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**IN THE MATTER OF:**

## Safety Light Corporation Site

## Safety Light Corporation

**Respondent**

**Proceeding Under Sections 106(a) and 122(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9606(a) and 9622(a)**

I hereby certify that the within is a true and correct copy of the original Administrative Order on Consent filed in this matter.

Phil P. Wilson 2/4/03  
Attorney for U.S. Environmental Protection  
Agency, Region III

## ADMINISTRATIVE ORDER BY CONSENT FOR REMOVAL RESPONSE ACTION

The parties to this Administrative Order by Consent ("Consent Order" or "Order") Safety Light Corporation ("Respondent") and the United States Environmental Protection Agency ("EPA"), having agreed to the entry of this Consent Order, it is therefore Ordered, that:

## I. JURISDICTION AND GENERAL PROVISIONS

- 1.1 This Consent Order is issued pursuant to the authority vested in the President of the United States by Sections 106(a) and 122(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606(a) and 9622(a); delegated to the Administrator of EPA by Executive Order No. 12580, 52 Fed. Reg. 2923 (January 29, 1987); and further delegated to the Regional Administrators of EPA, and to the Hazardous Site Cleanup Division Director (Delegation No. 1200 TN RIII-132, 4/27/99). This Consent Order pertains to property located in Bloomsburg, in South Centre Township along Old Berwick Road in Columbia County, Pennsylvania. The property will

hereinafter be referred to as the "Safety Light Corporation Site" or "the Site" and is further described in Section III (Findings of Fact) below.

- 1.2 The Respondent agrees to undertake all actions required by, and comply with all requirements of, this Consent Order including any modifications hereto (the "Work").
- 1.3 The Work shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 C.F.R. Part 300; and CERCLA.
- 1.4 The Respondent consents to and will not contest EPA's authority or jurisdiction to issue or to enforce this Consent Order.

## **II. STATEMENT OF PURPOSE**

- 2.1 In entering into this Consent Order, the mutual objectives of EPA and Respondent are to conduct a removal action, as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), to: 1) abate, mitigate, and/or eliminate the release or threat of release of hazardous substances at the Site by properly and appropriately characterizing as well as containing/preventing the migration of hazardous substances from the Site; and 2) properly collecting and staging all materials in a secure location in preparation for disposal to an offsite Nuclear Regulatory Commission licensed disposal facility.

## **III. FINDINGS OF FACT**

- 3.1 Respondent Safety Light Corporation is a corporation incorporated in and also presently headquartered in the Commonwealth of Pennsylvania.
- 3.2 Respondent Safety Light Corporation owns and operates a manufacturing facility along Old Berwick Road in Bloomsburg, in Columbia County, Pennsylvania. The Safety Light Corporation Site is approximately 10 acres in size. At an elevation of 490 feet above mean sea level, the Site is located on an old terrace and floodplain on the north bank of the Susquehanna River.
- 3.3 The Safety Light Corporation continues to make lighting products with radioactive material (tritium) as the energy source and currently holds two licenses administered by the U.S. Nuclear Regulatory Commission (NRC). A separate company, USR Metals, Inc., leases portions of the Site from Safety Light to conduct non-radioactive operations involving the manufacture of dials, nameplates, and other specialty products used in a

variety of industrial and military applications. USR Metals, Inc.'s operations also involve anodizing of aluminum products and applications of specialty protective films to the surfaces of various metal items. Safety Light Corporation also holds a license administered by the Pennsylvania Department of Environmental Protection.

- 3.4 Activities at the Site have varied over time and involved uses of a number of different radionuclides. In 1948, the United States Radium Corporation's (USRC) radium operations were relocated from Brooklyn, New York to the Site. At the time, USRC used mainly Radium (Ra-226) and minor amounts of Polonium (Po-210) in the manufacture of self-illuminating watch and instrument dials. From 1948 until 1954, USRC used an onsite lagoon for disposal of sewage and process wastewater. During the early 1950s, USRC expanded its operations to include the manufacturing of civil defense check sources and radiation sources utilizing Cesium (Cs-137) and the production of deck markers for the U.S. Navy involving the use of Strontium (Sr-90). During this same time period, radium was also used primarily for clocks and watches (dials and hands) and in the production of high level neutron and radiation therapy sources.
- 3.5 During the 1950s, USRC began producing light sources using Tritium (H-3), Carbon (C-14), and Krypton (Kr-85); low-level ionization sources using Nickel (Ni-63) and Tritium (H-3); and radiation beta sources using Krypton (Kr-85). Waste from these operations was buried in two underground silos. All operations using radium were discontinued in 1968, and in 1969 USRC sold all of the radioisotopes business except for the H-3 production.
- 3.6 On November 24, 1982, USRC changed its name to Safety Light Corporation (Safety Light). Safety Light is licensed by the NRC to use material to make exit signs, and to characterize and decommission contaminated facilities, equipment and land. Tritium (H-3) is used in the production of luminous signs and dials, paints, gas chromatograph foils, and accelerator targets.
- 3.7 An initial investigation of the Site was conducted by NUS Corporation, an EPA contractor, in July, 1991 to determine the Hazard Ranking System (HRS) score for further evaluation under CERCLA. A HRS preliminary score of 65.84 was calculated for the Site, which was based solely on the various radionuclides detected on site. NUS Corporation performed this work under EPA Contract No.68-01-7346.
- 3.8 The Nuclear Regulatory Commission (NRC) in a letter dated December 20, 2001 to Abraham Ferdas, Director of EPA's Hazardous Site Cleanup Division, requested EPA's Removal Enforcement and Site Assessment assistance.

- 3.9 Pursuant to a September 14, 1994 Settlement Agreement ("Agreement") with the NRC, Safety Light had previously engaged in clean-up efforts. The instant Consent Order does not supercede the Agreement and its requirements are in addition to and not in place of the Agreement, which remains in effect. The most recent effort by Safety Light to clean up the Site pursuant to the Agreement with the NRC has resulted in the removal of radioactive waste generated from the various operations described in paragraph 3.4 from the underground silos and staging of the waste in drums and containers on site. By June 20, 2000, the company had staged 176 drums (55-gallon) and 26 B-25 containers (4ft x 4ft x 6ft) that contain various types of radioactive waste. The staging area is near the edge of the Site approximately 200 feet from the Susquehanna River.
- 3.10 On July 3, 2002, the Director for the Hazardous Site Cleanup Division, EPA Region III, determined that the release and threatened release of radioactive waste from the Safety Light Corporation Site into the environment may present an imminent and substantial endangerment to the public health or welfare or to the environment.

#### **IV. CONCLUSIONS OF LAW**

- 4.1 The Safety Light Corporation Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- 4.2 The Respondent is a "person" as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- 4.3 Radionuclides are a "hazardous substance" within the meaning of section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because they are listed at 40 C.F.R. § 302.4. Further, radium, strontium, krypton, and cesium are all identified in the list of Radionuclides set out in Appendix B, 40 C.F.R. § 302.4.
- 4.4 "Hazardous substances," as defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14), are currently present at the Site.
- 4.5 The presence of hazardous substances at the Site and the past, present, and/or potential migration of hazardous substances from the Site constitute an actual and/or threatened "release" as defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- 4.6 Respondent is an "owner or operator of a vessel or a facility" (the Site) within the meaning of section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

- 4.7 EPA has determined that the Respondent is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
- 4.8 Safety Light, by entering into this Order, does not admit to any liability or responsibility with regard to the facts related herein. Safety Light specifically denies any such liability. However, Safety Light shall not challenge such facts, conclusions or determinations in an action to interpret or enforce this Consent Order.

#### **V. DETERMINATIONS**

Based on the Findings of Fact and Conclusions of Law set forth above, and upon EPA's review of information for the Administrative Record, EPA has determined that:

- 5.1 The actual and/or threatened release of hazardous substances from the Safety Light Corporation Site may present an imminent and substantial endangerment to the public health or welfare or the environment.
- 5.2 The Work is necessary to protect the public health and welfare and the environment.
- 5.3 Because there is a threat to public health or welfare or the environment, a removal action is appropriate to abate, minimize, stabilize, mitigate, or eliminate the release or threat of release of hazardous substances at or from the Safety Light Corporation Site.

#### **VI. PARTIES BOUND**

- 6.1 This Consent Order shall apply to and be binding upon EPA and its agents, and upon Respondent and its agents, successors, and assigns. Neither a change in ownership or corporate or partnership status of the Respondent, nor a change in ownership or control of the Site, shall in any way alter Respondent's responsibilities under this Consent Order.
- 6.2 In the event of any change in ownership or control of the Site, Respondent shall notify EPA in writing at least thirty (30) calendar days in advance of such change and shall provide a copy of this Consent Order to the transferee in interest of the Site prior to any agreement for transfer.
- 6.3 The Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, supervisory personnel, laboratories, and consultants retained by Respondent to conduct any portion of the Work to be performed by Respondent pursuant

to this Consent Order. Respondent shall require in any and all contracts related to this Site entered into after the date of execution of this Consent Order that the Work that is the subject of such contract be performed within the time and in the manner set forth in this Consent Order. Respondent shall ensure that its contractors perform the work in accordance with this Consent Order.

- 6.4 The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms of this Consent Order and to execute and legally bind Respondent to this Consent Order.

### **VII. NOTICE TO THE STATE**

- 7.1 Notice of issuance of this Consent Order has been given to the Commonwealth of Pennsylvania pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

### **VIII. RESPONSE ACTION PLAN DEVELOPMENT AND IMPLEMENTATION**

- 8.1 Respondent shall commence and complete performance of the following response action within the time periods specified herein.
- 8.2 Within ten (10) business days of the effective date of this Consent Order, Respondent shall notify EPA in writing of the identity and qualifications of the contractor, subcontractor, supervisory personnel, and other persons who will be primarily responsible for developing the Response Action Work Plan ("RAP") required by this Section. Respondent shall further notify EPA in writing of the identity and qualifications of all contractors, subcontractors, supervisory personnel, and other persons selected by Respondent who will conduct all or any portion of the response action no less than ten (10) business days prior to commencement of the response action to be performed by such persons. Respondent shall ensure that all contractors, subcontractors, supervisory personnel, and/or other persons retained to perform the response action shall meet the applicable Occupational Safety and Health Administration ("OSHA") requirements as defined in 29 C.F.R. § 1910.120. The Respondent's selection of all contractors, subcontractors, supervisory personnel, and other persons who will perform the response action; the Respondent's Project Coordinator designated pursuant to Section IX; and any replacements to any such persons are subject to disapproval by EPA at any time. In the event of any such disapproval by EPA, Respondent shall notify EPA within fourteen (14) calendar days of receipt of such EPA disapproval of the person(s) who will replace the one(s) whose

selection was disapproved by EPA. If a person's selection is disapproved by EPA, they shall not perform such specified response action.

8.3 Respondent shall accomplish the following items:

- (a) Provide security sufficient to preclude access to the waste staging and work processing areas at the Safety Light Corporation Site by persons not conducting or overseeing the response action required by this Consent Order.
- (b) Characterize the nature, concentration, and extent of radioactive waste contamination above area background levels associated with the underground Silo wastes currently stored in containers and drums which have been staged for disposal at the Safety Light Corporation Site.
- (c) Construct a work processing area consistent with established daily requirements for health and safety and radiation worker safety exposure rates set out in OSHA 29 CFR 1910.1096. Remove suspected sources of contamination identified in subparagraph 8.3 (b) above at the Site to the work processing area which will act as a controlled area to minimize exposure to contaminated materials, and any other condition posing an imminent and substantial threat to public health and the environment.
- (d) Excavate and remove any soil stained with spillage and/or leakage from the suspected sources of contamination identified in subparagraph 8.3 (b) above, and stage at the work processing area.
- (e) Prepare and make all necessary characterization of all contaminated wastes identified in subparagraph 8.3(b) above. Necessary characterization shall include the compilation/collection of all analytical data, waste profiles and forms necessary for proper disposal.
- (f) Stage all contaminated wastes and materials in a secure location for future disposal to an offsite NRC licensed disposal facility.
- (g) Assure that any replacement soil/backfill material used in any excavated areas contains no contamination.
- (h) Remove and properly dispose of, or treat, contaminated water (e.g., equipment and sampling related decontamination fluids) generated as a result of the activities set

forth in the above subparagraphs to levels in accordance with promulgated requirements and standards;

- (i) Provide post-removal site control activities consistent with section 300.415 (l) of the NCP, 40 C.F.R. § 300.415 (l); and EPA's "Policy on Management of Post Removal Site Control," (OSWER Directive 9360.2-02 (December 3, 1989). Such activities shall include but not limited to, arrangements with the State or local governments for performance of actions that will ensure the integrity of the work performed at the Site pursuant to this Consent Order through operation and maintenance actions and measures that will ensure continuous review of monitoring data. For purposes of this paragraph, "arrangements with State or local governments for the performance of actions" shall mean submitting, by agreement or otherwise, to enforceable requirements determined by the State or local government to meet the criteria set forth in this paragraph, and shall include public participation and comment as required by the State or local government and the NCP.
- (j) Provide Site specific health and safety measures, including preparation and implementation of a Health and Safety Plan ("HASP") for actions to be performed at the Site, to protect the health and safety of workers, other personnel and the public from the hazardous substances and work-related health and safety hazards during performance of the response action specified herein. The HASP shall, as appropriate, provide for proper decontamination of personnel and equipment, monitoring and control of offsite migration of hazardous substances during the performance of activities at the Site and protection of public health from exposure to hazardous substances during the conduct of activities at the Site pursuant to this Consent Order. Health and safety requirements in the HASP shall be at least as stringent as those set forth in Occupational Safety and Health Administration and EPA requirements, including but not limited to, requirements contained in 29 C.F.R. § 1910.120 and/or EPA Standard Operating Safety Guides (June, 1992). The HASP shall also include measures for fire protection appropriate to the conditions at the Site;
- (k) As appropriate, obtain a Hazardous Waste Generator Identification Number;
- (l) Provide an expeditious schedule for implementation of the RAP.

8.4 Within thirty (30) business days of the effective date of this Consent Order, Respondent shall submit to EPA for approval a RAP detailing the response action to be implemented for the items specified in paragraph 8.3 above. To the extent that information concerning



the details of a particular item does not yet exist so that it can be described in the RAP, the RAP shall set forth an expeditious schedule and plan for submittal of RAP supplement(s) to EPA for approval, which supplement(s) shall fully detail such items. All references to the review, approval and enforcement of the RAP shall also be applicable to any RAP supplement(s). The RAP shall include a schedule for expeditious performance of the response actions required by this Consent Order. The RAP shall be consistent with the NCP and shall be subject to approval by EPA according to the provisions of paragraphs 8.5 and 8.9 below.

- 8.5 EPA will review the RAP and notify the Respondent of EPA's approval or disapproval of the RAP. In the event of disapproval, EPA will specify the deficiencies in writing. The Respondent shall respond to and correct the deficiencies identified by EPA and resubmit the RAP to EPA within ten (10) business days of receipt of EPA disapproval or such longer time as may be specified in writing by EPA in its discretion. Exercise of EPA's discretion with respect to such period shall not be subject to the dispute resolution procedures set forth in Section XII of this Consent Order. Approval, disapproval, and/or modification by EPA of the subsequent RAP submission shall be according to the provisions of Paragraph 8.9 below.
- 8.6 Within fifteen (15) business days of receipt from EPA of written approval to proceed with implementation of the EPA-approved RAP ("written approval to proceed"), the Respondent shall commence implementation of such RAP and complete it in accordance with the RAP and the schedule therein. In the event EPA determines that any portion of the response action performed is deficient, and EPA requires Respondent to correct or re-perform such portion of the response action pursuant to this Consent Order, Respondent shall correct or re-perform such the response action or portion of the response action in accordance with a schedule provided by EPA.
- 8.7 Beginning thirty (30) calendar days subsequent to the date of receipt of EPA approval of the RAP and every thirty (30) calendar days thereafter, or such longer interval as may be determined in writing by the EPA Project Coordinator designated pursuant to Section IX, and until EPA advises Respondent that the Work is complete, the Respondent shall provide EPA with a progress report for each preceding 30-day period or if applicable, the period specified in writing by the EPA Project Coordinator. The progress reports shall include, at a minimum, the following: (1) a description of the response action completed and the actions that have been taken toward achieving compliance with this Consent Order; (2) a description of all data anticipated and activities scheduled for the next 30 calendar days or, if applicable, the period specified in writing by the EPA Project Coordinator; (3) a description of any problems encountered or anticipated; (4) any actions taken to prevent or mitigate such problems; (5) a schedule for completion of such actions;

- (6) copies of all analytical data received during the reporting period; and (7) all modifications to the response action, RAP, and schedule made in accordance with Section XIV of this Consent Order during the reporting period.
- 8.8 Documents, including plans, reports, sampling results, and other correspondence to be submitted pursuant to this Consent Order, shall be sent by certified or overnight mail to the EPA Project Coordinator designated pursuant to Section IX.
- 8.9 All reports, plans, approval letters, specifications, schedules, and attachments required by this Consent Order are subject to EPA approval and shall be deemed incorporated into this Consent Order upon approval by EPA. In the event that EPA approves a portion of the RAP, report, or other item required to be submitted under this Consent Order, the approved portion shall be enforceable under this Consent Order. In the event of conflict between this Consent Order and any document attached hereto, incorporated in, or enforceable hereunder, the provisions of this Consent Order shall control. In the event that EPA disapproves any required submission, EPA will (1) specify the deficiencies in writing, and/or (2) submit its own modifications to the Respondent to accomplish the Work outlined in paragraph 8.3 above. Respondent shall amend and submit to EPA a revised submission that responds to and corrects the specified deficiencies within five (5) business days of receipt of EPA disapproval or such longer time as may be specified by EPA in its discretion. Exercise of EPA's discretion with respect to such period shall not be subject to the dispute resolution procedures set forth in Section XII of this Consent Order. In the event that EPA submits its own modifications to the Respondent, the Respondent is hereby required to incorporate such modifications to accomplish the work in paragraph 8.3 above. Any non-compliance with EPA-approved reports, plans, specifications, schedules, attachments, or submission of deficient revisions following EPA disapproval, or non-compliance with an EPA-required modification shall be considered a failure to comply with a requirement of this Consent Order. Determination(s) of non-compliance will be made by EPA.
- 8.10 In addition to the information and documents otherwise required by this Consent Order, Respondent shall provide to EPA, upon written request, any and all information and documents in its possession, custody, or control related to the Site including, but not limited to, Site analytical data (including raw data); Site safety data; Site monitoring data; operational logs; copies of all hazardous waste manifests (including copies of all hazardous waste manifests signed upon receipt of the hazardous wastes by a licensed treatment, storage or disposal facility); the identity of treatment, storage and/or disposal facilities used; the identity of transporters used; the identity of any contractors, subcontractors, and supervisory personnel used; information and documents concerning Respondent's compliance with Quality Assurance and Quality Control requirements of this

Consent Order; information and documents relating to Respondent's efforts to secure access; and information and documents relating to any project delays. Nothing herein shall be interpreted as limiting the inspection and information-gathering authority of EPA under Federal law.

- 8.11 Within forty-five (45) calendar days of the date Respondent concludes it has completed implementation of the RAP and the items identified in paragraph 8.3, Respondent shall submit a written Final Report to EPA, subject to EPA approval described in paragraph 8.9, above. The written report shall detail the work undertaken to implement the RAP and the items identified in paragraph 8.3, and shall be certified by Respondent in accordance with the terms of Section XXII of this Consent Order. EPA will review the adequacy of Respondent's implementation of the RAP and accomplishment of items specified in paragraph 8.3 above. EPA will notify Respondent, in writing, of any discrepancies in the Final Report or deficiencies in the execution of the RAP and the items identified in paragraph 8.3 and the actions required to correct such discrepancies or deficiencies to accomplish the work in paragraph 8.3 above. Within ten (10) business days of receipt of notification by EPA, or as otherwise specified by EPA, Respondent shall, as directed by EPA, amend the Final Report, develop an additional plan or amend the existing RAP to address such discrepancies or deficiencies. Any additional plan or amendment to the RAP will be subject to the approval procedures outlined in paragraphs 8.5 and 8.9 above. Respondent shall perform all actions approved by EPA in a manner consistent with the NCP and all applicable Federal laws and regulations, as required by the NCP.
- 8.12 Respondent shall not handle or remove any hazardous substances from the Site except in conformance with the terms of this Consent Order and all applicable Federal, State, and local laws and regulations, as required by the NCP. Any hazardous substance, pollutant or contaminant transferred for disposal off-site as a result of this Consent Order must be taken to a facility acceptable under 40 C.F.R. § 300.440 and in accordance with any rule or regulation promulgated pursuant to Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3).
- 8.13 Respondent shall not commence any Work except in conformance with the terms of this Consent Order. Respondent shall not commence implementation of the RAP developed hereunder until receiving written EPA approval to proceed pursuant to paragraph 8.6.
- 8.14 Respondent shall immediately notify EPA's Project Coordinator and the National Response Center [(800) 424-8802] and any other party required by law in the event of any action or occurrence during the pendency of this Consent Order which causes or threatens to cause an additional release of hazardous substances, pollutants, or contaminants on, at

or from the Site, or which may create a danger to public health, welfare, or the environment.

- 8.15 In the event that EPA believes that response action or other current activities at the Site by the Respondent are causing or may cause a release or potential release of hazardous substances, or are a threat to public health or welfare or to the environment, EPA may, at its discretion, immediately halt or modify such response actions or other activities to eliminate or mitigate such actual or potential releases or threats.

### **IX. DESIGNATED PROJECT COORDINATORS**

- 9.1 Respondent shall designate a Project Coordinator and shall notify EPA of such designation no later than five (5) calendar days after the effective date of this Consent Order. Designation of a Project Coordinator shall not relieve Respondent of its obligation to comply with the requirements of the Consent Order. The Respondent's Project Coordinator shall be a technical and/or managerial representative of the Respondent and may be a contractor and/or consultant; provided, however, the Respondent's Project Coordinator shall not be its legal representative in this matter. The Project Coordinator for EPA designated pursuant to this Section and the Project Coordinator for the Respondent shall be responsible for overseeing the Work. To the maximum extent possible, communications between the Respondent and EPA and all documents concerning the activities performed pursuant to the terms and conditions of this Consent Order, including plans, reports, approvals, and other correspondence, shall be directed to the Project Coordinators.

- 9.2 The Project Coordinator for EPA is:

Dennis Matlock  
On-Scene Coordinator  
U.S. Environmental Protection Agency  
Removal Enforcement and Oil Section (3HS32)  
401 Methodist Building  
Wheeling, WV 26003  
(304) 234-0284

- 9.3 Respondent shall have the right to change its Project Coordinator. Such a change shall be accomplished by notifying the EPA Project Coordinator in writing at least five (5) calendar days prior to the change.

- 9.4 EPA shall have the right to change its Project Coordinator at any time without prior notice to Respondent. EPA's intent is to notify the Respondent as soon as practicable following any such change of its Project Coordinator.
- 9.5 The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of Work except when such stoppage or delay is specifically required by EPA.
- 9.6 The EPA Project Coordinator shall have the authority to halt or modify Work or other activities performed by Respondent at the Site in order to eliminate a release or threat of release of hazardous substances. Such direction by the EPA Project Coordinator may be given verbally or in writing. If such direction is given verbally, the EPA Project Coordinator will later memorialize such direction in writing.

#### **X. QUALITY ASSURANCE**

- 10.1 The Respondent shall use quality assurance, quality control, and chain of custody procedures in accordance with the following documents while conducting all sample collection and analysis activities required by this Consent Order:
- (a) "EPA NEIC Policies and Procedures Manual" (EPA Document 330/9-78-001-R (revised August 1991));
  - (b) "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," (QAMS-005/80 (December 1980)); and
  - (c) "QA/QC Guidance for Removal Activities," (EPA/540/G-90/004 (April 1990)).
- 10.2 The Respondent shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved RAP. The Respondent shall use a laboratory(s) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.

#### **XI. ACCESS**

- 11.1 As of the effective date of this Consent Order, Respondent shall provide to EPA and its employees, agents, consultants, contractors, and other authorized and/or designated

representatives, for the purposes of conducting and/or overseeing the Work, access to all property owned or controlled by Respondent wherein Work must be undertaken. Such access shall permit EPA and its employees, agents, consultants, contractors, and other authorized and designated representatives to conduct all activities described in paragraph 11.3 of this Consent Order.

- 11.2 To the extent that property wherein Work must be undertaken is presently owned or controlled by parties other than the Respondent, the Respondent shall use its best efforts to obtain Site access agreements from the present owners. Such access agreements shall be finalized as soon as practicable but no later than twenty (20) calendar days after receiving EPA's written approval to proceed. Such agreements shall provide reasonable access for the Respondent and their employees, agents, consultants, contractors, and other authorized and designated representatives to conduct the work, and for EPA and its designated representatives to conduct the activities outlined in paragraph 11.3 below. In the event that any property owner refuses to provide such access or access agreements are not obtained within the time designated above, whichever occurs sooner, the Respondent shall notify EPA at that time, in writing, of all efforts to obtain access and the circumstances of the failure to obtain such access. EPA may then take steps to provide such access. Respondent shall reimburse the United States for all costs incurred in obtaining access which are not inconsistent with the NCP.
- 11.3 In accordance with law and regulation, as appropriate, EPA and its employees, agents, contractors, consultants, and other authorized and designated representatives shall have the authority to enter and freely move about the location where the response actions and/or Work is being performed at all reasonable times for the purposes of, inter alia: inspecting Work, records, operating logs and contracts related to the Site; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests as EPA deems necessary; using a camera, sound recording or other documentary type equipment; and verifying the data submitted to EPA by the Respondent. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents and other writings, including all sampling and monitoring data, in any way pertaining to the Work.
- 11.4 Respondent may make a claim of business confidentiality for information submitted pursuant to this Consent Order in the manner described in 40 C.F.R. § 2.203(b). Such an assertion shall be adequately substantiated in accordance with 40 C.F.R. § 2.204(e)(4) at the time the assertion is made. Information subject to a confidentiality claim shall be made available to the public by EPA only in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the

information when it is submitted or made available to EPA, the submitted information may be made available to the public by EPA without further notice to Respondent.

- 11.5 The Respondent may withhold those records and documents covered by any privilege or protection recognized under federal law and applied by federal courts in actions commenced by the United States. In the event that the Respondent withholds a document as privileged, the Respondent shall provide EPA with the title of the document, the date of the document, the name(s) of the author(s) and addressee(s)/recipient(s), a description of the nature of the document and identification of the privilege asserted at the time such document is required to be provided to EPA.
- 11.6 No claim of confidentiality or privilege shall be made regarding any data required to be submitted pursuant to this Consent Order including, but not limited to, sampling, analytical, monitoring, hydrogeologic, scientific, chemical or engineering data, or documents or information evidencing conditions at or around the Site. Nor shall such claims be made for analytical data; Site safety data; Site monitoring data; operational logs; hazardous waste manifests; identities of treatment, storage and/or storage facilities used; identities of transporters used; identities of any contractors or subcontractors used in performing work required by this Consent Order.
- 11.7 Notwithstanding any provision of this Consent Order, EPA retains all of its access and information-gathering authorities and rights under CERCLA and any other applicable statute and regulation.

## **XII. DISPUTE RESOLUTION**

- 12.1 Except as provided elsewhere in this Consent Order, if the Respondent objects to any EPA notification of deficiency, disapproval, or other EPA action taken pursuant to this Consent Order, the Respondent shall notify EPA in writing of its objection(s) within fourteen (14) calendar days of receipt of such notification or action.
- 12.2 EPA and the Respondent shall have fourteen (14) calendar days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, EPA will provide a written statement of its decision to the Respondent. Respondent's obligations under this Consent Order shall not be tolled by submission of any objection for dispute resolution under this Section XII.

- 12.3 Following resolution of the dispute, as provided by this Section XII, Respondent shall perform the Work that was the subject of the dispute in accordance with the agreement reached or EPA's decision.
- 12.4 Notwithstanding any other provision of this Consent Order, no action or decision by EPA pursuant to this Consent Order shall give rise to any right to judicial review except as set forth in section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

### **XIII. DELAY IN PERFORMANCE AND STIPULATED PENALTIES**

- 13.1 For each day, or portion thereof, that Respondent fails to comply with any requirement of this Consent Order at the time and in the manner set forth herein, the Respondent shall be liable upon demand to EPA for the sums set forth below as stipulated penalties. Checks shall be made payable to the "Hazardous Substance Superfund" and shall be transmitted to:

U.S. Environmental Protection Agency, Region III  
Attention: Superfund Accounting  
P.O. Box 360515  
Pittsburgh, PA 15251-6515

Payment shall be made by cashier's or certified check within sixty (60) calendar days of receipt of demand. Interest at the rate of the current annualized treasury bill rate shall begin to accrue on the unpaid balance at the end of the sixty day period pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a). A copy of the transmittal letter shall be sent simultaneously to the EPA Project Coordinator at the address identified in Section IX of this Consent Order and to: EPA Region III Hearing Clerk (3RC00), 1650 Arch Street, Philadelphia, PA 19103.

- 13.2 Stipulated penalties shall accrue in the amount of \$500.00 per calendar day per violation. EPA has the discretion as to whether or not to impose these stipulated penalties and it is the EPA's intent to impose these stipulated penalties in a reasonable and non-capricious manner. Neither the accrual of nor demand for stipulated penalties set forth in this Section XIII shall preclude EPA from pursuing other penalties or sanctions available to EPA for Respondent's failure to comply with the requirements of this Consent Order.



#### **XIV. FORCE MAJEURE AND NOTIFICATION OF DELAY**

- 14.1 The Respondent, through its Project Coordinator, shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Consent Order. Such notification shall be made verbally as soon as possible but not later than two (2) calendar days after Respondent becomes aware or should have become aware of any such delay or anticipated delay, and in writing no later than seven (7) calendar days after Respondent becomes aware, or should have become aware, of such delay or anticipated delay. Such written notification shall be certified by the Project Coordinator in accordance with Section XXII of this Consent Order and shall fully describe the nature of the delay, including how it may affect the Work, RAP and schedule; the actions that will be or have been taken to mitigate, prevent and/or minimize further delay; and the timetable according to which the future actions to mitigate, prevent and/or minimize the delay will be taken. The Respondent shall ensure that its Project Coordinator provides Respondent with immediate notification of any project delays. The Respondent shall adopt all reasonable measures to avoid and minimize such delay.
- 14.2 To the extent Respondent intends to claim that any delay or anticipated delay described by Respondent in accordance with paragraph 14.1 was or will be caused by circumstances beyond its control, Respondent shall, within fourteen (14) calendar days after Respondent becomes aware, or should have become aware, of such delay or anticipated delay, submit to EPA a "Notice of Force Majeure" in which Respondent fully demonstrates that the delay was caused by circumstances beyond its control which could not have been overcome by due diligence, the necessity of the proposed length of the delay, and that the Respondent took and is taking all reasonable measures to avoid and minimize delay. The Respondent shall have the burden of proving these facts to EPA. Any "Notice of Force Majeure" shall be certified by a responsible official of Respondent pursuant to paragraph 22.1(b) of this Consent Order.
- 14.3 Any such delay that EPA determines (1) has resulted or will result from circumstances beyond the control of the Respondent, and (2) that could not and cannot be overcome by due diligence on the Respondent's part, shall not be deemed to be a violation of Respondent's obligation(s) under this Consent Order and shall not subject Respondent to stipulated penalties under this Consent Order for that particular delay. In such event, the schedule affected by the delay shall be extended for a period EPA deems necessary to complete the Work on an expedited basis, but no greater than a period equal to the delay directly resulting from such circumstances. Increased costs of performance of the requirements of this Consent Order or changed economic circumstances shall not be considered circumstances beyond the control of the Respondent. Delay in one item or component of Work or the RAP does not justify delay in timely achievement of other

items or components. Each delay must be separately addressed and substantiated according to the provisions of paragraphs 14.1 and 14.2, above.

- 14.4 Failure of the Respondent to comply with the notice requirements of paragraphs 14.1 and 14.2 above shall constitute a waiver of the Respondent's right to invoke the benefits of this Section with respect to that event.
- 14.5 In the event that EPA and the Respondent cannot agree that any delay in compliance with the requirements of this Consent Order has been or will be caused by circumstances beyond the control of the Respondent that cannot be overcome by due diligence, the dispute shall be resolved in accordance with the provisions of Section XII (Dispute Resolution) of this Consent Order.

#### **XV. RESERVATION OF RIGHTS**

- 15.1 Except as expressly provided in this Consent Order, (1) each party reserves all rights, claims, interests, and defenses it may otherwise have, and (2) nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Consent Order, including the right to seek injunctive relief and/or the imposition of statutory penalties.
- 15.2 As provided by this Consent Order, EPA expressly reserves its right to disapprove of Work performed by Respondent; to halt Work being performed by Respondent if Respondent has not complied with an approved RAP or this Consent Order, or at any time EPA deems necessary to protect public health, welfare or the environment and to perform such Work; to request and require hereunder that Respondent correct and/or re-perform any and all Work disapproved by EPA; and/or to request or require that Respondent perform response actions in addition to those required by this Consent Order. Further, EPA reserves the right to undertake response action at any time EPA deems appropriate. In the event EPA requires Respondent, and Respondent declines, to correct and/or re-perform work that has been disapproved by EPA and/or to perform response actions in addition to those required by this Consent Order, EPA reserves the right to undertake such actions and seek reimbursement of the costs incurred and/or to seek any other appropriate relief. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and to seek reimbursement for any costs incurred and/or take any other action authorized by law.
- 15.3 EPA reserves the right to bring an action against the Respondent for recovery of all recoverable costs incurred by the United States related to this Consent Order which are not reimbursed by the Respondent, as well as any other costs incurred by the

United States in connection with response actions conducted at the Site.

- 15.4 This Consent Order concerns certain response actions (Work described in Section VIII, above) concerning the Site. Such response actions do not fully address all contamination removal at the Site. Subsequent response actions which may be deemed necessary by EPA are not addressed by this Consent Order, including but not limited to appropriate removal and disposal of the materials and substances characterized in this Order. EPA reserves all rights including, without limitation, the right to institute legal action, including but not limited to issuance of further Orders against Respondent and/or any other parties in connection with the performance of any response actions not addressed by this Consent Order.
- 15.5 Nothing in this Consent Order shall limit the authority of the EPA On-Scene Coordinator as outlined in the NCP and CERCLA.

#### **XVI. OTHER CLAIMS**

- 16.1 Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not bound by this Consent Order for any liability it may have relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from the Site.
- 16.2 This Consent Order does not constitute any decision on preauthorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).
- 16.3 By consenting to the issuance of this Consent Order, the Respondent waives any claim to reimbursement it may have under sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612.

#### **XVII. OTHER LAWS**

- 17.1 All Work shall be undertaken in accordance with the requirements of all applicable and/or relevant and appropriate local, State and Federal laws and regulations, as required by the NCP.

### **XVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

- 18.1 The effective date of this Consent Order shall be on the second business day after the date on which EPA forwards a true and correct and fully executed copy of this Consent Order to Respondent's counsel.
- 18.2 This Consent Order may be amended by mutual agreement of EPA and the Respondent. Such amendments shall be in writing and shall have as their effective date the date on which such amendments are signed by EPA. Modifications to the EPA-approved RAP and its implementation may be made by mutual agreement of the Project Coordinators. Such modifications shall be memorialized in writing by the Project Coordinators.
- 18.3 Any reports, plans, specifications, schedules, or other submissions required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Consent Order and will subject the Respondent to the requirements of Section XIII (Delay in Performance and Stipulated Penalties), above. Determinations of non-compliance will be made by EPA.
- 18.4 No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, or other submissions by the Respondent or the requirements of this Consent Order will be construed as relieving the Respondent of its obligation to obtain formal approval when required by this Consent Order, and to comply with the requirements of this Consent Order unless formally modified.

### **XIX. LIABILITY OF THE UNITED STATES GOVERNMENT**

- 19.1 Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondent, or of its employees, agents, servants, receivers, successors, or assigns, or of any persons including, but not limited to, firms, corporations, subsidiaries, contractors, or consultants in carrying out the Work, nor shall the United States Government or any agency thereof be held out as a party to any contract entered into by Respondent in carrying out the Work.

## **XX. INDEMNIFICATION AND HOLD HARMLESS**

- 20.1 Respondent agrees to indemnify and hold harmless the United States, its agencies, departments, agents, officers, employees, and representatives from any and all causes of action caused by any acts or omissions of Respondent or its contractors in carrying out the work required by this Consent Order.

## **XXI. REIMBURSEMENT OF COSTS**

- 21.1 Reserved.
- 21.2 Reserved.

## **XXII. CERTIFICATION OF COMPLIANCE**

- 22.1 (a) Unless otherwise required by the terms of this Consent Order, any notice, report, certification, data presentation or other document submitted by Respondent under or pursuant to this Consent Order which discusses, describes, demonstrates or supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirement(s) of this Consent Order shall be certified by the Respondent, a responsible official of the Respondent or by the Project Coordinator for the Respondent. The term "responsible official" means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$35 million (in 1987 dollars when the consumer price index was 345.3), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. The responsible official of a partnership or sole proprietorship means the general partner or the proprietor, respectively.
- (b) The written Final Report required by paragraph 8.11 of this Consent Order, any written notification described in paragraph 12.1 of this Consent Order, and any "Notice of Force Majeure" described in paragraph 14.2 of this Consent Order shall be certified by the Respondent or a responsible official of Respondent.

- 22.2 The certification required by paragraph 22.1 of this Consent Order shall be in the following form:

I certify that the information contained in or accompanying this (specify type of submission) is true, accurate and complete.

I am aware that there are significant penalties for submitting false information including the possibility of fines and imprisonment for knowing violations.

Signature: \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

- 22.3 Submission of documents pursuant to this Consent Order which are found by EPA to contain false information shall constitute a failure to comply with this Consent Order and shall subject Respondent to, among other things, stipulated penalties whether or not a responsible official of Respondent has certified the document.

### **XXIII. SHIPMENT OF HAZARDOUS SUBSTANCES**

- 23.1 Respondent shall, prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's Project Coordinator of such shipment of hazardous substances. However, the requirement to notify EPA of shipments shall not apply to any such off-site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards. Notifications to States in those circumstances shall be governed by applicable state law.
- 23.2 The notification required by paragraph 23.1 shall be in writing and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation of the hazardous substances. Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state or to a facility in another state.
- 23.3 The identity of the receiving facility and state will be determined by Respondent. Respondent shall provide all relevant information, including information required by

paragraph 23.1, above, relating to the off-site shipments as soon as practicable but no later than one (1) business day before the hazardous substances are actually shipped.

#### **XXIV. RECORD RETENTION**

- 24.1 Respondent shall preserve all documents and information relating to the Work performed under this Consent Order, or relating to the hazardous substances found at or released from the Site, for six (6) years following completion of the response action required by this Consent Order. In addition, Respondent shall also retain, as appropriate, monthly reports on analytical services pursuant to OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to Potentially Responsible Party-Lead Superfund Sites," (July 6, 1992). At the end of this six year period and thirty (30) days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA.

#### **XXV. POST REMOVAL SITE CONTROL**

- 25.1 Respondent agrees to maintain the integrity of the response action pursuant to the arrangement proposed in Section 8.3 (g) of this Consent Order and approved by EPA pursuant to Section 8.9 of this Consent Order.

#### **XXVI. DEFINITIONS**

- 26.1 "Business days" as used in this Order shall mean every day of the week except Saturdays, Sundays, and federal holidays.
- 26.2 "Calendar days" as used in this Order shall mean every day of the week, including Saturdays, Sundays, and federal holidays.
- 26.3 "Days" as used herein shall mean "calendar days" unless specified otherwise.
- 26.4 All terms not defined herein shall have the meanings set forth in CERCLA and the NCP.

Safety Light Corporation Site: Consent Order for Removal Action  
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### XXVII. NOTICE OF COMPLETION

- 27.1 When EPA determines, after EPA's review and approval of the Final Report required pursuant to paragraph 8.11 of this Consent Order, that all response action specified in Section VIII of this Consent Order has been fully performed, and upon receipt of costs and penalties assessed by EPA, with the exception of any continuing obligations required by this Consent Order, including those requirements specified in Sections XV ("Reservation of Rights"); XVI ("Other Claims"), XIX ("Liability of the United States"), XX ("Indemnification and Hold Harmless") XIV ("Record Retention") and XXV (Post Removal Site Control), EPA will provide a notice of completion to the Respondent.

FOR THE RESPONDENT:

William E. Lynch Jr.

1/30/03  
Date

Print/Type Name: William E. Lynch Jr.

Print/type Title: Vice President



**FOR EPA:**



Abraham Ferdas, Director  
Hazardous Site Cleanup Division  
Region III  
U.S. Environmental Protection Agency

2/3/03

Date