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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

90 JAN 29 P3:33

Before Administrative Judges:

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Marshall E. Miller, Chairman
Oscar H. Paris
Frederick J. Shon

SERVED JAN 29 1990

In the Matter of

SAFETY LIGHT CORPORATION,
et al.

(Byproduct Material License
No. 37-00030-02 et al.)

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

ASLBP No. 89-590-01-OM
90-598-01-OM-2

January 29, 1990

ORDER

(Denying Motions to Dismiss NRC Orders issued
March 16, 1989 and August 21, 1989 for
Lack of Jurisdiction)

This proceeding involves two enforcement action Orders issued by the Nuclear Regulatory Commission (NRC) Staff with regard to the Bloomsburg, Pennsylvania site decontamination. The named parties were Safety Light Corporation, United States Radium Corporation; the following five parties (known collectively as the "USR Companies") USR Industries, Inc., USR Lighting, Inc., USR Chemicals, Inc., USR Metals, Inc., USR

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Natural Resources, Inc., and Lime Ridge Industries, Inc. and Metreal, Inc.¹

On March 16, 1989 the NRC Staff issued an Order Modifying Licenses (Effective Immediately) and Demand for Information (March Order).² That Order required all named parties to prepare plans for site characterization and decontamination of the site in Bloomsburg, Pennsylvania and to specify the amount of funds that each party would provide for implementation of the plan. The March Order alleged that Safety Light Corporation (SLC) and the other corporations have misled the NRC regarding the nature and effect of certain reorganizations that were carried out in 1980. It further alleged that neither prior notice was given nor NRC written consent obtained regarding the 1980 restructuring and subsequent sale, which amounted to a transfer of licenses in violation of Section 184 of the Atomic Energy Act and 10 C.F.R. 30.34(b). It was further alleged that "these corporate transactions were a deliberate attempt to isolate the liability and responsibility for cleanup of the Bloomsburg facility...from other; presumably more profitable, aspects of U.S. Radium's, and later Industries', business ventures."³

¹Originally Pinnacle Petroleum, Inc., was a named party, but it was dismissed from this action by the NRC by an Order dated April 24, 1989.

²54 Fed. Reg. 12035 (March 23, 1989).

³Id., at 12036.

On April 17, 1989, USR Companies filed an answer and request for hearing, raising questions among other things about the jurisdiction of NRC over the USR Companies and the appropriateness of an immediately effective order. SLC also requested a hearing on this Order. The Commission's Secretary, pursuant to 10 C.F.R. § 2.772(j), referred both requests to the Atomic Safety and Licensing Board Panel, and this Board⁴ was established on June 15, 1989 to hear the appeals. The Board was reconstituted on January 18, 1990.

On June 2, 1989 a Joint Characterization Plan prepared by IT Corporation was submitted in partial response to the March Order, but it was rejected by the NRC on June 16, 1989 as not satisfying its requirements. However, a revised plan dated August 9, 1989 was approved by the NRC on September 11, subject to the correction of certain identified deficiencies.⁵

On August 21, 1989, the NRC Staff issued an Order Modifying Licenses (Effective Immediately) to the USR Companies to assure that they would make available funds to comply with the March Order [54 Fed. Reg. 36078 (August 21, 1989)]. The August Order alleged that the

Corporations' failure to provide assurance of adequate funding to complete implementation of a satisfactory site characterization plan, the uncertainty regarding the nature and extent of

⁴On January 23, 1990 Judge Marshall E. Miller was appointed to replace Judge Hoyt as Chairman of the Board.

⁵August Plan to Characterize Radioactivity at Bloomsburg Site, dated September 11, 1989.

contamination at the Bloomsburg facility, and the statements made by the Corporations' principal officers as to the limited financial resources available for site characterization let alone decontamination, demonstrate that additional actions are immediately needed to protect public health and safety by assuring that sufficient resources are made available by the Corporations to initiate and complete the site characterization and take necessary immediate remedial action for any significant health and safety problems.

Answers and requests for hearing were again filed to the August Order, which were referred to the same Licensing Board. In addition, the USR Companies 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.

On October 19, 1989, the Board held a prehearing conference to be apprised of the issues and to establish appropriate procedures. On October 27, 1989, the Board held a second prehearing conference by telephone, in which it temporarily stayed the immediate effectiveness of the August Order pending the receipt of briefs on the stay issue and the Board's ruling on the motion for stay.⁶

On November 22, 1989 the Board issued an Order which converted its temporary stay of the immediate effectiveness of the NRC Staff Orders, to a stay pendente lite. The November Order also directed USR Industries to file a statement within 30 days describing its plan to fund the costs of: (1) site characterization; and (2) decontamination of the Bloomsburg

⁶October 27, 1989 Prehearing Conference Transcript, at 101.

site if the Board should conclude that USR Industries and/or its subsidiaries are legally liable for such costs. The statement was to include the sources for the funds and whether derived from proceeds of insurance policies, current cash accounts not otherwise legally committed, and noncash assets.

By an Order dated December 1, 1989, the Board clarified that the November 22, 1989, Order imposed a stay pendente lite of both the March 16 and August 21, 1989 Orders, and that the stay included Safety Light Corporation as well as USR Industries. A Hearing Schedule agreed to by all parties at a prehearing conference on November 29, 1989, was also adopted by the Board in this Order.

USR Industries submitted the funding information requested in the November 22 Board Order by a letter to the Board dated December 21, 1989. That letter stated that there was no funding plan because USR Industries maintains that NRC lacks jurisdiction over it; there are uncertainties regarding available insurance proceeds; and the corporation has patently inadequate financial resources in the absence of such insurance. If it were held liable for site characterization and cleanup it would "have no choice other than to seek protection under the bankruptcy statutes."

I. TRANSFER OF LICENSES

A. APPLICABLE STATUTES AND REGULATIONS

The controlling statute governing the transfer or disposition of licenses in any manner is Section 184 of the Atomic Energy Act of 1954, as amended.⁷ In that section Congress expressly provided that:

Sec. 184. Inalienability of Licenses.-- No license granted hereunder and no right to utilize or produce special nuclear material granted hereby shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of [the Atomic Energy] Act, and shall give its consent in writing.

By Section 184 Congress established a strong public policy prohibiting the "transfer of control of any license" by every conceivable means, without the prior written and informed consent of the Nuclear Regulatory Commission.⁸ This broad and sweeping statutory language was clearly intended to proscribe the alienation in any manner or form of any license or right to utilize or produce special nuclear material, without the specified Commission action. The integrity of the regulatory process in this regard can only be maintained by the most scrupulous adherence to such statutory requirements, in reality as well as in form.

⁷42 U.S.C. § 2234 (1982).

⁸Id.

The Commission has implemented these statutory requirements by the adoption of appropriate regulations. 10

C.F.R., Section 30.34(b) states:

No license issued or granted pursuant to the regulations in this part and parts 31 through 35, and 39 nor any right under a license shall be transferred, assigned or in any manner disposed of either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing.

The above-quoted Section 30.34(b) also implements Section 183 of the Atomic Energy Act of 1954, which provides:

Sec. 183. Terms of Licenses.-- Each license shall be in such form and contain such terms and conditions as the Commission may, by rule or regulation, prescribe to effectuate the provisions of [the Atomic Energy Act], including the following provisions:

- ... c. Neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of [the Atomic Energy Act].⁹

In this case every license and amendment that has been issued by the Commission contained an express provision that the "license shall be deemed to contain the conditions specified in Section 183 of the Atomic Energy Act of 1954, as amended, and is subject to all applicable rules, regulations and orders of the Nuclear Regulatory Commission now or

⁹42 U.S.C. § 2233(c) (1982).

hereafter in effect..."¹⁰ Such license conditions would also be constructively deemed to be part of all byproduct materials licenses under the terms of Section 30.34(d). Accordingly, all persons and corporations that have dealt here with the byproduct materials licenses and licensees are charged with knowledge of the requirements of these statutes and regulations.

In interpreting and applying statutory restraints on license transfers or other dispositions, we must consider the context in which nuclear energy is closely regulated. "Byproduct material" which is the subject of the instant licenses means any radioactive material yielded in, or made radioactive by exposure to the radiation incident to, the process of producing or utilizing special nuclear material.¹¹ The health and safety of the public and others exposed to radioactive materials is obviously of paramount importance. The whole history of the commercial utilization of nuclear energy and materials is fraught with deep public concern over the possible effects of any exposure to radioactivity. The entire subject has produced intensely emotional reactions by large segments of the population. Consequently, Congress has been very sensitive to the necessity of rigorous controls and close regulation of the entire nuclear industry. As a result,

¹⁰E.g., License No. 37-00030-02, Amendment No. 40 (January 25, 1979).

¹¹Section 30.4(d).

the regulatory framework it has established and charged the Nuclear Regulatory Commission with implementing is probably the tightest and most pervasive of any commercial or industrial activity in this country.

Against this background it is apparent that any person or corporation which chooses to engage in licensed nuclear byproduct material activities, is not completely free to conduct itself in a business-as-usual manner. There are substantial constraints upon unfettered business actions and forms resulting from the high degree of regulatory oversight, direct or consequential. Not surprisingly, such limitations apply to issues involving the direct or indirect transfer of licenses, significant changes in corporate and other licensees, and matters related to the liability and responsibility for the decontamination of sites and facilities used in licensed activities.

B. LICENSES ISSUED TO THE UNITED STATES
RADIUM CORPORATION

On March 16, 1956, the Atomic Energy Commission (AEC) issued License Number 37-30-1 to the United States Radium Corporation (U.S. Radium) "[f]or preparation of sealed sources for experimental use within the laboratory and for resale to AEC licensed users."¹² On June 20, 1956, the AEC issued License Number 37-30-2 (now License No. 37-00030-02) (the 02

¹²License No. 37-30-1, March 16, 1956.

license) to U.S. Radium for "RESEARCH AND DEVELOPMENT as defined in Section 11(q) Atomic Energy Act of 1954. PROCESSING FOR REDISTRIBUTION to AEC licensed users."¹³ The 02 license replaced License No. 37-30-1. On May 16, 1962, the AEC issued License No. GL 122 (now License No. 37-00030-10G) to U.S. Radium, which provided that "[p]ursuant to Section 30.24(j), 10 C.F.R. 30, the licensee is authorized to manufacture the sealed self-luminous sources listed in Condition 10 below, and when such sources have been manufactured, tested, and labelled in accordance with the provisions of this license and Sections 30.24(j) and 30.25 of 10 C.F.R. 30, to distribute the sources to persons generally licensed pursuant to Section 30.21(d) of 10 C.F.R. 30."¹⁴

On April 16, 1965, the AEC issued License No. 37-30-7 (now License No. 37-00030-07E) to U.S. Radium for "[a]pplication of tritiated luminous paint to timepiece hands and dials for sale or distribution to persons exempt from the requirements for a license pursuant to Section 30.10(a), Title 10, Code of Federal Regulations, Part 30, 'Licensing of Byproduct Material.'"¹⁵ On January 13, 1966, the AEC issued License No. GL 237 (now License No. 37-00030-09G) to U.S.

¹³License No. 37-00030-02, June 20, 1956.

¹⁴License No. 37-00030-10G, May 16, 1962.

¹⁵License No. 37-00030-07E, April 16, 1965.

Radium.¹⁶ The 10G, 09G, and 07E licenses authorize use, possession, and distribution of hydrogen-3 (tritium).

On April 25, 1969, U.S. Radium applied to renew License No. 37-00030-02.¹⁷ The license application requested a new license, or in the alternative, amendment of the 02 license to authorize new activities. The application also independently requested the AEC to renew the 02 license. U.S. Radium's proposed renewal of the 02 license would authorize possession of byproduct material at the Bloomsburg site for "[d]econtamination, clean-up and disposal of areas previously used for research, development and processing under this license."¹⁸ In response to this application, on August 5, 1969, the AEC issued License No. 37-00030-08 to U.S. Radium for "[p]rocessing for distribution to authorized recipients. Research and development as defined in 10 C.F.R. 30.4(q)."¹⁹

¹⁶License No. 37-00030-09G, January 13, 1966. License condition 9 specified that "[p]ursuant to Section 32.51, Title 10, Code of Federal Regulations, Part 32, the licensee is authorized to manufacture luminous devices specified in Condition No. 10 of this license subject to the conditions and limitations contained herein and to distribute such devices to persons generally licensed pursuant to Section 31.5, Title 10, Code of Federal Regulations, Part 31, or equivalent provisions of the regulations of any Agreement State."

¹⁷Application for Byproduct Material License, April 25, 1969.

¹⁸Id.

¹⁹License No. 37-00030-08, August 5, 1969. The AEC issued this license rather than amending the 02 license at U.S. Radium's request.

The AEC also renewed the 02 license for the purposes requested in the application.²⁰

On January 25, 1979, the NRC issued amendment number 40 to the 02 license. License conditions 13 and 14 of this license required U.S. Radium to submit a status report of decontamination work for each period beginning on July 1, as specified in applications dated June 7, 1977, and October 23, 1978. Each such report was due on the succeeding July 1. The incorporation of the October 23, 1978, letter into the license required U.S. Radium to take the actions listed on the schedule enclosed with that letter.

C. CORPORATE RESTRUCTURING BY LICENSE
UNITED STATES RADIUM CORPORATION

On May 14, 1980, United States Radium Corporation, a publicly held corporation and NRC licensee, created USR Industries, Inc. (USR Industries).²¹ Concurrently, USR Industries created Industries Merger Co., Inc. As the "Agreement and Plan of Merger" dated May 16, 1980, (Merger Plan)²² describes, as of May 16, 1980, these three corporations held interests in each other as follows: U.S.

²⁰License No. 37-00030-02, Amendment No. 36.

²¹American Stock Exchange, Inc., Listing Application No. 12145, dated August 21, 1980, at 1.

²²Agreement and Plan of Merger, dated May 16, 1980, Exhibit A to United States Radium Corporation Proxy Statement dated July 11, 1980.

Radium,²³ an NRC licensee since 1956, which then owned, possessed, and operated the Bloomsburg facility, owned all the outstanding stock of USR Industries, Inc.²⁴ In turn, USR Industries owned all the outstanding stock of Industries Merger Co., Inc.²⁵ All these corporations were Delaware corporations. When U.S. Radium created USR Industries and Industries Merger Company on May 14, 1980, the Board of Directors of U.S. Radium was identical to that of USR Industries, and the same individual was Chairman of the Board of all three companies.²⁶ Moreover, neither USR Industries nor Industries Merger Co. owned any assets other than those of U.S. Radium. Both USR Industries and Industries Merger Co. were only nominally capitalized.²⁷

As described in the Merger Plan, on execution of the plan, each share of U.S. Radium (publicly held) would convert to a share of USR Industries. The share of Industries Merger Co., Inc. (held by USR Industries) would convert to shares of the "Surviving Corporation," i.e., the entity whose assets

²³United States Radium Corporation (U.S. Radium) is denoted in the Merger Plan as "USR."

²⁴Id. In the Merger Plan, USR Industries is denoted as "Industries."

²⁵Id. The Merger Plan denotes Industries Merger Co., Inc. as "Merger Company."

²⁶ASE Listing Application, supra, at 4; Proxy Statement, supra, at 4-6; Merger Plan, supra, at A-7.

²⁷Proxy Statement, supra, at 16.

comprised all of U.S. Radium's assets prior to May 14, 1980. Finally, all shares of USR Industries outstanding prior to execution of the Merger Plan (held by U.S. Radium) would be cancelled.²⁸ In summary, U.S. Radium created its wholly-owned subsidiary USR Industries and USR Industries' wholly-owned subsidiary Industries Merger Co. so that, on execution of the Merger Plan, U.S. Radium's ownership of USR Industries would cease and U.S. Radium would become a wholly-owned subsidiary of USR Industries. In a sense the parent corporation would become the child, and vice versa. The Board of Directors of the former U.S. Radium would constitute the Board of Directors of USR Industries after execution of the Merger Plan.²⁹

As further described in the Proxy Statement dated July 11, 1980, after the merger U.S. Radium, as a wholly-owned subsidiary of USR Industries, would transfer all of its lines of business except for the safety lighting business to four other wholly-owned subsidiaries of USR Industries. The Proxy Statement names these four companies as USR Chemical Products, Inc., USR Lighting Products, Inc., USR Metals, Inc., and U.S. Natural Resources, Inc.³⁰

²⁸Id., Article II, at A-3.

²⁹Letter dated July 11, 1980, from Ralph T. McElvenny, Jr., Chairman of the Board and Chief Executive Officer of U.S. Radium to the stockholders of U.S. Radium (accompanying proxy statement).

³⁰Proxy Statement, supra, at 15.

On August 27, 1980, U.S. Radium, USR Industries and Industries Merger Co. executed the Merger Plan.³¹ On execution of the Merger Plan, the members of the boards of directors of U.S. Radium and USR Industries did not change. The only assets that USR Industries acquired through execution of the merger were assets of U.S. Radium before the merger.³²

Subsequently, USR Industries reorganized the businesses of its now wholly-owned subsidiary, U.S. Radium, into five wholly-owned subsidiaries, with the safety lighting operations at Bloomsburg segregated from all other assets in a company named U.S. Radium. On November 24, 1980, USR Industries changed U.S. Radium's name to Safety Light Corporation. On January 21, 1981, Safety Light requested the NRC to change the name on its licenses to Safety Light. Aside from this request, none of the corporations involved in these complicated and extensive transactions informed the NRC of any of the above described transactions. That 1981 letter of notification to the NRC stated:

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

³¹ASE Listing Application, supra, at 3.

³²Letter dated July 11, 1980, supra, at 2.

plant site. Therefore, in the 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

On March 7, 1983, in response to Safety Light's January 21, 1981 request, the NRC amended the licenses to change the name of the licensee from U.S. Radium to Safety Light.³³ When the NRC issued this amendment, the only information it had indicated that Safety Light was identical to U.S. Radium before the 1980 restructuring. The NRC then had no knowledge that U.S. Radium had been a subsidiary of USR Industries, or that many of U.S. Radium's assets had been transferred to the other USR companies.

On May 24, 1982, USR Industries sold its wholly-owned subsidiary, Safety Light, to three individuals.³⁴ No

³³Amendment Number 42 to the 02 license.

³⁴Letter dated November 11, 1983, Exhibit B to the "Memorandum of Law in Support of the Motion of USR Industries, Inc., USR Lighting, Inc., USR Chemicals, Inc., USR Metals, Inc., and U.S. Natural Resources, Inc. to Stay the Order Issued August 21, 1989," dated November 6, 1989. The November 11, 1983 letter provided in pertinent part:

Gentlemen:

Safety Light Corporation has been requested by representatives of the Region I Office of the

corporation or individual involved with this transaction requested or obtained the NRC's permission or approval to execute this transaction. The NRC has never given its written consent to this transaction.

On April 20, 1988, the NRC issued a Demand for Information to U.S. Radium, USR Industries, Safety Light, and their subsidiaries and successor corporation.³⁵ Based on the information obtained through this Demand, the NRC issued the March 16, 1989 Order.

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

³⁵NRC Demand for Information, April 20, 1988.

D. THE NRC HAS JURISDICTION OVER
THE USR COMPANIES

The beginning and the end of any analysis of NRC jurisdiction over parties and alienability of licenses must rest upon the express statutory requirements established by Congress in Section 104 of the Atomic Energy Act.³⁶ In mandatory language entitled "Inalienability of Licenses," it provided that no license or rights granted thereby shall be disposed of in any manner, unless the Commission shall after securing full information, find that the transfer is in accordance with the Atomic Energy Act, and shall give its consent in writing. None of these explicit requirements has been met by any of the corporate parties of this proceeding at any time.

The United States Radium Corporation was organized and chartered in Delaware in 1917. It was issued a number of licenses and renewals dealing with the use of byproduct or radioactive material starting March 16, 1956.³⁷ Apparently for many years it engaged in business involving licensed and non-licensed activities at its site in Bloomsburg, Pennsylvania.

³⁶42 U.S.C. § 2234 (1982). See our discussion of these statutory and regulatory provisions in Section IA, pages 7-10 supra.

³⁷See Section IB, pages 10-12 supra.

Rather suddenly on May 14, 1980, the United States Radium Corporation initiated a series of complicated and interrelated corporate restructuring actions which fundamentally changed the form and status of this licensee.³⁸ At that time the United States Radium Corporation created its wholly-owned subsidiary USR Industries, and the latter's wholly-owned subsidiary Industries Merger Co. All three corporations had identical boards of directors, and the same individual was chairman of the board. None owned any assets except United States Radium Corporation.

On the execution of the Merger Plan, United States Radium Corporation's ownership of USR Industries would cease, and the parent corporation would become the wholly-owned subsidiary of USR Industries. The only assets that USR Industries acquired through execution of the merger were the assets of United States Radium Corporation before the merger. Subsequently, USR Industries reorganized the businesses of its now wholly-owned subsidiary United States Radium Corporation, into five wholly-owned subsidiaries, with the safety lighting operations at Bloomsburg, Pennsylvania segregated from all other assets in a company named U.S. Radium.³⁹ On November 24, 1980, USR Industries changed the name of its former parent, the United States Radium Corporation, to the Safety Light Corporation.

³⁸See Section IC, pages 13-18, supra.

³⁹Id., at pages 14-15.

None of this elaborate and complex corporation restructuring was revealed to the NRC, although very detailed disclosures were made to others.⁴⁰ The only communication to NRC was a letter dated January 21, 1981, stating that the company name was changed from United States Radium Corporation to Safety Light Corporation, but the facility location was the same.⁴¹ There was absolutely no disclosure of the recent extensive corporate changes involving this NRC licensee.

There was no notice given of the transfers of controlling interest in the stock which could involve transfers of ownership and control of a license, requiring NRC written consent. In short, there was not even an attempt to comply with the mandatory requirements regarding "transfer of control of any license" upon written consent by the NRC after securing full information.⁴² The statute requires a full, fair disclosure to be made by licensees of actions involving the transfer or control of licenses, so that the NRC can make an informed judgment whether such actions are in accordance with the Atomic Energy Act. Clearly financial and other considerations related to decontamination of the site of licensed nuclear byproduct activities could and should be

⁴⁰Listing Application to American Stock Exchange, August 21, 1980 (Attachment 2, Staff's Nov. 16, 1989 brief); Merger Plan, May 16, 1980, Attachment 4; Proxy Statement, July 11, 1980, Attachment 3.

⁴¹Supra, at page 16.

⁴²42 U.S.C. § 2234; 10 C.F.R. Section 30.34(b)

reviewed by the NRC in fulfilling its statutory responsibilities. However, the NRC never had an opportunity to review the effect of the significant changes in the licenses corporation because of the nondisclosure of the facts by the parties to this proceedings. As a result of noncompliance with the statutory requirements, the transfers of control of the licenses by corporate restructuring were invalid as to the NRC which is obligated by statute to disregard them.

On May 24, 1982, USR Industries sold one hundred percent of its stock interest in its wholly-owned subsidiary, Safety Light Corporation, to three members of its operating management. By letter dated November 23, 1983, Safety Light informed the NRC that:

". . . 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. . ."

That letter to the NRC further stated:

"As previously stated in correspondence of 21 January 1982 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."⁴³

Once again there was no affirmative disclosure of changes in 100 percent stock ownership and transfer of control over

⁴³Brief of USR Industries dated November 20, 1989, Exhibit B.

licenses, and no written consent by the NRC pursuant to the statutory mandate. The prohibitions against unapproved transfers of control of licenses enacted by Congress cannot be ignored or avoided by licensees or by the NRC itself. The attempted transfers of ownership and control by the USR Companies were ineffective to eliminate NRC jurisdiction over the succeeding entities because the transfers were in violation of statutory requirements. The strong public policy established by Congress cannot be defeated or eroded by using corporate forms to shield licensees from their obligations to protect the public health and safety. USR Industries remain responsible for decontaminating the Blcomsburg site under the licenses, and the NRC has jurisdiction over them to compel compliance in this enforcement proceeding.

The USR Companies have advanced a number of arguments in support of their challenge to NRC jurisdiction over them in this proceeding. We have considered these contentions and hold that they do not bar NRC jurisdiction. For example, USR Companies argue that only ownership, not control, was transferred, and that stock may regularly be bought and sold without NRC prior approval.⁴⁴ Such arguments overlook the instant facts where massive transfers such as 100 percent of stock ownership are involved, and clearly control follows such deepseated restructuring. Fundamental changes in corporate

⁴⁴USR Brief dated November 6, 1989, at 13-15.

structure, ownership and control are the same as attempted transfers or assignments of licensees. Such ownership and control transfers apply to both the 1980 restructuring and 1982 sale of all the Safety Light stock to the three management individuals.

The validity of the Safety Light license, and the purposes for which NRC issued IN-89-25 on March 15, 1989, are unaffected by the license transfers attempted by changes of the licensees in this case.

The strong public policy enunciated by Congress in barring unapproved transfers of control of licensees in controlling, and hence there can be no avoidance of such mandatory requirements by NRC acquiescence,⁴⁵ delays,⁴⁶ laches or equitable estoppel,⁴⁷ notification of SEC or its own shareholders,⁴⁸ alleged business reasons as justification,⁴⁹ spin-offs,⁵⁰ or the provisions of 10 C.F.R. Part 50.⁵¹

⁴⁵Id., at 13.

⁴⁶Id., at 20.

⁴⁷Id., at 4, 13-14.

⁴⁸Id., at 10-12.

⁴⁹Id., at 11.

⁵⁰Id., at 11-12.

⁵¹USR Industries brief dated January 3, 1990 at 9-12.

Accordingly, we hereby deny the motions by USR Companies
to dismiss for lack of jurisdiction.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Marshall E. Miller
for *Shore*
Marshall E. Miller, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
January 29, 1990

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

SAFETY LIGHT CORPORATION, ET AL.

Docket No. (e) 30-05980 ET AL-DM

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER DATED 1/29/90 have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Oscar H. Paris
Atomic Safety and Licensing Board
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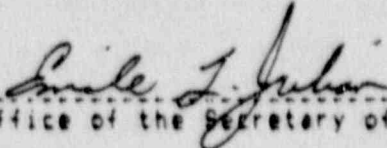
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King of Prussia, PA 19406

Docket No. (s)30-05980 ET AL-DM
LE ORDER DATE: 1/29/90

Dated at Rockville, Md. this
29 day of January 1990


Office of the Secretary of the Commission

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

SAFETY LIGHT CORPORATION, ET AL.

Docket No. (s) 30-05980 ET AL-DM-2

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER DATED 1/29/90 have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Atomic Safety and Licensing Appeal
Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Oscar H. Paris
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Frederick J. Shon
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

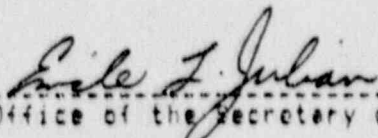
James H. Carpenter
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Marshall E. Miller, Chairman
ASLBF
1920 South Creek Blvd.
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Office of the General Counsel
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Gerald Chernoff
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2300 N Street, NW
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Dated at Rockville, Md. this
29 day of January 1990


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