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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'90 MAY -9 P4:02

Before Administrative Judges:

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

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

SERVED MAY 10 1990

In the Matter of

SAFETY LIGHT CORPORATION,  
et al.

(Bloomsburg Site  
Decontamination)

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

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

May 9, 1990

MEMORANDUM AND ORDER

(Granting Joint Motion of USR Industries and  
Staff to Hold Proceeding in Abeyance)

Judge Shon for the majority:

On May 4 USR Industries and NRC Staff filed a Joint Motion of USR Industries and NRC Staff to hold the Proceeding in Abeyance (Motion). The Motion was accompanied by a Partial Interim Agreement Between USR Industries and the NRC Staff (Agreement). On May 8 we held a conference between the Board and counsel to permit these parties to further clarify their positions and to present further argument as to whether the motion should be granted.

We grant the Motion for the reasons set forth below, but not without misgivings. Like our dissenting colleague

we are in some measure reluctant to grant additional delay in this case. Its history has been one of repeated dilatory maneuvering, and indeed despite two orders from the Staff, one in March and one in August of last year, despite our lifting of our pendente lite stay almost three months ago, and despite the Appeal Board's sanction of our action, no real progress has been made toward trying the case or complying with the orders that engendered it.

Nevertheless, we appear to be confronted with a situation in which at least some small progress will be made toward characterizing the state of contamination of the Bloomsburg site if we grant this Motion, while if we do not do so much of the money available may well be eaten up by litigation. (Tr. 292, 306). On the principle that it is better to investigate than to litigate, we are persuaded that the proper course is to allow the delay and encourage the parties to proceed according to the terms of the Agreement, hiring competent consultants to probe the site to the extent that available funds will permit.

We recognize the hazard implicit in this course: We may arrive at the October deadline with the investigatory job only ten percent done (Tr. 264, 270, 271) and nothing else accomplished at all. We may then be confronted with a situation in which the case must still be tried, and both time and funds will have been expended to little avail. But we believe that the quality of the decision may well be

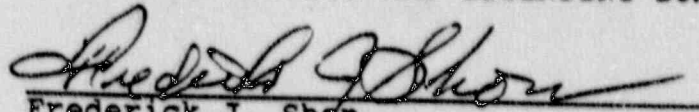
improved if all goes well. Both parties assure us that the data gathered over the next six months will improve the basis for and cogency of any decision we may later make. (Tr. 327-331).

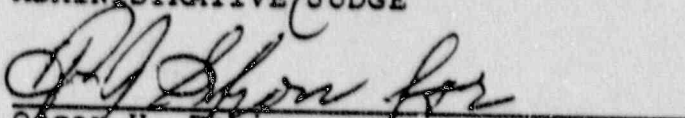
We are aware that on May 4 the Staff and USR Industries sent copies of their Motion and Agreement to the Appeal Board, suggesting in a cover letter that, should we grant the Motion, that action would delay the effects of the Appeal Board's orders concerning the payment schedule as well as the effects of our own orders. We do not, of course, know what action the Appeal Board may take in response, and if such action impacts the order we issue here, we may be constrained to reconsider. Nevertheless, in view of the parties' desire that we act expeditiously (Tr. 341), we are now granting the Motion without awaiting action by the Appeal Board.

The Motion is Granted.

IT IS SO ORDERED.

THE ATOMIC SAFETY AND LICENSING BOARD

  
Frederick J. Shen  
ADMINISTRATIVE JUDGE

  
Oscar H. Paris  
ADMINISTRATIVE JUDGE



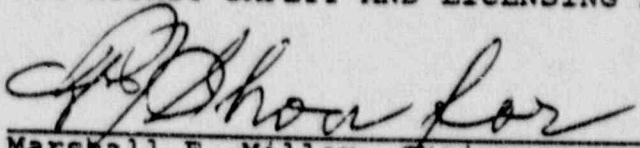
Judge Miller, Dissenting:

I would not grant the Motion. This ostensibly expedited proceeding has already been subject to more delay than necessary. Adding to that delay buys nothing: The savings realized by avoiding a few depositions and a few days of hearing time are minuscule and will likely be expended anyhow at some later date. Neither of the movants could represent to us that the data to be gathered in the next few months are essential to the hearing (Tr. 326-7, 330-1).

While the Commission's policy is to encourage settlement, this so-called settlement is really no settlement at all; it is simply an agreement to further delay matters. Had it been arrived at a year ago, it might have been worthwhile. Even now, if the Staff and USR Industries truly wish to settle, they could arrive at a real agreement, one in which the Staff could use its power to modify its orders in such a way as to make a hearing unnecessary. (Tr. 331-2).

I would adhere to our established hearing schedule, a schedule which would doubtless have produced a decision before the delayed schedule will even start the hearing.

THE ATOMIC SAFETY AND LICENSING BOARD

  
Marshall E. Miller, Chairman  
ADMINISTRATIVE JUDGE

Bethesda, Maryland  
May 9, 1990

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

SAFETY LIGHT CORPORATION, ET AL.

Docket No.(s) 30-05980 ET AL-QM

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (GRANTING JOINT MOT...) 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.

Administrative Judge  
Christine N. Kohl, Chairman  
Atomic Safety and Licensing Appeal  
Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

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

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

Administrative Judge  
W. Reed Johnson  
ASLAB  
115 Falcon Drive, Colthurst  
Charlottesville, VA 22901

Administrative Judge  
Marshall E. Miller, Chairman  
ASLBP  
1920 South Creek Blvd.  
Spruce Creek Fly-In  
Datona Beach, FL 32124

Robert M. Weisman, Esq.  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Geoffrey L. Beauchamp  
Wisler, Pearlstine, Talone, Craig and  
Barrity  
515 Swede Street  
Norristown, PA 19401

Gerald Charnoff, Esquire  
Shaw, Pittman, Potts and Trowbridge  
2300 N Street, NW  
Washington, DC, 20037

Docket No. (s) 30-05980 ET AL-DM  
LB M&D (GRANTING JOINT MOT...)

Jack Miller, President  
Safety Light Corporation  
4150-A Old Berwick Road  
Bloomsburg, PA 17815

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

Dated at Rockville, Md. this  
10 day of May 1990

*Patty Henderson*  
-----  
Office of the Secretary of the Commission



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U.S. Nuclear Regulatory Commission  
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Dated at Rockville, Md. this  
10 day of May 1990

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Office of the Secretary of the Commission