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VIA FACSIMILE AND FEDERAL EXPRESS

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**Re: Safety Light Corporation Bloomsburg Site
Proposed Administrative Order by Consent**

Dear Sirs and Madam:

This office represents Safety Light Corporation ("Safety Light") with respect to the above-reference matter. Safety Light was recently asked by the United States Environmental Protection Agency ("EPA") to enter into an Administrative Consent Order ("AOC") with regard to a removal action at its Bloomsburg, Pennsylvania Site (the "Bloomsburg Site"). Because each of your offices has an interest in this site and a long history of cooperation with Safety Light in its continuing efforts to clean up the Bloomsburg Site, we write to request your participation in the ongoing dialogue to determine the best and most productive course of action.

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The EPA's involvement on the property came after the NRC, the PADEP and Safety Light had worked out and were ready to put into effect a Work Plan regarding the "silo waste." Though unintended, EPA's involvement, and the resultant AOC, has stalled the limited remediation efforts contemplated by that Work Plan. Furthermore, the limited removal action the EPA has proposed will ultimately resolve only one issue at the Bloomsburg Site, still rendering it unfit for general use and therefore subject to continuing monitoring by the State and NRC.

While our client remains ready and willing to take whatever remedial action it can presently afford, we believe there is, at present, a limited opportunity to reach an agreement regarding the global investigation and remediation of the Bloomsburg Site. Such a resolution can only be obtained, however, if we are able to join all interested governmental entities in that dialogue and together formulate a joint remediation plan that recognizes the financial limitations of Safety Light and the need for a comprehensive plan which satisfies the regulatory concerns of each agency. We believe that to optimize available funds and future funding mechanisms, site conditions must be addressed as a whole, rather than on a piecemeal approach.

By way of background, we provide the following synopsis of our negotiations with the EPA to date. The EPA presented Safety Light with the proposed AOC in August, 2002. The AOC contained language of concern to us, which prevented Safety Light from executing the AOC as presented. Due to these concerns, we engaged in several conferences with representatives of the EPA, one of which was a telephone conference that representatives of the United States Nuclear Regulatory Commission ("NRC") monitored but in which they did not participate. We also wrote to the EPA regarding our concerns with the AOC as presented, proposing a number of revisions.

We recently received a revised AOC from EPA, which reflected the EPA's acceptance of a number of our changes, but rejection of those changes that were of primary importance to Safety Light. Without these changes, Safety Light cannot, in good faith, enter into this AOC. Specifically, the AOC still contains clauses empowering the EPA with virtually unfettered discretion to expand the Scope of Work mandated under the removal action and to thereby expose Safety Light to significant fines and penalties that are certain to accrue given the company's severely limited financial resources. The AOC also binds Safety Light to dispose of the "silo-waste" once it has been resorted and restaged. While no one is able to estimate the cost of this disposal until the waste is resorted, it is likely that Safety Light would not be able to finance such activities, again leaving it exposed to the risk of significant daily fines and penalties. Under these circumstances, we cannot advise our client to execute the proposed AOC.

As we have advised the EPA and as the NRC is already well-aware, Safety Light is in a precarious financial position. Current business conditions have significantly reduced Safety Light's ability to finance the large, open-ended commitments required by

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EPA's proposed AOC. Safety Light's resources are limited for several other reasons, which include: (1) Safety Light's obligation to set aside adequate funds for its allocated share of remediation costs at the Maxey Flats Superfund Site in Morehead, Kentucky under a Limited Ability to Pay Consent Decree lodged in Federal Court in New Jersey, and the terms of a separate but related Consent Decree lodged in Federal Court in Kentucky; (2) Safety Light's ongoing obligations to the NRC under a settlement agreement from which the current version of the AOC does not release Safety Light; and (3) Safety Light's possible financial obligations to the Pennsylvania Department of Environmental Protection ("PADEP") with regard to licensing and monitoring fees pursuant to a state-issued license for radium.

As we have discussed with representatives of the EPA, we are prepared to "open our books" to the EPA as we have done with other governmental entities in the past, in order to demonstrate Safety Light's inability to commit to fund a project for which no one can estimate an ultimate cost but which Safety Light's consultants' believe it could not finance. But, as stated above, even if Safety Light could ultimately survive such a financial undertaking, we are all still left with a Bloomsburg Site in continuing need of remediation.

The NRC has long recognized Safety Light's precarious financial position. But the NRC has also recognized the benefit of keeping Safety Light in business, rather than driving it into bankruptcy by imposing burdens it could not possibly shoulder or by refusing to renew its licenses. Indeed, in November of 1999, at the time of Safety Light's last licensing renewal with the NRC, the staff of the NRC completed a detailed analysis of the advantages and disadvantages of waiving the financial assurance requirement of 10 C.F.R. 30.35 in order to renew Safety Light's licenses. Memorandum from William D. Travers, Executive Director for Operations, United States Nuclear Regulatory Commission, to Commissioners, United States Nuclear Regulatory Commission (Nov. 17, 1999) (on file with the United States Nuclear Regulatory Commission). Recognizing Safety Light's inability to provide such financial assurances, but noting the local economic impact through loss of jobs and tax revenues, as well as the loss of contributions Safety Light could continue to make if it remained in business, the Commission granted an exemption to Safety Light and renewed the licenses.

The NRC memorandum discussed above also reflects that the staff of the NRC had conferred with the PADEP and EPA Region III regarding this renewal and waiver of financial assurance requirement and received no objections from either office. Thus, both PADEP and the EPA have long been aware of the financial situation of Safety Light and its ongoing struggle to remain in business while simultaneously cooperating with the NRC and PADEP to decommission the Bloomsburg Site.

Just a few months ago, NRC officials cited Safety Light as a prime example of the untenable position faced by a number of NRC regulated sites. The commission noted

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that the decommissioning of the Bloomsburg Site presented a unique opportunity to explore alternative solutions to funding problems. Mr. Hubert J. Miller, RGN-I/ORA noted that

Safety Light for example in my region in Pennsylvania if the estimates for unrestricted release of that is between 30 and 100 million dollars [sic]. These are estimates coming from the company. We're talking about radium largely. It's a dual made more complex by the fact that it's not just the things that we regulate [sic]. There's stranzium (PH) [sic] and cesium and some tritium. These are not issues that are real severe or acute level of hazard. You're talking enormous sums however if you go and try to clean up that site completely. A final solution has not been arrived at. Maybe I'm as much as anything echoing the premise of your question. That is the difficulty of this and the need to search solutions that might involve some sort of an institutional pair [sic]. We've made some progress recently working with the EPA who does have an authority under CERCLA I'm told to spend some money in the short run without going through a full ranking. In fact before it's done with a very shortage of our short year funds in that case, we may end up taking advantage of that [sic]. EPA may be in fact stepping in. We're making some progress. **It's a tough issue. I think Safety Light may be more than anything bringing it to life.**

Hubert J. Miller, RGN-I/ORA, Remarks at the United States of America Nuclear Regulatory Commission, Briefing on Status of Nuclear Waste Safety (Mar. 4, 2002) (transcript available in Electronic Reading Room, United States Nuclear Regulatory Commission) (emphasis added). Mr. Miller was speaking to the conundrum faced by decommissioning sites where the sites may not qualify for the NPL under the hazardous ranking score and therefore funding is not available, but the licensees who do not have the financial wherewithal are driven into bankruptcy. *Id.*; see comments of Commissioner Jeffrey S. Merrifield.

On the State side, Safety Light is contending with yet more obligations to two separate bureaus within the PADEP—the Bureau of Land Recycling and Waste Management and the Bureau of Radiation Protection. Both Bureaus oversee the Bloomsburg Site and the ongoing activities there. This oversight has resulted in the imposition of significant licensing fees on Safety Light, which they may not be able to pay. The PADEP's recognition of the need for a long term solution at the Bloomsburg sight is reflected by the fact that, as we understand, it may have been one of these bureaus

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that asked the EPA to become involved at the Bloomsburg Site in the first place. We also understand that PADEP has nominated the Bloomsburg Site for inclusion on the NPL on more than one occasion, seeking the necessary funding under the CERCLA statute to fully decommission the Bloomsburg Site. The Bureau of Radiation Protection has negotiated with and worked in cooperation with Safety Light, the NRC, and the EPA in the recent past in formulating a Work Plan for the silo remediation that was acceptable to all parties. We hope and trust that such a cooperative effort can be made with respect to the entire property.

EPA's goal with respect to the Bloomsburg Site is perhaps best demonstrated by the Memorandum of Understanding entered into between EPA and NRC regarding decommissioning of sites like the Bloomsburg Site. That Memorandum of Understanding provides "that the EPA will defer exercise of authority under the Comprehensive Environmental Response, Compensation and Liability Act (Superfund) for the majority of facilities decommissioned under NRC authority." The memorandum purportedly was intended to reduce the involvement of the EPA with NRC licensees like Safety Light that are in the decommissioning stage. *NRC Announces Meeting of Memorandum of Understanding with EPA on Cleanup of Radioactively Contaminated Sites*, NRC News (United States Nuclear Regulatory Commission), Oct. 23, 2002; see also Memorandum of Understanding between the Environmental Protection Agency and the Nuclear Regulatory Commission from Christine T. Whitman and Richard A. Meserve (Sep. 30, 2002; Oct. 9, 2002) (on file with the United States Nuclear Regulatory Commission).

We respectfully suggest that addressing site conditions at the Bloomsburg Site by the EPA separately runs contrary to the spirit, if not the letter, of this Memorandum of Understanding. As discussed above, the EPA proposed the AOC *after* the NRC, the PADEP and Safety Light had worked out and were ready to put into effect a Work Plan regarding the "silo waste." The EPA's involvement has resulted in a delay in putting that Work Plan into effect. And ultimately, the result of the proposed limited removal action by the EPA regarding the very same "silo waste" will not resolve other issues of concern at the Bloomsburg Site. The site will still be unfit for general use and subject to continuing monitoring by the State and NRC even if the AOC was accepted and executed.

In view of the above, we are requesting by this letter that the parties undertake a joint dialogue to determine the most effective, long-term, comprehensive approach to the remediation of the entire Bloomsburg Site. We recognize that we are asking a great deal from each of you in order to accomplish this goal, however, we see no other reasonable alternative. In that regard, we are prepared to undertake whatever efforts are required from Safety Light to facilitate this dialogue and possible resolution.

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Counsellors At Law

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Thank you for your time and attention to this matter. We look forward to receiving your comments in the very near future and stand ready to address any questions you might have in this regard.

Very truly yours,

ROBERTSON, FREILICH, BRUNO & COHEN, LLC

By: Kerry Ann McArdle
Kerry Ann McArdle, Esq.

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