN: I agree, Judge Shon, that the order
11 doesn't specifically list the technical issues but in setting
12 out the background and the reasons for imposing the
13 requirements of the order I think that the technical issues are
14 set forth there, the basis for the order.

15 What I was trying to say before is that if the other
16 parties to the proceeding take issue with that basis, then it's
17 up to them to specify what they think with that basis and I
18 think that they have been doing that.

19 JUDGE SHON: I know that they tried to do something
20 like that in each of their answers but it's not clear to me
21 that they have generated a really terse and comprehensive
22 listing, anything nearly as terse or comprehensive as
23 Mr. Charnoff proposed and no one else seems to have agreed to
24 that yet.

25 MR. WEISMAN: If I may make a proposal, if the

1 parties would come up with a list, then the staff would be
2 happy to look at it and negotiate to come up a list of issues
3 that would.

4 JUDGE SHON: That would suit me just fine. I think
5 it would probably suit Judge Hoyt, too.

6 JUDGE HOYT: The thing I want to do, though, is not
7 to have this interfere in any way with the schedule as we have
8 worked it out here this morning. I think perhaps a statement
9 of issues is what we really are requesting, that Judge Shon
10 wishes, and I think the parties pretty much understand that.

11 MR. CHARNOFF: I would be happy to sit with the staff
12 and Safety Light and try to do that but I'll frankly submit to
13 you that that's exactly what we did do, as Dr. Shon mentioned,
14 in my letter of October 18 and I would refer the staff and the
15 Board and Safety Light to Item 6 (a) and (b) and Item 7 as the
16 issues.

17 Frankly 6(b) says: "Is the characterization study
18 ordered by the NRC unreasonably extensive and expensive?"
19 That's as far as USR Industries and Shaw, Pittman could do at
20 this particular point in time prior to discovery to see what
21 the bases are for what the staff was contending.

22 So I'm happy -- I could tell whether you even agreed.
23 It may well be what you were saying did say that this was
24 sufficient if the staff and Safety Light agreed with my
25 characterization or if you're looking for anything more than

1 that. But that's as far as we could go at this point in time
2 but I would be happy to sit with Mr. Weisman and Mr. Bordernick
3 at their convenience and see if something even more specific
4 could be made. I would submit to that could probably only be
5 done after further discovery.

6 Unless they are going to take issue with these
7 statements, my view is this is sufficient to set in to
8 controversy for the Board the appropriate issues in an
9 evidentiary proceeding.

10 JUDGE SHON: Well, I guess that sounds like a
11 reasonable first start or first cut. The principal thing is to
12 arrange things so that the issues are clearly defined and the
13 opposing parties, in this case probably the staff, agree they
14 know what they've got to meet. If your proposal seems too hazy
15 to someone, then perhaps it should be refined. But if this
16 satisfies the parties, it would satisfy me.

17 MS. DRENNAN: Your Honor, I'd like to take the
18 opportunity to go over the orders again and review
19 Mr. Charnoff's filing and try to take a cut at the issues to
20 make them a little bit more definitive. I think it would be
21 helpful.

22 JUDGE HOYT: Very well. We will expect you to do
23 that in a reasonable period. We won't put a date on that since
24 I would prefer to have this schedule be our prime concern.

25 Anything from Mr. Charnoff?

1 MR. CHARNOFF: Thank you.

2 JUDGE HOYT: Mr. Weisman, how about you, sir?

3 MR. WEISMAN: Well, I think that I had attempted to
4 ask the Board a question. Maybe I didn't get it out.

5 JUDGE HOYT: Yes. Perhaps I stepped over that
6 because you were consulting and I said we'd come back to it.
7 And I apologize, Mr. Weisman. I did step over it and I didn't
8 get back to it.

9 MR. WEISMAN: All right. If you'd like me to repeat
10 that question.

11 JUDGE HOYT: I think it would be a good idea.

12 MR. WEISMAN: I understand that because of the way
13 your November 22 order is worded, I would understand that the
14 stay of the order dated March 16 does not remain in effect and
15 I wanted to know if that was correct.

16 MR. CHARNOFF: May I ask Mr. Weisman?

17 JUDGE HOYT: Yes, please.

18 MR. CHARNOFF: What is the implication if the Board
19 were to say that the March order was not stayed? Let me say
20 what I think I understand it to be.

21 The March order said that Safety Light and USR
22 Industries had to propose a certain characterization study.
23 It's my understanding that two such studies were sent in, one
24 of which was accepted by the staff in terms of the largest,
25 which is subject to a hearing and the challenge that we're

1 talking about.

2 But it is not my understanding that anything further
3 has to be carried out on that at the moment because there was
4 no schedule fixed in that first order for carrying it out. Am
5 I correct?

6 MR. WEISMAN: The staff would say that view is
7 incorrect.

8 MR. CHARNOFF: What is incorrect?

9 MR. WEISMAN: There are a couple of things. The
10 first one is that the March order required the parties to
11 control access to the site. Safety Light has done that by
12 putting up a fence. But if the March order did not remain in
13 effect, then there would be no obligation to maintain that
14 fence. Now, by that I don't mean to imply that Safety Light
15 would take the fence down but if there were freezing by the
16 river or perhaps a tornado or some other natural event, there
17 would be no obligation to maintain that fence.

18 The second item is that on approval of the plan
19 Safety Light and USR Industries were to implement that plan,
20 the order also required implementation of the plan. The order
21 does go on further and say that once the characterization plan
22 is implemented that the parties have to propose decontamination
23 activities and when the staff approved the parties' plan for
24 decontamination, however justified, then the parties were to
25 implement that plan as well.

1 MR. CHARNOFF: But no schedule was set for the onset
2 of implementation, was it?

3 MR. WEISMAN: Of the decontamination plan there was
4 no schedule. I believe that the characterization plan was to
5 be implemented within 180 days. But I think given that the
6 staff believes it will take longer to do that, that schedule
7 for completion of the characterization study would not apply.

8 The order did have the date or some time limit on
9 when the parties had to begin the site characterization after
10 the plan was approved.

11 MR. CHARNOFF: I don't have a copy of the order with
12 me but I didn't recall that frankly.

13 JUDGE HOYT: Are you referring to the March 23 order?

14 MR. WEISMAN: Yes.

15 JUDGE HOYT: If you want to see it, I have a copy of
16 it here on the bench.

17 MS. DRENNAN: Your Honor, I don't know that date is
18 even relevant due to the fact that we're going to the
19 proceeding, we have to establish, you know, the scope of the
20 site characterization plan before you can proceed with a buy or
21 anything else. So it would seem that matter, Mr. Weisman,
22 would just be obviously held abeyance.

23 It seems the only issue from what I'm understanding
24 about the March order is that you have a concern about Safety
25 Light maintaining the fence which I will assure you for the

1 record that during this proceeding we will keep the fence up
2 and we will maintain it.

3 JUDGE HOYT: Those things you're addressing,
4 Mr. Weisman, would be required of Safety Light as a licensee,
5 not because of the order of March 23, that is the safety
6 features of maintaining the records and maintaining the site
7 and doing all those things that are required by NRC
8 regulations.

9 The thrust of the March 23 order as I skim through it
10 quickly here and as I recall reading it before was to determine
11 the corporate liabilities of various parties.

12 I don't see that the March 23 order comes into play
13 until we get to the August order which required that this be
14 immediately funded and that's has generated the fireworks that
15 we're into in this case. In staying the August 21 order we
16 have done what is required of us and I don't see that we have
17 any concern that we're trying to stay an order that has not
18 come before us to be stayed because it is not necessarily
19 connected except through the fact that the August 21 order made
20 the immediate effectiveness of this funding this is now the
21 complaint of the parties here.

22 MR. WEISMAN: I think you've answered the question,
23 Your Honor.

24 JUDGE HOYT: I hope I have. I'm not even sure I've
25 answered it myself.

1 MR. WEISMAN: If I may comment, the March 16 order is
2 also immediately effective and we -- the staff --

3 JUDGE HOYT: Just a moment, Mr. Weisman. I'm not
4 with you on that.

5 MR. WEISMAN: I was made immediately effective.

6 MS. DRENNAN: Your Honor, if I may make a point
7 there?

8 JUDGE HOYT: Wait just a moment. Let's don't throw
9 out anything else right now until we get this resolved.

10 If you know where it is in the order, Mr. Weisman, I
11 have it right here, I'll let you --

12 MR. WEISMAN: May I come up?

13 JUDGE HOYT: Since you are familiar with it, let's
14 see if you can find it. My recollection was that the March
15 order was not immediately effective.

16 MR. CHARNOFF: I recall there was language in there
17 making it immediately effective. My understanding was that the
18 purpose of that was to get a proposed study submitted to the
19 staff soon and that was made immediately effective.

20 We didn't challenge that aspect of it because the
21 study had been proposed. But it's perfectly clear that we're
22 not going to put up money to start a study when I don't know
23 that I've got agreement on the confines of that study.

24 JUDGE HOYT: What was required to be immediately
25 effective in the March 23rd order was:

1 (a) within 90 days from the date of this order Safety
2 Light Corporation will post the premises as required by 10 CFR
3 and shall controll access to all contaminated areas by a fence
4 or other suitable means.

5 I'm not reading this verbatim but that's the
6 substance.

7 (b) within 45 days from the date of this order all
8 corporations shall jointly submit for review a joint plan to
9 characterize the radioactivity at the Bloomsburg site.

10 And then they go on to describe what that plan will
11 include in it.

12 Within 180 days from the date of the Regional
13 Administrator's approval the site characterization plan
14 required by the order and all corporations shall be submitted
15 to the Regional Administrator of Region I for his review and
16 within 30 days of the date the approval of the site
17 characterization report required by a section of this order,
18 all corporations should jointly submit to the Regional
19 Administrator for his review and approval a single
20 decontamination plan with a timetable for specific
21 decontamination activities, et cetera.

22 And further, the Regional Administrator's approval of
23 the decontamination plan required by the provision of this
24 order, a corporate officer not lower than the president from
25 each corporation shall submit within 15 days at the end of each

1 calendar quarter a status report, and they describe what shall
2 be in that status report.

3 And no corporation named herein shall either abandon
4 or transfer the Bloomsburg facility until the NRC has confirmed
5 that a successful decontamination of the Bloomsburg site has
6 been completed.

7 You are correct, Mr. Weisman.

8 The immediate effectiveness that we were concerned
9 with was in the August 21 order because in that order you were
10 demanding they establish the immediate funding of that and
11 there would be thereby a taking of property before the
12 liability had been determined.

13 You will recall Judge Shon citing the Queen of Hearts
14 case, I think, the Red Queen's case of fable legend. So I
15 think that's the way in which in this instance you are correct.

16 MR. CHARNOFF: But we need some clarification of
17 that, I think, Your Honor. And that is I understood we have to
18 submit or the parties were asked to submit within some time
19 period a characterization study and that was done subject to
20 the request for a hearing by both Safety Light and USR
21 Industries. Of course the August order said to start putting
22 money into a trust fund.

23 The simple fact is that absent any payments of funds,
24 no contractor is going to carry out a characterization study.
25 It was my understanding when we asked for a delay in

1 effectiveness in the immediate effectiveness of the requirement
2 to put up money, it also means that the delay in effectiveness
3 in initiating the study because that is the same thing, you're
4 going to incur liabilities.

5 JUDGE HOYT: I'm not sure whether you changed
6 positions of the horse and the cart in this, Mr. Charnoff, or
7 not, because if you don't get the money, you're not going to
8 get the site characterization study.

9 MR. CHARNOFF: That's exactly my point. That's why I
10 understand what you're staying was not only our obligation to
11 fund the trust fund but you were staying the obligation to
12 initiate the characterization study.

13 If we're only going to argue there shouldn't be a
14 study or it should only be a \$10,000 study or a \$20,000 study,
15 not a million dollar study, then we don't know what we're
16 supposed to begin.

17 If the staff is trying to lay the groundwork for an
18 assertion that notwithstanding the Board's orders, Safety Light
19 Corporation and perhaps USR Industries, too, should be
20 initiating its characterization study, then we object to that.

21 They're wrong.

22 We're not going to be put in a position of starting
23 to fund a characterization study and initiate it that you have
24 no jurisdiction to order us to do. And that's obviously what
25 we have been contesting in this hearing.

1 JUDGE SHON: It is also my understanding that the
2 order said you are to initiate the characterization study after
3 approval of the site characterization plan.

4 Now, has such a plan been approved? I don't believe
5 it has, has it?

6 MR. WEISMAN: It has been conditionally approved --

7 JUDGE SHON: I see.

8 MR. WEISMAN: -- as to Safety Light. The staff would
9 like to get such a plan unconditionally approved with respect
10 to both parties.

11 What I am telling you is that there were two plans
12 submitted. The first plan did not meet the specifications for
13 a characterization plan set forth in the March order so the
14 staff rejected it.

15 In early August, I don't recall the date exactly,
16 both Safety Light and USR submitted a second plan.

17 The staff in mid-September, I believe, conditionally
18 approved that plan with respect to Safety Light because USR had
19 indicated that it would do no further work on that plan.

20 We have yet to receive any other submissions that
21 would make that plan completely satisfactory.

22 JUDGE SHON: This conditional approval, I'm not quite
23 sure I understand what "conditional approval" is.

24 Does it in your view, for example, start the clock on
25 when you must start implementing?

1 MR. WEISMAN: No, it does not.

2 I would submit that the conditional approval is to
3 let the parties know that this plan is in the ballpark and with
4 some minor modifications will start the clock. If the minor
5 modifications are made, then that plan will be acceptable.

6 JUDGE SHON: But as of right now the effect of a stay
7 of the March order is in effect more or less moot. It doesn't
8 matter whether it's stayed or not because the plan hasn't been
9 approved. Isn't this correct?

10 MR. WEISMAN: Well, if the plan is not approved,
11 they're still under the obligation -- if you look at the way
12 the March order is written, it says "within 45 days submit a
13 plan that does a, b, c, d, e, f, et cetera." And we're saying:
14 "Well, you didn't do 'e' but the rest of the plan -- " I'm just
15 doing this in the abstract.

16 JUDGE SHON: Yes.

17 MR. WEISMAN: I'm saying: "You didn't do 'e' but the
18 rest of the plan is okay."

19 The staff's position is until they have done "e,"
20 they haven't satisfied that part of the order. We would like
21 the parties to satisfy that part of the order, to have a plan
22 prepared so that once liability and once the scope of the plan
23 is approved that it can be implemented. We don't want to have
24 to spend time between the end of the hearing finishing
25 developing the characterization plan.

1 MR. CHARNOFF: But this hearing, if held, is going to
2 define and describe the scope of the study that's appropriate.
3 Until that's done, I don't know where the staff is going.

4 This is not my business because USR is not part of
5 this operation. But I don't even understand how you can say
6 that, viz-a-viz, Safety Light. If you accept as you did that
7 the scope of the study, the characterization study is
8 appropriately before this Board, I don't think you would want
9 this Board to engage in a vain exercise to consider what the
10 scope of the study ought to be while at the same time you're
11 harrassing Safety Light Corporation to initiate some particular
12 study for approval by some regional administrator located
13 somewhere in Pennsylvania.

14 MS. DRENNAN: Your Honor, if I could speak on behalf
15 of Safety Light: I see these two orders, the March order and
16 the August order, are inextricably intertwined. In other
17 words, if the effectiveness of the August order is stayed,
18 therefore the March order by the nature of what the hearing is
19 going to be about, viz-a-viz, the August order stays the March
20 order and those provisions which Mr. Weisman is making
21 reference to -- Safety Light is now looking at the August order
22 as to the issue of what is the funding that needs to be done
23 for the site characterization plan.

24 Until the Board resolves that issue, then we are not
25 in a posture to come and complete any kind of a plan to submit,

1 let along be implemented.

2 So it seems clear to me that the March order has to
3 be stayed until this matter is resolved.

4 JUDGE HOYT: Mr. Charnoff, you are the party who is
5 moving for the stay only of the August 21 order. Would you
6 give me the rationale behind what you were doing there if you
7 were to accept Ms. Drennan's argument?

8 MR. CHARNOFF: I thought the staff and everybody
9 understood that if we can't fund it, we can't initiate any kind
10 of study.

11 JUDGE HOYT: So you assumed that by staying the
12 August 21 order we would be in effect staying the March order?

13 MR. CHARNOFF: Apart from the issue of putting a
14 fence around the site or something. I even mentioned in the
15 last prehearing conference that had been done. But absent any
16 funding you're not going to get a contractor to initiate a
17 study as goodwilled as they are.

18 JUDGE HOYT: I think it was your question that had to
19 be answered.

20 Yes, I think the Board finds that the March 21 order
21 has been stayed.

22 MS. DRENNAN: Thank you, Your Honor.

23 MR. WEISMAN: Thank you, Your Honor.

24 If the staff may comment, the staff does not intend
25 to harass Safety Light into initiating a study that it has no

1 money to pay for. That is certainly not our intent. We just
2 wanted to clarify the record.

3 JUDGE HOYT: Don't defend what you haven't been
4 charged with yet, Mr. Weisman.

5 (Laughter.)

6 MS. DRENNAN: Safety Light did not think it was
7 harrassment.

8 JUDGE HOYT: I don't know whether it is in the power
9 of this Board to in any way affect the position Safety Light,
10 viz-a-viz, their requirements that will set more than that of
11 maintaining a fence. I think my questions earlier indicated
12 that I did have some concern about that. Ms. Drennan has
13 assured me that those operational things of maintaining the
14 site and having somebody read out the present contamination
15 meters, whatever that may be, however it's done, and to see
16 that the fence is properly maintained.

17 If it's blown down in a hurricane, Ms. Drennan, put
18 it back up --

19 MS. DRENNAN: Right, Your Honor.

20 JUDGE HOYT: -- or through any other cause, be it an
21 Act of God or pestilence or other types of violence.

22 So does that finish us up?

23 MR. WEISMAN: I have two other comments: one, a
24 clarification, and one, something for the Board's information.

25 The first clarification is that while the regulations

1 do require licensees to maintain restricted areas, the nature
2 of the contamination on the site is such that Safety Light's
3 restricted area as required by regulation would not prevent
4 access. Other people could potentially wander on to the site
5 and become contaminated.

6 JUDGE HOYT: I understood some way, either in the
7 pleadings or in our of our prehearing conferences, that the
8 property had been posted. Is that incorrect?

9 MR. WEISMAN: That's correct. But the order, the
10 March order requiring the fence is what -- the order embodies
11 the requirement to control access with respect to all the
12 contamination on site.

13 The second item is that we have mentioned hurricanes
14 and tornados. Just to make sure that the Board and the parties
15 know, the roof of the Region I offices was torn off by a
16 tornado -- I guess, what was that -- two weeks ago -- so we
17 have had some difficulty in having our -- we have an affiant
18 from Region I. We have had some difficulty in getting him to
19 execute his affidavit. As we informed the Board with our
20 letter with the filing of our brief, we will execute that as
21 soon as possible. We've sent it to him by express mail and he
22 is to find a notary and execute the affidavit and return it to
23 us.

24 JUDGE HOYT: The U.S. Attorney is very helpful in
25 that matter sometimes, Mr. Weisman.

1 The matter of the damage to Region III won't impact
2 upon your ability to do your discovery and provide the records
3 and all the other stuff we had asked for in the past?

4 MR. WEISMAN: I don't believe it will affect it.

5 JUDGE HOYT: If it does, Mr. Weisman, please let us
6 know just as quickly as possible because we do want to adhere
7 to the schedule we've set out here this morning but I don't
8 want to be foolhardy about it.

9 Mr. Charnoff, how about you? Do you have anything
10 for us?

11 MR. CHARNOFF: No.

12 I'm just curious about the letter you sent to the
13 Board. We had noted that an affidavit had not been executed
14 but we did not receive with a copy of your document a cover
15 letter indicating anything on that. So hence forth when you
16 write to the Board, if you would send us copies of the cover
17 letters, I'd appreciate it.

18 MR. WEISMAN: It was intended to be included. A copy
19 of that letter was intended to be included.

20 MR. CHARNOFF: The second thing is that it would help
21 from now on if the NRC would have its seismic engineers review
22 the roofs of buildings in which they locate their staffs.

23 JUDGE HOYT: We do good to get government buildings
24 with roofs, Mr. Charnoff. You must remember that you are
25 speaking of federal employees now. We're living on the lean

1 end of that hog.

2 MR. CHARNOFF: As a taxpayer I'm in favor of that.

3 JUDGE HOYT: Thank you very much for your attendance
4 here this afternoon having done what I anticipated or hoped you
5 would do, that is, have the schedule already worked out and
6 certainly the fact that you've come to the office here prepared
7 to do job and I think we've done well.

8 As I mentioned to Judge Shon earlier, it's very
9 gratifying to have people who are competent counsel in a case.
10 It always makes it much more interesting -- maybe a little more
11 difficult but a little more interesting.

12 Thank you very much. The hearing is now adjourned.

13 (Whereupon, the prehearing conference was adjourned
14 sine die at 2:55 p.m.)

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REPORTER'S CERTIFICATE

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

in the matter of:

NAME OF PROCEEDING: Safety Light Corporation

DOCKET NUMBER: 030-05980

PLACE OF PROCEEDING: Bethesda, Maryland

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

Dean A. Robinson

Dean A. Robinson
Official Reporter
Ann Riley & Associates, Ltd.

11/29/89

PROPOSED HEARING SCHEDULE

Commencing on December 26, 1989

Exchange First Document Request and Interrogatories: January 2, 1990

Identify Potential Witnesses (if known): January 2

Produce Documents and Respond to Interrogatories: January 25

Begin Depositions: February 14

End Depositions: March 14

Proposed Stipulations: March 21

Agree to Stipulations: March 28

Submit Written Testimony: April 10

Motions to Strike: April 17

Reply to Motions to Strike:

SLC & USR: April 27

Staff: May 2

Rule on Motion to Strike: May 9

(Motions to strike only a portion of a witness's testimony may be ruled on orally at hearing.)

Hearing: Week of May 14, 1990.

This schedule is subject to extension for good cause.