



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

November 16, 1989

Helen F. Hoyt, Chairman  
Administrative Judge  
Atomic Safety and Licensing Board  
Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. Oscar H. Paris  
Administrative Judge  
Atomic Safety and Licensing Board  
Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Frederick J. Shon  
Administrative Judge  
Atomic Safety and Licensing Board  
Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

In the Matter of  
SAFETY LIGHT CORPORATION, UNITED STATES RADIUM CORPORATION  
USR INDUSTRIES, INC., USR LIGHTING, INC., USR CHEMICAL, INC.  
USR METALS, INC., USR NATURAL RESOURCES, INC.,  
LIME RIDGE INDUSTRIES, INC., AND METREAL, INC.  
(Bloomsburg PA. Site Decontamination)  
Docket Nos.: 30-05980, 30-5981, 30-05982,  
30-08335, 30-08444, ASLBP No. 89-050-01-0M

Dear Administrative Judges:

Enclosed is the "NRC STAFF'S RESPONSE TO 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" and attachments thereto. With respect to Attachment 7, the Affidavit of Francis M. Costello, Mr. Costello was not available to execute his affidavit today. A copy of Mr. Costello's affidavit will be filed with the Licensing Board and the parties as soon as possible.

Sincerely,

*Robert M. Weisman*

Robert M. Weisman  
Counsel for NRC Staff

Enclosure: As stated

cc w/encl.: Service List

November 16, 1989

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	Docket Nos. 030-05980
SAFETY LIGHT CORPORATION	)	030-05982
UNITED STATES RADIUM CORPORATION	)	030-05981
USR INDUSTRIES, INC.	)	030-08335
USR LIGHTING, INC.	)	030-08444
USR CHEMICALS, INC.	)	
USR METALS, INC.	)	
U.S. NATURAL RESOURCES, INC.	)	(ASLBP No. 89-590-01-OM
LIME RIDGE INDUSTRIES, INC.	)	and 90-598-01-OM-2)
METREAL, INC.	)	
(Bloomsburg Site Decontamination)	)	

NRC STAFF'S RESPONSE TO 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

I. INTRODUCTION

The NRC staff submits this brief in opposition to USR Industries, Inc., USR Lighting, Inc., USR Chemicals, Inc., USR Metals, Inc., and U.S. Natural Resources, Inc. (the USR companies) "Motion to Stay the Order Issued August 21, 1989." <sup>1/</sup> The Atomic Safety and Licensing Board (Licensing Board) presiding over this proceeding should deny the motion for a stay because the USR companies have not satisfied their burden of establishing that the four factors stated in Virginia Jobbers <sup>2/</sup>

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<sup>1/</sup> The staff will refer to the "Memorandum of Law in Support of the Motion of [the USR companies] to Stay the Order Issued August 21, 1989" as "USR Brief."

<sup>2/</sup> Virginia Petroleum Jobbers Ass'n v. Federal Power Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958).

and codified in 10 C.F.R. § 2.788 <sup>3/</sup> weigh in favor of granting it.

The staff will show that the Bloomsburg site is contaminated with at least three different radionuclides, that currently available data do not yield full information of extent and location of the contamination on the site, that known or unknown contaminants may be migrating through the groundwater at the site, and that the USSR companies are directly responsible in part for the presence of these contaminants. Because these conditions may lead to adverse effects on public health and safety, as the staff will demonstrate, complete characterization of the contamination on the site should begin immediately so that any appropriate remedial actions may be taken in a timely manner. Accordingly, it is necessary for the USSR companies to begin setting aside funds to pay for site characterization. Moreover, because of the USSR companies' apparently precarious financial condition, any delay in setting aside money for site characterization may mean that the USSR companies will ultimately fail to discharge their obligations to clean up the site. Therefore, it is also in the public interest for the USSR companies to begin setting aside funds for site characterization immediately.

During the prehearing conference held by telephone on October 27, 1989, the Licensing Board temporarily stayed both the Order Modifying Licenses (Effective Immediately) issued on August 21, 1989, and the Order Modifying Licenses (Effective Immediately) and Demand for Information issued March 16, 1989. In their "Motion to Stay," the USSR companies request the Board to stay the August Order but not the March

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<sup>3/</sup> 10 C.F.R. § 2.788 (1989).

Order. 4/ Accordingly, the Licensing Board should lift the temporary stay of the March Order.

## II. ISSUES

In order to decide if a stay is warranted in this case, the Licensing Board must determine:

1. Whether the movant has made a strong showing that it is likely to prevail on the merits;
2. Whether the movant will be irreparably injured unless a stay is granted;
3. Whether the granting of a stay would harm other parties; and,
4. Where the public interest lies. 5/

In determining whether a stay is warranted, the Board will have to decide in this enforcement proceeding what weight to accord each factor.

## III. BACKGROUND

As described in the staff's brief filed on November 6, 1989, on March 16, 1989, the NRC staff issued an Order Modifying Licenses (Effective Immediately) and Demand for Information to United States Radium Corporation, Safety Light Corporation, USR Industries, Inc., and their subsidiaries and successors (the Corporations). On August 21, 1989, the NRC staff issued a further Order Modifying Licenses (Effective Immediately) to the Corporations to assure that the Corporations would make available funds adequate to comply with the March Order. The staff

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4/ Motion to Stay at 1.

5/ 10 C.F.R. § 2.788.



asserted the NRC's jurisdiction over the USSR companies in the two orders based on a series of transactions described below. First, however, the staff describes the relevant licensing history.

On April 25, 1969, U.S. Radium applied to renew license number 37-00030-02 (the "02" license). <sup>6/</sup> The proposed purpose for the license was "[d]econtamination, clean-up and disposal of areas previously used for research, development and processing under this license." <sup>7/</sup> The NRC renewed the license for such purposes on August 5, 1969. <sup>8/</sup> On January 25, 1979, the NRC issued amendment number 40 to U.S. Radium's license number 37-00030-02 (the "02" license). <sup>9/</sup> 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. <sup>10/</sup> U.S. Radium did not take those actions.

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<sup>6/</sup> Application for Byproduct Material License, April 25, 1969, enclosed as Attachment 1. Attachment 1 also includes the amendment incorporating this application, as well as amendment number 40 to the 02 license.

<sup>7/</sup> Id.

<sup>8/</sup> License No. 37-00030-02, Amendment No. 36.

<sup>9/</sup> License No. 37-00030-02, Amendment No. 40.

<sup>10/</sup> See Attachment 1.

On May 14, 1980, United States Radium Corporation (U.S. Radium), a publicly held corporation that held the five NRC licenses at issue in this case, created USR Industries, Inc. <sup>11/</sup> Concurrently, USR Industries created Industries Merger Co., Inc. As the "Agreement and Plan of Merger" dated May 16, 1980 (Merger Plan) <sup>12/</sup> describes, as of May 16, 1980, these three corporations held interests in each other as follows: U.S. Radium, <sup>13/</sup> which then owned, possessed, and operated the Bloomsburg facility, owned all the outstanding stock of USR Industries, Inc. <sup>14/</sup> In turn, USR Industries owned all the outstanding stock of Industries Merger Co., Inc. <sup>15/</sup> All these corporations were Delaware corporations. 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 shares of Industries Merger Co., Inc. (held by USR Industries) would convert to shares of the "Surviving Corporation," i.e., the entity whose assets comprised all of U.S. Radium's assets prior to May 14, 1980. Finally, all shares of USR Industries outstanding prior to execution of

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<sup>11/</sup> American Stock Exchange, Inc., Listing Application No. 12145, dated August 21, 1980, at 1. (Enclosed as Attachment 2.)

<sup>12/</sup> Agreement and Plan of Merger, dated May 16, 1980, Exhibit A to United States Radium Corporation Proxy Statement dated July 11, 1980. The Proxy Statement is enclosed as Attachment 3, and the Merger Plan is enclosed as Attachment 4.

<sup>13/</sup> U.S. Radium is denoted in the Merger Plan as "USR." Merger Plan, supra, note 12, at A-1.

<sup>14/</sup> Id. In the Merger Plan, USR Industries is denoted as "Industries."

<sup>15/</sup> Id. The Merger Plan denotes Industries Merger Co., Inc. as "Merger Company."

the Merger Plan (held by U.S. Radium) would be cancelled. <sup>16/</sup> 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. 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. <sup>17/</sup>

As further described in the Proxy Statement dated July 11, 1980, <sup>18/</sup> 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. <sup>19/</sup>

On August 27, 1980, U.S. Radium, USR Industries, and Industries Merger Co. executed the Merger Plan. <sup>20/</sup> Subsequently, USR Industries

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<sup>16/</sup> Id., Article II, at A-3.

<sup>17/</sup> Letter 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. Cover letter to Proxy Statement, Attachment 3.

<sup>18/</sup> Proxy Statement for the Annual Meeting of Stockholders of United States Radium Corporation and Prospectus of USR Industries, Inc., dated July 11, 1980. (Attachment 3).

<sup>19/</sup> Id. at 15.

<sup>20/</sup> ASE Listing Application, supra, note 11, at 3.

reorganized the businesses of its 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. On January 21, 1981, Safety Light requested the NRC to change the name on its licenses to Safety Light. Aside from this request for a name change, none of the corporations involved in these transactions informed the NRC of any of the above transactions at the time they occurred.

On May 24, 1982, USR Industries sold its wholly-owned subsidiary, Safety Light, to three individuals. <sup>21/</sup> No corporation or individual involved with this transaction requested the NRC's permission to execute this transaction. The Commission has never given its consent in writing for any transfer of control of any of the licenses involved in this proceeding as required by 10 C.F.R. § 30.34(b).

#### IV. DISCUSSION

The issue concerning the application of the Commission's stay criteria set forth in 10 C.F.R. § 2.788, have generally arisen in cases involving a reactor operating license or construction permit. In these proceedings, the decisions consistently hold that whether a stay is

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<sup>21/</sup> Letter dated November 11, 1983, USR Brief, Exhibit B.

warranted must be determined by balancing the four factors of 10 C.F.R. § 2.788. <sup>22/</sup> In an operating license or construction permit proceeding, the adjudicatory bodies have given more weight to the factors of irreparable harm and likelihood of success on the merits. <sup>23/</sup> These Boards have determined, for example, that "[i]t is the 'established rule that a party is not ordinarily granted a stay of an administrative order without an appropriate showing of irreparable injury.'" <sup>24/</sup> The burden of proof is on the party requesting the stay. <sup>25/</sup> Moreover, where the party asks for the full relief to which it might be entitled on appeal, it has a heavy burden to establish a right to it. <sup>26/</sup>

In this enforcement proceeding, the significance of each of the factors should be considered differently because of the nature of the action and the potential impact on the public. The USSR companies are asking this Licensing Board to stay the August Order until the Board resolves the jurisdictional issue. To grant the stay at this time would allow the condition of the site to continue to deteriorate until the completion of this litigation, with attendant potential for latent

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<sup>22/</sup> Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-437, 6 N.R.C. 630 (1977), citing Washington Metropolitan Area Transit Comm'n v. Holiday Tours, 559 F.2d 841 (D.C. Cir. 1977).

<sup>23/</sup> Alabama Power Co. (Joseph M. Farley Nuclear Plant Units 1 and 2), CLI-81-27, 14 N.R.C. 795, 797 (1981); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-395, 5 N.R.C. 772, 785 (1977).

<sup>24/</sup> Marble Hill, supra, note 22, 6 N.R.C. at 632, quoting Permian Basin Area Rate Cases, 390 U.S. 747, 773 (1968).

<sup>25/</sup> Farley, supra, note 23; Midland, supra, note 23.

<sup>26/</sup> Id.

conditions to cause harm to public health and safety. Because of the potential harm to the public that might occur if corrective actions are not started in a timely manner, the public interest should be given great weight in considering the stay request. A case in which the agency compels a person to take action to protect public health and safety in enforcement is fundamentally different from a case in which the agency grants a license to initiate licensed activity. In the former case, the agency has determined that conditions exist which may threaten public health and safety and has demanded immediate action by the responsible parties, while in the latter case, the agency has determined that a party's proposed action will not endanger public health and safety or property. In an enforcement case such as this one, the staff has concluded that action is required to protect health or minimize danger to life or property. The core of the Commission's enforcement responsibilities is to ensure that responsible persons <sup>27/</sup> take action to protect health and minimize danger to life or property. The stay factors of potential harm to third parties and the public interest are where these responsibilities are manifested in the decision whether a stay is warranted. Accordingly, the Licensing Board should give great weight to the impact on the public interest factor of 10 C.F.R. § 2.788.

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<sup>27/</sup> As defined in the 1954 Act, the term "person" includes corporations, partnerships, firms, associations, or other entities, 42 U.S.C. 2014(s) (1982) (§ 11 of the 1954 Act).

A. Likelihood of Success on the Merits

1. NRC Jurisdiction over the USSR companies

a. The USSR companies' sale of Safety Light to three individuals

Based on § 184 <sup>28/</sup> of the 1954 Act, the Commission's regulations in § 30.34(b) state that:

[n]o license issued or granted pursuant to the regulations in [Part 30] 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 1954 Act] and shall give its consent in writing. <sup>29/</sup>

Section 30.34(b) implements § 184 of the 1954 Act as it applies to materials licensees such as the USSR companies and Safety Light. Section 30.34(b) also embodies Congress' direction to the Commission that:

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 1954 Act], including the following provisions:

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<sup>28/</sup> 42 U.S.C. § 2234 (1982). Section 184 of the 1954 Act provides 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 this Act, and shall give its consent in writing.

<sup>29/</sup> 10 C.F.R. § 30.34(b) (1989) (this regulation has not changed since 1979).

. . . . .

"c. Neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of [the 1954 Act]. <sup>30/</sup>

The license itself states that "[t]his 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 hereafter in effect . . ." <sup>31/</sup> Sections 183 and 184 <sup>32/</sup> of the 1954 Act do not authorize the transfer of a license unless the Commission finds that the transfer is in accordance with the 1954 Act and gives its consent to the transfer in writing. The Commission did not make such a finding and did not give its consent in writing to any transfer in this case.

Accordingly, 10 C.F.R. § 30.34, which implements §§ 183 and 184 of the 1954 Act, clearly prohibits transfer of those licenses, unless the Commission approves that transfer in writing. The statute does not authorize the Commission to allow a transfer in any other fashion, nor does it authorize a licensee to unilaterally transfer its license. <sup>33/</sup>

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<sup>30/</sup> 42 U.S.C. § 2233(c) (1982).

<sup>31/</sup> License No 37-00030-02, Amendment No. 40 (Jan. 25, 1979).

<sup>32/</sup> 42 U.S.C. § 2234. See supra, note 28.

<sup>33/</sup> Cf. U.S. Ecology, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), LBP-87-5, 25 N.R.C. 98, 106-108, vacated on other grounds, ALAB-866, 25 N.R.C. 897 (1987) (prohibiting a licensee from unilaterally terminating its license).



The USSR companies argue that this was not a "transfer of control" prohibited by 10 C.F.R. § 30.34(b) because only ownership, and not control, was transferred. <sup>34/</sup> Before the sale, however, the Board of Directors of Safety Light was identical to the Board of Directors of the USSR companies, which then controlled Safety Light's operating management. After the sale, the operating management of Safety Light was a separate corporate entity and was no longer responsible to USSR Industries. Accordingly, the USSR companies' sale of Safety Light was a transfer of control.

The USSR companies also argue that the NRC lacks jurisdiction over them by asserting that the NRC staff "acquiesced" in the transfer and that, as a matter of equity, this Board should deem that transfer approved. <sup>35/</sup> As described above, the 1954 Act provides only one method for the Commission to approve a license transfer. That method was not followed in this case. Moreover, the equitable remedies of laches and equitable estoppel, relied on by the USSR companies, is not appropriate in this case. Such equitable remedies should not be applied to a government agency where there is no showing of affirmative misconduct by the government. <sup>36/</sup> The USSR companies' suggestion that Safety Light was

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<sup>34/</sup> USSR Brief at 13-14.

<sup>35/</sup> Id.

<sup>36/</sup> Heckler v. Community Health Services of Crawford County, 467 U.S. 51, 59-61 (1984); Schweiker v. Hansen, 450 U.S. 785, 788-790 (1980); United States Immigration and Naturalization Service v. Hibi, 414 U.S. 5, 8 (1973). In Hibi, the Court stated that not even affirmative misconduct would necessarily allow use of such equitable

the same legal entity both before and after the USR companies sold it to its operating management and that this indicates that Safety Light was not transferred is simply not supported by the facts. Accordingly, the license transfer was not effective and the USR companies have not shown any substantial likelihood that they will succeed on the merits of whether the NRC has jurisdiction over them. <sup>37/</sup>

b. U.S. Radium's reorganization of itself into the USR companies

Because the Commission's regulations and the 1954 Act prohibited the USR Industries' transfer of the licenses to the current owners of Safety Light and rendered it ineffective, and through the doctrine of parent company liability, USR Industries is responsible for the obligations of U.S. Radium, its former subsidiary, under the licenses. The three showings necessary to establish parent company liability are: 1) the parent controls the subsidiary to such a degree that the subsidiary is a mere instrumentality of the parent; 2) wrong by the parent through the subsidiary, e.g., violation of a statute; and 3) unjust loss to the

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(Footnote continued from previous page)

defenses against the government. See Lea Exploration v. Department of Energy, 843 F.2d 510, 514-15 (Temp. Emer. Ct. App. 1988); Federal Deposit Ins. Corp. v. Roldan Fonseca, 795 F.2d 1102, 1107-08 (1st Cir. 1986); United States v. Ruby Co., 588 F.2d 697, 701-05 (9th Cir. 1978).

<sup>37/</sup> The USR companies refer to an order in a New Jersey state court finding that "Safety Light was the successor of U.S. Radium." No citation was provided nor was a copy of the decision attached to the stay request. This decision, nevertheless, does not change the fact that USR Industries did not transfer the licenses in compliance with the Atomic Energy Act or the Commission's regulations.

claimant, such as the subsidiary's inability to satisfy its obligations. <sup>38/</sup> As will be shown, USR Industries should be liable for U.S. Radium's obligations under these factors.

As described above, U.S. Radium's Board of Directors was identical to that of USR Industries both before and after the August 1980 reorganization. As shown by the proxy statement, the only thing that changed in this transaction was the names of the companies on the stock certificates outstanding before and after the transaction. Clearly, the same parties controlled U.S. Radium both before and after the transaction. This same group then transferred U.S. Radium's assets other than its safety lighting operation to other USR Industries subsidiaries. Moreover, this same group controlled and still control those subsidiaries. The same Board of Directors sold Safety Light to its present owners in violation of the Commission's regulations and the Atomic Energy Act, and consequently, Safety Light's access to additional assets to satisfy its responsibilities under the licenses was eliminated. The identical ownership and control of U.S. Radium both before and after the 1980 reorganization, the stripping of Safety Light of its assets, making it difficult for Safety Light to discharge its responsibilities under the licenses, and USR Industries' violation of the 1954 Act by its sale of Safety Light to the current owners, are the predicates to establishing that the parent company, USR Industries, remains liable for the obligations of its subsidiary, U.S.

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<sup>38/</sup> See Steven v. Roscoe Turner Aeronautical Corp., 324 F.2d 157, 160 (7th Cir. 1963).

Radium. <sup>39/</sup> Because the license transfer was void, and because USR Industries remains responsible for the obligations of its subsidiary under those licenses, the NRC had and continues to have jurisdiction over the USR companies.

The USR companies rely upon their notifications to "shareholders and the public," "customers and creditors," and "cognizant regulatory agencies," <sup>40/</sup> concerning the August 1980 transaction as justification for the position that a transfer has in fact occurred. The USR companies also emphasize that USR Industries and the subsidiaries other than U.S. Radium were never licensed and never conducted licensed activities. <sup>41/</sup> As demonstrated above, however, USR Industries was clearly liable for its subsidiary's obligations under the license and the assets of those companies were improperly transferred from Safety Light. The Commission should have had the opportunity to consider the change in Safety Light's financial strength before any reorganization or change in ownership or control took place. The USR companies' notifications to other persons

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<sup>39/</sup> Id. See United States v. Kayser-Roth Corp., No. 88-0325B, slip op., 1989 U.S. Dist. Lexis 12906 (D.R.I. Oct. 11, 1989). The staff notes that these same facts clearly establish that USR Industries and Industries Merger Company were mere instrumentalities of U.S. Radium before execution of the Merger Plan.

<sup>40/</sup> USR Brief at 10-12.

<sup>41/</sup> Note that USR Metals, Inc., currently leases space from Safety Light at the Bloomsburg site. USR Metals has been in and is now in possession of licensed materials, in the form of contamination on the site, because a leasehold is a possessory interest. 51C C.J.S. § 2.2 (1968). If USR Metals does not have a license, it would be in violation of the Atomic Energy Act.

does not change the fact that the Commission never gave its approval in writing to any transfer of the license.

The USR companies claim that U.S. Radium reorganized itself in the exercise of "sound business judgment." <sup>42/</sup> The USR companies go on to state that "management of each subsidiary was to be directly responsible for all aspects of [the subsidiary's] operation" and "[p]rofitability was to be stimulated by direct profit-center accounting, management responsibilities and production controls." <sup>43/</sup> In the first place, this reasoning does not provide a basis for not complying with the Atomic Energy Act or the Commission's regulations. Secondly, if the goal was to achieve some additional management control over operation, this could be accomplished in a less severe manner than stripping assets from Safety Light. A company can equally implement such changes in a divisional structure by instituting "profit-center accounting," "management responsibilities [sic]," and "production controls." On the other hand, the procedure followed by the USR companies does have the effect of "[limiting] the rights and liabilities associated with and employed by each business." <sup>44/</sup> This would be accomplished by "[t]he transfer of non-regulated assets to separate operating subsidiaries," <sup>45/</sup> with the goal "to prevent business collapse," <sup>46/</sup> i.e., to avoid liability not only

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<sup>42/</sup> USR Brief at 12.

<sup>43/</sup> Id.

<sup>44/</sup> USR Brief at 12.

<sup>45/</sup> Id.

<sup>46/</sup> Id.

for the Bloomsburg site, but for sites in New Jersey and Kentucky, as well. <sup>47/</sup> Implementation of these goals has the effect of reducing Safety Light's ability to fulfill its responsibilities under its NRC licenses and, in any event, was accomplished without complying with the Atomic Energy Act and the Commission's regulations. The USSR companies arguments do not change the fact that the NRC continues to have jurisdiction over them. <sup>48/</sup> Accordingly, the USSR companies do not make any substantial argument that the NRC lacks jurisdiction over them, and fail to carry their burden of demonstrating likelihood of success on the merits.

2. Immediate Effectiveness

a. Standard of review

To the extent that this Board determines to review the basis utilized by the Staff in making this Order immediately effective, it should apply the following standards:

- 1) whether the statement of reasons given permits rational understanding of the basis for [the staff's] decision;

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<sup>47/</sup> See USSR Industries, Inc., et al., v. Insurance Co. of North America, Docket No. L-055362-84, "Motion to File Third Amended Complaint" and "Third Amended Complaint" of USSR Industries, inc. (Aug. 4, 1989, N.J. Super. Ct. Law Div.) (Attachment 5). Several lawsuits have been filed seeking to hold USSR Industries liable for several sites in New Jersey and for Maxie Flats in Kentucky. Third Amended Complaint at 13-18.)

<sup>48/</sup> If the Board should find that USSR Industries' ownership and control of U.S. Radium after the August 1980 transaction was sufficiently different from ownership and control of U.S. Radium before the transaction such that U.S. Radium was not a mere instrumentality of USSR Industries, and that USSR Industries, therefore, was not liable for the obligations of its subsidiary, then this transaction was also a transfer of ownership and control and in violation of the Commission's regulations and the 1954 Act.

- 2) whether the [staff] has correctly understood governing law, regulations, and policy;
- 3) whether all necessary factors have been considered, and extraneous factors excluded, from the decision;
- 4) whether inquiry appropriate to the facts asserted has been made; and
- 5) whether the . . . decision is demonstrably untenable on the basis of all information available to him. <sup>49/</sup>

While not analyzing these factors explicitly, the USR companies seem to attack the staff's exercise of discretion in making the August Order immediately effective on the basis of factor (2), because the staff has allegedly misunderstood the Commission's regulations and policy governing decommissioning, and factor (5), because the staff has allegedly admitted that there is no immediate health and safety problem at the site.

b. Statements by NRC staff

The USR companies rely on and analyze statements to the Commission at a public meeting on July 13, 1988, made by Mr. Hugh Thompson, Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, and Mr. Glen Sjoblom, Deputy Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards. As explained below, those statements are consistent with the public health, interest, and safety basis for making the August Order immediately effective. However, as provided in 10 C.F.R. § 9.103, statements made by NRC employees at a Commission meeting may not be

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<sup>49/</sup> Sheffield, 9 N.C.R. at 676, nt. 1, quoting Consolidated Edison Co. of New York (Indian Point, Units 1, 2, and 3), CLI-75-8, 2 N.R.C. 173, 175 (1975).

pleaded, cited, or relied upon in any proceeding under Part 2 of the Regulations. Accordingly, these statements made by Mr. Thompson and Mr. Sjoblom may not be relied upon or considered. However, the Staff has included an affidavit by Mr. Sjoblom in support of the determination that it was necessary to take immediate action in this matter. <sup>50/</sup>

In addition, the NRC staff does not now assert, nor has it ever believed, that workers on site or members of the public are currently being exposed to doses of radiation from the Bloomsburg site that might cause adverse health effects. Mr. Sjoblom's statements, which the USR companies quote on pages 16 and 17 of their brief, explain this position. However, "latent conditions which may cause harm in the future are a sufficient basis for issuing an immediately effective . . . order where the consequences might not be subject to correction in the future." <sup>51/</sup> Mr. Sjoblom's statements to the effect that individuals are not now suffering adverse health effects as a result of exposures from the contaminated site are consistent with staff's findings in this case that latent conditions at the site may cause harm in the future. Here, members of the public are not now suffering adverse health effects. <sup>52/</sup> However, it is possible that strontium-90 or other isotopes may be migrating through the groundwater and may escape the site. If strontium-90 were to migrate into local drinking water supplies, the concentration of

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<sup>50/</sup> Affidavit of Glen L. Sjoblom Regarding Bloomsburg Site Decontamination (Nov. 16, 1989) (Sjoblom Affidavit) (Attachment 6).

<sup>51/</sup> Sheffield, 9 N.R.C. at 677, citing Consumers Power Co. (Midland Plant, Units 1 and 2), CLI-74-3, 7 A.E.C. 7, 10-12 (1974).

<sup>52/</sup> Sjoblom Affidavit, paragraph 13.



strontium-90 would be likely to exceed EPA standards for the concentration of that isotope in drinking water. <sup>53/</sup> Accordingly, there is an immediate need to obtain further information regarding the extent and location of the contamination on the site. <sup>54/</sup> Also, it is in the public interest to begin to characterize the site immediately. <sup>55/</sup> Accordingly, while no adverse health effects are yet being manifested, latent conditions on the site may adversely affect public health and safety in the future, and under the Sheffield standard, the staff had a sound basis for making the August Order immediately effective.

c. Staff interpretation of Commission regulations and policy

The USSR companies' contention that the staff has misconstrued the regulations and Commission policy is simply in error; the USSR companies assert that "both the March Order and the August Order refer to decontaminating the site for "unrestricted access." <sup>56/</sup> The March Order, however, requires "a single decontamination plan with a timetable for specific decontamination activities (milestones) and transfer of contaminated waste. The plan shall include the rationale for the priorities established [in it.]" <sup>57/</sup> The March Order goes on to require that when

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<sup>53/</sup> Affidavit of Francis M. Costello, paragraph 4 (Nov. 16, 1989) (Costello Affidavit) (Attachment 7).

<sup>54/</sup> Id.; Sjoblom Affidavit, paragraphs 7-9, 14-18.

<sup>55/</sup> Sjoblom Affidavit, paragraph 15.

<sup>56/</sup> USSR Brief at 18.

<sup>57/</sup> March Order, § VII D.

the Regional Administrator for Region I approves the plan, the plan will be implemented. Nowhere does the March Order require decontamination for unrestricted use; it only requires the minimum decontamination that Safety Light and the USR companies can justify. The only place where the March Order refers to "unrestricted use" is where it requires the Corporations to survey the site <sup>58/</sup> and requires that "[t]he surveys shall be sufficient to develop a complete plan for decontamination/removal operations necessary to permit unrestricted access to the site." <sup>59/</sup> The surveys will provide information on which the Corporations and the staff may make rational decisions regarding what must be done at the site. Lacking complete information, the staff will be unable to discharge its responsibilities to protect public health and safety. In short, the USR companies' argument is incorrect because neither the March Order nor the August Order require decontamination for unrestricted access. <sup>60/</sup>

Accordingly, the USR companies have not set forth any substantial argument that the staff lacked a basis for making the August Order immediately effective, and have not satisfied their burden of demonstrating likelihood of success on the merits.

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<sup>58/</sup> The USR companies' reference to the § II of the August Order is to a mere statement of fact: "The levels of radioactivity exceed those that would permit unrestricted access to the facility." This statement does not require the Corporations to do anything.

<sup>59/</sup> Id. at § VII B.

<sup>60/</sup> As indicated in Affidavit of Edward Y. Shum, Ph.D., and Robert J. Starmer, Ph.D., (Attachment 8), site characterization alone will cost approximately \$1,000,000, let alone cleanup; § 30.35's requirement to fund decommissioning for \$750,000 would be grossly inadequate to decommission the site.

B. Irreparable Harm

The USR companies cite the August Order for the proposition that they are currently losing money. The USR companies go on to allege that "[i]f USR Industries were to comply with the August Order as presently drafted, it would be required to deposit between \$50,000 and \$100,000 per month over the next year into a trust fund. The result of that order is likely bankruptcy." <sup>61/</sup> The fact that USR Industries is in financial difficulty formed part of the reason that the August 21, 1989 Order was made immediately effective. The Staff is concerned that because of the present financial condition in which USR finds itself, sufficient funds will not be available for USR Industries to meet their financial responsibilities under their license. In addition, USR Industries has not established that enforcement of the Order would result in bankruptcy. It is clear that, "[b]are allegations of what is likely to occur are of no value since the court must decide whether the harm will in fact occur. The movant must provide proof . . . indicating that the harm is certain to occur in the near future. Further, the movant must show that the alleged harm will directly result from the action which the movant seeks to enjoin." <sup>62/</sup> The USR companies motion is devoid of affidavits or documentary evidence that the USR companies will be forced into bankruptcy if they comply with the August Order. Because they have provided no proof, they have not met

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<sup>61/</sup> USR Brief at 20.

<sup>62/</sup> Wisconsin Gas Co. v. Federal Energy Regulatory Comm'n, 758 F.2d 669, 674 (D.C. Cir. 1985) (emphasis in original). The Court of Appeals denied the stay in this case.

their burden of showing irreparable harm and their motion for a stay must be denied.

Based on information currently available to the Staff, it does not believe that payment into the trust will threaten the very existence of the movant's business. In a sworn statement in a letter dated September 19, 1989, the Chairman and President of USR Industries stated that the USR companies had a consolidated worth of \$1.6 million. <sup>63/</sup> USR Industries holds twenty-five percent of the stock of Pinnacle Petroleum, <sup>64/</sup> and Pinnacle Petroleum stock is traded on the NASDAQ system. <sup>65/</sup> According to Dun & Bradstreet, Pinnacle Petroleum's net worth is \$2.8 million; accordingly, the USR companies have at least \$700,000 in assets that can be liquidated to deposit into the trust.

Moreover, the case that the USR companies cite for the principle that irreparable harm is found in the absence of a stay where the movant would suffer "the destruction of [the business] in its current form . . .," is clearly distinguishable from this case. In Holiday Tours, <sup>66/</sup> the District Court granted the Transit Commission a permanent injunction restraining Holiday from operating a sightseeing service without a

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<sup>63/</sup> Letter dated September 19, 1989, from Ralph T. McElvenny, Jr., President, to William T. Russell, Regional Administrator, NRC Region I, at 4 (Attachment 9).

<sup>64/</sup> Pinnacle Petroleum, Inc., v. United States Nuclear Regulatory Comm'n, No. 89-184 (D.Del. filed Apr. 14, 1989) (Verified Complaint, at 4) (Attachment 10).

<sup>65/</sup> Id. at 3.

<sup>66/</sup> Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977).

certificate of public convenience and necessity, but stayed the injunction on Holiday's motion. <sup>67/</sup> In Holiday Tours, Holiday's sole business was operating tour buses, and the injunction would have prevented Holiday from doing so. In this case, the USSR companies would have to dispose of assets to comply with the order, but the August Order does not otherwise prevent them from engaging in their businesses. As noted above, the USSR companies did not show how disposing of some of their assets would prevent them from conducting their normal business operations. Accordingly, the USSR companies have not demonstrated that compliance with the order threatens the very existence of their businesses, and have failed to satisfy their burden of demonstrating irreparable injury. <sup>68/</sup>

C. Affect on Third Parties

As described above, latent effects on public health may form a basis for agency action. While no person is now being exposed to damaging doses of radiation from the contamination at the Bloomsburg site, as explained below, failure to initiate site characterization immediately may have adverse effects on third parties. <sup>69/</sup>

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<sup>67/</sup> Id. at 842.

<sup>68/</sup> The USSR companies cite Getty Oil v. Ruckleshaus 342 F. Supp. 1006 (D. Del. 1972) as a case where a) there was no hazard to public health and safety from a stay, but the regulation that was to be enforced was in the public interest. The staff notes that the District Court denied the stay because of Getty's almost certain probability of losing the case on the merits. However, the Court of Appeals remanded the case for lack of jurisdiction with instructions to dismiss, and did not affirm the holding. Getty Oil v. Ruckleshaus, 467 F.2d 349 (3d Cir. 1972)

<sup>69/</sup> Costello Affidavit, paragraphs 3, 4.

Soil, groundwater, and buildings on the Bloomsburg site are contaminated with radium-226, strontium-90, and tritium. <sup>70/</sup> These isotopes have half-lives of approximately 1600 years, 30 years, and 12 years, respectively. <sup>71/</sup> The concentration of radioactive materials in soil and groundwater on the site exceed NRC standards for unrestricted use. <sup>72/</sup> Moreover, concentration of strontium-90 in groundwater on the site exceeds EPA drinking water standards. <sup>73/</sup> Because the current sampling program is incomplete, strontium-90 or other isotopes, in unknown concentration, may be moving offsite in groundwater. <sup>74/</sup> If strontium-90 were to move offsite through groundwater and contaminate supplies of drinking water, that contamination would likely exceed EPA drinking water standards. <sup>75/</sup> Accordingly, latent conditions on the site may result in effects on public health and safety. In order to prevent these potential effects, site characterization should begin immediately. <sup>76/</sup> Because of the staff's important interest in protecting public health and safety, the Board should give this factor heavy weight. Accordingly, the stay should be denied.

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<sup>70/</sup> Sjoblom Affidavit, paragraph 17.

<sup>71/</sup> Costello Affidavit, paragraph 4.

<sup>72/</sup> Id.

<sup>73/</sup> Id.

<sup>74/</sup> Id.

<sup>75/</sup> Id.

<sup>76/</sup> Id.; Sjoblom Affidavit, paragraphs 15-18.

D. The Public Interest

In determining where the public interest lies in this case, the Licensing Board should consider: 1) Any delay will make ultimate decontamination more difficult and more expensive; <sup>77/</sup> and, 2) should the USSR companies continue to lose money, by the time a decision on the merits is reached, with the full panoply of appeals available to the USSR companies, so much money will have been dissipated that the cost of cleanup will fall on the taxpayers. Furthermore, it is clear from the record that many of the assets of the company that deposited the radioactive contamination at the Bloomsburg site, U.S. Radium (before 1980), now are vested in the USSR companies. <sup>78/</sup> It is in the public interest that those responsible for polluting a site clean up that site. <sup>79/</sup> Any grant of a stay will not only make decontamination more difficult, but may lead to the USSR companies' inability to discharge their obligations under the licenses. Accordingly, the public interest weighs heavily against the granting of a stay. The Licensing Board should find that it is not in the public interest to stay the immediate effectiveness of the August 21, 1989 Order.

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<sup>77/</sup> Sjoblom Affidavit, paragraph 17; Costello Affidavit, paragraph 5.

<sup>78/</sup> Costello Affidavit, paragraphs 6, 7; Sjoblom Affidavit, paragraphs 3, 4, 7-9, 17.

<sup>79/</sup> Sjoblom Affidavit, paragraph 18.

V. CONCLUSION

Because the USR companies have failed to carry their burden of showing likelihood of success on the merits, irreparable harm, lack of effect on third parties, and where the public interest lies, this Licensing Board should deny the USR companies' motion for a stay, and should lift the stay granted during the prehearing conference held by telephone on October 27, 1989. The staff notes that the USR companies do not request a stay of the March Order. Even if the Board grants a stay of the August Order, the staff urges the Board to lift the stay granted during the October 27 prehearing conference insofar as it applies to the March Order.

Respectfully submitted,

Robert M. Weisman  
Robert M. Weisman  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 16<sup>th</sup> day of November, 1989



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

SAFETY LIGHT CORPORATION  
UNITED STATES RADIUM CORPORATION  
USR INDUSTRIES, INC.  
USR LIGHTING, INC.  
USR CHEMICALS, INC.  
USR METALS, INC.  
U.S. NATURAL RESOURCES, INC.  
LIME RIDGE INDUSTRIES, INC.  
METREAL, INC.  
(Bloomsburg Site Decontamination)

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

(ASLBP No. 89-590-01-0M)  
(ASLBP No. 90-598-01-0M-2)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO 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" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, or by messenger as indicated by double asterisk this 16th day of November, 1989:

Helen Hoyt, Esq.\*\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. Oscar H. Paris\*\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Frederick J. Shon\*\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Atomic Safety and Licensing Board  
Panel (1)\*  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Atomic Safety and Licensing Appeal  
Panel (5)\*  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Adjudicatory File (2)\*  
Atomic Safety and Licensing Board  
Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Office of the Secretary(2)\*  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
Attn: Docketing and Service Section

Mr. William T. Russell  
Regional Administrator  
U.S. Nuclear Regulatory Commission  
475 Allendale Road  
King of Prussia, PA 19406

Mr. Ralph T. McElvenny  
USR Industries, Inc.  
550 Post Oak Blvd.  
Suite 550  
Houston, TX 77027

D. Jane Drennan, Esq.\*\*  
Wunder, Ryan, Cannon & Thelen  
1615 L. St., N.W. Suite 650  
Washington, D.C. 20036

Gerald Charnoff, Esq.\*\*  
Shaw, Pittman, Potts & Trowbridge  
2300 N. Street, N.W.  
Washington, DC 20037

Robert M. Weisman  
Robert M. Weisman  
Counsel for NRC Staff

ATTACHMENT 1

UNITED STATES ATOMIC ENERGY COMMISSION  
**APPLICATION FOR BYPRODUCT MATERIAL LICENSE**

**INSTRUCTIONS.**—Complete Items 1 through 16 if this is an initial application or an application for renewal of a license. Information contained in previous applications filed with the Commission with respect to Items 8 through 15 may be incorporated by reference provided references are clear and specific. Use supplemental sheets where necessary. Item 16 must be completed on all applications. Mail two copies to U.S. Atomic Energy Commission, Washington, D.C., 20545, Attention: Isotopes Branch, Division of Materials Licensing. Upon approval of this application, the applicant will receive an AEC Byproduct Material License. An AEC Byproduct Material License is issued in accordance with the general requirements contained in Title 10, Code of Federal Regulations, Part 20, and the licensee is subject to Title 10, Code of Federal Regulations, Part 20.

<p>1 (a) NAME AND STREET ADDRESS OF APPLICANT (Institution, firm, individual person, etc. Include ZIP Code.)</p> <p><b>United States Radium Corp. 4150 Old Berwick Rd. Bloomsburg, Pennsylvania 17815</b></p>		<p>(b) STREET ADDRESS(ES) AT WHICH BYPRODUCT MATERIAL WILL BE USED. (If different from 1 (a). Include ZIP Code.)</p>	
<p>2 DEPARTMENT TO USE BYPRODUCT MATERIAL</p> <p><b>Nuclear Division</b></p>		<p>3 PREVIOUS LICENSE NUMBER(S). (If this is an application for renewal of a license, please indicate and give number.)</p> <p><b>37-00030-02 (renewal)</b></p>	
<p>4 INDIVIDUAL USER(S) (Name and title of individual(s) who will use or directly supervise use of byproduct material. Give training and experience in Items 8 and 9.)</p> <p><b>D.B.Cowan Mgr., Gas filling dept. G.E.Widger Mgr., Isolite assembly dept. I.W.Allam Mgr., Foil preparation dept.</b></p>		<p>5 RADIATION PROTECTION OFFICER (Name of person designated as radiation protection officer if other than individual user. Attach resume of his training and experience as in Items 8 and 9.)</p> <p><b>J. D. McGraw</b></p>	
<p>6 (a) BYPRODUCT MATERIAL (Elements and mass number of each)</p> <p><b>Any byproduct material with Atomic Numbers between 3 and 83, inclusive.</b></p> <p><b>Hydrogen 3 Any Polonium 210 Any Actinium 227 Any Neptunium 237 Any Americium 241 Any</b></p>		<p>(b) CHEMICAL AND/OR PHYSICAL FORM AND MAXIMUM NUMBER OF MILLICURIES OF EACH CHEMICAL AND/OR PHYSICAL FORM THAT YOU WILL POSSESS AT ANY ONE TIME (If sealed source(s), also state name of manufacturer, model number, number of sources and maximum activity per source.)</p> <p><b>100 millicuries each except:</b>  <b>Carbon 14 0.5 curie</b>  <b>Cobalt 60 50 curies</b>  <b>Nickel 63 5 curies</b>  <b>Krypton 85 1500 curies</b>  <b>Strontium 90 100 curies</b>  <b>Ruthenium 106 1 curie</b>  <b>Cesium 137 250 curies</b>  <b>Cerium 144 5 curies</b>  <b>Promethium 147 100 curies</b>  <b>Thallium 204 25 curies</b></p> <p><b>40,000 curies</b>  <b>15 curies</b>  <b>1 curie</b>  <b>0.01 curie</b>  <b>32 curies</b></p>	

7. DESCRIBE PURPOSE FOR WHICH BYPRODUCT MATERIAL WILL BE USED. (If byproduct material is for "human use," supplement A (Form AEC-313a) must be completed in lieu of this item. If byproduct material is in the form of a sealed source, include the make and model number of the storage container and/or device in which the source will be stored and/or used.)

- Decontamination, clean-up and disposal of areas previously used for research, development and processing under this license.
- Distribution to authorized recipients of material of value that are not radioactive scrap.

## TRAINING AND EXPERIENCE OF EACH INDIVIDUAL NAMED IN ITEM 1

(Use supplemental sheets if necessary)

8. TYPE OF TRAINING	WHERE TRAINED	LOCATION OF TRAINING	ON THE JOB (Circle answer)	FORMAL COURSE (Circle answer)
a. Principles and practices of radiation protection	See Item 8 attachment.		Yes No	Yes No
b. Radioactivity measurement standardization and monitoring techniques and instruments			Yes No	Yes No
c. Mathematics and calculations basic to the use and measurement of radioactivity			Yes No	Yes No
d. Biological effects of radiation			Yes No	Yes No

## 9. EXPERIENCE WITH RADIATION (Actual use of radioisotopes or equivalent experience.)

ISOTOPE	MAXIMUM AMOUNT	WHERE EXPERIENCE WAS GAINED	DURATION OF EXPERIENCE	TYPE OF USE
See Item 8 attachment.				

## 10. RADIATION DETECTION INSTRUMENTS (Use supplemental sheets if necessary.)

TYPE OF INSTRUMENTS (Include make and model number of each)	NUMBER AVAILABLE	RADIATION DETECTED	SENSITIVITY RANGE (mr/hr)	WINDOW THICKNESS (mg/cm <sup>2</sup> )	USE (Monitoring, surveying, measuring)
See Item 10 attachment.					

## 11. METHOD, FREQUENCY, AND STANDARDS USED IN CALIBRATING INSTRUMENTS LISTED ABOVE

See Item 11 attachment

## 12. FILM BADGES, DOSIMETERS, AND BIO-ASSAY PROCEDURES USED. (For film badges, specify method of calibrating and processing, or name of supplier.)

See letter USRC to Mr. R. E. Brinkman 5-20-65 (with attachment).

## INFORMATION TO BE SUBMITTED ON ADDITIONAL SHEETS IN DUPLICATE

13. FACILITIES AND EQUIPMENT. Describe laboratory facilities and remote handling equipment, storage containers, shielding, fume hoods, etc. Explanatory sketch of facility is attached (Circle answer) Yes No	See above letter (with attachment).
14. RADIATION PROTECTION PROGRAM. Describe the radiation protection program including control measures. If application covers sealed sources, submit leak testing procedures where applicable, name, training, and experience of person to perform leak tests, and arrangements for performing initial radiation survey, servicing, maintenance and repair of the source.	

See attached copy HSOP 27.

15. WASTE DISPOSAL. If a commercial waste disposal service is employed, specify name of company. Otherwise, submit detailed description of methods which will be used for disposing of radioactive wastes and estimates of the type and amount of activity involved.

Nuclear Engineering Co., Morehead, Ky.  
CERTIFICATE (This item must be completed by applicant)

16. THE APPLICANT AND ANY OFFICIAL EXECUTING THIS CERTIFICATE ON BEHALF OF THE APPLICANT NAMED IN ITEM 1, CERTIFY THAT THIS APPLICATION IS PREPARED IN CONFORMITY WITH TITLE 10, CODE OF FEDERAL REGULATIONS, PART 30, AND THAT ALL INFORMATION CONTAINED HEREIN, INCLUDING ANY SUPPLEMENTS ATTACHED HERETO, IS TRUE AND CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF.

Date April 25, 1969

UNITED STATES RADIUM CORP.

Applicant named in Item 1

By:

O. L. Olson

Director, Nuclear Division

WARNING.—18 U. S. C., Section 1001; Act of June 25, 1948; 62 Stat. 749; makes it a criminal offense to make a willfully false statement or representation to any department or agency of the United States or to any matter within its jurisdiction.

**U. S. ATOMIC ENERGY COMMISSION** License No. 37-00030-C1  
**BYPRODUCT MATERIAL LICENSE** Page 1 of 2 Pages  
**Amendment No. 36**

Pursuant to the Atomic Energy Act of 1954 and Title 10, Code of Federal Regulations, Chapter 1, Parts 30, 32, 33, 34, and 35, and in reliance on statements and representations heretofore made by the licensee, a license is hereby issued authorizing the licensee to receive, acquire, own, possess, transfer and import byproduct material listed below; and to use such byproduct material for the purpose(s) and at the place(s) designated below. This license shall be deemed to contain the conditions specified in Section 183 of the Atomic Energy Act of 1954, and is subject to all applicable rules, regulations, and orders of the Atomic Energy Commission now or hereafter in effect and to any conditions specified below.

<b>Licensee</b>		<b>In accordance with letter dated March 14, 1969,</b>
1. United States Radium Corporation		3. License number 37-00030-C2 is amended in its entirety to read as follows:
2. 4150 Old Berwick Road Bloomsburg, Pennsylvania 17015		
		4. Expiration date July 31, 1970
		5. Reference No.
<b>6. Byproduct material (element and mass number)</b>	<b>7. Chemical and/or physical form</b>	<b>8. Maximum amount of radioactivity which licensee may possess at any one time</b>
A. Any byproduct material	A. Contaminated facilities and equipment	A. See item 9.A. below

**9. Authorized use**

- A. Decontamination, clean-up and disposal of equipment and facilities previously used for research, development, and processing under this license.

**CONDITIONS**

10. Byproduct material may only be used at the licensee's address stated in Item 2 above.
11. The licensee shall comply with the provisions of Title 10, Chapter 1, Code of Federal Regulations, Part 20, "Standards for Protection Against Radiation."
12. Byproduct material shall be used by, or under the supervision of, D. B. Cowan, C. E. Widger, I. W. Allam, or J. D. McGraw.

## CONDITIONS

Amendment No. 36

(Continued)

13. Except as specifically provided otherwise by this license, the licensee shall possess and use byproduct material described in Items 6, 7, and 8 of this license in accordance with statements, representations, and procedures contained in application dated April 25, 1969 and letter dated July 23, 1969, signed by O. L. Olson.

AUG 5 1969

For the U. S. Atomic Energy Commission

Original Signed By

Robert E. Brinkman

by Isotopes BranchDivision of Materials Licensing  
Washington, D. C. 20545*R.E.B. [Signature]*

# U. S. NUCLEAR REGULATORY COMMISSION MATERIALS LICENSE

 Page 1 of 1 Pages  
Amendment No. 00

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974 (Public Law 93-438), and Title 10, Code of Federal Regulations, Chapter 1, Parts 30, 31, 32, 33, 34, 35, 36, 40 and 70, and in reliance on statements and representations heretofore made by the licensee, a license is hereby issued authorizing the licensee to receive, acquire, possess, and transfer byproduct, source, and special nuclear material designated below; to use such material for the purpose(s) and at the place(s) designated below; to deliver or transfer such material to persons authorized to receive it in accordance with the regulations of the applicable Part(s); and to import such byproduct and source material. This 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 hereafter in effect and to any conditions specified below.

Licensee		In accordance with application dated June 7, 1977	
1. United States Radium Corporation		3. License number 37-00030-02 is amended in its entirety to read as follows:	
2. 4150 Old Berwick Road Bloomsburg, Pennsylvania 17815		4. Expiration date February 29, 1984	
		5. Docket or Reference No.	
6. Byproduct, source, and/or special nuclear material	7. Chemical and/or physical form	8. Maximum amount that licensee may possess at any one time under this license	
A. Any byproduct material	A. Contaminated facilities and equipment	A. See Item 9.A. below	

## 9. Authorized use

- A. Decontamination, cleanup, and disposal of equipment and facilities previously used for research and development under this license.

## CONDITIONS

10. Licensed material shall be used only at the licensee's address stated in Item 2 above.
11. The licensee shall comply with the provisions of Title 10, Chapter 1, Code of Federal Regulations, Part 19, "Notices, Instructions and Reports to Workers; Inspections" and Part 20, "Standards for Protection Against Radiation."
12. Operations shall be conducted by, or under the supervision of, R. E. Bickert or J. D. McGraw.
13. A report of status and schedule of work for the 12 months period commencing July 1 shall be submitted no latter than July 1.



MATERIALS LICENSE

Supplementary Sheet

License Number 37-00030-02

Docket or

Reference No. \_\_\_\_\_

Amendment No. 40

(continued)

14. Except as specifically provided otherwise by this license, the licensee shall possess and use licensed material described in Items 6, 7, and 8 of this license in accordance with statements, representations, and procedures contained in application dated April 25, 1969; letter dated July 23, 1969, and application dated June 7, 1977 as amended October 23, 1978.

Date JAN 25 1979

*NB* 1/25/79  
For the U. S. Nuclear Regulatory Commission  
Original Signed By  
**NATHAN BASSIN**  
by License Management Branch

Division of Fuel Cycle and  
Material Safety  
Washington, D.C. 20555 *SM* **1**

*NB/ua*

3581  
UNITED STATES RADIUM CORPORATION

4150 OLD BERWICK ROAD/BLOOMSBURG, PENNSYLVANIA 17815 / (717) 784-3510

October 23, 1978

Radioisotopes Licensing Branch  
Division of Fuel Cycle and Material Safety  
U. S. Nuclear Regulatory Commission  
396SS Washington, D. C. 20555

Attention: Mr. Frederick Combs

Reference: USNRC License 37-00030-02

Docket No. 87910

Dear Mr. Combs:

Enclosed is the information you requested in your letter of June 9, 1978. Specific operations are scheduled only through June of 1979. At this time, a complete evaluation of survey results collected will be carried out to determine further operations.

Very truly yours,

UNITED STATES RADIUM CORPORATION

Terry D. Brown  
Nuclear Operations Manager

TDB  
jrn

Enc.

CERT. MAIL -rrr  
CC: USNRC

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INSPECTION AND ENFORCEMENT

DECONTAMINATION PROGRAM  
U. S. RADIUM CORPORATION  
BLOOMSBURG FACILITY

PART I

PRESENT STATUS

## PREFACE

With the conclusion of the decontamination of the primary facilities utilized in activities licensed under USAEC License 37-00030-02, a survey of the entire plant was begun. This survey, carried out over a period of three years, included every building on the site regardless of whether radioactive materials had been processed in them or not. The purpose of the plant survey was to identify, to the best of our ability, the status of the entire plant site. The survey was not designed to determine the full extent of any contamination found in a specific area, but rather to determine what areas or buildings did have any significant levels of contamination, and a rough estimate of the work and equipment needed to carry out such decontamination. This type of survey was sorely needed because records of the early history of radioactives operations on the site (1948 - 1956) were incomplete. The following pages show the results of that survey and represent the present status of our site. DPM values are per a nominal 50-100 cm<sup>2</sup>.

## AREA #1 - MAIN BUILDING

The former Hand Painting department occupied the second floor front of this building. The area itself has been completely decontaminated. However, the attic above this area still contains the contaminated exhaust ducts for the old radium painting operations. In addition, there is widespread alpha contamination on rafters, ceiling joists, and underside of the roof. Levels of contamination range up to 20,000 DPM. Between the floor of the former Hand Painting department and the ceiling below there is lower level alpha contamination, on the order of 200-600 DPM.

The only other known contamination remaining in this building is a drain line from a Strontium-90 production operation which was removed in the early 1950's. There is no measurable radiation coming up through the floor. However, there is no way to determine the extent of the contamination (if any) within the drain line. The drain is not in use, and hasn't been used for some twenty years.

AREA #2 - ETCHING BUILDING

The former shipping room in this building once housed radium screening machines. There is low level fixed alpha contamination on the floor (200-600 DPM). There are higher levels in certain cracks around the cement pads on which the radium screening machines once stood (200-2000 DPM). The entire floor has been covered with plywood and is used only for storage of little used materials. Removable alpha contamination has not been found in the area since the plywood was laid down. It is suspected that the soil beneath the wooden floor may also have low level contamination in it; however, radiation levels show no gamma radiation above background in this area.

The former Watch Dial screen rooms and drain line in this building were used for applying Tritium to watch dials in large sheets. Although the operation was moved to the Nuclear Building in 1969, the area has only been partially decontaminated. Levels of Tritium removable contamination range from 5000-50000 DPM. The exhaust ducts, absolute filter bank, blower and discharge stack for the former Watch Dial screen rooms are still intact. Contamination levels in these areas are unknown.

The attic of the building has scattered spots of low level alpha contamination (200-1000 DPM).

The maintenance wire enclosure has a 12" thick concrete floor poured over an old radium drain. Radiation levels in the enclosure are background.

#### AREA #3 - TRITIUM BUILDING

The Tritium building originally housed the equipment used for making Tritium foil. This equipment was moved to the Nuclear building in 1969. Surveys of this building over the past nine years have shown a steady decrease in removable Tritium contamination from 50,000 - 80,000 DPM in 1969, to its present 8,000-10,000 DPM.

#### AREA #4 - PIPE SHOP

Radon samples taken in 1973 showed excessive levels of radon (in excess of 3 X mpc). Surveys showed 200-400 DPM removable alpha uniformly distributed over every interior surface of the building. Although no radioactive operations have ever been performed in this building, it extends over an area that was used as a plant dump in the late forties.

#### AREA #5 - RADIUM VAULT

This building was formerly used for storage and handling of radium bromide, radium foil and radium radiation sources. When closed off in 1970, contamination levels were 1,000-50,000 DPM fixed alpha and 50-200 DPM removable alpha. Radiation levels at some places in the building were 0.1-0.3 mR/hr beta-gamma.



#### AREA #6 - SOLUTIONS VAULT

This building was used for handling certain radioactive solutions and for storage of certain high-level radiation sources. Recent surveys have shown that there is no detectable removable alpha or beta-gamma. The building is presently being used for storage.

#### AREA #7 - SEALED SOURCES VAULT

This small building was used only for the storage of certain sealed sources; however, some contamination has been found in and around the floor and door of the building. The last surveys showed less than 0.25 mR/hr beta-gamma.

#### AREA #8 - OLD GARAGE

Originally used as the waste disposal building, this structure has been vacant since the late 1950's. The dirt is contaminated (200-2,000 DPM alpha and 0-0.4 mR/hr beta-gamma).

#### AREA #9 - SILO

The silo was used solely for the remote storage of certain types of high-level sources. Contamination is basically background; however, a thorough survey has not been conducted.

#### AREA #10 - OLD HOUSE

This structure has been used for the storage of many low-level contaminated items over the years. Low-level alpha contamination (200-1,000 DPM) is widespread in certain areas of the building.

#### AREA #11 - PERSONNEL OFFICE

In the basement of the former personnel office is an old well of some sort that was apparently used for waste disposal purposes. No records are available as to what was disposed of in this well - by whom, why or when. It apparently has a concrete cap. Radiation levels over the cap are 0-0.25 mR/hr beta-gamma.

#### AREA #12 - BURIAL PITS

Originally licensed for the disposal of low-level wastes in 1956, there are no records in existence of how these burial sites are constructed, nor of what is buried in them. Radiation levels at soil level range from background to 0.6 mR/hr beta-gamma. These pits were under water during the flood of 1972; however, there has been no significant change in radiation levels during or after the flood.

AREA #13 - PLANT DUMP at Southwest Corner of Property

Originally found in 1970, some decontamination has been carried out in this area. Present radiation levels are less than 0.6 mR/hr beta-gamma.

AREA #14 - PLANT DUMP between Lagoons

This area was found during the installation of a new storm sewer in 1972. Radiation levels are approximately several thousand CPM beta only. There appears to be little or no associated gamma.

AREA #15 - CEMENT TROUGH, SEWER AND GRATE

Source of contamination of these items is unknown. Contamination levels are 200-2,000 DPM alpha.

AREA #16 - EAST LAGOON

The full extent of contamination in this pond is difficult to ascertain due to the water and mud in the pond. Underwater surveys with a waterproof probe show radiation levels range from background to 4 mR/hr gamma.

AREA #17 - CONTAMINATED SOIL UNDER OLD LOADING DOCK

This area was formerly the main access to the alpha laboratory for the removal of radioactive waste and other large items. The soil beneath it is relatively inaccessible; however, the limited surveys possible indicate contamination levels ranging from background to 2 mR/hr beta-gamma.

AREA #18 - CONTAMINATED SOIL BY SILO FENCE

This contaminated area adjoins the old garage formerly used for waste disposal. Radiation levels range from background to 0.6 mR/hr beta-gamma.

AREA #19 - CONTAMINATED SOIL BY TRITIUM BUILDING

A small area of soil near the front of Area #3 has a radiation level of approximately 0.6 mR/hr beta-gamma.

AREA #20 - CONTAMINATED SOIL EAST OF LAGOONS

This is a large area of soil completely covered with heavy undergrowth. Radiation levels range from background to 0.6 mR/hr beta-gamma.

## AREA #21 - CARPENTER SHOP

This building was used for storage of radium in the late forties and early fifties. One wall is known to be contaminated with 10,000 to 50,000 DPM alpha and 1-2 mR/hr beta-gamma.

## AREA #22 - SIDEWALKS

At various times in the past, contamination has been found at isolated points on the exterior walkways on the site. This has generally been 200-2,000 DPM alpha with no detectable beta-gamma.

## AREA #23 - FORMER CANAL BANK

At one time, there were additional lagoons on the site. These were decontaminated in the early sixties. However, no records of residual levels of contamination exist.

## AREA #24 - CONTAMINATED DRAINS

A number of contaminated drains left from old radioactive operations remain on the site. The extent of contamination in these lines is unknown.

AREA #25 - FORMER EXIT SIGN ASSEMBLY AREA

This area in the Etching building was used for the assembly and storage of exit signs containing Tritium. Brief surveys showed no detectable contamination; however, a thorough survey remains to be done.

AREA #26 - FORMER CESIUM ION-EXCHANGE HUT

This building formerly housed the ion-exchange columns used to treat waste water from the Cesium laboratory. While gross contamination has been removed, survey records are incomplete.

PART II

PROPOSED SCHEDULE FOR  
FURTHER SURVEY AND DECONTAMINATION  
OPERATIONS

## PREFACE

Based upon the site contamination status contained in Part I of this program, a tentative schedule for the decontamination program has been developed covering the next nine months. It will be modified by considerations such as weather conditions and survey results.

In June of 1979, a schedule for the next twelve months will be developed, based upon new survey results and any other new information available.



## OCTOBER THROUGH DECEMBER, 1978

- Area 9 - Survey silo to determine nature of decontamination efforts necessary.
- Area 12 - Take three core samples in vicinity of old burial pits and establish permanent wells for continuing samples of ground water and sub-surface radiation levels.
- Area 14 - Excavate contaminated soil between lagoons.
- Area 15 - Decontaminate cement trough and storm sewer. Replace if necessary.
- Area 18 - Survey to determine extent of area involved. Take core samples by hand.
- Area 19 - Remove contaminated soil by Tritium building.
- Area 21 - Remove contaminated wall in carpenter shop.
- Area 22 - Survey all external plant walkways.

## JANUARY THROUGH JUNE, 1979

- Area 2 -
  - (a) Decontaminate former shipping room.
  - (b) Survey former Watch Dial screen rooms, exhaust ducts, filter bank and plenum chamber.
  - (c) Survey attic to determine exact location of contaminated areas.
- Area 5 - Reopen and survey old radium vault.
- Area 7 - Decontaminate sealed sources vault.
- Area 8 - Decontaminate old garage.
- Area 23 - Survey canal bank.

--- REVIEW PROGRAM ---

OCT 6 1978

United States Radium Corporation  
Attn: Mr. J. David McGraw  
4150 Bld. Bernick Road  
Bloomsburg, Pa. 17815

Gentlemen:

This refers to your request for renewal of License No. 37-00030-02 and our request for additional information dated June 9, 1978, a copy of which is enclosed. A check of our files indicates that we have not received a response from you to date. If we do not receive a reply within 30 days, it may be necessary to deny your application and terminate your license. Such action would require that you divest yourself of all licensed material.

Sincerely,

Frederick Combs  
Radioisotopes Licensing Branch  
Division of Fuel Cycle and  
Material Safety

Enclosure:  
As stated

CA 10/6/78



## UNITED STATES RADIUM CORPORATION

4150 OLD BERWICK ROAD / BLOOMSBURG, PENNSYLVANIA 17815 / (717) 784-3510

2505

June 22, 1978

Radioisotopes Licensing Branch  
Division of Fuel Cycle and Material  
Safety  
U.S. NUCLEAR REGULATORY COMMISSION  
Washington, D. C. 20555

Attn: Mr. Frederick Combs

Ref.: FCRC-FC (87910)

Dear Mr. Combs:

We have received your letter of June 9, 1978.

The information you have requested is being prepared.

Preparation and submission of a detailed report, and our present and future programs should be completed by October 31, 1978.

Very truly yours,

UNITED STATES RADIUM CORPORATION

E. B. Fisher  
Chairman and Chief Executive Officer

EBF:dc

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JUN 9 1978

FCRL:FC  
(87910)

United States Radium Corporation  
ATTN: Mr. J. David McGraw  
4150 Old Berwick Road  
Bloomsburg, PA 17815

Gentlemen:

This refers to your application dated June 7, 1977, for renewal of License No. 37-00030-02, authorizing decontamination of your former research development and processing facilities. We request that you supplement your application with a detailed report concerning the status of your decontamination efforts. This report should identify those areas which are still contaminated and the types and quantities of contamination in those areas, provide a description of your current program for surveying these areas and surrounding environs, and outline your plan for completing decontamination of this facility.

We shall continue review of your application upon receipt of the above information, in duplicate.

Sincerely,

Frederick Combs  
Radioisotopes Licensing Branch  
Division of Fuel Cycle and  
Material Safety

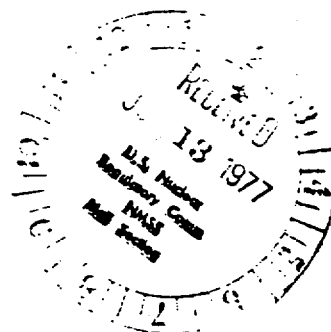
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MC#137426	SURNAME	FCRLS/cb				
6/8/78	DATE	6/9/78				



## UNITED STATES RADIUM CORPORATION

4150 OLD BERWICK ROAD/BLOOMSBURG, PENNSYLVANIA 17815/(717) 784-3510

June 7, 1977



Radioisotope Licensing Branch  
Division of Fuel Cycle and  
Material Safety  
U. S. NUCLEAR REGULATORY COMMISSION  
Washington, D. C. 20555

Ref.: License No. 37-00030-02

Gentlemen:

Enclosed are the required duplicate copies of Form  
AEC-313 requesting renewal of the above-referenced license.

If further information is required, please contact the  
undersigned.

Respectfully yours,

UNITED STATES RADIUM CORPORATION

J. David McGraw  
Radiation Safety Officer

JDMcG  
jrn

Encs.

CERT. MAIL ret.rec.req.

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87910

UNITED STATES ATOMIC ENERGY COMMISSION  
**APPLICATION FOR BYPRODUCT MATERIAL LICENSE**

**INSTRUCTIONS**—Complete Items 1 through 16 if this is an initial application or an application for renewal of a license. Information contained in previous applications filed with the Commission with respect to Items 8 through 15 may be incorporated by reference provided references are clear and specific. Use supplemental sheets where necessary. Item 16 must be completed on all applications. Mail two copies to: U.S. Atomic Energy Commission, Washington, D.C., 20545, Attention: Materials Branch, Directorate of Licensing. Upon approval of this application, the applicant will receive an AEC Byproduct Material License. An AEC Byproduct Material License is issued in accordance with the general requirements contained in Title 10, Code of Federal Regulations, Part 30, and the Licensee is subject to Title 10, Code of Federal Regulations, Part 20, and the license fee provisions of Title 10, Code of Federal Regulations, Part 170. The license fee category should be stated in Item 16 and the appropriate fee enclosed. (See Note in Instruction Sheet).

<b>1. (a) NAME AND STREET ADDRESS OF APPLICANT</b> (Institution, firm, hospital person, etc. Include ZIP Code and telephone number.) U. S. Radium Corporation 4150 Old Berwick Road Bloomsburg, Pa. 17815		<b>(b) STREET ADDRESS(ES) AT WHICH BYPRODUCT MATERIAL WILL BE USED</b> (If different from 1(a). Include ZIP Code.)	
<b>2. DEPARTMENT TO USE BYPRODUCT MATERIAL</b> Health Physics		<b>3. PREVIOUS LICENSE NUMBER(S)</b> (If this is an application for renewal of a license, please indicate and give number.) 37-00030-02 (renewal)	
<b>4. INDIVIDUAL USER(S)</b> (Name and title of individual(s) who will use or directly supervise use of byproduct material. Give training and experience in Items 8 and 9.) R. E. Bickert J. D. McGraw		<b>5. RADIATION PROTECTION OFFICER</b> (Name of person designated as radiation protection officer if other than individual user. Attach resume of his training and experience as in Items 8 and 9.) J. D. McGraw	
<b>6. (a) BYPRODUCT MATERIAL</b> (Elements and mass number of each.) Any byproduct material		<b>(b) CHEMICAL AND/OR PHYSICAL FORM AND MAXIMUM NUMBER OF MILLICURIES OF EACH CHEMICAL AND/OR PHYSICAL FORM THAT YOU WILL POSSESS AT ANY ONE TIME.</b> (If sealed source(s), also state name of manufacturer, model number, number of sources and maximum activity per source.) Contaminated facilities and equipment	

**7. DESCRIBE PURPOSE FOR WHICH BYPRODUCT MATERIAL WILL BE USED.** (If byproduct material is for "human use," supplement A (Form AEC-313a) must be completed in lieu of this item. If byproduct material is in the form of a sealed source, include the make and model number of the storage container and/or device in which the source will be stored and/or used.)

Decontamination, cleanup and disposal of equipment and facilities previously used for research, development, and processing under this license.

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87910

# TRAINING AND EXPERIENCE OF EACH INDIVIDUAL NAMED IN ITEM 4 (Use supplemental sheets if necessary)

8. TYPE OF TRAINING	WHERE TRAINED	DURATION OF TRAINING	ON THE JOB (Circle answer)	FORMAL COURSE (Circle answer)
a. Principles and practices of radiation protection	Items 8 thru 15		Yes No	Yes No
b. Radioactivity measurement standardization and monitoring techniques and instruments	see application dated Oct. 18, 1974, signed by		Yes No	Yes No
c. Mathematics and calculations basic to the use and measurement of radioactivity	J. David McGraw		Yes No	Yes No
d. Biological effects of radiation	supporting renewal of license 37-00030-08.		Yes No	Yes No

## 9. EXPERIENCE WITH RADIATION. (Actual use of radioisotopes or equivalent experience.)

ISOTOPE	MAXIMUM AMOUNT	WHERE EXPERIENCE WAS GAINED	DURATION OF EXPERIENCE	TYPE OF USE

## 10. RADIATION DETECTION INSTRUMENTS (Use supplemental sheets if necessary)

TYPE OF INSTRUMENTS (Include make and model number of each)	NUMBER AVAILABLE	RADIATION DETECTED	SENSITIVITY RANGE (mr/hr)	WINDOW THICKNESS (mg/cm <sup>2</sup> )	USE (Monitoring, surveying, measuring)

## 11. METHOD, FREQUENCY, AND STANDARDS USED IN CALIBRATING INSTRUMENTS LISTED ABOVE

## 12. FILM BADGES, DOSIMETERS, AND BIO-ASSAY PROCEDURES USED. (For film badges, specify method of calibrating and processing, or name of supplier.)

## INFORMATION TO BE SUBMITTED ON ADDITIONAL SHEETS IN DUPLICATE

13. FACILITIES AND EQUIPMENT. Describe laboratory facilities and remote handling equipment, storage containers, shielding, fume hoods, etc. Explanatory sketch of facility is attached. (Circle answer) Yes No
14. RADIATION PROTECTION PROGRAM. Describe the radiation protection program including control measures. If application covers sealed sources, submit leak testing procedures where applicable, name, training, and experience of person to perform leak tests, and arrangements for performing initial radiation survey, servicing, maintenance and repair of the source.
15. WASTE DISPOSAL. If a commercial waste disposal service is employed, specify name of company. Otherwise, submit detailed description of methods which will be used for disposing of radioactive wastes and estimates of the type and amount of activity involved.

## CERTIFICATE (This item must be completed by applicant)

16. THE APPLICANT AND ANY OFFICIAL EXECUTING THIS CERTIFICATE ON BEHALF OF THE APPLICANT NAMED IN ITEM 1, CERTIFY THAT THIS APPLICATION IS PREPARED IN CONFORMITY WITH TITLE 10, CODE OF FEDERAL REGULATIONS, PART 30, AND THAT ALL INFORMATION CONTAINED HEREIN, INCLUDING ANY SUPPLEMENTS ATTACHED HERETO, IS TRUE AND CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF.

License Fee Category \$ \_\_\_\_\_

Fee Enclosed \$ \_\_\_\_\_

Date June 7, 1977

UNITED STATES RADIUM CORPORATION

Applicant named in item 1

By: \_\_\_\_\_

J. David McGraw

Radiation Safety Officer

Title of certifying official

**WARNING.**—18 U. S. C., Section 1001; Act of June 25, 1948; 62 Stat. 749, makes it a criminal offense to make a willfully false statement or representation to any department or agency of the United States as to any matter within its jurisdiction.

ATTACHMENT 2



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LISTING APPLICATION NO. 12145

AMERICAN STOCK EXCHANGE, INC.

The Listing Application of USR Industries, Inc., which is set forth below, was approved on August 21, 1980.

The papers and exhibits submitted by the Corporation in support of its application are available for inspection at the Library of the Exchange. 51

**USR INDUSTRIES, INC.**

(Incorporated under the laws of the State of Delaware on May 14, 1980)

Common Stock, \$1.00 Par Value

Morristown, New Jersey  
August 6, 1980  
(Amended August 27, 1980)\*

**Substitutional Listing:**  
(For Common Stock of UNITED STATES RADIUM CORPORATION ("USR"), previously listed)

USR Industries, Inc. (the "Corporation") hereby makes application to the American Stock Exchange, Inc. (the "Exchange") for the listing of:

1,164,136 shares of Common Stock, par value \$1.00 per share (the "Common Stock"), issued August 27, 1980 upon effectiveness of the merger (the "Merger") contemplated by the Agreement and Plan of Merger dated as of May 16, 1980 (the "Merger Agreement") described herein and in the attached Prospectus of the Corporation and Proxy Statement of USR dated July 11, 1980 (the "Prospectus and Proxy Statement") in substitution for a like number of previously listed and outstanding shares of common stock, par value \$1.00 per share, of USR;

making a total of 1,164,136 shares of Common Stock, the listing of which is hereby applied for (of a total authorized issue of 3,500,000 shares).

All of the shares of Common Stock for which listing is applied for are fully paid and non-assessable, and no personal liability will attach to the ownership thereof.

\* Amended to reflect effectiveness of the Merger.

Reference is made to USR's previous listing applications, the most recent of which was approved on February 12, 1980 (No. 11982).

The common stock of USK is presently listed on the Exchange.

Upon official notice of the effectiveness of the Merger hereinafter described and upon admission of the Common Stock of the Corporation to dealings on the Exchange, dealings in common stock of USR on the Exchange were terminated.

#### PROSPECTUS AND PROXY STATEMENT

Attached hereto and incorporated herein by reference is a copy of the Prospectus and Proxy Statement which was mailed to USR's stockholders in connection with the solicitation of proxies for the Annual Meeting of Stockholders held on August 6, 1980 (the "Annual Meeting") for the purpose, among other things, of voting on the Merger described herein and in the attached Prospectus and Proxy Statement.

The Merger Agreement and the Certificate of Incorporation of the Corporation are included as exhibits to the Prospectus and Proxy Statement.

#### CAPITALIZATION

The following table sets forth the capitalization of the Corporation as of August 6, 1980, after giving effect to the Merger.

Class Par Value	Authorized by Charter	Number of Shares		Listing Applied For
		Authorized For Issuance	Outstanding	
Common Stock \$1.00 Par Value	3,500,000	1,264,136	1,164,136	1,164,136

#### Unissued Reserved Shares:

The Corporation has reserved 100,000 shares of Common Stock for issuance upon exercise of stock options granted to two directors of the Corporation. The options were originally granted by USR and approved by the stockholders of USR in 1979, but by the terms of the option agreements, as amended, the options will be exercisable only for shares of Common Stock of the Corporation on and after the effective date of the Merger. These 100,000 shares have not been approved for listing.

No additional unissued shares of Common Stock are reserved for issuance for any specified purpose.

The 100 shares of the Corporation initially issued upon incorporation of the Corporation were cancelled upon effectiveness of the Merger.

#### LONG-TERM DEBT

The Corporation has no issue or series of funded or long-term debt. USR (a wholly-owned subsidiary of the Corporation whose name will be changed to Safety Light Corporation) has long-term obligations under a capital lease (excluding current installments) which totalled \$1,325,858 as of March 29, 1980.

#### AUTHORITY FOR AND PURPOSE OF ISSUANCE

As to the 1,164,136 Substitutional Shares:

The Corporation was initially formed as a wholly-owned subsidiary of USR. Pursuant to the terms of the Agreement and Plan of Merger dated as of May 16, 1980 by and between USR, the Corporation and Industries Merger Co. Inc. ("Merger Company", a Delaware corporation organized as a nominally-capitalized, wholly-owned subsidiary of the Corporation to be a constituent corporation in the Merger), Merger Company was merged into USR effective August 27, 1980 and the shares of common stock, \$1.00 par value, of USR were exchanged, share-for-share, for shares of Common Stock, \$1.00 par value, of the Corporation, with the result that USR (whose name will be changed to "Safety Light Corporation") became a wholly-owned subsidiary of the Corporation.

The Boards of Directors of USR, the Corporation and Merger Company approved the Merger Agreement on May 15, 1980. On July 2, 1980, the Board of Directors of the Corporation authorized the issuance of the Common Stock and the listing of the Common Stock on the Exchange.

The Merger Agreement was approved by a majority of the outstanding shares of USR entitled to vote thereon at the Annual Meeting of Stockholders of USR held on August 6, 1980.

Reference is made to the Prospectus and Proxy Statement incorporated by reference herein for additional information concerning the authority for and purpose of issuance of the shares of the Common Stock of the Corporation for which application for listing is being made. The Merger Agreement and the Certificate of Incorporation of the Corporation are included as exhibits to the Prospectus and Proxy Statement.

#### OPINION OF COUNSEL

The firm of Shearman & Sterling, 153 East 53rd Street, New York, New York 10022, has rendered the opinion filed in support of this application. No member of the firm is an officer or director of the Corporation. To the best knowledge of the Corporation, no member of the firm is a stockholder of the Corporation.

#### REGISTRATION UNDER SECURITIES ACT OF 1933

The 1,164,136 shares of Common Stock of the Corporation, par value \$1.00 per share, for which substitutional listing is applied herein, have been registered under the Securities Act of 1933 (the "Act"), pursuant to a Registration Statement (Registration No. 2-67813) filed with the Securities and Exchange Commission (the "Commission") on Form S-14. The effective date of the Registration Statement was July 2, 1980.

The Corporation is filing with the Exchange and with the Securities and Exchange Commission an Application on Form 8-B for the registration of its Common Stock on the Exchange, pursuant to the Securities Exchange Act of 1934.

#### GENERAL INFORMATION

The fiscal year of the Corporation ends December 31 of each year.

The Corporation's principal executive offices are located at 170 East Hanover Avenue, P.O. Box 246, Morristown, New Jersey 07960.

The Corporation's By-Laws provide that the annual meeting of stockholders shall be held at such place as may be determined by the Board of Directors on the third Wednesday of May in each year, if not a legal holiday and, if a legal holiday, then on the next business day following, at 12:00 o'clock noon. The holders of a majority of the issued and outstanding stock of the Corporation present, in person or by proxy, shall constitute a quorum for any meeting of stockholders.

The names and addresses of all Directors and the names and titles of all officers of the Corporation are:

#### DIRECTORS

<u>Name</u>	<u>Address (Business)</u>
Brian P. Burns	Burns & Whitehead 100 Bush Street San Francisco, California 94014
Harry J. Dabagian	USR Industries, Inc. 170 East Hanover Avenue P.O. Box 246 Morristown, New Jersey 07960
Joseph G. Kostrzewa	P.O. Box 1036 Traverse City, Michigan 49684
Ralph T. McElvenny, Jr.	USR Industries, Inc. 170 East Hanover Avenue P.O. Box 246 Morristown, New Jersey 07960

#### OFFICERS

<u>Name</u>	<u>Title</u>
Ralph T. McElvenny, Jr.	Chairman of the Board and Chief Executive Officer
William C. Kaltnecker	Treasurer and Secretary
Harry J. Dabagian	President and Chief Operating Officer

The Corporation's Transfer Agent is Manufacturers Hanover Trust Co., New York, N.Y. The Corporation's Registrar is Chemical Bank, New York, N.Y.

#### FINANCIAL STATEMENTS

The Corporation will publish regularly financial statements in accordance with the requirements of the Exchange.

CERTIFICATE

Pursuant to the authority granted by a duly adopted resolution of its Board of Directors, USR Industries, Inc., a Delaware corporation, hereby applies for listing of the aforesaid 1,164,136 shares of its common Stock, par value \$1.00 per share, on the American Stock Exchange, Inc.; and the undersigned hereby certifies that the statements and representations made in this application and in the papers and exhibits submitted in support thereof are true and correct to the best of his knowledge and belief.

USR Industries, Inc.

By: Ralph T. McElvenny, Jr.  
Ralph T. McElvenny, Jr.  
Chairman of the Board and  
Chief Executive Officer

ATTACHMENT 3

SEC.

UNITED STATES RADIUM CORPORATION  
170 East Hanover Avenue  
P.O. Box 246  
Morristown, New Jersey 07960

July 11, 1980

Dear Stockholders:

You are cordially invited to attend the Annual Meeting of Stockholders of United States Radium Corporation, which will be held at the Whitehall Hotel, 1700 Smith Street, Houston, Texas, on Wednesday, August 6, 1980, at 10:00 A.M., local time.

At this meeting, the stockholders will be asked to elect Directors of the Corporation for the ensuing year and to approve a proposed restructuring of the Corporation pursuant to an Agreement and Plan of Merger dated as of May 16, 1980, under which the Corporation would become a wholly-owned subsidiary of a Delaware holding company to be called USR Industries, Inc.

The primary purpose of this proposed reorganization is to provide a corporate framework that will better serve the needs of the Corporation by allowing for decentralization of management and financial control systems and segregating the risks and liabilities of each of the Corporation's businesses.

Although the objectives of the plan are simple, the mechanics may at first seem somewhat complicated. Briefly, a new corporation, USR Industries, Inc., has been formed by the Corporation. With your approval, a subsidiary of USR Industries, Inc. will be merged into the Corporation. After completion of the transaction, which is described in greater detail in the Proxy Statement, the Corporation, whose name will be changed to "Safety Light Corporation" pursuant to the Agreement and Plan of Merger, will be a subsidiary of USR Industries, Inc. Subsequently, it is contemplated that the Corporation will (i) transfer all of its businesses except its safety lighting products and tritiated foils and targets business to four subsidiary corporations and (ii) transfer the common stock of these corporations and of Unatco Funding Corporation, currently a wholly-owned subsidiary of the Corporation, to USR Industries, Inc.

The members of the Board of Directors of United States Radium Corporation at the time of the merger will constitute the Board of Directors of USR Industries, Inc. The holders of the Corporation's Common Stock will automatically become stockholders of USR Industries, Inc.

It will not be necessary for holders of the Corporation's Common Stock to turn in their stock certificates in exchange for stock certificates of USR Industries, Inc. Such stockholders will automatically become stockholders of USR Industries, Inc. if the plan becomes effective and will, therefore, receive reports, notices and so forth with respect to USR Industries, Inc. as heretofore with respect to the Corporation. It is expected that the Shares of Common Stock of USR Industries, Inc. will be listed on the American Stock Exchange on the effective date of the merger.

If the plan becomes effective, your shares of the Corporation's Common Stock will be automatically converted into shares of Common Stock of USR Industries, Inc., which will have substantially the same terms as the shares of the Corporation you now own. The assets and liabilities of USR Industries, Inc. and its subsidiaries after the restructuring will be the same as the present assets and liabilities of the Corporation and its current subsidiaries. Accordingly, shares of Common Stock of USR Industries, Inc. will represent the same interest in the same assets as shares of Common Stock of the Corporation now represent. No gain or loss will be recognized for Federal income tax purposes. The tax basis for shares of USR Industries, Inc. Common Stock will be the same as for shares of the Corporation, and the holding period for shares of USR Industries, Inc. Common Stock will include the period during which shares of the Corporation were held.

YOUR BOARD OF DIRECTORS RECOMMENDS A FAVORABLE VOTE ON THE MATTERS DESCRIBED IN THE ENCLOSED PROXY STATEMENT.

Sincerely,



Ralph T. McElvenny, Jr.  
Chairman of the Board and Chief  
Executive Officer



**IMPORTANT**

In order that there may be a proper representation at the Meeting, you are urged to sign and mail the enclosed proxy or proxies even though you now plan to attend. If you are present in person, you may, if you wish, vote personally on all matters brought before the Meeting.

Your prompt action in sending in your proxy or proxies will be greatly appreciated. If you have more than one stockholder account, you are receiving a proxy for each account. You are urged to sign and mail all proxies you receive. A postage-paid envelope is provided for your use.

UNITED STATES RADIUM CORPORATION  
170 East Hanover Avenue  
P.O. Box 246  
Morristown, New Jersey 07960

Notice of Annual Meeting of Stockholders to be held August 6, 1980

To the Holders of Common Stock of  
UNITED STATES RADIUM CORPORATION:

The Annual Meeting of Stockholders of United States Radium Corporation (the "Corporation") will be held at the Whitehall Hotel, 1700 Smith Street, Houston, Texas 77002 on Wednesday, August 6, 1980, at 10:00 A.M. local time, for the following purposes:

1. To elect Directors of the Corporation, each to serve for a term of one year and until his successor is duly elected and qualified;
2. To consider and adopt the Agreement and Plan of Merger described in the accompanying Proxy Statement; and
3. To transact such other business as may properly come before the Meeting or any adjournment or adjournments thereof.

Each of the foregoing proposals may be considered or acted upon at the first session of the Meeting or at any adjournments thereof.

The close of business on July 2, 1980 has been fixed by the Board of Directors as the record date for the determination of stockholders entitled to notice of and to vote at the Meeting or any adjournments thereof. A complete list of the stockholders entitled to vote at the Meeting will be available for examination by any stockholder of the Corporation for any purpose germane to the Meeting at the Meeting and at Suite 2390, Dresser Tower, 601 Jefferson Avenue, Houston, Texas 77002 for a period of ten days prior to the Meeting.

By Order of the Board of Directors

William C. Kaltnecker  
Secretary

Dated: July 11, 1980

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IMPORTANT

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You are cordially invited to attend the Meeting in person. If you do not expect to attend the Meeting, please sign, date and mail promptly the enclosed proxy in the enclosed stamped addressed envelope in order that a quorum can be present at the Meeting and that your shares may be voted for you.

THIS DOCUMENT IS BOTH A PROXY STATEMENT  
FOR THE ANNUAL MEETING OF STOCKHOLDERS OF  
UNITED STATES RADIUM CORPORATION  
AND A PROSPECTUS OF USR INDUSTRIES, INC.

UNITED STATES RADIUM CORPORATION  
170 East Hanover Avenue  
P.O. Box 246  
Morristown, New Jersey 07960  
Telephone (201) 539-4000

USR INDUSTRIES, INC.  
170 East Hanover Avenue  
P.O. Box 246  
Morristown, New Jersey 07960  
Telephone (201) 539-4000

1,264,136 Shares of Common Stock

Pursuant to the Agreement and Plan of Merger described herein, holders of United States Radium Corporation (the "Corporation") Common Stock will become stockholders on a share-for-share basis of USR Industries, Inc. ("Industries") and the Corporation will become a wholly-owned subsidiary of Industries. Reference is made to the within prospectus for further information concerning the securities offered hereby.

THE SECURITIES OF USR INDUSTRIES, INC. HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

A Registration Statement under the Securities Act of 1933 has been filed with the Securities and Exchange Commission (the "Commission"), Washington, D.C., with respect to the shares of Common Stock of USR Industries, Inc. offered hereby. As permitted by the rules and regulations of the Commission, this prospectus omits certain information contained in the Registration Statement on file with the Commission. The information omitted can be inspected at Room 6101 of the office of the Commission, 1100 L Street, N.W., Washington, D.C., and copies can be obtained from the Commission at prescribed rates by writing to it at 500 North Capitol Street, N.W., Washington, D.C. 20549. For further information pertaining to the securities offered hereby, reference is made to the Registration Statement, including the exhibits filed as a part hereof.

The date of this Prospectus is July 11, 1980.

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UNITED STATES RADIUM CORPORATION

PROXY STATEMENT

INTRODUCTION

This Proxy Statement is furnished in connection with the solicitation of proxies by the Board of Directors of United States Radium Corporation (the "Corporation"), 170 East Hannover Avenue, P.O. Box 246, Morristown, New Jersey 07960, to be used at the Annual Meeting of Stockholders of the Corporation to be held on Wednesday, August 6, 1980, at the Whitehall Hotel, 1700 Smith Street, Houston, Texas, for the purposes set forth in the accompanying Notice of Annual Meeting of Stockholders. It is anticipated that this Proxy Statement and the enclosed form of proxy will be mailed to the holders of the Corporation's Common Stock commencing on or about July 11, 1980. If the enclosed form of proxy is executed and returned, it will be voted, but it may be revoked at any time insofar as it has not been exercised upon written notice to the Secretary of the Corporation. Unless otherwise directed, the persons acting under the proxies will vote the shares represented thereby for the election as directors of the four persons named below and for the approval of the Agreement and Plan of Merger.

At the close of business on July 2, 1980, the record date for determining the stockholders entitled to vote at the Meeting, the Corporation had outstanding 1,164,136 shares of Common Stock, each of which is entitled to one vote. At such date, the Corporation held 4,562 shares of Common Stock in its treasury, none of which shares is entitled to vote at the Meeting. The Common Stock is the only class of voting securities of the Corporation.

At May 1, 1980, the only person known to the Corporation to own beneficially more than 5% of the outstanding shares of Common Stock of the Corporation was Titan Wells, Inc., c/o Suite 3500, 551 Fifth Avenue, New York, New York 10022, which held 303,603 shares of record, constituting 26.08% of the shares outstanding at such date. Titan Wells, Inc. has sole voting power and dispositive power with respect to these shares. Mr. Ralph T. McElvenny, Jr., Chairman of the Board of Directors and Chief Executive Officer of the Corporation, is Chairman of the Board of Directors of, and owns the controlling interest in, Titan Wells, Inc.

#### ELECTION OF DIRECTORS

Four directors, constituting the entire Board of Directors, are to be elected at the Meeting to hold office for the ensuing year and until their successors are duly elected and qualify. All the nominees are members of the present Board of Directors, all were elected by the stockholders, and all have indicated their willingness to be re-elected. Except where authority to do so has been withheld, the persons acting under the proxies will vote the shares represented thereby for the election of the nominees named below as directors. If any such nominee should be unable to serve, an event not now anticipated, discretionary authority may be exercised by the persons acting under the proxies to vote for a substitute.

Shares of Common Stock of the Corporation owned beneficially by each of the directors of the Company are set forth in the table below. As of May 1, 1980, the Corporation's directors and officers as a group (7 persons) owned beneficially 454,688 shares (constituting 35.97% of the shares) of the Corporation's Common Stock. Such shares include 100,000 shares which two directors, Messrs. Brian P. Burns and Ralph L. McElvenny, Jr., have the right to purchase at any time prior to April 20, 1986 pursuant to stock options. Messrs. Burns and McElvenny had not exercised these stock options as of the record date for the Annual Meeting.

<u>Name and Principal Occupations and Affiliations</u>	<u>Age</u>	<u>Director Since</u>	<u>Shares of Common Stock Owned Bene- ficially as of May 1, 1980</u>	<u>Percent of Class</u>
Brian P. Burns . . . . . Partner, Burns & White- head, Attorneys at Law, San Francisco, Calif.; Chairman of the Execu- tive Committee of the Corporation, The Coca- Cola Bottling Company of New York, Inc. and United States Banknote Corporation; Chairman of the Audit Committee, Rocor International; Director, Beverly Wilshire Hotel, Boothe Financial Corporation, and Kellogg Company.	43	1978	98,235(1)	7.77%
Harry J. Dabagian. . . President and Chief Operating Officer of the Corporation; General Manager of the Chemical Products Division.	51	1977	2,000	.17%
Joseph G. Kostrzewa. . Senior Vice President and Treasurer, Traverse Corporation, Traverse City, Michigan (oil and gas exploration and pro- duction); President, Northern Processors, Inc., Traverse City, Michigan (oil and gas field service); Direc- tor, Traverse City State Bank.	39	1978	0	0%



<u>Name and Principal Occupations and Affiliations</u>	<u>Age</u>	<u>Director Since</u>	<u>Share of Common Stock Owned Beneficially as of May 1, 1980</u>	<u>Percent of Class</u>
Ralph T. McElvenny, Jr. Chairman of the Board, Chief Executive Officer and member of the Executive Committee of the Corporation; Chairman and Chief Executive Officer, Titan Wells, Inc. (oil and gas exploration and production and diversified manufacturing).	38	1978	353,603(2)(3)	27.97%

(1) Includes 50,000 shares of Common Stock as to which Mr. Burns has the right to acquire beneficial ownership at any time until April 30, 1986 through the exercise of stock options. Mr. Burns had not exercised these options as of the record date for the Annual Meeting.

(2) Includes 50,000 shares of Common Stock as to which Mr. McElvenny has the right to acquire beneficial ownership at any time until April 30, 1986 through the exercise of stock options. Mr. McElvenny had not exercised these options as of the record date for the Annual Meeting.

(3) Mr. McElvenny is Chairman of the Board of Directors and Chief Executive Officer of, and owns the controlling interest in, Titan Wells, Inc. which owns approximately 26% of the Corporation's outstanding Common Stock.

Mr. Burns is senior partner in the law firm of Burns & Whitehead. For more than five years immediately preceding his affiliation with Burns & Whitehead, Mr. Burns was a partner in the law firm of Cullinan, Burns & Helmer. See also "Management Remuneration; Certain Transactions".

Mr. Dabagian has been continuously employed by the Corporation for the last five years, having served as President since September, 1978. Previously, he served as Vice President and General Manager of the Chemical Products Division.

Mr. Kostrzewa is Senior Vice President and Treasurer of Traverse Corporation, one of two corporations which operate the Corporation's oil and gas interests. Mr. Kostrzewa has been continuously employed by the Traverse Corporation since 1976; prior thereto, he was a partner of Seidman & Seidman, independent public accountants, and manager of that firm's office in Traverse City, Michigan.

Mr. McElvenny was first elected Chairman of the Board and Chief Executive Officer of the Corporation in October, 1978, having previously been elected Vice Chairman in September, 1978, and having first been elected to the Board of Directors in August, 1978. In addition, since 1977, Mr. McElvenny has been a director and Chairman of Titan Wells, Inc. ("Titan"). Prior to his affiliation with Titan, Mr. McElvenny was a director and Chairman of Tandex Corporation and also Vice President and a director of Univenture Corporation ("Univenture"), a venture capital investment and management corporation wholly owned by the United Corporation, a registered investment company, and Assistant Secretary of Univenture's parent, United Corporation. See also "Management Remuneration; Certain Transactions".

#### COMMITTEES AND MEETINGS OF THE BOARD OF DIRECTORS

The Board of Directors held three meetings during 1979. All directors, with the exception of Mr. Dabagian, attended at least 75% of the aggregate number of Board Meetings and meetings of the committees of the Board on which such directors serve. Mr. Dabagian attended two of the three meetings held in the aggregate by the Board of Directors and the committees on which he serves.

Messrs. Burns, as Chairman, and McElvenny are members of the Executive Committee, which, in accordance with the By-Laws of the Corporation, exercises certain of the powers of the Board in the management of the business and affairs of the Corporation, including the determination of the compensation paid to all officers and directors. The Executive Committee generally confers by telephone several times each week and usually meets in person monthly. Meetings are conducted with such frequency that written recordation of each proceeding is not believed to be useful or practical. However, where written record of action by the Executive Committee is necessary to promote sound business

practice or is otherwise legally required or desirable in the best interests of the Corporation, a record of such action is submitted to the Board of Directors for formal written recordation in the minute book of the Corporation.

Messrs. Kostrzewa, as Chairman, and Burns are members of the Audit Committee, which met formally once during 1979. The functions of the Audit Committee include: annual review with the Corporation's independent auditors of the general nature and scope of the Corporation's audit plan, review with the independent auditors of the results of their annual examination and their letter to management, discussion with management of the implementation of any recommendations made in the independent auditors' letter to management, and examination and consideration of such other matters in relation to the internal and external audit of the Corporation's accounts as the Committee may, in its own discretion, determine to be desirable.

The Corporation has no standing nominating committee.

# MANAGEMENT REMUNERATION; CERTAIN TRANSACTIONS

(A) Name of individual or number of persons in group	(B) Capacities in which served	(C) Cash and cash-equivalent forms of remuneration(1)	(D) Aggregate of contingent forms of remuneration
Harry J. Dabagian	President, Chief Operating Officer and Director	\$98,000	(5)
Ralph T. McElvenny, Jr.	Chairman and Chief Executive Officer	\$59,167	(5)
All Officers and Directors (8 persons)		\$280,190	(5)

(1) There were no cash-equivalent forms of remuneration in the nature of securities or property, insurance benefits or reimbursement, or personal benefits.

(2) Includes salary of \$55,000 and \$43,200 in bonuses accrued in 1979.

(3) Includes salary of \$46,667 and \$12,500 in bonuses accrued in 1979.

(4) Directors of the Corporation who are not also officers receive \$500 for each Board meeting attended. Such payments are included in this figure.

(5) The Corporation's contributions to its Pension Plan for Salaried Employees are the only contingent forms of remuneration paid. The amount of such contributions, however, is not and cannot readily be separately or individually calculated by the regular actuaries of the Plan. Aggregate contributions to the Plan amounted to approximately 10.5% of the total remuneration of Plan participants covered by the Plan. The Plan is a defined benefit plan under which participants, upon reaching age 65 with a minimum of ten years' vesting service, are eligible for annual lifetime or 5-year certain pension benefits equal to the number of years of benefit service multiplied by the sum of \$49.50 and 1-1/2% of the highest 5-year average compensation in excess of \$6,600. Benefit service is obtained for years in which an employee

participated and contributed 2% of his compensation in excess of \$6,600. The following table shows the estimated annual benefits payable upon retirement to persons in specified remuneration and years-of-service classifications:

Initial Annual Remuneration	Benefits with Different Years of Service (a)				
	<u>10</u>	<u>15</u>	<u>20</u>	<u>25</u>	<u>30</u>
\$15,000	\$ 2,471	\$ 4,543	\$ 7,380	\$11,188	\$16,220
25,000	4,448	8,066	12,960	19,471	27,024
40,000	7,413	13,352	21,330	31,898	45,729
55,000	10,378	18,637	29,700	44,323	63,434
70,000	13,344	23,922	38,070	56,749	81,139

(a) Calculation assumes commencement of employment on January 1, 1979, election by employee to become a member on July 1, 1979, annual remuneration increases at the rate of 3-1/2% per year and benefit payments for 5-years certain commencing at age 65 with the years of service shown following July 1, 1979.

At last year's Annual Meeting, stockholders approved the grant of non-qualified stock options to purchase 50,000 shares of the Corporation's Common Stock to each of Messrs. Ralph T. McElvenny, Jr. and Brian P. Burns. The options are exercisable until April 30, 1986 at a price of \$2.50 per share. The closing price of the Corporation's Common Stock on the American Stock Exchange on the date of grant, April 4, 1979, was \$2.63 per share. Neither Mr. Burns nor Mr. McElvenny has exercised any of his options.

During 1979, the Corporation purchased certain income-producing oil and gas properties and exploration acreage from Titan Wells, Inc. for a total purchase price of \$172,233. The terms of this transaction were approved by the stockholders of the Corporation at last year's Annual Meeting. During 1979, Titan Wells, Inc. had a maximum indebtedness to the Corporation of \$20,267.48, representing certain oil and gas revenues owing to the Corporation. Titan Wells, Inc. pays interest at the rate of 1% over the prime rate quoted by a major New York City bank on the outstanding

indebtedness, the principal amount of which, as of April 30, 1980, was \$16,144. Mr. Ralph T. McFlivenny, Jr. owns the controlling interest in, and is Chairman of the Board and Chief Executive Officer of, Titan Wells, Inc.

In 1979, the Corporation paid \$6,273 to the law firm of Cullinan, Burns & Helmer for legal services rendered to the Corporation in 1978, when Mr. Burns was a partner in that firm. Also during 1979, the Corporation paid or accrued the amount of \$73,892 for legal services rendered to it by the law firm of Burns & Whitehead, in which Mr. Burns is senior partner. It is anticipated that Burns & Whitehead will continue to render legal services to the Corporation in the future.

#### RELATIONSHIP WITH INDEPENDENT PUBLIC ACCOUNTANTS

The Board of Directors appointed Peat, Marwick, Mitchell & Co., independent certified public accountants, to audit the accounts of the Corporation for the year ending December 31, 1979, and has appointed the same firm to audit the accounts of the Corporation for the year ending December 31, 1980.

During 1979, Peat, Marwick, Mitchell & Co. rendered professional services in the nature of the annual audit, examination of financial statements of the pension plan, assistance on Federal and state tax matters and preparation of tax returns. Audit fees consisted of fees for examination of financial statements of the Corporation for inclusion in the Annual Report to stockholders and the annual report filed with the Securities and Exchange Commission on Form 10-K, and consultation and assistance on accounting and reporting matters. Fees for non-audit services represented in the aggregate 25.5% of total audit fees, with fees for tax work representing 100% of such non-audit fees. The Audit Committee approved each service rendered by the accountants and considered its possible effect on the independence of the accountants either after the service was performed or contemporaneously.

A representative of Peat, Marwick, Mitchell & Co. is expected to be present at the Meeting, by telephone, will have an opportunity to make a statement if he desires to do so and will be available to respond to appropriate questions of stockholders.

## SUMMARY OF MATERIAL ON RESTRUCTURING

The following is not intended as a complete statement of all the material features of the proposed merger and is qualified in its entirety by the more detailed information appearing elsewhere in this Proxy Statement.

### Proposed Restructuring

USR Industries, Inc., a Delaware corporation ("Industries"), has been organized to become the parent of United States Radium Corporation (the "Corporation") and its subsidiaries, Metreal Corporation and Unatco Funding Corporation. In the proposed restructuring, the Common Stock of the Corporation will be converted on a share-for-share basis into Common Stock of Industries, which in turn will become the sole stockholder of the Corporation, whose name will be changed to "Safety Light Corporation" pursuant to the Agreement and Plan of Merger. Consequently, the holders of Common Stock of the Corporation will become stockholders of Industries. Following the merger, it is contemplated that the Corporation will transfer all of its businesses except its safety lighting products and tritiated foils and targets business to four separate subsidiary corporations, and that it will transfer the shares of common stock of these wholly-owned subsidiaries, as well as the shares of stock of Unatco Funding Corporation, to Industries. The Corporation will thus retain its safety lighting products and tritiated foils and targets business and the stock of Metreal Corporation.

Stock certificates of the Corporation will automatically represent the corresponding shares of Common Stock of Industries upon consummation of the merger. The rights of the owners of the Common Stock of Industries will be substantially the same as those of the owners of the Common Stock of the Corporation. It is expected that the shares of Common Stock of Industries will be listed on the American Stock Exchange. See "Merger - General", "Merger - Effect of Restructuring" and "Merger - Capitalization of Industries".

The consolidated financial statements of Industries immediately after the proposed restructuring will be substantially identical to the consolidated financial statements of the Corporation immediately prior thereto. See "Merger - General".

#### Reasons for Restructuring

The Board of Directors of the Corporation believes that the proposed restructuring will provide a framework better suited to meet the current and future needs of the total enterprise by, among other things, allowing for decentralization of management and financial control systems and segregating the risks and liabilities of each of the Corporation's different businesses. See "Merger - Reasons for Restructuring".

#### Tax Consequences

The Board of Directors of the Corporation has been advised by the law firm of Shearman & Sterling, special counsel to the Corporation, that the position of present stockholders of the Corporation for Federal income tax purposes will not be affected by the proposed restructuring. See "Merger - Federal Tax Consequences".

#### Appraisal Rights

The Common Stock of the Corporation is listed on the American Stock Exchange and it is expected that the Common Stock of Industries will also be so listed. Consequently, under the Delaware General Corporation Law, stockholders of the Corporation who vote against the merger do not have the right to dissent from the plan of merger and receive payment for the fair value of their shares.

#### Vote Required

Adoption of the Agreement and Plan of Merger will require approval by the holders of a majority of the shares of the Corporation's Common Stock outstanding on the record date.

#### Possible Future Restructuring

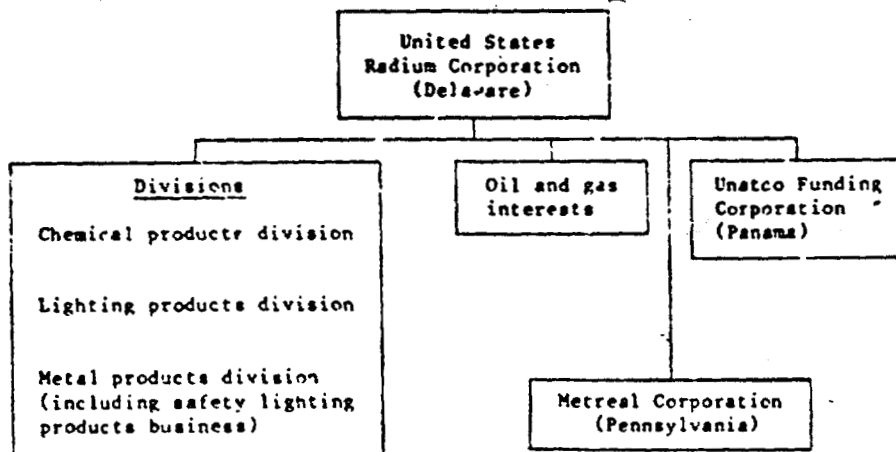
Management is currently exploring the possibility of further restructuring the enterprise by dividing it into two separate and unrelated corporations. Such further restructuring would be subject to, among other things, satisfactory tax rulings or opinions and stockholder approval. No assurance can be given that Management will recommend any further restructuring or that, if recommended, any further restructuring will be consummated. See "Possible Future Restructuring".



MERGER  
(Your Management Recommends a Vote FOR APPROVAL)

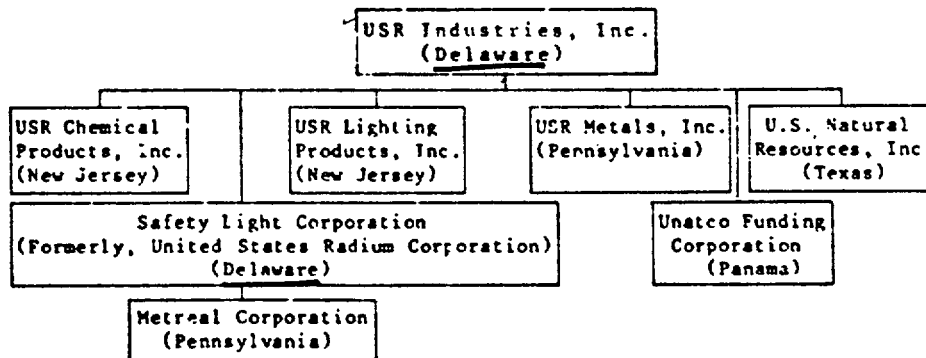
Present Structure of the Corporation

The Corporation, which was incorporated in 1917, has been managed and operated on a highly centralized, divisional basis. The divisions of the Corporation are: the chemical products division, primarily a manufacturer of luminescent phosphors; the lighting products division, primarily a manufacturer of instrument panels; and the metal products division, primarily a manufacturer of specialty watch dials. The Corporation also manufactures safety lighting products and tritiated foils and targets (the "safety lighting products business", which is operated together with the metal products division and which is the only one of the Corporation's businesses which is licensed and regulated), owns oil and gas interests, and has two wholly-owned subsidiaries: Unatco Funding Corporation ("Unatco"), a Panama corporation formed by the Corporation in June, 1979, primarily to make venture investments on an international basis; and Metreal Corporation ("Metreal"), a Pennsylvania corporation formed by the Corporation in January, 1979, which owns land and buildings which are leased to the Corporation and used for the safety lighting products business. The following diagram illustrates the present structure of the Corporation:



### General

The Agreement and Plan of Merger (the "Agreement"), approved unanimously by the Board of Directors of United States Radium Corporation (the "Corporation"), is designed to restructure the corporate framework in which the Corporation's operations are currently conducted. As explained below in more detail, the consummation of the merger will result in a new corporate entity, USR Industries, Inc. ("Industries"), having the Corporation as its wholly-owned subsidiary. It is contemplated that after the merger the Corporation will transfer all of its businesses except the safety lighting products business to four new subsidiary corporations which will be: USR Chemical Products, Inc. ("Chemical"), a New Jersey corporation, which will receive the assets and liabilities of the chemical products division; USR Lighting Products, Inc. ("Lighting"), a New Jersey corporation, which will receive the assets and liabilities of the lighting products division; USR Metals, Inc. ("Metals"), a Pennsylvania corporation, which will receive the assets and liabilities of the metal products division except the safety lighting products business; and U.S. Natural Resources Inc. ("Resources"), a Texas corporation, which will receive the oil and gas interests. Finally, it is contemplated that the Corporation will transfer the shares of these four subsidiaries, as well as the shares of Unatco, to Industries, with the result that the Corporation, Chemical, Lighting, Metals, Resources and Unatco will be wholly-owned subsidiaries of Industries. The only business of the Corporation will be the safety lighting products business. In anticipation thereof, the Agreement provides that on the effective date of the merger, the Corporation's name will be changed to "Safety Light Corporation". Metreal will continue to be a subsidiary of the Corporation. After these actions have been completed, the reorganized corporate structure will be as set forth in the following diagram, which also shows the jurisdiction of incorporation of the various companies.



Industries has been formed as a wholly-owned subsidiary of the Corporation. Industries, in turn, has formed a subsidiary, Industries Merger Co. Inc. ("Merger Company"). Both new corporations have only nominal assets and liabilities and are incorporated in Delaware. Under the terms of the Agreement, Merger Company will be merged into the Corporation, which will be the surviving corporation.

On the effective date of the merger, each outstanding share of Common Stock of the Corporation will automatically be converted into a share of Common Stock of Industries; as a consequence, Industries will own all of the Common Stock of the Corporation and the present stockholders of the Corporation will become stockholders of Industries.

The terms and conditions of the merger are set forth in the Agreement, a copy of which is attached as Exhibit A hereto.

Following this rearrangement, shares of Common Stock of Industries will represent the same interest in the same assets as shares of Common Stock of the Corporation now represent. The number of issued and outstanding shares of Industries following the merger will be the same as that of the Corporation immediately prior to the merger, and following the merger the shares of Common Stock of Industries will be owned by the present holders of the Common Stock of the Corporation in the same proportions and amounts in which they currently hold the Corporation's Common Stock.

#### Reasons for Restructuring; Proposed Operations

The objective of the merger and the transfers described above is to rearrange the businesses of United States Radium Corporation into a structure better suited to meet the current and future needs of the total enterprise.

For many years, under previous management, the Corporation was managed and operated on a highly centralized, divisional basis, using systems of management and financial control centered in a few individuals. Current management believes that such systems are now outmoded and not best applied to the present businesses of the Corporation, and that they should be succeeded by a decentralized structure based upon separate subsidiary corporations. The restruc-

turing will facilitate this change in operations, since line management of each of Industries' subsidiaries will be directly responsible for imposition of controls over their respective operations, including manufacturing, sales, financial and administrative aspects. The Corporation believes that this change in management and financial control structure will stimulate more realistic and responsive decision-making. The restructuring is also intended to assist each separate business of the Corporation better to rank, control and improve its future performance. Operation through a divisional structure with heavily centralized decision-making is believed to have led to inefficiencies and contributed to the Corporation's losses during recent years. Lack of formalized ranking of the Corporation's business segments has resulted in the accumulation of small product lines having extensive and inefficient requirements for labor, capital commitments and production supervision.

The restructuring is further intended to limit the risks and liabilities associated with each business of the Corporation to the assets associated with that business. Management believes that each of the Corporation's businesses should be free-standing to the extent possible; that is, that none of the businesses should have to depend upon the others for support, or be burdened with the risks and liabilities associated with those other businesses. As a related matter, the Corporation believes that it would be advantageous to conduct those of its businesses which are not licensed and regulated through corporations which are separate and distinct from a corporation whose business is licensed and regulated. The Corporation's safety lighting products business is the only business of the Corporation which is licensed and regulated.

The Board of Directors recognizes that the restructuring may have some unfavorable results, but believes that these are significantly outweighed by the factors set out above. One possible unfavorable result may be increased costs of administration: data processing, legal, accounting, and similar services for the several corporations may exceed those incurred by the Corporation alone. Another possible unfavorable result could be reduced creditworthiness of the enterprise, since suppliers and others who might be willing to extend credit to the Corporation, as now constituted, on particular terms, might be unwilling to extend credit to one of the individual subsidiaries of Industries.

The metal products business of the Corporation currently renders certain services to the safety lighting products business. It is expected that after the restructuring, the subsidiary corporations operating these respective businesses may continue this relationship and that, from time to time, other of the affiliated corporations may perform services for, or make available the use of facilities and equipment to, their affiliates. In each case, it is expected that the corporation receiving such services or using such facilities and equipment will reimburse the other corporation for the cost thereof.

No determination has yet been made regarding the method of transferring the common stock of Chemicals, Lighting, Metals, Resources and Unatco to Industries, but the transfer could be made as a dividend on the Corporation's Common Stock. Stockholders will not be afforded an opportunity to approve the transfer of the Corporation's businesses to subsidiary corporations or the transfer of the common stock of Chemicals, Lighting, Metals, Resources and Unatco to Industries.

#### Directors, Officers and Employees

The members of the Board of Directors of the Corporation at the time of the merger will constitute the Board of Directors of Industries as well. Therefore, in electing the nominees for directors of the Corporation and approving the Agreement at the Annual Meeting, stockholders will be considered to have ratified the election of such persons as directors of Industries.

Following the restructuring, it is expected that the following persons, each of whom is currently an officer of the Corporation, will, at least initially, hold the offices with Industries set forth opposite their names:

<u>Name</u>	<u>Office</u>
Ralph T. McElvenny, Jr.	Chairman and Chief Executive Officer
Harry J. Dabagian	President and Chief Operating Officer
William C. Kaltnecker	Secretary and Treasurer

Each of Industries' subsidiaries will have its own officers, directors and employees. It is possible that some

of the subsidiaries may have some of the same officers and directors.

Article 10 of the Certificate of Incorporation of Industries and Section 145 of the Delaware General Corporation Law provide for the indemnification of directors and officers under certain circumstances. Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling Industries, pursuant to the foregoing provisions, Industries has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable.

#### Conditions of the Merger

The transactions contemplated by the Agreement will not be effected until (i) the Agreement is adopted by a majority of the outstanding shares of the Corporation entitled to vote thereon and (ii) Shearman & Sterling, special counsel to the Corporation, shall have delivered an opinion, satisfactory to the Board of Directors of the Corporation, with respect to the tax consequences of the merger and the transactions incident thereto.

#### Amendment and Termination

By mutual agreement of the Boards of Directors of the Corporation, Merger Company and Industries, the Agreement may be amended, modified or supplemented in such manner as such Boards of Directors may agree in writing at any time before or after approval or adoption of the Agreement by the stockholders of the Corporation, provided that after favorable action by the stockholders of the Corporation no such amendment, modification or supplement may affect the rights of the stockholders of the Corporation in a manner which is materially adverse to such stockholders in the judgment of the Board of Directors of the Corporation.

Notwithstanding approval of the Agreement by the stockholders of the Corporation, the Agreement may be terminated by the Corporation's Board of Directors if it deems consummation of the merger inadvisable for any reason. In the event the Agreement is terminated, the Corporation may still transfer its businesses to subsidiary corporations as described above.

#### Effect of Restructuring

On the effective date of the merger, each share of Common Stock of the Corporation issued and outstanding immediately prior to the merger will, as a result of the merger, be converted into one share of Common Stock of Industries. Each share of Common Stock of Merger Company issued and outstanding immediately prior to the merger will be converted into one new share of Common Stock of the Corporation. Shares of Common Stock of Industries issued and outstanding immediately prior to the merger will be cancelled.

On the effective date of the merger, the shares of Common Stock of the Corporation will be removed from listing on the American Stock Exchange (the "AMEX"). Application has been made to list the Common Stock of Industries on the AMEX. It is expected that the listing of Industries' Common Stock will occur on the effective date of the merger and, consequently, that Industries will be subject to the same requirements under the Federal securities laws (including reporting and proxy solicitation requirements) as is the Corporation.

Industries' Certificate of Incorporation and By-Laws, in the form in which they will be in effect on the effective date of the merger, will be substantially the same as the present Certificate of Incorporation and By-Laws of the Corporation except that Industries' Certificate of Incorporation will not provide for annual audited financial statements. Industries will prepare all financial statements required by law to be prepared. The Certificate of Incorporation of Industries is set forth as Exhibit B hereto.

Pursuant to the Agreement, the Certificate of Incorporation of the Corporation will be amended on the effective date of the merger to change the name of the Corporation to "Safety Light Corporation", as described above, and to delete the requirement that the Corporation prepare annual audited financial statements. The Corporation will continue to prepare all financial statements required by law to be prepared.

Options to purchase shares of the Common Stock of the Corporation held by Messrs. Brian P. Burns and Ralph T. McElvenny, Jr. (See "Management Remuneration; Certain Transactions") will, by the terms of the option agreements, as amended, be exercisable only for shares of

Industries Common Stock on and after the effective date of the merger. The terms and conditions of the options will not otherwise be changed.

#### No Exchange of Certificates Required

It will not be necessary for stockholders to surrender their present certificates representing Common Stock of the Corporation in exchange for certificates representing Common Stock of Industries. Upon consummation of the merger, certificates representing shares of the Corporation's Common Stock will be deemed for all purposes to represent an equal number of shares of the Common Stock of Industries. When currently outstanding certificates for Common Stock are presented for transfer after the merger, new certificates bearing the name of Industries will be issued. Nevertheless, any holder of Common Stock who wishes to do so may, after the effective date of the merger, submit his certificates to the Corporation or to Manufacturers Hanover Trust Company, New York, New York and receive a new certificate or certificates for an equal number of shares of Common Stock of Industries.

#### Capitalization of Industries

The authorized capital stock of Industries consists of 3,500,000 shares of Common Stock, \$1.00 par value. The following statements summarize certain relevant provisions thereof and are qualified by reference to Industries' Certificate of Incorporation and the laws of the State of Delaware.

All shares of Industries' Common Stock will participate equally with respect to dividends and rank equally upon liquidation. The holder of each share of Common Stock is entitled to one vote. No holder of Common Stock will have any preemptive or subscription rights. Upon the issuance of Industries' Common Stock on the effective date of the merger, such shares will be fully paid and non-assessable and the holders thereof will not be under any liability for further calls or assessments.

#### Federal Tax Consequences

The Board of Directors of the Corporation has been advised by the law firm of Shearman & Sterling, special counsel to the Corporation, that under present Federal income tax laws, upon the conversion of the shares of the Corporation's Common Stock into shares of Common Stock of Industries



(i) no gain or loss will be recognized by holders of the Corporation's Common Stock and (ii) such holders' tax basis and holding period (for purposes of capital gains taxes) as in existence immediately prior to the conversion shall remain unchanged after their shares have been converted into Common Stock of Industries.

The foregoing relates solely to Federal income tax consequences. Stockholders should consult their personal tax advisers with respect to the application to individual situations of state and local tax laws.

#### Vote Required

Under the Delaware General Corporation Law, the Agreement as adopted by the Board of Directors of the Corporation and Merger Company must be approved by the affirmative vote of the holders of a majority of the outstanding shares of the Corporation entitled to vote thereon. After such stockholder approval, the merger will become effective on the date an executed copy of the Agreement or a Certificate of Merger is filed with the Secretary of State of the State of Delaware.

#### Dissenting Shareholders

Section 262(k) of the Delaware General Corporation Law states in relevant part that, unless otherwise provided in a corporation's certificate of incorporation, a stockholder may not dissent with respect to the adoption of a plan of merger and seek appraisal as to shares which were listed on a national securities exchange on the record date fixed to determine the stockholders entitled to receive notice of and to vote at the meeting at which action on the merger is taken. The shares of the Corporation are, and were on the record date for the Annual Meeting, listed on the American Stock Exchange. The Certificate of Incorporation of the Corporation does not contain any provision giving a right of dissent to the stockholders of the Corporation.

Section 262(l) of the Delaware General Corporation Law states in relevant part that, notwithstanding the provisions of Section 262(k), as described above, appraisal rights are available as to shares of stock of a corporation which is a party to a merger if the holders of the shares are required to accept for their stock anything except,

among other things, shares of stock of a corporation not a party to the merger which at the effective date of the merger will be listed on a national securities exchange. Since it is expected that the stock of Industries will be listed on the American Stock Exchange, stockholders of the Corporation who do not vote in favor of the merger will not have the right to dissent from the merger and seek appraisal for their shares.

#### Market Price of Common Stock

The following table sets forth the reported high and low sales prices per share of the Common Stock of the Corporation for the calendar quarters indicated as reported on the composite tape for issues listed on the American Stock Exchange:

	<u>High</u>	<u>Low</u>
1978		
Second Quarter	4	2-3/4
Third Quarter	4-1/8	3-1/4
Fourth Quarter	3-7/8	2-1/8
1979		
First Quarter	2-5/8	2-1/8
Second Quarter	3-7/8	2-5/8
Third Quarter	4	3-1/8
Fourth Quarter	3-7/8	2-3/4
1980		
First Quarter	5-1/8	2-3/8

#### Legal Matters

Shearman & Sterling, special counsel to USR Industries, Inc., will pass upon the validity of the Common Stock of USR Industries, Inc. to be issued pursuant to the Agreement.

#### Approval

Adoption of the Agreement will require approval by the holders of a majority of the outstanding shares of the Corporation's Common Stock entitled to vote thereon.

Mr. Burns and Titan Wells, Inc., the owners of an aggregate of approximately 30.22% of the outstanding shares of the Common Stock of the Corporation, have indicated their intention to vote in favor of the Agreement. If approved, it is anticipated that the merger will occur as soon after the Annual Meeting of Stockholders as practicable. THE BOARD OF DIRECTORS RECOMMENDS THAT THE STOCKHOLDERS VOTE FOR APPROVAL OF THE AGREEMENT.

#### POSSIBLE FUTURE RESTRUCTURING

It is assumed in this Section that the restructuring referred to elsewhere in this Proxy Statement will be consummated. If this is not the case, references in this Section to "Industries" shall be deemed to be references to "the Corporation".

As part of Management's continuing effort to create a corporate framework that will best serve the needs of the different businesses of Industries, Management is currently exploring the possibility of further restructuring the enterprise by dividing it into two separate and unrelated domestic or foreign corporations, one of which ("X Corporation") would own the assets of, and conduct, the safety lighting products business and the other of which ("Y Corporation") would own the balance of Industries' assets and conduct the balance of Industries' businesses. Should this further restructuring be consummated, Industries' stockholders will own through their ownership of X Corporation and Y Corporation the same interest in Industries' assets and businesses as they owned immediately prior to such consummation by virtue of their ownership of their stock of Industries.

Management's decision regarding whether to recommend such further restructuring to Industries' stockholders as being in their best interests and to solicit their vote in favor thereof will depend on a number of factors, including the receipt of satisfactory rulings from the Internal Revenue Service (the "IRS") with respect to the tax consequences to Industries and its stockholders of such restructuring or of opinions of counsel with respect to such tax consequences.

If Management determines that the possible further restructuring would serve the best interests of the stockholders, implementation of a proposal for such further restructuring would be contingent upon the approval of the stockholders of Industries, which approval would be solicited in accordance with Federal securities and Delaware law, among others. No assurance can be given at this time that Management will recommend any further restructuring of Industries to its

stockholders or that, if recommended, any further restructuring will be consummated.

#### STOCKHOLDER PROPOSALS FOR THE 1981 ANNUAL MEETING OF STOCKHOLDERS

It is anticipated that the Corporation's 1981 Annual Meeting of Stockholders will be held on or about May 21, 1981, and that the Corporation's proxy materials for that Meeting will be mailed to Stockholders on or about April 21, 1981. Stockholder proposals for the 1981 Annual Meeting of Stockholders must be received by the Corporation at its offices at 170 East Hanover Avenue, P.O. Box 246, Morristown, New Jersey 07960 before January 21, 1981 to be considered for inclusion in the Corporation's Proxy Statement for that Meeting.

#### OTHER MATTERS

The Board of Directors knows of no other matter to be brought before the Meeting. However, if any other matters should be properly presented for action, it is the intention of the persons named in the enclosed form of proxy to vote the shares represented thereby in accordance with their judgment on such matters.

The Corporation will bear the cost of solicitation of proxies. In addition to the use of the mails, proxies may be solicited by officers, directors and regular employees of the Corporation personally, by telephone or by telegraph. Arrangements may also be made with brokerage houses and other custodians, nominees and fiduciaries to forward solicitation material to the beneficial owners of the shares of Common Stock held of record by such persons, and the Corporation will reimburse them for reasonable out-of-pocket expenses incurred by them in so doing.

It is important that proxies be returned to ensure that all shares are voted. Therefore, stockholders who do not expect to attend in person are urged to sign, date and return the enclosed proxy in the enclosed envelope which requires no postage.

By Order of the Board of Directors

Dated: July 11, 1980

William C. Kaltnecker  
Secretary

ATTACHMENT 4

Exhibit A  
to  
Proxy Statement

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (the "Agreement") dated as of May 16, 1980 by and between United States Radium Corporation ("USR"), USR Industries, Inc. ("Industries") and Industries Merger Co. Inc. ("Merger Company"), each a Delaware corporation.

WHEREAS, USR has an authorized capitalization consisting of 3,500,000 shares of Common Stock, \$1.00 par value ("USR Common Stock"), of which 1,164,136 shares are issued and outstanding on the date hereof, 100,000 shares are reserved for issuance pursuant to the terms of stock options granted in 1979, and 4,562 shares are in treasury; and

WHEREAS, Industries has an authorized capitalization consisting of 3,500,000 shares of Common Stock, \$1.00 par value ("Industries Common Stock"), of which 100 shares have been issued and are outstanding and owned beneficially and of record by USR on the date hereof; and

WHEREAS, Merger Company has an authorized capitalization consisting of 100 shares of Common Stock, \$0.10 par value ("Merger Company Common Stock"), all of which shares have been issued and are outstanding and are owned beneficially and of record by Industries on the date hereof; and

WHEREAS, the Boards of Directors of the respective parties hereto deem it advisable to merge Merger Company into USR (the "Merger") in accordance with the Delaware General Corporation Law and this Agreement, whereby the holders of shares of USR Common Stock will receive shares of Industries Common Stock; and

WHEREAS, the Merger, to be effective, must be approved by the affirmative vote of the holders of a majority of the issued and outstanding USR Common Stock entitled to vote thereon and by the affirmative vote of the holders of a

majority of the issued and outstanding Merger Company Common Stock entitled to vote thereon;

NOW, THEREFORE, in consideration of the premises and agreements herein contained, the parties hereto agree that Merger Company shall be merged into USR which shall be the corporation surviving the Merger and that the terms and conditions of the Merger, the mode of carrying it into effect, and the manner of converting shares shall be as follows:

#### ARTICLE I

##### THE MERGER

(a) Subject to and in accordance with the provisions of this Agreement, either a copy of this Agreement or a Certificate of Merger shall be executed, acknowledged and thereafter filed with the Secretary of State of Delaware, as provided in Sections 251 and 103 of the Delaware General Corporation Law. The Merger shall become effective as of the time the Agreement or Certificate of Merger is filed or at a subsequent effective date set forth in the Agreement or Certificate of Merger (the "Effective Date"). At the Effective Date, the separate existence of Merger Company shall cease and Merger Company shall be merged with and into USR (Merger Company and USR being sometimes referred to herein as the "Constituent Corporations" and USR being sometimes referred to herein as the "Surviving Corporation").

(b) Prior to and after the Effective Date, USR and Merger Company, respectively, shall take all such action as may be necessary or appropriate in order to effectuate the Merger. In this connection, Industries shall issue the shares of Industries Common Stock which the holders of USR Common Stock shall be entitled to receive as provided in Article II hereof. In case at any time after the Effective Date any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full title to all properties, assets, rights, approvals, immunities and franchises of either of the Constituent Corporations, the officers and directors of each of the Constituent Corporations as of the Effective Date shall take all such further action.

## ARTICLE II

### TERMS OF CONVERSION OF SHARES

#### On the Effective Date:

(a) Each share of USR Common Stock outstanding immediately prior to the Merger shall, as a result of the Merger, be automatically owned beneficially and of record by Industries and, with respect to the holders of the USR Common Stock, shall be converted into one share of Industries Common Stock, which shall thereupon be issued, fully paid and non-assessable;

(b) Each share of Merger Company Common Stock outstanding immediately prior to the Merger shall, as a result of the Merger, be automatically converted into one new share of common stock, \$1.00 par value, of the Surviving Corporation, which shall thereupon be issued, fully paid and non-assessable; provided, however, that simultaneously therewith or immediately thereafter, the Board of Directors of the Surviving Corporation shall take all such corporate action as may be necessary to adjust the surplus and capital accounts of the Surviving Corporation to take into account the conversion of Merger Company Common Stock at the Effective Date; and

(c) Each share of Industries Common Stock outstanding immediately prior to the Merger shall be cancelled and cease to exist.

## ARTICLE III

### CERTIFICATE OF INCORPORATION AND BY-LAWS

From and after the Effective Date, and until thereafter amended as provided by law, the Certificate of Incorporation of USR, as amended, and as in effect immediately prior to the Merger shall be and continue to be the Certificate of Incorporation of the Surviving Corporation, except that the Certificate of Incorporation of the Surviving Corporation shall be amended as follows:

1. Article First shall be amended to read:  
"FIRST: The name of this corporation is Safety Light Corporation."



2. Article Ninth shall be amended to read:  
"NINTH: The fiscal year of the Corporation shall terminate on the 31st day of December in each year unless otherwise required by law."

From and after the Effective Date, the By-Laws of USR shall be and continue to be the By-Laws of the Surviving Corporation until amended in accordance with law.

#### ARTICLE IV

##### DIRECTORS AND OFFICERS

The persons who are Directors and Officers of USR immediately prior to the Merger shall continue as Directors and Officers, respectively, of the Surviving Corporation and shall continue to hold office as provided in the By-Laws of the Surviving Corporation. If, at or following the Effective Date, a vacancy shall exist in the Board of Directors or in the position of any Officer of the Surviving Corporation, such vacancy may be filled in the manner provided in the By-Laws of the Surviving Corporation.

#### ARTICLE V

##### STOCK CERTIFICATES

Following the Effective Date, each holder of an outstanding certificate or certificates, theretofore representing USR Common Stock may, but shall not be required to, surrender the same to Industries for cancellation or transfer, and each such holder or transferee will be entitled to receive certificates representing the same number of shares of Industries Common Stock as the shares of USR Common Stock previously represented by the stock certificates surrendered. Until so surrendered or presented for transfer, each outstanding certificate which, prior to the Effective Date, represented shares of USR Common Stock shall be deemed and treated for all corporate purposes to represent the ownership of the same number of shares of Industries Common Stock as though such surrender or transfer and exchange had taken place. The stock transfer books for the USR Common Stock shall be deemed to be closed at the Effective Date and no transfer of outstanding USR Common Stock shall thereafter be made on such books.

All shares of Industries Common Stock for which shares of USR Common Stock shall have been exchanged pursuant to this Article V shall be deemed to have been issued in full satisfaction of all rights pertaining to such shares of USR Common Stock.

Upon the Effective Date, the holders of certificates representing USR Common Stock outstanding at such time shall cease to have any rights with respect to such stock (except such rights as certain stockholders may have under Section 262 of the Delaware General Corporation Law) and their sole rights shall be with respect to the Industries Common Stock for which their shares of USR Common Stock have been exchanged by the Merger.

#### ARTICLE VI

##### CONDITIONS OF THE MERGER

Consummation of the Merger is subject to the satisfaction of the following conditions:

(a) The Merger shall have received the approval of the holders of capital stock of each of the Constituent Corporations as required by Section 251 of the Delaware General Corporation Law and by the Certificate of Incorporation and By-Laws of the Constituent Corporations.

(b) There shall have been obtained an opinion of Shearman & Sterling, special counsel to USR, satisfactory to the Board of Directors of USR, with respect to the tax consequences of the Merger and other transactions incident thereto.

(c) Industries shall have received all necessary Blue Sky permits and other authorizations, if any, to carry out the transactions contemplated hereby.

#### ARTICLE VII

##### AMENDMENT AND TERMINATION

The parties hereto by mutual consent of their respective Boards of Directors may amend, modify or supplement this Agreement in such manner as may be agreed upon by them in writing, at any time before or after approval of this Agreement by the stockholders of USR, provided, however, that no such amendment, modification or supplement shall, in the sole judgment of the Board of Directors of USR, materially and adversely affect the rights of the stockholders of USR.

This Agreement may be terminated and the Merger and other transactions herein provided for abandoned at any time prior to the filing of the Agreement or a Certificate of Merger with the Secretary of State of Delaware, whether before or after approval of this Agreement by the stockholders of USR, by action of the Board of Directors of USR if said Board of Directors determines for any reason that the consummation of the transactions provided for herein would for any reason be inadvisable or not in the best interests of USR or its stockholders.

#### ARTICLE VIII

##### EFFECTIVE DATE OF THE MERGER

Subject to the prior satisfaction of the conditions of the Merger set forth in Article VI hereof and the authority to terminate this Agreement as set forth in Article VII hereof, the Constituent Corporations and Industries shall do all such acts and things as shall be necessary or desirable in order to make the Effective Date occur as soon as possible after the Agreement is approved by the stockholders of USR entitled to vote thereon, and, in any event, prior to June 1, 1981.

#### ARTICLE IX

##### MISCELLANEOUS

This Agreement may be executed in counterparts, each of which, when so executed, shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

IN WITNESS WHEREOF, USR, Merger Company and Industries, pursuant to approval and authorization duly given by resolutions adopted by their respective Boards of Directors,

have each caused this Agreement and Plan of Merger to be executed by duly authorized officers as of the date written above.

UNITED STATES RADIUM CORPORATION

[SEAL]

By: /s/ Ralph T. McElvenny, Jr.  
Ralph T. McElvenny, Jr.  
Chairman of the Board and  
Chief Executive Officer

ATTEST:

By: /s/ William C. Kaltnecker  
William C. Kaltnecker  
Secretary

USR INDUSTRIES, INC.

By: /s/ Ralph T. McElvenny, Jr.  
Ralph T. McElvenny, Jr.  
Chairman of the Board and  
Chief Executive Officer

ATTEST:

By: /s/ William C. Kaltnecker  
William C. Kaltnecker  
Secretary

INDUSTRIES MERGER CO. INC.

By: /s/ Ralph T. McElvenny, Jr.  
Ralph T. McElvenny, Jr.  
Chairman of the Board and  
Chief Executive Officer

ATTEST:

By: /s/ William C. Kaltnecker  
William C. Kaltnecker  
Secretary

ATTACHMENT 5

**HANNOCH WEISMAN**

A PROFESSIONAL CORPORATION  
4 BECKER FARM ROAD  
ROSELAND, NEW JERSEY 07068-3788  
(201) 535-5300  
ATTORNEYS FOR Plaintiffs

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY  
DOCKET NO. L-055362-84

USR INDUSTRIES, INC., et als.,

Plaintiffs,

-vs-

INSURANCE COMPANY OF NORTH  
AMERICA, et als.,

Defendants.

:

:

:

:

:

:

Civil Action

PLAINTIFF'S NOTICE OF MOTION  
TO FILE

THIRD AMENDED COMPLAINT

Returnable August 4, 1989

TO: ALL COUNSEL (see attached Rider)

PLEASE TAKE NOTICE that the undersigned attorneys, counsel to plaintiffs, will move before the Honorable Marilyn Loftus, Superior Court of New Jersey, New Courts Building, Room 818, Newark, New Jersey, for an Order permitting plaintiffs to file a Third Amended Complaint in the above-captioned matter.

PLEASE TAKE FURTHER NOTICE that in support of their application, plaintiffs will rely upon the attached Certification

of Kevin J. Bruno, Esq. Pursuant to R. 1:6-2, plaintiffs will  
rely on the papers submitted herewith, and do not request oral  
argument. A proposed form of order has been submitted herewith.

HANNOCH WEISMAN  
Attorneys for Plaintiffs

By

  
Kevin J. Bruno

DATED: July 21, 1989

**COUNSEL LIST**

**Re: U.S.R. Industries v. INA, et als  
Docket No. L-05536284**

**Dated: 4/20/89**

**Greenberg, Margolis, Ziegler & Schwartz, Esqs.  
3 ADP Boulevard  
Roseland, New Jersey 07068  
(201) 992-3700  
Attorneys for Ambassador Insurance Company**

**White & Williams, Esqs.  
222 Haddon Avenue  
Suite 300  
Westmont, New Jersey 08108  
Attorneys for California Union Insurance Co. and  
Insurance Company of North America**

**Guy Cellucci, Esq.  
White & Williams, Esqs.  
1234 Market Street, 17th Floor  
Philadelphia, Pennsylvania 19107  
(215) 854-7123  
Attorneys for California Union Insurance Co. and  
Insurance Company of North America**

**William G. Becker, Jr., Esq.  
T. Kevin Sheehy, Esq.  
Shanley & Fisher, P.C.  
131 Madison Avenue  
Morristown, New Jersey 07960-1979  
(201) 285-1000  
Attorneys for Federal Insurance Company, Mission  
Insurance Company and U.S. Guarantee Company**

**Einhorn, Harris & Platt, Esqs.  
Broadway & Second Avenue  
P.O. Box 540  
Denville, New Jersey 07834-0541  
(201) 627-7300  
Attorneys for Fireman's Fund Insurance Co.**

**Rivkin, Radler, Dunne & Bayh, Esqs.  
EAB Plaza  
Uniondale, New York 11556-0111  
(516) 746-7500  
Attorneys for Fireman's Fund Insurance Co.**



**William J. Bowman, Esq.**  
**Hogan & Hartson, Esqs.**  
555 13th Street  
Washington, D.C. 20004-1109  
(202) 637-5600  
**Attorneys for First State Insurance Co.,**  
**Co-counsel for Hartford Insurance Group**

**Brian Ade, Esq. (or Robert Byrne, Esq.)**  
**Harwood, Lloyd, Ryan, Coyle & McBride**  
130 Main Street  
Hackensack, New Jersey 07601  
(201) 487-1080/ (201) 489-5005  
**Attorneys for the Hartford Insurance Group**

**O'Donnell, Kennedy, Vespole & Piechta, Esqs.**  
414 Eagle Rock Avenue  
West Orange, New Jersey 07052  
(201) 669-0100  
**Attorneys for Integrity Insurance Company**

**DeGonge, Garrity & Fitzpatrick, Esqs.**  
430 Broad Street  
P.O. Box 1560  
Bloomfield, New Jersey 07003-1560  
(201) 748-7400  
**Attorneys for National Union Fire Insurance Company**  
**and Lexington Insurance Company**

**Golden, Lintner, Rothschild, Spagnola & DiFazio, Esqs.**  
1011 Route 22 West  
Box 897  
Somerville, New Jersey 08876  
(201) 722-6300  
**Attorneys for Royal Indemnity Company**

**Michael Majewski, Esq.**  
**Waxman, Miller & Trautwig, P.C.**  
1010 Northern Boulevard  
Suite 214  
Great Neck, New York 11021  
(516) 829-4840  
**Attorneys for Puritan Insurance Company**

**John S. Fitzpatrick, Esq.**  
**Haggerty & Donohue, Esqs.**  
One Springfield Avenue  
Summit, New Jersey 07901  
(201) 227-2600  
**Attorneys for New Jersey Property-Liability**  
**Insurance Guaranty Association (Midland)**

Douglas R. Kleinfeld, Esq.  
Kleinfeld, Kleinfeld & Lubin, Esqs.  
9 Parmley Place  
Summit, New Jersey 07901  
(201) 273-2626  
Attorneys for St. Paul's Fire and Marine Insurance Co.

Ronca, McDonald, Judge & Hanley, Esqs.  
600 South Livingston Avenue  
Livingston, New Jersey 07039  
(201) 994-2030  
Attorneys for Southern American Insurance Company

Slade H. McLaughlin, Esq.  
Griffith & Burr, Esqs.  
1608 Walnut Street  
14th Floor  
Philadelphia, Pennsylvania 19103  
Attorneys for Commercial Union Insurance Company

Hoagland, Longo, Oropollo & Moran, Esqs.  
303 George Street  
P.O. Box 480  
New Brunswick, New Jersey 08903  
(201) 545-4717  
Attorneys for Aetna Life and Casualty Company

Henry Lee, Esq.  
Mendes & Mount, Esqs.  
Three Park Avenue  
New York, New York 10016  
(212) 545-4717  
Attorneys for Southern American Insurance Company

Kimball Ann Lane, Esq.  
Adams, Duque & Hazeltine, Esqs.  
551 Madison Avenue  
8th Floor  
New York, New York 10022

**HANNOCH WEISMAN**

A PROFESSIONAL CORPORATION  
4 BECKER FARM ROAD  
ROSELAND, NEW JERSEY 07068-3788  
(201) 535-5300  
ATTORNEYS FOR Plaintiffs

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY  
DOCKET NO. L-055362-84

USR INDUSTRIES, INC., et als., :

Plaintiffs, :

-vs- :

INSURANCE COMPANY OF NORTH  
AMERICA, et als. :

Defendants. :

Civil Action

CERTIFICATION OF  
KEVIN J. BRUNO

KEVIN J. BRUNO, of full age, deposes and says as follows:

1. I am an attorney at law in the State of New Jersey and am associated with the law firm of Hannoch Weisman, counsel to plaintiffs in the above captioned matter.

2. I am fully familiar with the facts of this matter and make this certification in support of plaintiffs' motion for leave to file a Third Amended Complaint, a copy of which is attached hereto as Exhibit "A".

3. Since the filing of this action, several additional claims have been filed against the plaintiff insureds, none of

which have been incorporated into this lawsuit: Douglass, et al. v. Safety Light Corporation, et al., docket no. L-089653-85; Stephens, et al. v. United States Radium Corporation, et al., docket no. L-091247-85; Estate of Alexander Masson, et al. v. United States Radium Corporation, et al., docket no. L-055737-86; Claim by the United States Environmental Protection Agency ("EPA") for response costs associated with remedial work conducted at the Maxey Flats Disposal Site located in Morehead, Kentucky; T&E Industries, Inc. v. Safety Light Corporation, et al., civil action no. 87-1088; claim by the EPA for response costs associated with remedial work at the Kin Buc landfill site located in Edison, New Jersey; and claim by the United States Nuclear Regulatory Commission ("NRC") for remedial work associated with the site characterization and decontamination of property located in Bloomsburg, Pennsylvania. Plaintiffs have amended paragraphs 49 through 54 of their complaint to include these claims. All of the defendant insurers have been duly notified of these claims.

4. The third amended complaint also adds an additional defendant insurer, Travelers Indemnity Company, which previously had been dismissed from this action by Stipulation dated May 17, 1985. The Settlement Agreement dated May 17, 1985, which formed the basis for said Stipulation of Dismissal provided that coverage would be afforded for claims relating to the Bloomsburg, Pennsylvania site. Because the EPA Maxey Flats and NRC claims fall within this category of claims, and because Travelers has thus far declined coverage for said claims, plaintiffs have determined to add Travelers as an additional defendant. Paragraph

57 of the complaint has been amended accordingly.

5. Since the inception of this action, various carriers have assumed, to varying degrees, the defense of the plaintiff insureds. Paragraph 56 of the complaint has been amended to bring up to date the status and scope of such defense agreements. Likewise, paragraphs 48 and 53 of the complaint have been amended to indicate that certain carriers have agreed to provide the sums necessary to settle the Zwain and Kin Buc claims underlying this action, subject to a reservation of rights to contest liability at a later date.

6. Paragraphs 44 and 46 of the complaint have been amended to incorporate the above mentioned changes. Paragraphs 11, 13 and 14 have been amended to indicate that certain defendant insurers are presently in insolvency. In particular, both the caption and paragraph 14 have been amended to indicate that the New Jersey Property-Liability Guaranty Association is a party to this action upon the behalf of the Integrity Insurance Company and Midland Insurance Company, both of which are in insolvency.

For the foregoing reasons, plaintiffs respectfully request that they be granted leave to file a Third Amended Complaint in this action.

I hereby certify that the foregoing statements made by me are true; I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
Kevin J. Bruno

DATED: July 21, 1989

**HANNOCH WEISMAN**

A PROFESSIONAL CORPORATION  
4 BECKER FARM ROAD  
ROSELAND, NEW JERSEY 07068-3788  
(201) 535-5300  
ATTORNEYS FOR           **Plaintiffs**

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY  
DOCKET NO: L-055362-84

USR INDUSTRIES, INC., USR METALS, :  
INC., USR LIGHTING, INC., SAFETY :  
LIGHT CORPORATION, USR CHEMICALS, :  
INC. AND U.S. NATURAL RESOURCES, :  
INC., :

Plaintiffs, :

-vs- :

Civil Action

INSURANCE COMPANY OF NORTH :  
AMERICA, FIREMAN'S FUND INSURANCE :  
COMPANY, NATIONAL UNION FIRE :  
INSURANCE COMPANY, FIRST STATE :  
INSURANCE COMPANY, FEDERAL INSUR- :  
ANCE COMPANY, CALIFORNIA UNION :  
INSURANCE COMPANY, ST. PAUL FIRE :  
AND MARINE INSURANCE COMPANY, :  
MISSION INSURANCE COMPANY, :  
PURITAN INSURANCE COMPANY, :  
AMBASSADOR INSURANCE COMPANY, :  
THE NEW JERSEY PROPERTY-LIABILITY :  
GUARANTY ASSOCIATION upon the :  
behalf of MIDLAND INSURANCE :  
COMPANY AND INTEGRITY INSURANCE :  
COMPANY in INSOLVENCY, HARTFORD :  
INSURANCE GROUP, ROYAL :  
INDEMNITY COMPANY, a division :  
of ROYAL INSURANCE COMPANY OF :  
AMERICA, AETNA LIFE INSURANCE :

THIRD  
AMENDED COMPLAINT

COMPANY OF AMERICA, COMMERCIAL :  
UNION INSURANCE COMPANY, :  
LEXINGTON INSURANCE COMPANY, :  
SOUTHERN AMERICAN INSURANCE :  
COMPANY, THE TRAVELERS :  
INDEMNITY COMPANY AND JOHN DOE :  
COMPANIES :  
1-100, :

Defendants.

### COMPLAINT

Plaintiffs, USR Industries, Inc., USR Metals, Inc., USR Lighting, Inc., Safety Light Corporation, USR Chemicals, Inc. and U.S. Natural Resources, Inc., by way of Complaint against the defendants, say:

### THE INSUREDS

1. From a period beginning with World War I until approximately 1980, the former United States Radium Corporation was a corporation organized under the laws of the State of Delaware and did business in the State of New Jersey. For a limited period of time, the former United States Radium Corporation manufactured products used primarily in military applications (such as fighter plane instruments illuminated for night flight by a coating of radium luminous paint). For a limited period of time, the former United States Radium Corporation maintained a plant in Orange, New Jersey.

2. In 1980, USR Industries, Inc., a newly formed corporation organized under the laws of the State of Delaware was established as a parent holding corporation and purchased, in exchange for its stock, the assets and business of the former United States Radium Corporation and the various business segments thereof, as such were comprised in 1980. The name of the former United States Radium Corporation was changed to Safety Light Corporation at or about that time. As part of the restructuring, the following distinct companies became subsidiary corporations wholly owned by USR Industries, Inc.: USR Lighting, Inc., a corporation organized under the laws of the State of New Jersey; USR Metals, Inc., a corporation organized under the laws of the State of Pennsylvania; and USR Chemicals, Inc., a corporation organized under the laws of the State of New Jersey. At the time, USR Industries, Inc. also established U.S. Natural Resources, Inc., an inactive corporation organized under the laws of the State of Texas.

3. In 1982, all of the stock of Safety Light Corporation was purchased by Lime Ridge Industries, Inc., an unrelated company having no common ownership by or with USR Industries, Inc.



THE INSURERS: PRIMARY AND EXCESS CARRIERS

4. Defendant, Insurance Company of North America (hereinafter referred to as "INA"), a corporation licensed to do business and doing and transacting business in the State of New Jersey, is organized under the laws of the Commonwealth of Pennsylvania and has its principal place of business in the Commonwealth of Pennsylvania.

5. Defendant, Fireman's Fund Insurance Company, (hereinafter referred to as "Fireman's Fund"), a corporation licensed to do business and doing and transacting business in the State of New Jersey, is organized under the laws of the State of California and has its principal place of business in the State of California.

6. Defendant, National Union Fire Insurance Company of Pittsburgh, Pennsylvania (hereinafter referred to as "National Union"), a corporation licensed to do business and doing and transacting business in the State of New Jersey, is organized under the laws of the Commonwealth of Pennsylvania and has its principal place of business in the Commonwealth of Pennsylvania.

7. Defendant, First State Insurance Company (hereinafter referred to as "First State"), a corporation licensed to do business and doing and transacting business in the State of New Jersey, is organized under the laws of the State of Delaware and

has its principal place of business in the Commonwealth of Massachusetts.

8. Defendant, Federal Insurance Company (hereinafter referred to as "Federal"), a corporation licensed to do business and doing and transacting business in the State of New Jersey, is organized under the laws of the State of New Jersey and has its principal place of business in the State of New Jersey.

9. Defendant, California Union Insurance Company (hereinafter referred to as "California Union"), a corporation licensed to do business and doing and transacting business in the State of New Jersey, is organized under the laws of the State of California and has its principal place of business in the State of California.

10. Defendant, St. Paul Fire and Marine Insurance Company (hereinafter referred to as "St. Paul"), a corporation licensed to do business and doing and transacting business in the State of New Jersey, is organized under the laws of the State of Minnesota and has its principal place of business in the State of Minnesota.

11. Defendant, Mission Insurance Company (hereinafter referred to as "Mission"), in insolvency, a corporation licensed to do business and doing and transacting business in the State of New Jersey, is organized under the laws of the State of

California and has its principal place of business in the State of California.

12. Defendant, Puritan Insurance Company (hereinafter referred to as "Puritan"), a corporation licensed to do business and doing and transacting business in the State of New Jersey, is organized under the laws of the State of Connecticut and has its principal place of business in the State of Connecticut.

13. Defendant, Ambassador Insurance Company (hereinafter referred to as "Ambassador"), a corporation licensed to do business and doing and transacting business in the State of New Jersey, is organized under the laws of the State of Vermont and has its principal place of business in the State of Vermont.

14. Defendant, The New Jersey Property-Liability Guaranty Association, upon the behalf of Integrity Insurance Company (hereinafter referred to as "Integrity") and Midland Insurance Company (hereinafter referred to as "Midland"), which are in insolvency. Integrity is a corporation licensed to do business and doing and transacting business in the State of New Jersey, is organized under the laws of the State of New Jersey and has its principal place of business in the State of New Jersey. Midland is a corporation licensed to do business and doing and transacting business in the State of New Jersey, is organized under the laws of the State of New York and has its principal place of business in the State of New York.

15. Defendant, Hartford Insurance Group (hereinafter referred to as "Hartford"), a corporation licensed to do business and doing and transacting business in the State of New Jersey, is organized under the laws of the State of Connecticut, and has its principal place of business in the State of Connecticut.

16. Defendant, Royal Indemnity Company, a division of Royal Insurance Company of America (hereinafter referred to as "Royal Indemnity"), a corporation licensed to do business and doing and transacting business in the State of New Jersey, is organized under the laws of the State of Illinois and has its principal place of business in the State of New York.

17. Defendant, Aetna Insurance Company (hereinafter referred to as "Aetna"), a corporation licensed to do business and doing and transacting business in the State of New Jersey, is organized under the laws of the State of Connecticut and has its principal place of business in the Commonwealth of Pennsylvania.

18. Defendant, Commercial Union Insurance Company (hereinafter referred to as "Commercial Union"), a corporation licensed to do business and doing and transacting business in the State of New Jersey, is organized under the laws of the Commonwealth of Massachusetts and has its principal place of business in the Commonwealth of Massachusetts.

19. Defendant, Lexington Insurance Company (hereinafter referred to as "Lexington"), is a corporation organized under the laws of the State of Delaware and has its principal place of business in the Commonwealth of Massachusetts.

20. Defendant, Southern American Insurance Company (hereinafter referred to as "Southern American"), is a corporation organized under the laws of the State of Tennessee and has its principal place of business in the State of Tennessee.

21. Defendant, The Travelers Indemnity Company (hereinafter referred to as "Travelers"), a corporation licensed to do business and doing and transacting business in the State of New Jersey, is organized under the laws of the State of Connecticut, and has its principal place of business in the State of Connecticut.

22. Defendants, John Doe Companies 1-100, are unnamed companies which issued insurance policies, including comprehensive liability insurance policies, pursuant to which they agreed to defend and indemnify United States Radium Corporation and/or USR Industries, Inc., USR Metals, Inc., USR Lighting, Inc., Safety Light Corporation, USR Chemicals, Inc. and U.S. Natural Resources, Inc.

23. Defendants, INA, Fireman's Fund, National Union First State, Federal, California Union, St. Paul, Mission,

Puritan, Midland, Ambassador, Integrity, Hartford, Royal Indemnity, Aetna, Commercial Union, Lexington, Southern American and Travelers are corporations or companies which are now and have been licensed and authorized to issue insurance policies, including comprehensive liability insurance policies.

#### THE CONTROVERSY

24. Pursuant to the terms of their respective policies, each defendant insurer agreed to indemnify and defend United States Radium Corporation and/or USR Industries, Inc., USR Metals, Inc., USR Lighting, Inc., Safety Light Corporation, USR Chemicals, Inc. and U.S. Natural Resources, Inc. (hereinafter referred to collectively as "the insureds") against certain liabilities arising out of various risks, including liabilities for personal or bodily injury and property damage, for which the insureds are and/or were responsible, occurring during the policy periods of their respective policies.

25. Pursuant to the terms of their respective policies, each defendant insurer has a duty to defend all lawsuits and claims filed against its insureds for which its insureds have potential liability of the nature hereinabove described.

26. Defendant, INA, contractually agreed to indemnify and defend United States Radium Corporation against such liabilities and claims pursuant to one or more policies in effect for all or a portion of the period prior to and through 1979.

27. Defendant, Fireman's Fund, contractually agreed to indemnify and defend United States Radium Corporation against such liabilities and claims pursuant to one or more policies in effect for all or a portion of the period 1970 through 1979.

28. Defendant, National Union, contractually agreed to indemnify and defend United States Radium Corporation against such liabilities and claims pursuant to one or more policies in effect during the period 1979 through 1981.

29. Defendant, First State, contractually agreed to indemnify and defend USR Industries, Inc. against such liabilities and claims pursuant to one or more policies in effect during the period 1982 through 1983.

30. Defendant, Federal, contractually agreed to indemnify and defend United States Radium Corporation against such liabilities and claims pursuant to one or more policies in effect during the periods 1945 through 1954 and 1973 through 1977.

31. Defendant, California Union, contractually agreed to indemnify and defend United States Radium Corporation against such liabilities and claims pursuant to one or more policies in effect during the period 1978 through 1979.

32. Defendant, St. Paul, contractually agreed to indemnify and defend United States Radium Corporation against such liabilities and claims pursuant to one or more policies in effect during the period 1979 through 1981.

33. Defendant, Mission, contractually agreed to indemnify and defend United States Radium Corporation, USR Industries, Inc., USR Metals, Inc., USR Lighting, Inc., USR Chemicals, Inc., US Natural Resources, Inc., and Safety Light Corporation against such liabilities and claims pursuant to one or more policies in effect during the period 1979 through 1982.

34. Defendant, Puritan, contractually agreed to indemnify and defend USR Industries, Inc. and Safety Light Corporation against such liabilities and claims pursuant to one or more policies in effect during the period 1982 through 1983.

35. Defendant, Midland, contractually agreed to indemnify and defend USR Industries, Inc. against such liabilities and claims pursuant to one or more policies in effect during the period 1981 through 1982.

36. Defendant, Ambassador, contractually agreed to indemnify and defend Safety Light Corporation against such liabilities and claims pursuant to one or more policies in effect during the period 1982 through 1983.

37. Defendant, Integrity, contractually agreed to indemnify and defend USR Industries, Inc. against such liabilities and claims pursuant to one or more policies in effect during the period 1982 through 1984.



38. Defendant, Hartford, contractually agreed to indemnify and defend United States Radium Corporation, USA Industries, Inc., USA Metals, Inc., USA Lighting, Inc. against such liabilities and claims pursuant to one or more policies in effect during the periods 1942 through 1945 and 1983 through 1984.

39. Defendant, Royal Indemnity, contractually agreed to indemnify and defend USA Industries, Inc., USA Metals, Inc. and USA Lighting, Inc. against such liabilities and claims pursuant to one or more policies in effect during the period 1984 through 1985.

40. Defendant, Aetna, contractually agreed to indemnify and defend United States Radium Corporation against such liabilities and claims pursuant to one or more policies in effect during the period 1919 through 1920.

41. Defendant, Commercial Union, contractually agreed to indemnify and defend United States Radium Corporation against such liabilities and claims pursuant to one or more policies in effect during the period 1942 through 1945.

42. Defendant, Lexington, contractually agreed to indemnify and defend United States Radium Corporation against such liabilities and claims pursuant to one or more policies in effect during the period 1977 through 1979.

43. Defendant, Southern American, contractually agreed to indemnify and defend USR Industries, Inc., USR Metals, Inc. and USR Lighting, Inc. against such liabilities and claims pursuant to one or more policies in effect during the period 1984.

44. Defendant, Travelers, contractually agreed to indemnify and defend Safety Light Corporation against such liabilities and claims pursuant to one or more policies in effect during the period 1982 through 1984.

45. On information and belief, defendants, John Doe Companies 1-100, contractually agreed to indemnify and defend the insureds against such liabilities and claims pursuant to one or more policies in effect for all or a portion of the relevant time periods.

46. Plaintiffs, USR Industries, Inc., USR Metals, Inc., USR Lighting, Inc., Safety Light Corporation, USR Chemicals, Inc. and U.S. Natural Resources, Inc. have been named as defendants in several actions filed in the Superior Court of New Jersey, described hereinafter in paragraphs 48 to 50, and in an action filed in the United States District Court, District of New Jersey, described hereinafter in paragraph 53. The plaintiffs in these actions seek damages for property damage and personal or bodily injury allegedly resulting from exposure of person and property to radiation allegedly emanating from the former site of

the former United States Radium Corporation and from certain other locations allegedly containing landfill which is alleged to have originated at the former United States Radium Corporation site. Such property damage and personal or bodily injury are claimed to have occurred on a continuous basis during the policy years of one or more of the policies referred to in paragraphs 25 to 46 above.

47. On March 25, 1981, an action entitled T&E Industries, Inc. v. United States Radium Corporation, et al., Docket No. L-41346-80, was commenced in the Superior Court of New Jersey. On December 13, 1983, plaintiff amended its complaint to name additional defendants including the insureds. Plaintiff is seeking to recover for property damage resulting from alleged contamination of the former site of the former United States Radium Corporation in Orange, New Jersey, a portion of which is owned and occupied by said plaintiff.

48. On December 6, 1982, an action entitled Zwain, et al. v. Safety Light Corporation et al., Docket No. L-19945-82, was commenced in the Superior Court of New Jersey against some of the insureds and other defendants. Plaintiffs sought recovery for property damage and personal or bodily injury resulting from alleged contamination of the former site of the former United States Radium Corporation in Orange, New Jersey, a portion of which is owned and occupied by said plaintiffs. The individual

plaintiffs also sought recovery for alleged emotional distress and loss of consortium resulting from their allegedly injurious exposure to radiation. In or about September, 1987, defendants, INA, Hartford, St. Paul, Puritan and Midland agreed to provide \$150,000.00 in full settlement of this action, subject to a reservation of rights to contest liability at a later date.

49. On January 23, 1984, an action entitled Jackson, et al. v. Safety Light Corporation, et al., Docket No. L005135-84 was commenced in the Superior Court of New Jersey. The action initially named Safety Light Corporation as a defendant. On March 13, 1984, plaintiffs amended their complaint to name some of the other insureds as additional defendants. On February 29, 1984, an action entitled Allen, et al. v. United States Radium Corporation, et al., Docket No. L13851-84 was commenced in the Superior Court of New Jersey against the insured and other defendants. On October 30, 1984, an action entitled Gatto, et al., v. United States Radium Corp., et al., Docket No. L6033284, was commenced in the Superior Court of New Jersey against the insureds. On November 19, 1985, an action entitled Douglass, et al. v. Safety Light Corporation, et al., Docket No. L-089653-85, was commenced in the Superior Court of New Jersey against the insureds. On November 27, 1985, an action entitled Stephens, et al. v. United States Radium Corporation, et al., Docket No. L-091247-85, was commenced against the insureds in the Superior Court of New Jersey. On May 15, 1986, an action entitled Estate

of Alexander Masson, et al. v. United States Radium Corporation, et al., Docket No. L-055737-86, was commenced in the Superior Court of New Jersey against the insureds. The plaintiffs in all six (6) actions are, or were, residents of the towns of Glen Ridge, Montclair and West Orange, New Jersey, and are seeking to recover for property damage and personal or bodily injury resulting from alleged exposure to radiation which has allegedly been discovered in or around their homes and which plaintiffs allege emanated from landfill which is alleged to have originated at the former United States Radium Corporation site in Orange, New Jersey.

50. By letters dated October 26, 1983, October 4, 1983 and December 14, 1984 the United States Environmental Protection Agency ("EPA") notified the insureds that the EPA had determined them to be potentially responsible parties under the Comprehensive Environmental Response Compensation Liability Act of 1980, 42 U.S.C. §9601, et seq., for certain remediation work at the former United States Radium Corporation site in Orange, New Jersey and at certain locations in the towns of Glen Ridge, Montclair and West Orange.

51. By letter dated November 26, 1986, the EPA notified the former United States Radium Corporation that EPA had determined it to be a potentially responsible party under the Comprehensive Environmental Response Compensation Liability Act of

1980, as amended, 42 U.S.C. § 9601, et seq., for certain remediation work at the Maxey Flats Disposal Site located in Morehead, Kentucky. EPA alleges the former United States Radium Corporation generated and arranged for the disposal of a certain amount of the radioactive waste materials present at the site.

52. On March 27, 1987, an action entitled T&E Industries, Inc. v. Safety Light Corporation, et al., Civil Action No. 87-1088, was commenced in the United States District Court, District of New Jersey. Plaintiff seeks a judgment that the insureds are responsible for all response costs incurred or to be incurred by it as the result of alleged contamination of the former United States Radium Corporation site in Orange, New Jersey. Plaintiff also requests injunctive relief compelling the insureds to expend funds to investigate and remediate the alleged contamination at the site. In December, 1988, defendants INA, Hartford, Puritan and Midland agreed to provide certain monies towards construction of a security fence around vacant portions of the Orange site, subject to a reservation of rights to contest liability at a later date.

53. By letter dated August 9, 1988, the EPA notified plaintiff, Safety Light Corporation, that EPA had determined it to be a potentially responsible party under the Comprehensive Environmental Response Compensation Liability Act of 1980, as amended, 42 U.S.C. §9601 et seq., for contributing towards the

costs of certain remediation work at the Kin Buc landfill site located in Edison, New Jersey. EPA alleged Safety Light Corporation generated and arranged for the disposal of a certain amount of the waste materials present at the site. In or about August, 1988, defendants, INA, Puritan and St. Paul, agreed to provide all monies necessary to resolve EPA's claim against plaintiff, subject to a reservation of rights to contest liability at a later date.

54. By order dated March 16, 1989, the United States Nuclear Regulatory Commission ("USNRC") ordered the insureds to immediately undertake the preparation and implementation of a plan for site characterization and decontamination of certain property located in Bloomsburg, Pennsylvania. The property had been occupied by the former United States Radium Corporation since the 1940's and is currently occupied by Safety Light Corporation and USR Metals, Inc. It is alleged by the USNRC that radioactive contamination on the property, and the migration of same offsite, present a threat to health and the environment.

55. The plaintiffs in the instant action have incurred and are continuing to incur substantial liabilities in the form of expenses for the defense of the actions and claims hereinabove referred to and plaintiffs have already paid substantial amounts with respect thereto. Each defendant insurer is obligated to indemnify the plaintiffs against such liabilities and expenses.

56. In or about November, 1984, defendant, Hartford, agreed to assume the defense of USR Industries, Inc., USR Metals, Inc. and USR Lighting, Inc. This defense was undertaken by Hartford under a reservation of rights to contest liability at a later date. In or about September, 1985, defendants Hartford, INA, St. Paul, Puritan and Midland agreed to assume the defense of all of the insureds in the T&E Industries, Inc., Zwain, Jackson, Allen and Gatto actions under a reservation of rights to contest liability at a later date. In or about 1987, the same defendants agreed to also assume the defense of all of the insureds in the Douglass, Stephens and Masson matters, subject to the same reservation of rights. In or about 1988, defendant, INA, agreed to assume the defense of the insureds in the Maxey Flats claim, subject to the same reservation of rights.

57. By settlement agreement dated May 17, 1985, plaintiffs and Travelers agreed to endorse Travelers' policies to provide that no comprehensive general liability or contractual liability coverage would be afforded for certain claims, including inter alia all property damage or bodily injury claims "allegedly arising out of the premises, operations, products, materials or waste of the former Orange, New Jersey site of the United States Radium Corporation". At the time, all claims forming the basis for this action related, either directly or indirectly, to the former Orange site; Travelers was therefore dismissed from this action by Stipulation dated May 17, 1985.



Subsequently, the Maxey Flats and NRC claims have been asserted against the insureds. Both claims relate to the Bloomsburg, Pennsylvania site of Safety Light Corporation and fall within the category of claims for which Travelers expressly acknowledged in the settlement agreement the existence of comprehensive general liability and contractual liability coverage under the Travelers policies.

58. Each defendant has a duty and obligation to defend and to indemnify plaintiffs in some or all of the actions and claims hereinabove referred to. However, contrary to its duties and obligations under its respective insurance policies or agreements to defend the insureds with respect to the aforesaid actions, each defendant has wrongfully failed or refused to defend plaintiffs, with the exception, in varying degrees, of defendants, Hartford, INA, St. Paul, Puritan and Midland, against the aforesaid actions and claims and has wrongfully failed or refused to indemnify plaintiffs against all liability and expenses incurred in connection therewith.

WHEREFORE, plaintiffs USR Industries, Inc., USR Metals, Inc., USR Lighting, Inc., Safety Light Corporation, USR Chemicals, Inc. and U.S. Natural Resources, Inc. demand judgment against all defendants:

(1) Requiring each defendant to indemnify and defend plaintiffs against all liability, loss or expense caused by rea-

son of the aforementioned lawsuits and claims.

(2) Preliminarily and permanently enjoining each defendant from failing and refusing (a) to defend plaintiffs in all of the aforementioned lawsuits and claims, and (b) to indemnify against all liabilities and expenses which have been and will be incurred with respect to any such lawsuit or claim;

(3) Preliminarily and permanently granting plaintiffs specific performance of the contracts of insurance issued by defendants;

(4) Declaring and adjudging the rights and obligations of the parties under the respective insurance policies issued to the insureds or agreements entered into with the insureds with respect to past and future liabilities of the insureds arising from lawsuits or claims for property damage and personal or bodily injury to third persons allegedly resulting from radioactive contamination.

(5) For compensatory and punitive damages;

(6) For costs of suit;

(7) For counsel fees; and

(8) For such other and further relief as the Court may deem proper and just.

HANNOCH WEISMAN  
Attorneys for Plaintiffs

By



IRVIN M. FREILICH  
A Member of the Firm

DATED: July 20, 1989

**HANNOCH WEISMAN**

A PROFESSIONAL CORPORATION

4 BECKER FARM ROAD

ROSELAND, NEW JERSEY 07068-3788

(201) 535-5300

ATTORNEYS FOR Plaintiffs

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY  
DOCKET NO. L-055362-84

USR INDUSTRIES, INC., et als.,

:

Plaintiffs,

:

Civil Action

-vs-

:

ORDER PERMITTING PLAINTIFFS  
TO FILE

INSURANCE COMPANY OF NORTH  
AMERICA, et als.,

:

THIRD AMENDED COMPLAINT

Defendants.

:

:

This matter having been brought before the court by way of notice of motion of Hannoch Weisman, attorneys for plaintiffs, for an order permitting plaintiffs to file a Third Amended Complaint, and the court having read and considered the moving papers and papers on file in this matter, and for other good cause shown;

IT IS on this        day of        , 1989,

ORDERED that plaintiffs be and are hereby granted leave to file a Third Amended Complaint; and it is



**ATTACHMENT 6**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

(ASLBP No. 89-590-01-0M  
and 90-598-01-0M-2)

1. I am currently employed by the United States Nuclear Regulatory Commission (NRC) as the Deputy Director of the Division of Industrial and Medical Nuclear Safety, within the Office of Nuclear Material Safety and Safeguards. A copy of my professional qualifications is attached.
2. In that capacity, I have direct responsibility for oversight of the NRC materials safety licensing and inspection activities carried out in the NRC Regional Offices.

3. I became more familiar with this particular site during 1988 while acting in the capacity of Director of the Division of Radiation Safety and Safeguards in the NRC Region I Office in King of Prussia, Pennsylvania. I have personally visited and participated in an inspection of this site during early July 1988.
4. The site is in a residential area along the Susquehanna River. There are several old buildings on the site. They appeared very poorly maintained over the years and some are rotting and falling down. The ones currently being used for offices and for production of luminous light sources are old, but apparently acceptable for their current use. During the walk-around tour and surveys on site, I learned that radioactive materials have been deposited in pits and underground caissons and are detectable in and around buildings as well as in lagoons formed when an old canal parallel to the river was filled. Several radionuclides are present in groundwater and soil on site. Tritium has been detected in an off-site well.
5. It is possible that other as yet undetected sources of contamination could be present and could be migrating through the groundwater. Moreover, strontium-90 contamination on the site exceeds the EPA standard for drinking water and could be migrating through groundwater. Should known or unknown contaminants migrate into local drinking water supplies, EPA drinking water standards may be exceeded, with attendant effects on public health and safety.



6. The USR brief in support of its motion for a stay references quotations from portions of a briefing I provided to the Commission on July 13, 1988, in my aforementioned capacity as a Region I Division Director. As background information, this briefing was part of a public meeting of the Commission and the overall purpose of the meeting was to allow the NRC staff to brief the Commission on the status of staff actions with regard to problem reactors and nuclear materials licensees warranting enhanced NRC attention to ensure NRC requirements are met. Prior to Commission meetings of this type, the NRC staff selects and identifies these problem licensees and discusses them during meetings of NRC senior managers, including the Executive Director for Operations and his Deputies, Office Directors, and Regional Administrators.
7. In this particular instance, the staff identified the licensee involved with the contaminated site in Bloomsburg as a problem licensee, because the site had been contaminated for a number of years. Further, although the licensee had been subject to a license condition since 1979, requiring decontamination of the site, little or no progress was being made, or apparently intended.
8. Furthermore, NRC staff had determined that the U. S. Radium Company had, subsequent to incorporation of this license condition into the license, gone through a series of reorganizations, stock transfers, and name changes, in an attempt to isolate the assets of U. S. Radium and its successors from the responsibility for the decontamination. Full information had not been provided to the NRC prior to these actions to enable the NRC to make the required finding that the transfer of the license was in the public interest.

9. In fact, the licensee provided only partial information and portrayed its action as a simple change of name. Because of this, the NRC staff became very concerned that the companies would not clean up the contamination at the site, including long-term monitoring and control as well as permanent remedial actions.
10. Therefore, in my briefing of the Commission, I intended to inform the Commission of the problems we believed we had with this licensee and our overall plan to develop and take actions to compel the licensee to begin the activities necessary to clean up the site at the licensee's expense.
11. The overall actions taken, and being taken, by the NRC staff in the subsequent enforcement conference and NRC Orders are entirely consistent with the general information provided to the Commission at the July 13, 1988, public meeting.
12. In my statement to the Commission, I provided information that would allow the Commission, and indeed the public, this being a public meeting, to put the radiological contamination at the Bloomsburg site into a proper and balanced perspective.
13. Therefore, while I intended to inform the Commission of the staff's basis for its intended actions to compel the licensees immediately to begin to take actions that would lead to site cleanup, I also did not want to alarm the Commission or members of the public present by implying


that members of the public were currently being harmed by the contamination present at the site. Based on the information available to me from review of data and from my personal observations at the site a few days prior to the Commission meeting, I believed that, so long as the site was properly controlled, no member of the public was being harmed by the contamination. It was in that sense that I stated there was not an immediate problem.

14. The Order dated August 21, 1989, requires the licensees immediately to begin putting funds into an account that would be used to begin the process of radiological decontamination of the site; this process can take one or more years, and it is important that it begin in a timely manner.
15. The first step in an overall process of decontamination involves characterization of the magnitude and location of the radioactivity, including measurements of all the various radionuclides that may be present. Characterization also includes development of technical information on the types of soil and strata present, groundwater content and location and rates of movement. This data, in conjunction with the radiological data, is required to understand where the radioactive contamination is, how much is there, and how fast it is moving. Such information is needed to make estimates of radiological doses and risk to the public through environmental transport pathways, both currently and in the future after the site is converted to other public uses. Because the radiological characterization of the site to date has been quite limited, it is possible that new information could indicate a need for some actions of a short-term remedial nature.

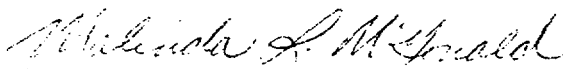
16. The second step in the process involves preparing a decontamination plan. A decontamination plan would be based on the results of the characterization studies and would describe how those results are used to identify and set priorities for, the areas that need to be decontaminated, and to select the engineering options that are available to achieve the necessary decontamination to meet decontamination criteria. The third step is the actual carrying out of the selected remedial actions. The overall process can take one or more years.
  
17. The radionuclides present at the contaminated Bloomsburg site all have relatively long half lives. Tritium has a half-life of about 12 years; strontium-90 has a half-life of about 30 years, and radium has a half-life of about 1600 years. Therefore, this problem is not going to go away through radioactive decay any time in the near future. Note that the overall cost to decontaminate the site may increase over time as the contamination spreads out over greater areas and more extensive efforts are required. Therefore, if the public is to be protected and if the cleanup is to be funded by the companies responsible for creating the problem in the first place, rather than by the public at large, these companies must be immediately compelled to initiate those actions necessary to effectuate cleanup.

18. Based on my current knowledge, I believe that members of the public are not in current danger from the site contamination, so long as the current controls remain in effect and barring information of the contrary developed during site characterization. However, based on that same knowledge, I believe that the public interest demands that effective actions begin immediately that will result in a timely characterization of the site and development and implementation of a decontamination plan in a timely manner. Failure to do so may cause future adverse impact on public health and safety.

I hereby certify that the information above is true and correct to the best of my knowledge and belief.

  
Glen L. Sjoblom

Subscribed and sworn to before me  
this 16<sup>th</sup> day of November, 1989

  
Notary Public

My commission expires: 7/1/90

## PROFESSIONAL QUALIFICATIONS

Name: Glen L. Sjoblom

## EDUCATION, HONORS AND OTHER INVOLVEMENT

BS.: Chemical Engineering, University of Minnesota (1963), Honors  
MS.: Chemical Engineering, University of California (1964), Honors

Certificate: Bettis Reactor Engineering School, 1966

Honorary Engineering Fraternity, TBP  
Harvard Course for Senior Managers in Government, 1984  
NRC Incident Investigation Team 1987

## EXPERIENCE:

- 1987-Present Deputy Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission (NRC). Responsible for licensing and inspection, regulatory development, and incident response activities relative to the more than 8,000 commercial radioactive material uses and 12 nuclear fuel facilities in the United States (U.S.).
- 1986-1987 Chief, Safeguards and Materials Programs Branch, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission. Responsible for directing the NRC inspection program development relative to inspection and enforcement at the more than 8,000 radioactive material users and 12 nuclear fuel facilities in the U.S. Following the accident at the nuclear fuel facility at Gore, Oklahoma in early 1986, responsible for directing a major change in the NRC approach toward emphasis on safety at these facilities.

- 1982-1986      Director, Office of Radiation Programs, U.S. Environmental Protection Agency (EPA). Responsible to the Assistant Administrator for Air and Radiation for directing the Agency programs involving radiation protection. These programs include setting radiation protection criteria, standards, and guidance for ionizing and nonionizing radiation for the Federal government, the States, and for industry.
- In carrying out his responsibilities, Mr. Sjoblom worked effectively at all levels of management within the Environmental Protection Agency as well as with many other Federal agency senior managers, Congressional staffs, State representatives, environmental groups, industry representatives, foreign governments representatives, professional societies, and National and International organizations involved in radiation matters.
- Was the principle spokesman for the EPA on radiation matters and has spoken and testified numerous times before representatives of the States, industry, Congressional committees, the public, and the news media.
- 1971-1982      Served as Assistant Director for Environmental Controls, Nuclear Technology Division, Naval Reactors Program Headquarters, Washington, D.C. Responsible for all aspects involving environmental controls of radioactivity from navy nuclear powered ships and supporting Navy and Department of Energy facilities. Several broad aspects involved radioactive waste management, decontamination, environmental monitoring, facility design, reactor shield design, and transportation of radioactive materials.
- Position involved setting standards for these aspects, directing related research, as well as implementation through training and compliance monitoring. An important aspect involved directing the assembly of information materials to provide perspective on radiological matters to the public. Responsibilities also included nonradioactive air and water pollution control and solid waste disposal at the several Department of Energy facilities supporting the Naval Reactors Program. This position involved dealing with numerous senior personnel within the Navy, as well as Federal agencies, including the Department of Energy, Environmental Protection Agency, Nuclear Regulatory Commission, as well as State health and environmental agencies, government laboratories and private corporations, research institutions, and universities.
- 1968-1971      Served as Radiation Application Engineer, Speciality Chemical Division, Atlantic Richfield Corporation. Responsible for direction of efforts in evaluating effects of and engineering radiation usage in various industrial processes including irradiators, radiography, hot cell operations, polymerization and dosimetry. This involved company radiation safety efforts in these processes. Dealt with division management and management of several other companies and research organizations.

Glen L. Sjoblom

- 3 -

1964-1968

While an Officer of the United States Navy, held positions within the Naval Reactors headquarters organization, Washington, D.C., including the Reactor Design Division and the Shielding Branch of the Nuclear Technology Division. Managed broad research and development programs of reactor design and radiation shielding.



ATTACHMENT 7

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

(ASLBP No. 89-590-01-0M  
and 90-598-01-0M-2)

1. I am employed by the United States Nuclear Regulatory Commission (NRC) as a Senior Health Physicist, Nuclear Materials Safety Section B, Nuclear Materials Safety Branch, Division of Radiation Safety and Safeguards, Region I, U. S. Nuclear Regulatory Commission at 475 Allendale Road, King of Prussia, Pa. In 1970, I received a Bachelor's Degree in Engineering Physics from St. Joseph's University in Philadelphia, Pa. In 1975, I received a Master's Degree in Health Physics from Rutgers University in New Brunswick, N.J. I worked as an operational health physicist at an accelerator at Brookhaven National Laboratories from 1972 to 1975. From 1975 to 1977 I worked as a health physicist for Delmarva Power, including one year at Salem Nuclear Generating Station. I have been employed as an inspector at NRC Region I since 1977. During this

time, I have been involved in inspecting and licensing byproduct materials licensees and in the operation of the NRC's direct radiation monitoring program for nuclear reactors. I was certified by the American Board of Health Physics in 1977.

2. I was the principal inspector from 1980 through 1989 at the United States Radium (U.S. Radium) and Safety Light Corporation site in Bloomsburg, Pennsylvania. This affidavit represents my evaluation of the need for site characterization at the Bloomsburg site.

3. By way of background, it should be noted that, during the 1950's and 1960's, U.S. Radium Corporation operations at the Bloomsburg, Pennsylvania site used radium-226, strontium-90, cesium-137 and other isotopes for the production of luminous devices and foils in addition to other products. Monitoring by U.S. Radium, Safety Light and Oak Ridge Associated Universities has shown that these operations resulted in extensive radioactive contamination of soil, groundwater, and buildings on the site. The contaminated soil, groundwater, and buildings are located on portions of the site which are no longer used for licensed activities. In addition, the tritium processing at the site in the 1970's and 1980's has resulted in tritium contamination of groundwater both on and off the site.

4. U.S. Radium and Safety Light have monitored radioactive contaminants both on and off the Bloomsburg site, and Oak Ridge Associated Universities evaluated the site for the NRC in 1981. These monitoring efforts have identified the following radiological concerns:

- a. Concentrations of radioactive materials in groundwater on the site exceed NRC limits for unrestricted areas in several locations.

- b. Concentrations of radioactive materials in soil on the site exceed current NRC criteria for release for unrestricted use.
  - c. There is evidence that radioactive materials are migrating off the site through groundwater, although no radionuclides other than tritium have been measured in offsite groundwater.  
However, if strontium-90, the concentration of which measured in groundwater onsite exceeds EPA drinking water standards, were to migrate off the site, it is very likely that the resultant concentration offsite would exceed EPA standards for drinking water.
  - d. The lack of a comprehensive sampling program, both on and off the site, has resulted in great uncertainty about the onsite sources of groundwater contamination and the subsurface migration of this contamination off of the site. There are too few monitoring locations to yield a complete characterization of the migration pathways through which contaminated groundwater might leave the site.
5. Decontamination cannot be accomplished without detailed information on the location and concentration of contaminants and on the movement of groundwater. Any delay in characterization, therefore, will delay decontamination. If decontamination is delayed, contaminants may spread through groundwater, making decontamination more difficult and more expensive.
6. The following is a brief chronology of the history of NRC License No. 37-00030-02, which was originally issued to U.S. Radium

Corporation. It includes facts prior to the issuance of the March 16, 1989 NRC Order.

- a. June 30, 1956 - License No. 37-00030-02 was issued and authorized the use of any byproduct material between Atomic Numbers 3 and 83 for research and development, processing, and redistribution.
- b. April 25, 1969 - U.S. Radium submits license renewal application which describes the purposes as being "decontamination and disposal of areas previously used for research, development, and processing under this license" and "distribution to authorized recipients of material of value that are not radioactive scrap."
- c. August 5, 1969 - Amendment No. 36 was issued which modifies the license to limit the authorization to the "decontamination, clean-up, and disposal of equipment and facilities previously used for research, development, and processing under this license."
- d. June 7, 1977 - U.S. Radium submits a license renewal application which describes the purpose as being "decontamination, cleanup and disposal of equipment and facilities previously used for research, development, and processing under this license."
- e. June 9, 1978 - NRC sends a letter to U.S. Radium which requests that the licensee "supplement your application with a detailed report concerning the status of your decontamination efforts. This report should identify those areas which are still contaminated and the types and quantities of contamination in those areas, provide a description of your current program for

surveying those areas and surrounding environs, and outline your plan for completing decontamination of this facility."

- f. October 23, 1978 - U.S. Radium submits a plan for completing certain site characterization and decontamination efforts.
- g. January 25, 1979 - Amendment No 40 issued which requires the licensee to perform the site characterization and decontamination efforts described in the licensee's October 23, 1978 application and to submit by July 1 a report of the status and schedule of work for the twelve month period commencing July 1.
- h. April 11, 1980 - NRC inspection determines that the report and schedule of decontamination operation had not been submitted on July 1, 1979 as required.
- i. August, 1980 - U.S. Radium restructured.
- j. January 21, 1981 - Safety Light Corporation sends letter to NRC which states that, effective November 24, 1980, U.S. Radium Corporation changed its name to Safety Light Corporation.
- k. May 24, 1982 - USR Industries sells Safety Light Corporation to a group of employees.
- l. January 20, 1983 - License Amendment No. 42 issued which, based on the January 21, 1981, letter, changed the name of the licensee from United States Radium Corporation to Safety Light Corporation. At the time Amendment No. 42 was issued, NRC was unaware of the May 24, 1982, sale of the company and unaware of August 1980 restructuring.

- m. March 8, 1983 - NRC inspection determined that there was a change in the ownership of the Safety Light Corporation.
- n. September 22, 1983 - NRC sends a letter to Safety Light Corporation which requests Safety Light Corporation to submit "the details of the recent change in the ownership of the Safety Light Corporation, including the date of the transaction, a discussion of the reorganization which occurred when the name of the licensee changed from U.S. Radium to Safety Light Corporation on November 24, 1980, a description of the current organization of the Safety Light Corporation and a description of who is financially responsible for the ultimate decontamination of the radioactive materials buried on your property. In your reply to this letter, please specifically confirm our understandings and provide a schedule for completing these actions. You are advised that you should also promptly submit a report of the status and schedule for decontamination activities for the 12-month period commencing on July 1, 1983, to the NRC's Materials Licensing Branch in Washington, D.C."
- o. November 11, 1983 - Safety Light Corporation submits a letter to NRC which states that "effective November 24, 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 changes". The letter further stated that USR industries sold Safety Light Corporation to a group of executive officers on May 24, 1982.

- p. June 19 - 20; November 12, 1986 - NRC inspection which concludes that licensee is in violation of 10 C.F.R. § 30.34(b) for transferring license without notifying NRC; and is in violation of its license for failing to decontaminate site as required and for failing to submit report of status and schedule for decontamination.
  - q. April 20, 1988 - NRC letter to Safety Light Corporation, with a copy to USR Industries, which enclosed a Notice of Violation for the violations identified in the 1986 inspection, and which required (1) answers to specific questions about the reorganization of U.S. Radium Corporation, (2) a decommissioning plan for the site, (3) an estimate of the cost of decommissioning and (4) the submission of a decommissioning funding plan.
7. In summary, the U.S. Radium Corporation told the AEC and its successor, the NRC, that it intended to decontaminate the Bloomsburg site in 1969 and 1978. The AEC and NRC informed U.S. Radium Corporation that decontamination was expected in 1969, 1977, 1979, 1980, 1983, 1986, and 1988, prior to the Order in March 1989. In 1980, having been cited for a violation for failure to comply with the requirement to submit a decontamination report and schedule, U.S. Radium Corporation separated the liability of its licensed operation from the assets of the rest of the corporation without notice to the NRC, changed its name in 1981, and, in 1982, transferred that licensed operation without notifying the NRC. As a result of the operation of U.S. Radium and Safety Light, the Bloomsburg site is



contaminated to an unknown degree. There are elevated levels of radioactive material in the drinking water of nearby residences; and the subsurface radioactivity may be spreading.

8. It is my conclusion that there is an immediate need for site radiological characterization because of the known contamination of groundwater on the site, the potential for migration to offsite potable water supplies, and the uncertainties which are caused by the limitation in the currently available monitoring data.

The foregoing and the attached statement of professional qualifications are true and correct to the best of my knowledge and belief.

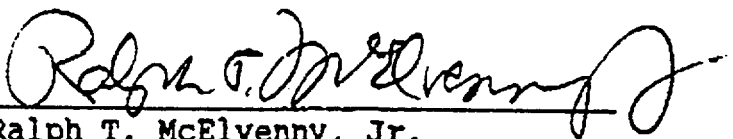
Francis M. Costello

Subscribed and sworn to before  
this \_\_\_\_ day of November, 1989

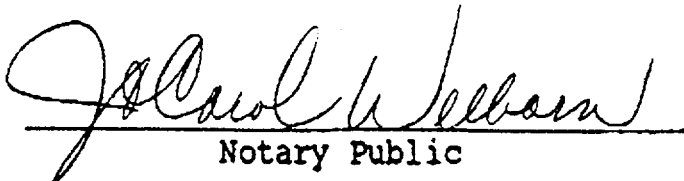
\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

State of Texas )  
County of Harris )

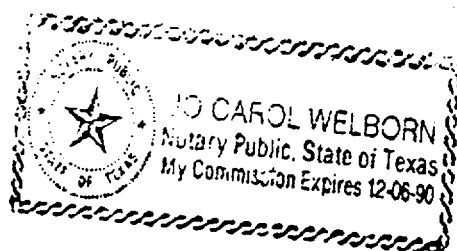
Ralph T. McElvenny, Jr., being duly sworn, deposes and says that he has read the foregoing letter; that to the best of his knowledge and belief, the statements and facts stated therein are true and accurate.

  
Ralph T. McElvenny, Jr.

Subscribed and sworn to before  
me this 20<sup>th</sup> day of September, 1989.

  
Notary Public

My Commission Expires 12-06-90



**ATTACHMENT 8**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

SAFETY LIGHT CORPORATION  
UNITED STATES RADIUM CORPORATION  
USR INDUSTRIES, INC.  
USR LIGHTING, INC.  
USR CHEMICALS, INC.  
USR METALS, INC.  
U.S. NATURAL RESOURCES, INC.  
LIME RIDGE INDUSTRIES, INC.  
METREAL, INC.  
(Bloomsburg Site Decontamination)

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

(ASLBP No. 89-590-01-0M  
and 90-948-01-0M-2)

AFFIDAVIT OF EDWARD Y. SHUM, PhD., AND ROBERT J. STARMER, PhD.

We, Edward Y. Shum and Robert J. Starmer, being duly sworn, depose and state as follows:

1. I, Edward Y. Shum, am employed by the United States Nuclear Regulatory Commission as Senior Environmental Engineer within the Siting Section, Technical Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards. A copy of my professional qualifications is attached.

2. I, Robert J. Starmer, am employed by the United States Nuclear Regulatory Commission as Section Leader of the Siting Section, Technical Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards. A copy of my professional qualifications is attached.


3. I, Edward L. Shum, prepared paragraphs numbers 1, 5, and 6 of this Affidavit.

4. I, Robert J. Starmer, prepared paragraphs numbers 2 and 7 of this Affidavit.

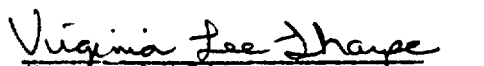
5. The site characterization plan consists of (1) radiological characterization and (2) hydrogeological evaluation. The objective of the radiological characterization is to determine the horizontal and vertical limits and ranges of radioactive contamination and to determine the volume of waste and clean-up cost.

6. The radiological characterization includes site preparation (clearing, gridding, magnetrometry); measurements and sampling; sample analysis and data evaluation. The total cost is estimated by Oak Ridge Associated Universities (NRC's contractor for site survey) to be about \$500,000.

7. The purpose of hydrogeological evaluation is to provide information on groundwater contamination and contaminant transport via groundwater pathway, potentially off-site. The program consists of sampling and analysis of groundwater from existing wells; drilling, sampling and analysis of additional wells; simple modeling; and data evaluation. The analyses include radiological and nonradiological components. The current conceptual model of site hydrology will be evaluated, and predictions of potential contaminant mitigation are to be performed as the basis for planning mitigative actions. The total cost is estimated by NRC staff and Pacific Northwest Lab (NRC's contractor for hydrogeological modeling for low-level waste disposal sites) to be about \$500,000.

  
Edward Y. Shum, PhD.

Subscribed and sworn to before  
this 16th day of November, 1989

  
Notary Public  
My Commission expires: 7/1/90

  
Robert J. Starmer, PhD.

Subscribed and sworn to before  
this 16th day of November, 1989

  
Notary Public  
My Commission expires: 7/1/90

## CURRICULUM VITAE

Edward Y. Shum

Present Appointment(s) - Senior Environmental Engineer - Technical Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

### Work Experience

1973 - Present: Employed by the United States Atomic Energy Commission (now the United States Nuclear Regulatory Commission) in the Division of Nuclear Material Safety and Safeguards. Major work assignment in the Division has been to serve as an environmental project manager of fuel cycle licensing actions, including the licensing of uranium mills, fuel fabrication, and  $UF_6$  conversion facilities and low-level waste facilities. Other major work includes: Member of the task force on uranium enrichment facilities in the United States; member of task force on the implementation of the Environmental Protection Agency radiation standards on nuclear fuel cycle facilities; member of the NRC task force on the use of radioisotope thermoelectric generator in space program; principle author in development in interim soil decontamination criteria covering fuel cycle facilities.

1965-69: Employed by Stanford University as a research chemist on psychodelic drugs.

Education: University of California, Berkeley, B.S., in Chemistry - 1965

Oregon State University - M.S., in Nuclear Chemistry - 1971

Oregon State University - Ph.D., in Nuclear Chemistry - 1973

### Membership and Position in Professional Societies:

Phi Lambda Upsilon - National Honor Chemical Society

Phi Kappa Phi - National Honor Society

Sigma Xi - Full Member - National Honorary Research Society

American Nuclear Society - Full Member

### Consultantships and Committee Memberships:

Member of the Scientific Committee 64, Task Group 5, National Council on Radiation Protection and Measurements (NCRP).

Member of Advisory Group of IAEA on "Models and Radiological Basis for Recommendations on Radionuclide Releases of Regional and World-Wide Interest".

Member of Science Panel of the Committee on Interagency Radiation Research and Policy Coordination (CIRRPC).

Awards: Scholarship at University of California  
Research Assistantship from Atomic Energy Commission and Fellowship from National Institute of Health at Oregon State University  
High Quality Service Award from the Nuclear Regulatory Commission in 1986  
Meritorious Service Award from the Nuclear Regulatory Commission in 1987

ROBERT J. STARMER

PROFESSIONAL SUMMARY

Sixteen years of professional experience in geology, geochemistry and nuclear waste management regulation. Three years as post-doctoral fellow at the Ruhr-University of Bochum studying volcanic rocks and volcanism of the Canary Islands, Spain. Also set up analytical laboratories for whole rock analysis by automated x-ray fluorescence and by atomic absorption spectrometry. Five years teaching a broad spectrum of earth science courses at Adelphi University and study of marine environmental problems of the South shore of Long Island. Eight years with the Nuclear Regulatory Commission as staff for low-level waste disposal facility siting and performance assessment, section leader for geochemistry of waste disposal and uranium recovery operations, section leader, program manager, for the low-level waste management program and currently section leader of the siting section for siting and performance assessment of low-level waste disposal sites and for general geosciences aspects of uranium milltailings operations and remedial actions.

PROFESSIONAL EXPERIENCE

- April 1987 to Present -- Section Leader, Siting Section,  
Technical Branch, Division of Low-Level  
Waste Management and Decommissioning,  
U. S. Nuclear Regulatory Commission
- April 1985 - April 1987 -- Section Leader, Low-Level Waste  
Projects Section, Low-Level Waste and  
Uranium Recovery Projects Branch,  
Division of Waste Management,  
U. S. Nuclear Regulatory Commission
- May 1984 - April 1985 -- Section Leader, Geochemistry Section  
Geotechnical Branch, Division of Waste  
Management, U. S. Nuclear Regulatory  
Commission
- October 1982 - May 1984 -- Geochemist/Geochemistry Team Leader,  
High-Level Waste Technical Development  
Branch, Division of Waste Management,  
U. S. Nuclear Regulatory Commission
- January 1981 - October 1982 -- Project Manager/Earth Sciences,  
Low-Level Waste Licensing Branch,  
Division of Waste Management,  
U. S. Nuclear Regulatory Commission
- September 1975 - January 1981 -- Assistant Professor of Earth  
Sciences, Adelphi University  
Garden City, New York

February 1972 - August 1975 -- Research Associate,  
Ruhr-University of Bochum,  
Bochum, West Germany

#### EDUCATION

The University of Michigan		
Bachelor of Science	Geology	1965
The University of Cincinnati		
Master of Science	Geology	1969
Thesis Subject: Cataclastic Deformation of the Precambrian Basement During Laramide Tectonism, Wyoming		
Doctor of Philosophy	Geology	1972
Dissertation Subject: Petrology and Structural Geology of the Crazy Mountains Dike Swarm, Montana		

#### RECENT PUBLICATIONS

- 1988 Performance Assessment Strategy for Low-Level Waste Disposal, Proceedings of the 10th Annual DOE Low-Level Waste Conference, Denver
- 1988 Regulatory Perspective on Geomorphic Stability at Waste Disposal Sites During Extreme Rainfall Events, EOS, V. 69, p. 351 (with others)
- 1987 NRC Low-Level Waste Management Goals 1987-1993, Proceedings of the 8th Annual DOE Low-Level Waste Conference, Denver
- 1986 Future Directions for the U. S. Nuclear Regulatory Commission's Low-Level Waste Management Program, Proceedings of the 7th Annual DOE Low-Level Waste Conference, Las Vegas
- 1983 NRC-Funded Studies on Waste Disposal in Partially Saturated Media, w/D. L. Siefkin, in Role of the Unsaturated Zone in Radioactive and Hazardous Waste Disposal, J. W. Mercer, ed., Ann Arbor Science
- 1982 Site Suitability, Selection and Characterization: Branch Technical Position--Low-Level Waste Licensing Branch, (with others), U. S. Nuclear Regulatory Commission, NUREG-0902



**ATTACHMENT 9**

## USR INDUSTRIES, INC.

550 POST OAK BOULEVARD / SUITE 545 / HOUSTON, TEXAS 77027

(713) 622-9171

September 19, 1989

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

RE: In the Matter of Safety Light Corp., et al.  
Docket Nos. 030-05980, 05981, 05982, 08335  
and 08444

Dear Mr. Russell:

This letter supplements the Answer and Request for Hearing ("Answer") on behalf of USR Industries, Inc. USR Lighting, Inc., USR Chemicals, Inc., USR Metals, Inc. and U.S. Natural Resources, Inc. ("These Respondents") filed on September 8, 1989 to the August 21, 1989 Order Modifying Licenses ("Order"), and requests extension of time in which to make further response thereto.

These Respondents require additional time to answer part of the Order for the following reasons:

(1) To complete arrangements to retain counsel to represent These Respondents in the above captioned matter ("Matter"), as the firm of Hannoeh Weisman just days ago withdrew due to inability of These Respondents to pay Hannoeh Weisman's substantial legal fees incurred primarily for this Matter and for offensive litigation to determine insurance defense and liability issues;

(2) To insure that International Technology Corporation ("IT Corporation"), Washington, D.C., an

independent technical firm of recognized expertise earlier retained by Hannotch Weisman on behalf of These Respondents and Safety Light Corporation ("Safety Light"), will agree to payment arrangements from a trust fund or otherwise for work performed in connection with the Bloomsburg, Pennsylvania site which is the subject of this Matter;

(3) To settle payment arrangements for prospective charges by IT Corporation for future technical evaluation and advice respecting the site. (Charges presented for work done by IT Corporation in response to this Matter total \$63,001.49, of which \$27,157.11 and \$22,860.98 were accumulated during April and July 1989, respectively);

(4) To negotiate on an emergency basis with representatives of five primary insurance companies which provided assistance of over \$2,000,000 pursuant to a Defense Agreement executed in 1985 between such insurers, Safety Light and These Respondents;

(5) To determine whether and to what extent Safety Light will agree to participate in costs including preparation of documents and work demanded in the Order, and for the costs of ongoing litigation to determine the duty to defend and coverage under the underlying insurance policies; and

(6) To complete the sale by These Respondents of interests in a limited partnership which owns a small commercial office building in Houston, Texas so as to provide immediate corporate liquidity.

Through Hannotch Weisman, These Respondents previously filed the Answer, which addresses most of the issues raised by the Order. A supplement to that Answer ("Supplement") was

drafted by Hannoch Weisman prior to that firm's withdrawal as counsel for These Respondents. These Respondents have redrafted the Supplement and desire that the amended Supplement be reviewed by counsel prior to filing. At the same time, These Respondents believe that, if emergency funding arrangements can be completed promptly, Hannoch Weisman may be willing to continue to represent These Respondents in the offensive litigation against the insurance companies. (While These Respondents paid \$20,000 to Hannoch Weisman during May 1989 and \$16,500 to Hannoch Weisman on June 30, 1989, in the interim the firm delivered additional bills and, as of July 31, 1989 These Respondents owed the firm \$67,857.19.) The need to retain counsel is of utmost concern to These Respondents, especially as These Respondents anticipate that Safety Light may soon be rendered unable to assist with partial reimbursement for the costs of the insurance litigation.

These Respondents are cooperating fully with the NRC. However, as public companies they also have responsibilities to persons including employees, customers, vendors, stockholders, outside financial institutions and with respect to other environmental litigation arising out of alleged occurrences dating back to the era of World War I. These Respondents respectfully submit that NRC demands that-without assistance from insurers - These Respondents pay for a site characterization plan which the NRC estimates will cost approximately \$1,000,000 (plus or minus up to \$300,000) are not realistic. These Respondents are now and throughout their corporate histories have been rather marginal companies. While very small, These Respondents provide meaningful employment in a rural area of Pennsylvania, and are operating profitably on a monthly cash flow basis (before legal fees). Like tens of thousands of other small companies

across the country, These Respondents depend upon liability insurance to cover potentially ruinous occurrences.

These Respondents have sustained losses from operations for many years and have a consolidated net worth of only approximately \$1.6 million. Facing severe difficulties in connection with this Matter, These Respondents intend to complete arrangements respecting sale of the limited partnership interest in the small Houston building as soon as possible.

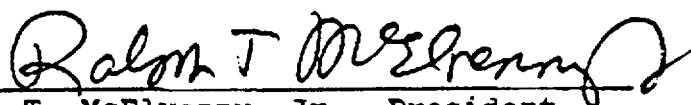
Intense efforts are being made to deal simultaneously with the legal and technical expenses suddenly brought on in response to the Order. These Respondents are in negotiation with primary insurance carriers which executed the 1985 Defense Agreement. Unfortunately, factors including the extreme time limits promulgated in the NRC Orders to date together with the extreme demands for technical evaluation and expenditures have disrupted orderly negotiations with the insurance carriers. These Respondents request that the NRC take notice that the negotiations which led to the successful Defense Agreement executed in 1985 required many months of work, careful application of the special legal expertise of Hannoeh Weisman and a good measure of negotiated "give and take." It is submitted that immediate negotiations with representatives of the insurers (particularly Guy Cellucci, Esq. of White & Williams, representing the Insurance Company of North America) are necessary in order to avoid the virtual foreclosure of this vital source of potential assistance.

While These Respondents realize that this request falls near the deadline for response to the Order, Hannoeh Weisman has only recently withdrawn and direct demands from IT Corporation have been asserted only today. Although currently without counsel, these Respondents are making their

best efforts to respond to the Order on a timely basis. In order to retain new counsel to complete the Answer, to deal specifically with arrangements to establish a trust agreement and to move forward with substantive emergency negotiation as summarized above, These Respondents hereby request a sixty day extension of the filing dates set forth in the Order.

These Respondents desire and intend to conduct relationships with the NRC in a cooperative and realistic manner so as to pursue early and satisfactory resolution of the issues raised by the Order. If this letter is deficient in any manner so as to cause the NRC to determine that These Respondents should proceed without counsel please so advise the undersigned by FAX at your earliest convenience c/o (713) 963-8751.

Very truly yours,



Ralph T. McElvenny, Jr., President  
For: USR Industries, Inc., USR  
Lighting, Inc., USR Chemicals, Inc.,  
USR Metals, Inc. and U.S. Natural  
Resources, Inc.

ATTACHMENT 10

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

PINNACLE PETROLEUM, INC.,  
a Delaware corporation,

Plaintiff,

v.

NUCLEAR REGULATORY COMMISSION,  
an agency of the United States  
Government ("NRC"); LANDO W.  
ZECH, JR., Chairman of the NRC  
KENNETH M. CARR, Commissioner  
of the NRC; JAMES R. CURTISS,  
Commissioner of the NRC;  
THOMAS M. ROBERTS, Commissioner  
of the NRC; and KENNETH C.  
ROGERS, Commissioner of the NRC,

Defendants.

C. A. No. 58-184

FILED  
APR 14 4 32 PM '89  
CLERK U.S. DISTRICT COURT  
DISTRICT OF DELAWARE

VERIFIED COMPLAINT  
(For Declaratory Judgment And Injunction)

Plaintiff Pinnacle Petroleum, Inc. ("Pinnacle  
Petroleum"), for its Complaint avers as follows:

Introduction

This is an action for declaratory judgment and for an  
injunction to prevent defendants from exceeding their juris-  
diction by attempting to make Pinnacle Petroleum a respondent  
in certain license proceedings of the Nuclear Regulatory Com-  
mission and by attempting to make Pinnacle Petroleum respon-  
sible for clean up of an allegedly contaminated site in North-  
eastern Pennsylvania in which Pinnacle Petroleum has never had



any interest or involvement and to which it is a complete stranger. Indeed, Pinnacle Petroleum has never had any relationship whatever with the site and had no relationship with any entity involved in the matter until more than three years after the pertinent events.

#### Jurisdiction and Venue

1. Pinnacle Petroleum is a corporation incorporated and residing in the State of Delaware.

2. Defendant Nuclear Regulatory Commission is an agency of the United States of America, established pursuant to 42 U.S.C. § 5841, whose duties include licensing "byproduct materials," as defined at 42 U.S.C. § 2014(e).

3. Defendants Chairman Lando W. Zech, Jr., Commissioner Kenneth M. Carr, Commissioner James R. Curtiss, Commissioner Thomas M. Roberts and Commissioner Kenneth C. Rogers are Commissioners of the Nuclear Regulatory Commission acting in their official capacities and pursuant to color of legal authority. (All defendants are jointly referred to herein as "NRC".)

4. Jurisdiction in this Court exists pursuant to 28 U.S.C. §§ 1331 and 2201.

5. Venue in this Court exists pursuant to 28 U.S.C. § 1391(e)(4).

### General Averments

6. Pinnacle Petroleum was originally incorporated in Colorado in 1980 and made its initial public offering of stock in 1981. It was reincorporated in Delaware in 1983.

7. Pinnacle Petroleum is a corporation incorporated for the primary purpose of engaging in oil and gas exploration and production.

8. Because of the industry conditions following the severe decline of the independent oil and gas industry, Pinnacle Petroleum determined to expand primarily by using its stock to acquire other small independent oil and gas exploration and production companies. To the extent feasible, Pinnacle Petroleum has issued shares of its stock for all or part of the consideration paid to make such purchases. This developmental strategy and business plan was publicly announced by Pinnacle Petroleum in 1983, and has been followed since that time. This business plan is referred to generally as the Plan of Corporate Development.

9. Pinnacle Petroleum is a publicly traded corporation with approximately 3,000 shareholders. Pinnacle Petroleum's stock is quoted on the National Association of Security Dealers, Inc. Automated Quotation (NASDAQ) System. Since its initial public offering in 1981, it has made its filings with the Securities and Exchange Commission and has prepared and filed its own audited financial statements.

10. In October 1983, in a negotiated arms-length purchase transaction, USR Industries, Inc. bought, paid for and was issued shares of Pinnacle Petroleum stock which amounted to 64% of Pinnacle Petroleum's then total outstanding stock. Since 1983, the issuance of additional corporate stock by Pinnacle Petroleum in connection with new acquisition and merger transactions pursuant to its Plan of Corporate Development, together with sales by USR Industries from time to time of its Pinnacle Petroleum stock, has reduced USR Industries' percentage of ownership of Pinnacle Petroleum to the point where it presently owns only 25% of the outstanding Pinnacle Petroleum stock. The remainder of the 3,000 shareholders own the balance of the 75% of Pinnacle Petroleum's stock. The President and Chief Executive Officer of USR Industries also serves as President and Chief Executive Officer of Pinnacle Petroleum, although none of the other officers and directors of Pinnacle Petroleum have any relationship to USR Industries or to any of the other corporate entities enumerated in the NRC Safety Light Proceeding described hereafter.

11. As part of Pinnacle Petroleum's Plan of Corporate Development, in September 1985, Pinnacle Petroleum formed a subsidiary, PinReg Corporation which acquired 50.1% of the stock of Regal Petroleum, Ltd. ("Regal"), a publicly traded NASDAQ company. Pinnacle Petroleum recently decided to seek the approval of the disinterested director of Regal to effect a merger or consolidation with Regal through the issuance of

Pinnacle Petroleum stock for the remaining 49% of Regal shares. During February and March 1989, in an effort to complete this plan, the Regal board of directors hired an independent investment banking firm to evaluate the merger of Pinnacle Petroleum and Regal and to evaluate the fairness of the exchange ratio for the merger. The Regal board of directors has met to evaluate the merger, has received the advice of the independent investment banking firm and has instructed counsel to prepare materials to submit to the Securities and Exchange Commission necessary to effectuate the merger. The preparation of those materials was virtually completed but, upon the issuance of the Safety Light Order, described hereafter, all further steps toward completion of the merger were halted.

12. A corporation owned jointly by Pinnacle Petroleum and Regal, Golden Holding Corporation, recently acquired in negotiated and market transactions more than 28% of another publicly traded NASDAQ corporation, Golden Oil Company ("Golden Oil"). Pinnacle Petroleum has been actively engaged in discussions aimed at acquiring the remainder of the outstanding stock of Golden Oil and merging Golden Oil into Pinnacle Petroleum. These discussions are active and sensitive, and have had to be discontinued with the issuance of the Safety Light Order.

### The Safety Light Proceeding

13. In a proceeding entitled "In The Matter of Safety Light Corporation, et al.", Docket Nos. 030-05980, 030-05982, 030-05981, 030-08335, and 030-08444" (the "Safety Light" Proceeding"), on March 16, 1989, the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support of the NRC issued an "Order Modifying Licenses (Effective Immediately) And Demand For Information" (the "Safety Light Order"), a copy of which is attached hereto as Exhibit A.

14. The Safety Light Order requires, inter alia, that a number of companies, including Pinnacle Petroleum, provide adequate resources to evaluate, plan and implement decontamination efforts for radiological materials at a facility located in Bloomsburg, Pennsylvania ("the Bloomsburg facility").

15. The only specific reference to Pinnacle Petroleum in the entire Safety Light Order states at page 4, without any factual basis, that "Pinnacle Petroleum, Inc. is apparently another subsidiary of [USR] Industries [Inc.]." That Order also states, at page 5, that ". . . [Pinnacle Petroleum] is, and remains, jointly and severally liable and responsible for the cleanup of the Bloomsburg facility and for the conduct of all other activities on that site that require an NRC license."

16. The Safety Light Order is not, at this time, a final order of the NRC and is not subject to appeal to a circuit court of appeals. As set out below, the mere existence of the Safety Light Order creates substantial, irreparable injury to Pinnacle Petroleum under circumstances in which Pinnacle Petroleum is patently beyond the jurisdiction of the NRC.

17. The Court should exercise its discretion and decline to apply the judicially created doctrine of exhaustion of administrative remedies. That doctrine, which would require Pinnacle Petroleum to litigate completely the NRC's jurisdiction before the NRC, should not apply because, as set out hereafter, the NRC clearly does not have any jurisdiction; the delay created by having to litigate this issue before the NRC would cause Pinnacle Petroleum irreparable damage which could threaten Pinnacle Petroleum's corporate existence and for which there is no adequate remedy; and the NRC has no special expertise to bring to bear on the question of Pinnacle Petroleum's corporate relationship with other corporations -- the central issue determining the NRC's jurisdiction.

#### NRC Has No Jurisdiction Over Pinnacle Petroleum

18. Even assuming, without in any way conceding, the truth of every statement in the Safety Light Order as to the relationships of all corporate entities other than Pinnacle Petroleum identified in the Safety Light Order (the "remaining Safety Light Corporations") among themselves and with the NRC,

any exercise or attempted exercise of jurisdiction by the NRC over Pinnacle Petroleum would be in excess of its statutory authority and an abuse of discretion.

19. The NRC is authorized by the Atomic Energy Act, 42 U.S.C. § 2111, to issue licenses "to use byproduct material for research or development purposes, for medical therapy, industrial uses, agricultural uses, or such other useful applications as may be developed." 42 U.S.C. § 2234 provides that, "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 the transfer of control of any licensee to any person . . . ." "Person" is defined in 42 U.S.C. § 2014(s) to include a corporation and "any legal successor, representative, agent, or agency" of that corporation.

20. Pinnacle Petroleum is not now and never has been (1) a licensee to use "byproduct material" for any purpose whatever or (2) the transferee or assignee of such a license or (3) the legal successor to, or representative, agent or agency of any licensee, transferee or assignee of such a license. In addition, Pinnacle Petroleum is not now and never has been involved or connected with the Bloomsburg facility as an owner, tenant, user, disposer of "byproduct material," or in any other way, and is not now and never has been the legal successor to or representative, agent or agency of any corpor-

ation, or other entity, involved or connected with the Bloomsburg facility.

21. The reorganization of many of the remaining Safety Light Corporations referred to in the Safety Light Order at Section 3, pages 3 and 4, which forms the basis for the Safety Light Order is stated to have taken place in 1980. Pinnacle Petroleum was not involved directly or indirectly in the planning, implementation or in any other way with that reorganization or with any efforts or actions allegedly taken by any of the remaining Safety Light Corporations pursuant to or as part of that reorganization. Not until more than three years following that reorganization was a portion of Pinnacle Petroleum's stock purchased by one of the remaining Safety Light Corporations.

22. The only relationships that have ever existed between Pinnacle Petroleum and any of the remaining Safety Light Corporations are the existence of a common chief executive between Pinnacle Petroleum and USR Industries, Inc., and the holding by USR Industries of some of Pinnacle Petroleum's stock as set forth in paragraph 10, above.

23. Pinnacle Petroleum has never purchased, received or been the transferee or assignee of any assets, including NRC licenses, from any of the remaining Safety Light Corporations, other than having been paid the cash purchase price when it sold some of its stock to USR Industries in 1983.



Pinnacle Petroleum is Suffering Irreparable Injury

24. If the declaratory and injunctive relief sought in this Complaint is not granted, Pinnacle Petroleum will suffer irreparable damage which could seriously threaten its continued existence and for which there is no remedy at law.

25. The Safety Light Order makes it apparent that there has been no determination at this time as to the nature or degree of contamination of the Bloomsburg facility or the time or expense that would be required to decontaminate the facility to the NRC's satisfaction. Therefore, the amount of time, effort and expense needed to evaluate, establish a plan for and decontaminate the facility is both indeterminate and has the clear potential to be extremely large.

26. The existence of the Safety Light Order, creating the possibility that Pinnacle Petroleum might be improperly held responsible for decontamination of a site with which it has never been involved, is a material development that would have to be disclosed in any proposed merger transaction. The disclosure of an unidentified and potentially unlimited exposure would, as a practical matter, eliminate any possibility of effecting any further mergers or acquisitions for so long as this cloud exists, including the mergers with Regal and Golden Oil. It also would probably preclude Pinnacle Petroleum from borrowing money from banks or lending institutions or from issuing stock to raise funds or to use in connection with any purchase. These effects, together with

disclosure of the Safety Light Order itself, are also likely to have a significant harmful effect on the market price of Pinnacle Petroleum's stock and on all of the shareholders of Pinnacle Petroleum.

27. Pinnacle Petroleum believes that its prospects for success, if it can effectuate mergers with Regal and Golden Oil, are excellent. Substantial duplicative administrative expenses and expenses in connection with the operation of separate publicly held corporations can be saved immediately. Merger would also allow for consolidation of and more efficient operations, for additional acquisition possibilities, and the ability generally to generate positive cash flow rather than to lose money. However, Pinnacle Petroleum is presently losing money at the rate of almost \$2,000 a day and will continue to do so until and unless it can proceed with the planned mergers. If Pinnacle Petroleum cannot effectuate those mergers, which, but for the Safety Light order, it believes it can immediately complete, Pinnacle Petroleum will have to dispose of significant assets probably under distress sale conditions, and its existence would be seriously threatened.

28. Pinnacle Petroleum and its public shareholders have no plain, speedy or adequate remedy at law for these injuries. The immediate loss of opportunities arising from the inability to complete the planned mergers, which are necessary so that Pinnacle Petroleum can be a viable company,

is neither measurable nor compensable in dollars. Pinnacle Petroleum will continue to lose substantial sums of money and its ability to complete mergers upon which it has already spent and invested considerable sums of money will remain paralyzed. Pinnacle Petroleum cannot sue the NRC for these damages caused by the cloud which has been wrongfully placed upon Pinnacle Petroleum's activities because the NRC is protected against a damage action by the doctrine of governmental immunity.

The NRC Possesses No Special Expertise

29. The NRC has no special expertise to which this Court should defer with respect to the determinative issue affecting the NRC's jurisdiction over Pinnacle Petroleum, namely, whether Pinnacle Petroleum is a legal successor to a licensee, or a transferee or assignee of a license. Indeed, if there is any such special expertise, it resides in this Court. The determination to be made by the Court has nothing to do with atomic energy or difficult nuclear regulatory issues. It is simply a straightforward question of corporate structure.

FIRST CLAIM FOR RELIEF  
(For Declaratory Judgment)

30. Pinnacle Petroleum incorporates the allegations of Paragraphs 1 through 29, above, as though set forth in full herein.

31. The nature of the legal relations between Pinnacle Petroleum and a licensee or transferee or assignee of a license and the consequent determination as to whether the NRC is acting beyond its jurisdiction and in abuse of its discretion is an actual controversy within the jurisdiction of this Court.

WHEREFORE, Pinnacle Petroleum prays, pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure, that the Court enter a declaratory judgment that Pinnacle Petroleum is not a legal successor of USSR Industries and that any attempted exercise of jurisdiction over Pinnacle Petroleum by the NRC in the Safety Light Proceeding is beyond its jurisdiction and an abuse of discretion; and that Pinnacle Petroleum be awarded its costs, attorneys fees and any other relief the Court deems proper.

SECOND CLAIM FOR RELIEF  
(For Injunction)

32. Pinnacle Petroleum incorporates the allegations of Paragraphs 1 through 29 and 31, above, as though set forth in full herein.

WHEREFORE, Pinnacle Petroleum prays, pursuant to 28 U.S.C. § 2202 and Rule 65 of the Federal Rules of Civil Procedure, that the Court enter a preliminary and permanent injunction against the exercise or attempted exercise of jurisdiction over Pinnacle Petroleum by the NRC in the Safety Light Proceeding; and that Pinnacle Petroleum be awarded its costs, attorneys fees and any other relief the Court deems proper.

MORRIS, NICHOLS, ARSHT & TUNNELL

*Donald E. Reid*

Martin P. Tully  
Donald E. Reid  
1105 N. Market Street  
P.O. Box 1347  
Wilmington, DE 19899  
(302) 658-9200  
Attorneys for Plaintiff  
Pinnacle Petroleum, Inc.

OF COUNSEL:

DAVIS, GRAHAM & STUBBS  
Richard P. Holme  
M. Roy Goldberg  
1200 19th Street, N.W.  
Suite 500  
Washington, DC 20036  
(202) 822-8660

April 14, 1989

VERIFICATION

State of Texas                                 )  
                                                      )  
County of \_\_\_\_\_)                 ss:

I, Ralph T. McElvenny, Jr., being first duly sworn,  
do depose and state as follows:

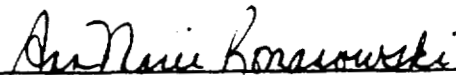
1. Since October, 1983, I have been the President and Chief Executive Officer of Pinnacle Petroleum, Inc.; since 1979, I have served as President and Chief Executive Officer of USR Industries, Inc.; since December, 1985 I have served as President and Chief Executive Officer of Regal Petroleum, Ltd.; and since October, 1988 I have served as President and a Director of Golden Oil Holding Corporation and as a Director of Golden Oil Company.

2. I have read the foregoing "Verified Complaint (For Declaratory Judgment and Injunction)."

3. I have personal knowledge of the facts set forth in the following paragraphs and they are true: 1, 6 - 15 and 20 - 28. The remaining paragraphs are true to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
Ralph T. McElvenny, Jr.

Subscribed and sworn to before me this 14<sup>th</sup> day of  
April 1989.

  
\_\_\_\_\_  
Notary Public

My Commission expires: 12/14/89



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

NOV 15 1989

Helen F. Hoyt, Chairman  
Administrative Judge  
Atomic Safety and Licensing Board  
Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. Oscar H. Paris  
Administrative Judge  
Atomic Safety and Licensing Board  
Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Frederick J. Shon  
Administrative Judge  
Atomic Safety and Licensing Board  
Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

In the Matter of  
SAFETY LIGHT CORPORATION, UNITED STATES RADIUM CORPORATION  
USR INDUSTRIES, INC., USR LIGHTING, INC., USR CHEMICALS, INC.  
USR METALS, INC., USR NATURAL RESOURCES, INC.,  
LIME RIDGE INDUSTRIES, INC., AND METREAL, INC.  
(Bloomsburg PA. Site Decontamination)  
Docket Nos.: 30-05980, 30-5981, 30-05982,  
30-08335, 30-08444, ASLBP Nos. 89-590-01-OM and 90-598-01-OM-2

Dear Administrative Judges:

At the prehearing conference in the above-captioned proceeding held on October 19, 1989, the Board requested the staff to deliver to the Board, and serve on the parties, copies of the five licenses involved in this case. On November 3, 1989, as described in a letter from staff counsel to the Board, the staff responded to that request. The staff had made a preliminary determination that any licensing documents dated prior to 1979 made no reference to any licensing transaction that might be relevant to this proceeding. On its review of the files, however, the staff has identified documents dated in 1978 and 1979 that are incorporated by reference into License No. 37-00030-02 that pertain to planned decontamination activities at the Bloomsburg site and are relevant to the proceedings in this case. Please find enclosed copies of those documents. The staff has also identified an application for an amendment dated April 25, 1969, that may be relevant. The relevant portion of that application is enclosed. (The NRC issued Amendment No. 36 on August 5, 1969, in response to this application.)

- 2 -

The staff had also stated in its November 3 letter that it would serve copies of over-sized drawings on the parties by November 13, 1989. The staff encountered difficulty in copying those drawings and they are being served today in separate containers. The staff apologizes for any inconvenience this may have caused.

Sincerely,

*Robert M. Weisman*

Robert M. Weisman  
Counsel for the NRC Staff

cc: Service List

w/encl.: Helen Hoyt, Esq.  
Dr. Oscar H. Paris  
Frederick J. Shon  
D. Jane Drennan, Esq.  
G. Charnoff, Esq.



NRC's motion for delay until Nov. 16,  
filing of its brief re USR stay of the  
Aug. 21 order. The delay was granted and  
the brief was filed on Nov. 16 (copy  
previously provided to you).

JHJ

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

November 8, 1989

*Jayner*

W. Russell  
T. Martin  
M. Knapp  
D. Holody  
K. Smith  
~~J. Lieberman~~ 7H  
~~R. Cunningham~~ 6H  
~~L. Chandler~~ 15  
~~B. Weisman~~ 15  
~~R. Bangart~~ SE  
L. Bettenhauser  
J. Kinneman  
F. Costello  
M. Miller  
L/N 37-00030-02,  
-08, -09G -  
K. Abraham

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

SAFETY LIGHT CORPORATION  
UNITED STATES RADIUM CORPORATION  
USR INDUSTRIES, INC.  
USR LIGHTING, INC.  
USR CHEMICALS, INC.  
USR METALS, INC.  
U.S. NATURAL RESOURCES, INC.  
LIME RIDGE INDUSTRIES, INC.  
METREAL, INC.  
(Bloomsburg Site Decontamination)

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

(ASLBP No. 89-590-01-OM)

NRC STAFF MOTION FOR EXTENSION  
OF TIME IN WHICH TO FILE BRIEF

INTRODUCTION

During a prehearing conference on October 27, 1989, the Licensing Board set a schedule for the submission of pleadings in connection with the USR companies request for a stay of the Commission's August 21, 1989 Order. Under the schedule, the USR companies were to file their request for a stay on November 6, 1989 and the Staff was to respond on November 9, 1989. The staff, in order to respond to the USR companies' extensive pleading, will have to prepare at least one affidavit to address the USR companies' factual assertions in addition to addressing the arguments raised in the pleading. Under the time constraints imposed by the schedule the staff does not believe that adequate time exists to provide the attention that this pleading deserves.

In addition, beginning on Thursday, November 2, 1989, the staff's fifteen year old word processing equipment began to suffer disk failures;

given the unreliability of the system, it would have been very difficult for the staff to submit a timely response on November 9, 1989, even if adequate time was otherwise available.

Counsel for the USR companies and Safety Light have no objection to this motion provided that, while the staff reserves its right to object to the stay entered at the Prehearing Conference held on Friday, October 27, 1989, the staff does not object to that stay continuing until the staff files its brief.

MOTION

Wherefore, the NRC staff requests the Licensing Board to extend the time for filing the NRC staff's brief by seven days until November 16, 1989. 1/

Respectfully submitted,

*Robert M. Weisman*

Robert M. Weisman  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 8th day of November, 1989.

---

1/ Please note that the normal time for responding to a motion for a stay is ten days. 10 C.F.R. § 2.788(d) (1989). Granting the staff's request would result in the staff having ten days to file its brief.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

SAFETY LIGHT CORPORATION  
UNITED STATES RADIUM CORPORATION  
USR INDUSTRIES, INC.  
USR LIGHTING, INC.  
USR CHEMICALS, INC.  
USR METALS, INC.  
U.S. NATURAL RESOURCES, INC.  
LIME RIDGE INDUSTRIES, INC.  
METREAL, INC.  
(Bloomsburg Site Decontamination)

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

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF MOTION FOR EXTENSION OF TIME IN WHICH TO FILE BRIEF" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, or telecopied as indicated by double asterisk this 8th day of November, 1989:

Helen Hoyt, Esq.\*\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. Oscar H. Paris\*\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Frederick J. Shon\*\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Atomic Safety and Licensing Board  
Panel (1)\*  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Atomic Safety and Licensing Appeal  
Panel (5)\*  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Adjudicatory File (2)\*  
Atomic Safety and Licensing Board  
Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Office of the Secretary(2)\*  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
Attn: Docketing and Service Section

Mr. William T. Russell  
Regional Administrator  
U.S. Nuclear Regulatory Commission  
475 Allendale Road  
King of Prussia, PA 19406

Mr. Ralph T. McElvenny  
USR Industries, Inc.  
550 Post Oak Blvd.  
Suite 550  
Houston, TX 77027

Gerald Charnoff, Esq.\*\*  
Shaw, Pittman, Potts & Trowbridge  
2300 N. Street, N.W.  
Washington, DC 20037

D. Jane Drennan, Esq.\*\*  
Wunder, Ryan, Cannon & Thelen  
1615 L. St., N.W. Suite 650  
Washington, D.C. 20036

Robert M. Weisman  
Robert M. Weisman  
Counsel for NRC Staff

Weisman's argument to the Safety Light/USR  
ASLB on ~~the~~ issues related to the Board's granting  
of a stay to the 8/21/89 Order. Concludes that:

November 6, 1989

1. Board may consider USR's request for stay;
2. The "stay" granted by the Board during the 10/27/89 conference call should be vacated pending the Board's evaluation of the arguments submitted by USR and the staff.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )

SAFETY LIGHT CORPORATION )  
UNITED STATES RADIUM CORPORATION )  
USR INDUSTRIES, INC. )  
USR LIGHTING, INC. )  
USR CHEMICALS, INC. )  
USR METALS, INC. )  
USR NATURAL RESOURCES, INC. )  
LIME RIDGE INDUSTRIES, INC. )  
METREAL, INC. )  
(Bloomsburg Site Decontamination) )

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

(ASLBP No. 89-590-01-OM)  
and 90-598-01-OM-2)

W. Russell  
T. Martin  
M. Knapp  
D. Holody  
K. Smith  
~~J. Lieberman 7H5~~  
~~R. Cunningham 6H3~~  
~~L. Chandler 15B18~~  
~~B. Weisman 15B18~~  
~~R. Bangart 5E4~~  
L. Bettenhausen  
J. Kinneman  
F. Costello  
M. Miller  
L/N 37-00030-02, -071  
-08, -09G, -10G  
K. Abraham

Note: complete  
package not included.  
Pls. contact Jim  
Jaeger for enclosure  
to the brief. (However,  
copy of whole pkg. provided  
to Karla Smith.)

NRC STAFF'S BRIEF ON BOARD AUTHORITY TO CONSIDER STAY

I. INTRODUCTION

During a telephone prehearing conference held on October 27, 1989,  
the Atomic Safety and Licensing Board (Licensing Board) granted the  
request of USR Industries, Inc., USR Lighting, Inc., USR Chemicals, Inc.,  
USR Metals, Inc., and USR Natural Resources, Inc. (the USR companies), for  
a stay of the Order Modifying Licenses (Effective Immediately) issued by  
the Nuclear Regulatory Commission (NRC or Commission) on August 21, 1989,  
and of the Order Modifying Licenses (Effective Immediately) and Demand for  
Information issued by the NRC on March 16, 1989, which are the subjects of  
this proceeding. The Licensing Board issued the stay pending the sub-  
mission of briefs on the question of whether the Board has authority to  
stay the immediate effectiveness of those orders, and, if so, whether a  
stay is warranted at this time. For the reasons set forth below, the  
Licensing Board has the authority to stay the immediate effectiveness of

both orders upon a determination that the factors set forth in Virginia Jobbers <sup>1/</sup> as codified in 10 C.F.R. § 2.788 weigh in favor of such action.

## II. ISSUES

The Licensing Board raises two issues that will be addressed below:

- 1) Does the Licensing Board have authority to stay an enforcement order issued by the NRC staff that is immediately effective?
- 2) If so, what standards must the Licensing Board apply to determine whether a stay is warranted?

## III. BACKGROUND

On March 16, 1989, the NRC staff issued an Order Modifying Licenses (Effective Immediately) and Demand for Information to United States Radium Corporation, Safety Light Corporation, USR Industries, Inc., and their subsidiaries and successors (the Corporations). Both Safety Light and the USR companies requested hearings on this order. The Commission's Secretary, pursuant to 10 C.F.R. § 2.772(j) (1989), referred both those requests to the Atomic Safety and Licensing Board Panel and this Board was designated to consider these matters.

On August 21, 1989, the NRC staff issued a further Order Modifying Licenses (Effective Immediately) to the Corporations to assure that the

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<sup>1/</sup> Virginia Petroleum Jobbers Ass'n v. Federal Power Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958).

Corporations would make available funds adequate to comply with the March Order. Both Safety Light and the USSR companies requested hearings on this Order. The Commission's Secretary referred both requests for a hearing on the August Order to the Atomic Safety and Licensing Board Panel.

Additionally, the USSR companies filed a Petition for Review of the August Order in the United States Court of Appeals for the District of Columbia Circuit. 2/

On October 19, 1989, the Board held a prehearing conference so that the parties could apprise the Board of the issues remaining in the case and for the Board to establish procedures for the proceeding in light of the issues. On October 24, 1989, the Board held a second prehearing conference by telephone in which a schedule was set for the parties to submit briefs in connection with the stay request raised by the USSR companies, 3/ and in

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2/ Petition for Review, October 18, 1989.

3/ Prehearing Conference Transcript, at 89, 95-99 (October 24, 1989). During September and October, 1989, the NRC staff granted Safety Light's requests to extend the time for Safety Light to comply with the August 21, 1989 Order. (See letters from Safety Light to the NRC dated September 8, 18, and 19, 1989, and responses of the NRC to Safety Light, dated September 11 and 21, 1989, enclosed as Appendix A.) Safety Light's requests to extend the time for compliance were coupled with substantial efforts to comply with the Order. While the USSR companies also requested extensions of time, they made no representation to the staff that they would make any attempt to comply with the August order. (See letters from the USSR companies to the NRC dated September 19 and 22, 1989, and the NRC responses to those letters dated September 21 and October 11, 1989, enclosed as Appendix B.) In fact, other than an offer to set up a trust similar to a trust being developed by Safety Light and to make an initial payment to fund such a trust, the USSR companies have made no independent effort to comply with the August Order.

which it temporarily stayed the effect of the orders, pending the Board's receipt of briefs on the stay issue. <sup>4/</sup>

#### IV. DISCUSSION

A. The Licensing Board has authority to consider the USR companies' request for a stay.

The Commission's Rules of Practice state that "[a]n atomic safety and licensing board shall have duties and may exercise the powers of a

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(Footnote continued from previous page)

It would appear from statements made by the Licensing Board members during the two prehearing conferences that the Licensing Board believes that the treatment being accorded Safety Light and the USR companies is unreasonably disparate. The staff notes that both the August and March orders hold Safety Light and the USR companies jointly and severally responsible for the site characterization and ultimate decontamination of the site and that the staff has not apportioned responsibility or financial liability between Safety Light and the USR companies. As will be more fully developed in the staff's response to the USR companies' request for a stay, the staff does have a basis for treating the two parties differently. Initially, the staff notes that, although it has extended some of the deadlines set forth in the August Order, it has not suspended Safety Light's obligation to comply with the terms of either order, but, in light of Safety Light's substantial efforts to comply, has attempted to cooperate with Safety Light to develop a satisfactory way for Safety Light to comply. The USR companies made no similar effort to comply with the orders. The USR companies' offer, which they first raised at the October 19, 1989 prehearing conference, differed substantially from Safety Light's proposals, in particular, failing to include funding of the trust beyond the initial payment and including a constraint on the use of funds during the pendency of this proceeding. The Staff believes that it is both unfair and unreasonable to allow the USR companies, which have made no effort to comply with the August Order, to be accorded the same treatment as Safety Light. The USR companies have made their position quite clear that they do not believe that the Commission has the authority to hold them responsible for characterization and decontamination of the Bloomsburg site and that the Commission had no basis to make that Order immediately effective. To that end, they have appealed the August order to the Court of Appeals for the District of Columbia Circuit. If they are successful in that appeal, the Court of Appeals will take appropriate action. In the meantime, unless the USR companies can establish that they meet the criteria for a stay, they have provided no basis for the staff to treat them like Safety Light.

<sup>4/</sup> Prehearing Conference Transcript, at 101.



presiding officer as granted by § 2.718 [of this part]" <sup>5/</sup> and "[a] presiding officer [has all powers necessary] to conduct a fair and impartial hearing according to law, to take appropriate action to avoid delay, and to maintain order . . . including the power to . . . [t]ake any . . . action consistent with the [1954] Act, [Chapter 10 of the Code of Federal Regulations], and sections 551-558 of Title 5 of the United States Code." <sup>6/</sup> The power to stay the very order that is the subject of the proceeding is reasonably a power "necessary . . . to conduct a fair and impartial hearing according to law;" <sup>7/</sup> similar powers have long been recognized in equity by courts <sup>8/</sup> and by the Commission. <sup>9/</sup> Also, in

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<sup>5/</sup> 10 C.F.R. § 2.721(d) (1989).

<sup>6/</sup> 10 C.F.R. § 2.718 (1989).

<sup>7/</sup> Id.

<sup>8/</sup> The All Writs Act, 28 U.S.C. § 1651(a) (1988), "provided statutory confirmation of [the courts' authority to issue stays pendente lite]." Sampson v. Murray, 415 U.S. 61, 73-74 (1974). See Virginia Jobbers at 923-35, supra, note 1. See also Niagara Mohawk Power Corp. v. Federal Power Comm'n, 379 F.2d 153, 157-160 (D.C. Cir. 1967) (attributing equitable powers to the FPC in assigning an effective date to a license); Cf. Ex Parte Peterson, 253 U.S. 300, 312-14 (1919) (recognizing a district court's authority to appoint an auditor to help simplify the issues in dispute).

<sup>9/</sup> Natural Resources Defense Council, CLI-76-2, 3 N.R.C. 76 (1976); Wisconsin Electric Power Co. (Point Beach Nuclear Plant Unit No. 2), ALAB-58, 4 A.E.C. 951, 952-53 (1972); See Wisconsin Electric Power Co. (Point Beach Nuclear Plant Unit No. 2), ALAB-82, 5 A.E.C. 350, 351-52 (1972) (citing Niagara Mohawk, supra, note 8, with approval). Section 161 of the 1954 Act, in particular § 161(p), which states

staying the effect of the staff's order, the Licensing Board would be acting within the authority granted under § 10(d) of the Administrative Procedure Act (APA), <sup>10/</sup> which states that "[w]hen an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review." <sup>11/</sup> Accordingly, the Licensing Board in this case has the authority to consider a request to stay the orders.

This is not the first time that one of the Commission's adjudicatory boards has considered the question of the propriety of staying an immediately effective order where there had also been a petition for review filed with a Court of Appeals. For example, in a Seabrook case, <sup>12/</sup> the Appeal Board ruled that it had authority to stay an immediately effective order, notwithstanding the fact that the a party had

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(Footnote continued from previous page)

that "the Commission is authorized to make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of [the 1954] Act," authorized the Commission to promulgate 10 C.F.R. §§ 2.721 and 2.718. 42 U.S.C. § 2201(p) (1982); 10 C.F.R. Part 2, at 39 (1989). See Mixed Oxide Fuel, CLI-78-10, 7 N.R.C. 711, 724-28 (1978). In Mixed Oxide Fuel, the Commission attributed to § 161(p) its authority to exercise its discretion to terminate proceedings in carrying out its common defense and security responsibilities; clearly, § 161(p) authorizes the Commission to adopt regulations that provide for fair hearings in the discharge of the Commission's responsibilities.

<sup>10/</sup> 5 U.S.C. § 705 (1982).

<sup>11/</sup> Id.

<sup>12/</sup> Public Service of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-349, 4 N.R.C. 235, order suspended on other grounds, CLI-76-17, 4 N.R.C. 451 (1976) (hereafter Seabrook).

petitioned a court of appeals for review of the order. <sup>13/</sup> The Appeal Board stated that "[n]o time limitation has been imposed with respect to the exercise of that authority; i.e., Section 10(d) permits the issuance of an administrative stay either before or after the petition for review is filed [with the court of appeals]." <sup>14/</sup> Therefore, the USSR companies' petition for review in the court of appeals does not restrict the Licensing Board's authority to consider a stay in this case.

The Appeal Board in Seabrook also examined Commission cases and analyzed whether the relationship between an agency and a court of appeals would restrict the agency's flexibility in order to reach this conclusion. <sup>15/</sup> The Appeal Board determined that the agency's relationship to the court did not restrict the agency's flexibility. <sup>16/</sup> The staff sees no basis for dealing with this immediately effective enforcement order any differently than the Commission has dealt with other immediately effective orders. Accordingly, this Licensing Board has the authority to stay the effect of the March and August orders if, after analyzing the appropriate factors, it determines that a stay is warranted.

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<sup>13/</sup> In Seabrook, the order was an Atomic Safety and Licensing Board's initial decision to authorize the issuance of a construction permit that was made immediately effective by operation of 10 C.F.R. § 2.764. 4 N.R.C. at 238-39.

<sup>14/</sup> Seabrook, 4 N.R.C. at 244.

<sup>15/</sup> Seabrook, 4 N.R.C. at 242-45.

<sup>16/</sup> Seabrook, 4 N.R.C. at 245.

B. Standards

Should the Board decide to consider a request for a stay in this case, Virginia Jobbers sets forth the appropriate standards for the Board to apply. The courts and the Commission have long used the Virginia Jobbers standard for evaluating requests for stays. <sup>17/</sup> In its Rules of Practice, <sup>18/</sup> the Commission codified its long-standing policy of considering requests for stays of decisions that are immediately effective through operation of 10 C.F.R. § 2.764 under the Virginia Jobbers standard. In its notice of proposed rulemaking for 10 C.F.R. § 2.788, <sup>19/</sup> the Commission stated that it regarded the authority to stay an immediately effective order inherent in itself, the Appeal Board, and in presiding officers. However, the Commission explained that this authority had never been explicitly spelled out in its rules and that, under the proposed rules, "the extraordinary relief of a stay would only be available if the traditional legal standards, including irreparable harm and high likelihood of success on the merits, are met." <sup>20/</sup> In codifying these standards for granting stays of immediately effective decisions

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<sup>17/</sup> Hilton v. Braunskill, 481 U.S. 770, 776-77 (1986); Sampson v. Murray, supra, note 8; Permian Basis Area Rate Cases, 390 U.S. 747, 773 (1968); Virginia Jobbers, supra, note 1; Natural Resources Defense Council, CLI-76-2, 3 N.R.C. 76, (1976), citing Southern California Edison Co., (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-199, 7 A.E.C. 478, 479-80 (1974); Wisconsin Electric Power Co. (Point Beach Nuclear Plant Unit No. 2), ALAB-58, 4 A.E.C. 951, 952-53 (1972); See also Atchison, Topeka & Santa Fe R.R. Co. v. Wichita Board of Trade, 412 U.S. 800, 821 (1973) (citing Virginia Jobbers for the proposition that a court must estimate ultimate success on the merits if enjoining agency action pending final determination).

<sup>18/</sup> 10 C.F.R. § 2.788 (1989).

<sup>19/</sup> 41 Fed. Reg. 54,206 (Dec. 13, 1976).

<sup>20/</sup> Id.

pendente lite, the Commission applied the same logic as the D.C. Circuit summarized in Virginia Jobbers. <sup>21/</sup> Although § 2.788 does not explicitly apply to enforcement orders, such as are the subjects of this proceeding, an immediately effective order has the same effect whether issued by an Atomic Safety and Licensing Board or by the staff; the same well-settled standard for granting the equitable remedy of a stay applies equally well to either case. Accordingly, although the Licensing Board may grant the extraordinary relief of a stay in this case, it should not do so unless and until it determines, under 10 C.F.R. § 2.788, that such relief is warranted.

#### V. CONCLUSION

Accordingly, as explained above, this Licensing Board may consider the USSR companies' request for a stay, under the standards set forth in Virginia Jobbers, as codified in 10 C.F.R. § 2.788. Because no basis has been given for the "stay" granted by the Licensing Board during the October 24, 1989 Prehearing Conference, and until such time as a basis has been provided, that action should be vacated.

Respectfully submitted,

Robert M. Weisman  
Robert M. Weisman  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 6<sup>th</sup> day of November, 1989

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<sup>21/</sup> Natural Resources Defense Council, supra, note 17; Point Beach, supra, note 17.

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

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

(ASLBP No. 89-590-01-0M)  
(ASLBP No. 90-598-01-0M-2)

Mr. William T. Russell  
Regional Administrator  
U.S. Nuclear Regulatory Commission  
475 Allendale Road  
King of Prussia, PA 19406

Mr. Ralph T. McElvenny  
USR Industries, Inc.  
550 Post Oak Blvd.  
Suite 550  
Houston, TX 77027

Gerald Charnoff, Esq.\*\*  
Shaw, Pittman, Potts & Trowbridge  
2300 N. Street, N.W.  
Washington, DC 20037

D. Jane Drennan, Esq.\*\*  
Wunder, Ryan, Cannon & Thelen  
1615 L. St., N.W. Suite 650  
Washington, D.C. 20036

Robert M. Weisman  
Robert M. Weisman  
Counsel for NRC Staff

APPENDIX A



RW

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of:

SAFETY LIGHT CORPORATION,  
et al.

) DOCKET NOS. 030-05980  
) 030-05981  
) 030-05892  
) 030-08335  
) 030-08444  
)  
) LICENSE NOS. 37-00030-02  
) 37-00030-08  
) 37-00030-07E  
) 37-00030-09G  
) 37-00030-10G  
)

MOTION OF SAFETY LIGHT CORPORATION  
FOR AN EXTENSION OF TIME TO FILE  
AN ANSWER AND TO REQUEST A HEARING

Pursuant to 10 C.F.R. § 2.711 (1989) of the Nuclear Regulatory Commission's ("NRC" or "Commission") Rules of Practice for Domestic Licensing Proceedings, Safety Light Corporation ("Safety Light") respectfully requests an extension of time to file an answer to the August 21, 1989 Order Modifying Licenses ("August 21 Order") in the above-captioned proceeding. Safety Light also requests additional time to consider whether to file a request for a hearing in the same proceeding.

In its August 21 Order, the Commission directed Safety Light and other interested parties to file an answer and/or request a hearing within 20 days from the issuance of the

instant order. To comply with the August 21 Order, Safety Light must file its answer or request for hearing by Monday, September 11, 1989.

On September 6, 1989 Safety Light retained the undersigned as counsel to represent the company in this proceeding. As Safety Light's Washington counsel, the undersigned has not had sufficient time to review the case and thus, is not prepared to file an answer on Monday, September 11, as required by the August 21 Order.

WHEREFORE, Safety Light requests the Commission for an additional 20 days to file its answer to the August 21 Order, and an additional 20 days to consider whether to request a hearing.

Respectfully Submitted,



D. Jane Brennan, Esq.  
1615 L Street, N.W.  
Suite 650  
Washington, D.C. 20036  
(202) 659-3005

Counsel For  
SAFETY LIGHT CORPORATION

Dated this 8<sup>th</sup> day of September, 1989

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon the following by mail on this 8th day of September, 1989:

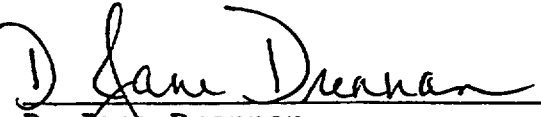
James Lieberman  
Director, Office of Enforcement  
U.S. Nuclear Regulatory Commission  
ATTN: DOCUMENT CONTROL DESK  
Washington, D.C. 20555

Assistant General Counsel for Enforcement  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
ATTN: DOCUMENT CONTROL DESK  
Washington, D.C. 20555

Hugh L. Thompson, Jr.  
Deputy Executive Director for Nuclear Safety,  
Safeguards and Operations Support  
U. S. Nuclear Regulatory Commission  
Washington, D.C. 20555

William Russell  
Regional Administrator  
NRC Region I  
475 Allendale Road  
King of Prussia, PA 19406

Lee Bettenhausen  
Division Director  
NRC Region I  
475 Allendale Road  
King of Prussia, PA 19406

  
D. Jane Drennan

Dated: September 8, 1989

**WUNDER, RYAN, CANNON & THELEN**

1615 L STREET, N.W., SUITE 650  
WASHINGTON, D. C. 20036

(202) 638-3005

D. JANE BRENNAN

DIRECT DIAL:  
(202) 778-0895

September 18, 1989

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

RE: In the Matter of Safety Light Corp., et al.  
Docket Nos. 030-05980, 05981, 05982, 08335  
and 08444 (EA 89-29)

Dear Mr. Russell:

This letter is a first Request by Safety Light Corporation ("Safety Light") for an extension of time in which to submit a "Work Plan" and proposed "Trust Agreement" to the Nuclear Regulatory Commission ("NRC"). Safety Light is requesting the additional time in order to (1) conduct discussions with USR Industries Inc. ("USR") to explore the potential for USR to participate jointly in the preparation of these documents and (2) insure that IT Corporation has adequate time to prepare a Work Plan which complies with the NRC's letter of September 11.

By Order Modifying Licenses, issued on March 16, 1989, the NRC directed Safety Light and USR to submit jointly site characterization and decontamination plans for the Bloomsburg site. By a subsequent order, issued on August 21, 1989, the NRC directed the parties to establish jointly a "Trust Agreement" and to provide funding to implement the plan. In the latter order, the NRC estimated that a site characterization plan, which would meet the NRC's requirements, would cost approximately \$1,000,000 (plus or minus 30%) (Order at 6). In this same order, the NRC also expressed concern that Safety Light has very limited funds available to commit to the characterization plan.

Safety Light intends to comply with the NRC's rules and regulations; however, the company does have limited funds. During the period of 1985 to 1989, Safety Light's annual income has varied between approximately \$10,000 and \$200,000. It is, therefore, imperative that Safety Light make every effort to determine whether USR is prepared to assist in the funding of the Work Plan and the Trust Agreement. Additionally, efforts are

## LAW OFFICES

WUNDER, RYAN, CANNON &amp; THELEN

William T. Russell

Page 2

currently underway to negotiate partial or full funding of the Trust Agreement by the insurance companies who have had full coverage of the site for many years.

As of this date, Safety Light is uncertain what action USR intends to take with regard to both the Work Plan and Trust Agreement. Further, Safety Light has been unable to contact IT Corporation to determine its ability to fulfill NRC's request in a timely fashion and, in addition, to estimate the cost of the Work Plan. IT Corporation is under contract to Hannoeh and Weisman and thus, it is uncertain at this time what contractual arrangements will be necessary for IT Corporation to undertake the Work Plan.

Safety Light recognizes that it is jointly and severally responsible for compliance with the Atomic Energy Act and implementing regulations. Safety Light fully intends to use its best efforts and maximum resources to respond to the NRC's orders and requests in a timely fashion; however, it is requesting a 30 day extension of the filing dates for the Work Plan and proposed Trust Agreement in order to comply fully. Specifically, Safety Light proposes to submit the Trust Agreement on October 21 and the Work Plan on November 2.

If this letter is deficient in any manner to foreclose granting the requested extensions, please advise me on what additional information may be of assistance in your evaluation of this request. It is the intent of Safety Light to conduct discussions with the NRC in a forthright manner and to cooperate to resolve the issues raised by the orders.

Sincerely,



D. Jane Drennan  
Counsel for  
SAFETY LIGHT CORPORATION

September 19, 1989

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

Re: Docket Nos. 030-05980, 030-05981, 030-05982,  
030-08335 and 030-08444 (TA 89-29)

Dear Mr. Russell:

This letter supplements the filing dated September 18, 1989, in which Safety Light Corporation ("Safety Light") requested an extension of thirty (30) days in which to submit the Trust Agreement referenced in the Order, dated August 21, 1989, issued by the Nuclear Regulatory Commission ("NRC").

Subsequent to filing our submittal on Monday, I learned that counsel for USR Industries, Inc. ("USR"), Hannech Weisman, has withdrawn from the above-captioned proceeding. At this time, USR is without legal counsel. Safety Light now must proceed in attempting to meet the NRC's requests which includes the establishment of a Trust and the submission of the Work Plan. Hannech Weisman had retained IT Corporation for all prior technical work submitted to the NRC. Safety Light now must establish a business relationship with IT Corporation, and execute a new contract with IT Corporation, and establish a schedule to perform the Work Plan.

As stated in previous submittals, on September 8th, Safety Light retained Washington D.C. counsel for this proceeding as part of its effort to improve communications with the NRC and to be more responsive to NRC's concerns. On September 11, the NRC granted Safety Light an extension until October 2nd to determine whether to submit an answer and to request a hearing in this proceeding. Since that date, Safety Light has communicated daily with the NRC to keep the agency apprised of its efforts to schedule the preparation of the Work Plan and to prepare a joint Trust Agreement with USR. This letter summarizes these discussions.

Safety Light has commenced drafting the Trust Agreement. Safety Light learned only yesterday that USR did not have counsel

who could participate in this process. Safety Light will now proceed to finalize a draft Trust Agreement that will be comparable to the example set forth in 40 C.F.R. § 264. It is anticipated that the draft of the Trust Agreement will be completed in the next seven (7) days and will be available for review by the Trustee who will administer it.

Safety Light has had preliminary discussions with several financial institutions concerning the Trust Agreement. Safety Light is also exploring the advisability of appointing a lawyer as Trustee. Safety Light expects to inform the NRC within the next two (2) weeks as to whom is the Trustee. Shortly thereafter, Safety Light intends to submit the Trust Agreement for NRC review. Once the Trust Agreement is approved by the NRC, Safety Light will then establish the Trust Account and make an initial deposit of 50 percent of the prior month's profits.

Safety Light's primary concern is the level of funding that it can dedicate to the Trust. In light of the withdrawal of USSR's counsel, Safety Light must now fully fund the Work Plan. In the past four (4) months, Safety Light has expenditures of more than \$150,000 for legal and technical services related to these proceedings. Safety Light has not yet been able to ascertain what economic liability it may have for litigation services performed on its behalf in an effort to establish the liability of the insurance carriers with regard to this issue. This litigation is ongoing and necessary to ensure that the Trust is fully funded. Safety Light is also accruing substantial expenses in attempting to comply with all aspects of the NRC's recent orders.

Safety Light's available revenues to fund the Trust Agreement are not only being depleted by the foregoing, but are also subject to various fluctuations in the tritium market. The price of tritium increased substantially in 1988 and is expected to increase again in October 1989. The price increases adversely affect Safety Light's profits.


Because Safety Light is unable to project its available revenues for the next twelve (12) months, Safety Light proposes that it will commit 50 percent of its monthly profits to the Trust. During the period in which Safety Light is funding the Trust, Safety Light shall freeze the salaries of its officers and shall undertake to maintain its operating expenses at a reasonable level.

In light of the foregoing, Safety Light has attempted to respond to the NRC's oral request for a status report on its activities and a statement of its intention to proceed with the

William T. Russell  
Page 3

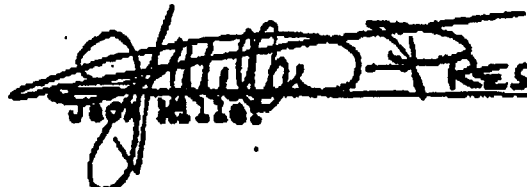
establishment of the Trust and preparation of the Work Plan. Safety Light urges the NRC to grant the requested extensions to allow Safety Light and the agency to continue ongoing discussions and achieve a settlement on these matter.

Very truly yours,


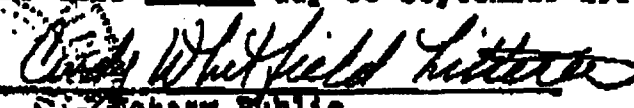
  
Jack Miller  
President

State of Pennsylvania }  
County of Columbia } ss.:

Jack Miller, being duly sworn, deposes and says that he has read the foregoing letter; that to the best of his knowledge and belief, the statements and facts stated therein are true and accurate.

 PRESIDENT  
Jack Miller

Subscribed and sworn to before  
me this 19th day of September 1989.

  
  
Cindy Whitfield Litter  
Notary Public

My Commission Expires

Notarial Seal  
Cindy Whitfield Litter, Notary Public  
South Centre Twp., Columbia County  
My Commission Expires Dec. 31, 1991  
Member, Pennsylvania Association of Notaries

cc: James Lieberman  
Director, Office of Enforcement  
U.S. Nuclear Regulatory Commission



SEP 11 1989

D. Jane Drennan, Esq.  
1615 L Street NW  
Suite 650  
Washington, DC 20036

Dear Ms. Drennan:

We have considered your request for an extension of time to file an answer and a request for a hearing on behalf of Safety Light Corporation in response to the Order issued by the NRC on August 21, 1989.

Your request for an additional 20 days to file these documents is granted. Accordingly, any answer and/or a request for a hearing on behalf of Safety Light Corporation is due no later than October 2, 1989.

This extension is granted as to the filing of the specified documents only. All other provisions of the Order of August 21, 1989 remain in effect, and must be satisfied by the dates imposed therein unless the Order is relaxed or modified in writing on a showing of good cause. Any failure to create the trust and submit the trust agreement to the NRC by September 21, 1989, and to meet the payment schedule in the Order, will be considered a violation of the Order.

Sincerely,

**Original Signed By  
James Lieberman**

James Lieberman, Director  
Office of Enforcement



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION I  
475 ALLENDALE ROAD  
KING OF PRUSSIA, PENNSYLVANIA 19406

SEP. 11 1989

Docket Nos. 030-05980  
030-05982

License Nos. 37-00030-02  
37-00030-08

Safety Light Corporation  
ATTN: Mr. Jack Miller  
4150-A Old Berwick Road  
Bloomsburg, Pennsylvania 17815

Gentlemen:

Subject: Plan to Characterize Radioactivity at Bloomsburg Site

On March 16, 1989, the NRC issued an Order to Safety Light Corporation, USR Industries, Inc., U.S. Radium Corporation and their successor corporations and subsidiaries (collectively, the "Corporations"). The Order required, in part, that the Corporations submit, a joint plan to characterize the radioactivity at the Bloomsburg site by May 1, 1989. The Corporations subject to the Order subsequently requested, and were granted, an extension of time for the submission of the plan until June 2, 1989. On June 2, 1989, a Joint Characterization Plan (JCP) was hand-delivered to NRC Region I. On June 6, 1989, the appendices to the JCP were sent to NRC Region I by telecopier.

The NRC reviewed the June 2, 1989 JCP and the appendices and determined that it did not satisfy the requirements of the March 16, 1989 Order. On June 16, 1989 the NRC sent letters to the Corporations specifying the requirements of the Order which had not been met and describing technical deficiencies in the JCP. At an Enforcement Conference at NRC Region I on July 6, 1989, the NRC and the Corporations discussed the Corporations' failures to fully comply with the March 16, 1989 Order. A subsequent meeting was held at Region I on July 13, 1989, during which the deficiencies in the JCP were discussed in detail.

On August 11, 1989, NRC Region I received the Corporations' revised site characterization plan (the August plan), which was dated August 9, 1989. The NRC staff has reviewed this plan and has determined that it satisfies the technical criteria for a site characterization plan given in the March 16, 1989 Order. The August plan states that "specific procedures for performance of this site characterization effort will be generated for approval by the appropriate agencies and personnel." The August plan further states that these specific procedures, or "Work Plan" will be generated two weeks "after the scope of work for characterization of the Bloomsburg site has been approved". The NRC hereby approves the August plan, subject to correction of the deficiencies identified in the Enclosure. Accordingly, and pursuant to 10 CFR 30.32(b) the Work Plan is to be delivered to NRC Region I for review and approval by 21 days from the date of the letter. The Corporations may correct certain of the deficiencies by amending the August plan as noted in the enclosure and providing the amended plan to Region I on the same schedule, if they desire. The technical deficiencies in the Enclosure must be addressed.

SEP. 1, 1989

2

Section VII.C. of the March 16, 1989 Order requires that, within 180 days from the date the Regional Administrator approves the site characterization plan, all Corporations shall jointly submit to the Regional Administrator, NRC Region I, for his review and approval, a single report that contains a complete radiological characterization of the site, with a description of the location and level of all sources of radiation and contamination, including non-radiological hazards. Accordingly, with respect to the portions of this plan approved by this letter, this report must be submitted to NRC Region I within 180 days of the date of this letter. However, it may be impossible to submit some information within 180 days (e.g., the third and fourth seasons of hydrogeologic information). Section X of the March 16, 1989 Order states that the Regional Administrator of the NRC Region I may, in writing, relax or rescind any provision of the Order upon the timely showing, in writing, of good cause. You should promptly identify those items for which compliance with this requirement is impossible and request change of the required submission date.

In accordance with 10 CFR 2.790(a), a copy of this letter and the enclosure will be placed in the NRC Public Document Room.

Sincerely,



William T. Russell  
Regional Administrator

Enclosure:

Technical deficiencies in the August 9, 1989 Site Characterization Plan

cc:

Public Document Room (PDR)  
Nuclear Safety Information Center (NSIC)  
Commonwealth of Pennsylvania

For Safety Light Letter:

Michael O'Donoghue, Esq.  
Wister, Pearlstine, Talone, Craig & Garrity  
515 Swede Street  
Norristown, PA 19401-4880

Wunder, Ryan, Cannon, and Thelen  
ATTN: Jane Drennan  
1615 L Street, N.W.  
Suite 650  
Washington, D.C. 20036

For USR Industries Letter:

A. Patrick Nucciarone, Esquire  
Hannoch Weisman, P.C.  
4 Becker Farm Road  
Roseland, New Jersey 07068-3788

## ENCLOSURE

### TECHNICAL DEFICIENCIES IN THE AUGUST 9, 1989 SITE CHARACTERIZATION PLAN

1. The Work Plan or amended site characterization plan must describe in general terms how the data obtained from the characterization effort will be used to develop a decommissioning and cleanup plan.
2. Since there are many uncertainties associated with contamination at this site, it will probably be very difficult to obtain definitive information on the extent of some areas of contamination on a single "pass" of monitoring and sampling. The Work Plan must include the flexibility for followup or additional measurements under a phased or interactive approach to assure that greater detail is obtained, when necessary.
3. Based on limited surface scanning and sampling conducted by Oak Ridge Associated Universities (ORAU) at this site, there appear to be numerous locations of radiological contamination, even in the portions of the site identified as Category 1 and Category 2 in the plan. The grid spacing proposed in these areas is larger than that typically recommended for characterization surveys (NUREG-2082). Large grids may result in a failure to identify small areas of contamination. The Work Plan must specify that sample and measurement locations be on spacings more comparable with the criteria specified in NUREG-2082. For Category 1 and 2 areas, the grid must be no larger than at 10 m X 10 m.
4. The Work Plan must specify that samples of surface (0-15 cm) soil will be collected from the center of grid squares and at four points midway between the center and the block corners and the resulting portions composited for analysis.
5. Scanning intervals must be given in the Work Plan and must be no greater than one to two meter intervals throughout the site.
6. The Work Plan or amended site characterization plan must reference the NRC's "Guidelines For Decontamination of Facilities and Equipment Prior To Release for Unrestricted Use or Termination of Licenses for Byproduct, Source or Special Nuclear Materials," instead of in Regulatory Guide 1.86 for decontamination of buildings and equipment. The Work Plan must provide for monitoring of outdoor paved surfaces for beta-emitters by use of an end-window geiger counter.
7. Greater detail must be provided in the Work Plan or amended site characterization plan regarding facility surveys in existing facilities. The Work Plan must describe the types, frequencies, and procedures for contamination measurements and indicate whether measurements will also be performed on equipment and materials. The Plan must include procedures for surveying drains, ducts, covered and painted surfaces, and other locations not directly accessible.

8. Based on findings of elevated gamma levels in the drainage ditch originating near the lagoon area, the Work Plan must include the collection and analysis of sediment samples from this ditch and the outfall area at the river.
9. The Work Plan or amended site characterization plan must provide systematic approaches for utilizing existing on-site monitoring wells for hydrogeological characterization, including:
  - a. qualifying or rejecting existing wells for water quality data collection; and
  - b. considering possible methods for well reconditioning or re-completion; and
  - c. considering existing wells in selecting the locations of proposed wells.
10. The Site Characterization Plan dated August 9, 1989, indicates that additional information may need to be collected; however, it does not describe the criteria that will be used for deciding if additional information is needed. The Work Plan must describe the criteria that will be used to determine whether there is a need for: a) additional sampling; b) installation of additional wells; and c) conducting large-scale pump tests. The Work Plan or amended site characterization plan must provide the basis and rationale for the number and location of additional sampling wells. NRC believes that at least five (5) additional wells are needed within the flood plain near the old canal to better define the direction of groundwater flow and extent of contamination. Existing data suggests that contamination is moving oblique or perpendicular to apparent groundwater flow. Therefore, in locating the new wells, consideration should be given to the areas southeast of the disposal pits and offsite. Also, based on regional geological maps and water use in the area, a low shale aquifer is known to underlie the surficial aquifer at the site. In order to evaluate the water and hydrologic qualities of the lower aquifer, at least three (3) wells must be constructed with straddles or well nests to enable measurement of water quality and hydrologic parameters in both aquifers.
11. In locating new wells, the Work Plan must consider inaccuracies in the current conceptual model of site hydrology, especially when data suggest that at least some contamination is not moving in the assumed direction of groundwater flow.
12. The Work Plan must discuss plans for conducting surveys of off-site wells and water users, and include plans for monitoring existing off-site wells.

13. The Work Plan or amended site characterization plan must provide detailed procedures for obtaining and using existing records of regional and site specific information for the hydrogeological characterization. This should include published reports, inventory records, and data from the licensee and the USNRC.
14. The Work Plan or amended site characterization plan must describe plans for investigating regional and local hydrostratigraphy. Site studies should verify that deeper aquifers are not hydrologically connected to the surface aquifer.
15. The Work Plan must describe how data will be evaluated so that immediate hazards to workers or the public will be promptly recognized and an appropriate response developed.
16. The Work Plan must include providing split samples to the NRC for analysis.



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

SEP 21 1989

Safety Light Corporation  
ATTN: Jack Miller, President  
4150-A Old Berwick Road  
Bloomsburg, Pennsylvania 17815

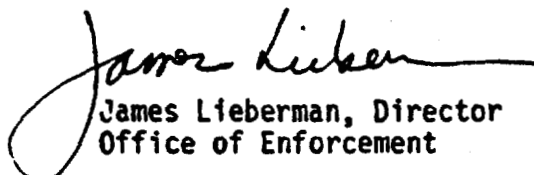
SUBJECT: ENFORCEMENT ACTION (EA 89-29) ORDER MODIFYING LICENSES  
(EFFECTIVE IMMEDIATELY)

By letter dated September 19, 1989, you supplemented the September 18, 1989 request of your counsel for an extension of 30 days to comply with the Commission's August 21, 1989 Order in this matter. The August Order required, among other things, that a trust agreement be submitted by September 20, 1989 to establish over 12 months a \$1,000,000 fund to implement a site characterization plan for your Bloomsburg facility and for taking necessary immediate remedial action. Your counsel previously sought an extension of time to ask for a hearing and answer this Order. We granted this request on September 11, 1989.

Your responses state that you are in the process of developing a trust agreement and that you are prepared to provide 50% of Safety Light's monthly profits to the trust. In addition, Safety Light intends to freeze the salaries of its officers and maintain its operating expenses at a reasonable level.

We encourage you to continue your efforts to negotiate a trust agreement and obtain full funding of the agreement by your resources, insurance funds, and USR. Accordingly, we grant Safety Light an additional 30 days to satisfy the August 21, 1989 Order. We expect you to take further actions to comply with the Order including actions to obtain insurance funding. These actions and any additional commitments to demonstrate compliance with the Order should be described in writing, under oath or affirmation, and be in our hands by close of business October 23, 1989.

Sincerely,

  
James Lieberman, Director  
Office of Enforcement

cc: D. Jane Drennan, Esq.  
R. T. McElvenny

APPENDIX B



# USI INDUSTRIES, INC.

550 POST OAK BOULEVARD / SUITE 545 / HOUSTON, TEXAS 77027

(713) 622-9171

September 22, 1989

Mr. James Lieberman, Director  
Office of Enforcement  
United States Nuclear Regulatory Commission  
Washington, D.C. 20555

RE: In the Matter of Safety Light Corp., et al.  
Docket Nos. 030-05980, 05981, 05982, 08333  
and 08444

Dear Mr. Lieberman:

These Respondents were most disappointed to receive your response to our request for extension of time dated September 19, 1989. We believe it is necessary to define a range of problems through negotiation in order to reach realistic solutions to the complex insurance, corporate, legal and other issues inherent in this Matter. In the view of These Respondents, a rigid and extreme regulatory stance would not seem to serve the paramount regulatory objectives of protection of the public health and safety and of the environment.

These Respondents replied on September 19, 1989 in good faith and without benefit of counsel. Obviously, without retaining new counsel These Respondents are not in a position to either defend enforcement actions or to conduct substantive negotiations with the NRC. However, after rereading the request dated September 19, 1989 These Respondents would like to take this opportunity to emphasize that they are making most serious and active efforts (1) to arrange legal representation; (2) to work on a suitable Trust Agreement; (3) to increase liquidity so as to meet existing

obligations for legal fees brought on by suddenly increased bills for the NRC and insurance company litigation; and (4) to deal effectively with the insurance companies.

Without counsel These Respondents do not have the capability to put together a definitive Trust Agreement. However, a model Trust Agreement has been located and we are redrafting such to address specifically the particular requirements and considerations of this Matter. We understand that Safety Light Corporation is continuing efforts to develop a suitable Work Plan and a Trust Agreement of its own, and that Safety Light Corporation (which currently has competent NRC counsel) has been given additional time necessary to prepare these materials.

Without assistance from the insurance companies, Safety Light Corporation is in no better position to continue to pay huge legal fees or huge fees to independent technical consultants than are These Respondents. As evidenced by the seven figure sums made available for other environmental matters under the 1985 Defense Agreement it may be possible to arrange further insurance company assistance for this Matter. However, no major insurance company is likely to step forward upon request to meet the extreme time deadlines ordered by the NRC. Unlike either Safety Light Corporation or These Respondents, a major insurance company has on hand an internal legal department and is well financed and equipped to carry on protracted litigation with the NRC or any other party. These Respondents emphasize that the great progress achieved in other environmental matters under the 1985 Defense Agreement resulted from patient, methodical, realistic negotiations and "give and take" between These Respondents, Hannech Weisman and the major insurance companies which are signatories under that Agreement.

These Respondents desire to continue work in good faith on the Trust Agreement, the insurance litigation and other areas related to this Matter. On a current basis These Respondents are operating profitably (before charges for legal fees and consultants). However, they are under severe pressure to complete arrangements to meet even their existing obligations for legal and consulting services already rendered. Additional time is absolutely required to obtain counsel, and to complete the foregoing arrangements. These Respondents believe that extension of time to perform will promote rather than undercut the regulatory intent of the Order.

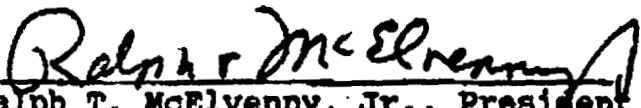
The position of the NRC seems to foreclose all negotiation, leaving no possibility even to work towards realistic solutions, including insurance company participation. If the only prospect is more legal fees to defend enforcement actions, the finite financial and managerial resources of These Respondents would be devoted to meeting yet greater legal fees, while financial and managerial resources available for insurance company negotiation and outside advice would be reduced or eliminated.

By letter dated September 19, 1989 a sixty day extension was requested by These Respondents. We understand that Safety Light Corporation was granted a thirty day extension, and These Respondents are willing to continue efforts under that same time frame.

Even without counsel, These Respondents submitted a request in good faith to the NRC. Work is underway on a draft Trust Agreement and These Respondents are proceeding to sell assets to create what is for them a substantial amount of liquidity. These Respondents now request the same time

extension as granted to Safety Light Corporation. Please advise as soon as possible so that These Respondents may know how to proceed.

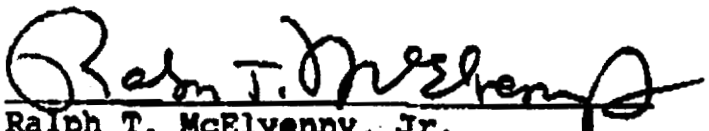
Very truly yours,

  
Ralph T. McElvenny, Jr., President  
For: USR Industries, Inc., USR  
Lighting, Ind., USR Chemicals, Inc.,  
Usr Metals, Inc. and U.S. Natural  
Resources, Inc.

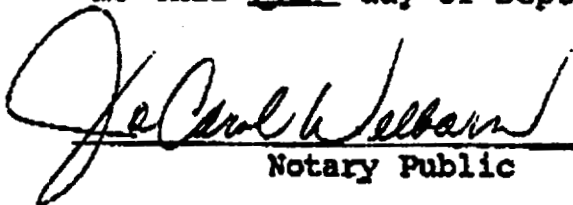
cc: Mr. William T. Russell  
Mr. John T. Miller  
D. Jane Drennan, Esq.

State of Texas       )  
                              )  
County of Harris     )

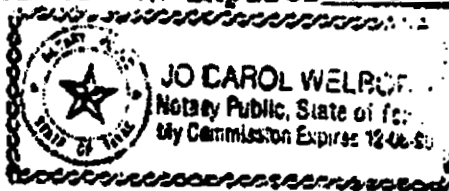
Ralph T. McElvenny, Jr., being duly sworn, deposes and says that he has read the foregoing letter; that to the best of his knowledge and belief, the statements and facts stated therein are true and accurate.

  
Ralph T. McElvenny, Jr.

Subscribed and sworn to before  
me this 22 day of September, 1989.

  
Notary Public

My Commission Expires 12-06-90.



## USR INDUSTRIES, INC.

550 POST OAK BOULEVARD / SUITE 545 / HOUSTON, TEXAS 77027

(713) 622-9171

September 19, 1989

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

RE: In the Matter of Safety Light Corp., et al.  
Docket Nos. 030-05980, 05981, 05982, 08335  
and 08444

Dear Mr. Russell:

This letter supplements the Answer and Request for Hearing ("Answer") on behalf of USR Industries, Inc. USR Lighting, Inc., USR Chemicals, Inc., USR Metals, Inc. and U.S. Natural Resources, Inc. ("These Respondents") filed on September 8, 1989 to the August 21, 1989 Order Modifying Licenses ("Order"), and requests extension of time in which to make further response thereto.

These Respondents require additional time to answer part of the Order for the following reasons:

(1) To complete arrangements to retain counsel to represent These Respondents in the above captioned matter ("Matter"), as the firm of Hannoeh Weisman just days ago withdrew due to inability of These Respondents to pay Hannoeh Weisman's substantial legal fees incurred primarily for this Matter and for offensive litigation to determine insurance defense and liability issues;

(2) To insure that International Technology Corporation ("IT Corporation"), Washington, D.C., an

independent technical firm of recognized expertise earlier retained by Hannotch Weisman on behalf of These Respondents and Safety Light Corporation ("Safety Light"), will agree to payment arrangements from a trust fund or otherwise for work performed in connection with the Bloomsburg, Pennsylvania site which is the subject of this Matter;

(3) To settle payment arrangements for prospective charges by IT Corporation for future technical evaluation and advice respecting the site. (Charges presented for work done by IT Corporation in response to this Matter total \$63,001.49, of which \$27,157.11 and \$22,860.98 were accumulated during April and July 1989, respectively);

(4) To negotiate on an emergency basis with representatives of five primary insurance companies which provided assistance of over \$2,000,000 pursuant to a Defense Agreement executed in 1985 between such insurers, Safety Light and These Respondents;

(5) To determine whether and to what extent Safety Light will agree to participate in costs including preparation of documents and work demanded in the Order, and for the costs of ongoing litigation to determine the duty to defend and coverage under the underlying insurance policies; and

(6) To complete the sale by These Respondents of interests in a limited partnership which owns a small commercial office building in Houston, Texas so as to provide immediate corporate liquidity.

Through Hannotch Weisman, These Respondents previously filed the Answer, which addresses most of the issues raised by the Order. A supplement to that Answer ("Supplement") was

drafted by Hannoch Weisman prior to that firm's withdrawal as counsel for These Respondents. These Respondents have redrafted the Supplement and desire that the amended Supplement be reviewed by counsel prior to filing. At the same time, These Respondents believe that, if emergency funding arrangements can be completed promptly, Hannoch Weisman may be willing to continue to represent These Respondents in the offensive litigation against the insurance companies. (While These Respondents paid \$20,000 to Hannoch Weisman during May 1989 and \$16,500 to Hannoch Weisman on June 30, 1989, in the interim the firm delivered additional bills and, as of July 31, 1989 These Respondents owed the firm \$67,857.19.) The need to retain counsel is of utmost concern to These Respondents, especially as These Respondents anticipate that Safety Light may soon be rendered unable to assist with partial reimbursement for the costs of the insurance litigation.

These Respondents are cooperating fully with the NRC. However, as public companies they also have responsibilities to persons including employees, customers, vendors, stockholders, outside financial institutions and with respect to other environmental litigation arising out of alleged occurrences dating back to the era of World War I. These Respondents respectfully submit that NRC demands that-without assistance from insurers - These Respondents pay for a site characterization plan which the NRC estimates will cost approximately \$1,000,000 (plus or minus up to \$300,000) are not realistic. These Respondents are now and throughout their corporate histories have been rather marginal companies. While very small, These Respondents provide meaningful employment in a rural area of Pennsylvania, and are operating profitably on a monthly cash flow basis (before legal fees). Like tens of thousands of other small companies



across the country, These Respondents depend upon liability insurance to cover potentially ruinous occurrences.

These Respondents have sustained losses from operations for many years and have a consolidated net worth of only approximately \$1.6 million. Facing severe difficulties in connection with this Matter, These Respondents intend to complete arrangements respecting sale of the limited partnership interest in the small Houston building as soon as possible.

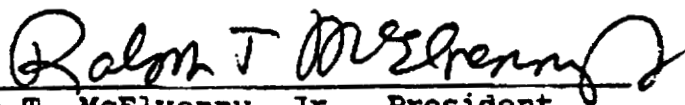
Intense efforts are being made to deal simultaneously with the legal and technical expenses suddenly brought on in response to the Order. These Respondents are in negotiation with primary insurance carriers which executed the 1985 Defense Agreement. Unfortunately, factors including the extreme time limits promulgated in the NRC Orders to date together with the extreme demands for technical evaluation and expenditures have disrupted orderly negotiations with the insurance carriers. These Respondents request that the NRC take notice that the negotiations which led to the successful Defense Agreement executed in 1985 required many months of work, careful application of the special legal expertise of Hanoach Weisman and a good measure of negotiated "give and take." It is submitted that immediate negotiations with representatives of the insurers (particularly Guy Cellucci, Esq. of White & Williams, representing the Insurance Company of North America) are necessary in order to avoid the virtual foreclosure of this vital source of potential assistance.

While These Respondents realize that this request falls near the deadline for response to the Order, Hanoach Weisman has only recently withdrawn and direct demands from IT Corporation have been asserted only today. Although currently without counsel, these Respondents are making their

best efforts to respond to the Order on a timely basis. In order to retain new counsel to complete the Answer, to deal specifically with arrangements to establish a trust agreement and to move forward with substantive emergency negotiation as summarized above, These Respondents hereby request a sixty day extension of the filing dates set forth in the Order.

These Respondents desire and intend to conduct relationships with the NRC in a cooperative and realistic manner so as to pursue early and satisfactory resolution of the issues raised by the Order. If this letter is deficient in any manner so as to cause the NRC to determine that These Respondents should proceed without counsel please so advise the undersigned by FAX at your earliest convenience c/o (713) 963-8751.

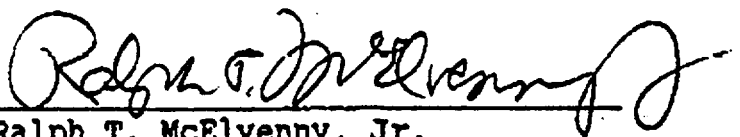
Very truly yours,



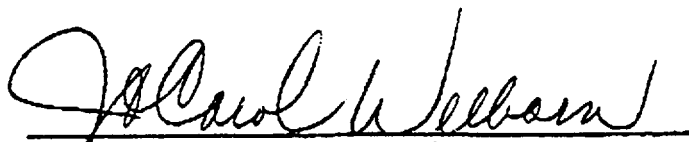
Ralph T. McElvenny, Jr., President  
For: USR Industries, Inc., USR  
Lighting, Inc., USR Chemicals, Inc.,  
USR Metals, Inc. and U.S. Natural  
Resources, Inc.

State of Texas )  
County of Harris )

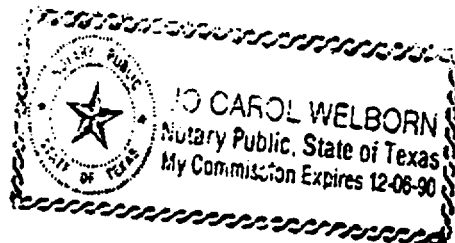
Ralph T. McElvenny, Jr., being duly sworn, deposes and says that he has read the foregoing letter; that to the best of his knowledge and belief, the statements and facts stated therein are true and accurate.

  
Ralph T. McElvenny, Jr.

Subscribed and sworn to before  
me this 20<sup>th</sup> day of September, 1989.

  
Notary Public

My Commission Expires 12-06-90



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION I  
475 ALLENDALE ROAD  
KING OF PRUSSIA, PENNSYLVANIA 19406

SEP. 11 1989

Docket Nos. 030-05980  
030-05982

License Nos. 37-00030-02  
37-00030-08

USR Industries  
ATTN: Mr. Ralph T. McElvenny, Jr.  
550 Post Oak Boulevard, Suite 545  
Houston, Texas 77027

Gentlemen:

Subject: Plan to Characterize Radioactivity at Bloomsburg Site

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SEP. 11 1989

2

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In accordance with 10 CFR 2.790(a), a copy of this letter and the enclosure will be placed in the NRC Public Document Room.

Sincerely,

  
William T. Russell  
Regional Administrator

Enclosure:

Technical deficiencies in the August 9, 1989 Site Characterization Plan

cc:

Public Document Room (PDR)  
Nuclear Safety Information Center (NSIC)  
Commonwealth of Pennsylvania

For Safety Light Letter:

Michael O'Donoghue, Esq.  
Wister, Pearlstine, Talone, Craig & Garrity  
515 Swede Street  
Norristown, PA 19401-4880

Wunder, Ryan, Cannon, and Thelen  
ATTN: Jane Drennan  
1615 L Street NW  
Suite 650  
Washington, D.C. 20036

For USR Industries Letter:

A. Patrick Nucciarone, Esquire  
Hannoch Weisman, P.C.  
4 Becker Farm Road  
Roseland, New Jersey 07068-3788

## ENCLOSURE

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5. Scanning intervals must be given in the Work Plan and must be no greater than one to two meter intervals throughout the site.
6. The Work Plan or amended site characterization plan must reference the NRC's "Guidelines For Decontamination of Facilities and Equipment Prior To Release for Unrestricted Use or Termination of Licenses for Byproduct, Source or Special Nuclear Materials," instead of in Regulatory Guide 1.86 for decontamination of buildings and equipment. The Work Plan must provide for monitoring of outdoor paved surfaces for beta-emitters by use of an end-window geiger counter.
7. Greater detail must be provided in the Work Plan or amended site characterization plan regarding facility surveys in existing facilities. The Work Plan must describe the types, frequencies, and procedures for contamination measurements and indicate whether measurements will also be performed on equipment and materials. The Plan must include procedures for surveying drains, ducts, covered and painted surfaces, and other locations not directly accessible.

3. Based on findings of elevated gamma levels in the drainage ditch originating near the lagoon area, the Work Plan must include the collection and analysis of sediment samples from this ditch and the outfall area at the river.
4. The Work Plan or amended site characterization plan must provide systematic approaches for utilizing existing on-site monitoring wells for hydrogeological characterization, including:
  - a. qualifying or rejecting existing wells for water quality data collection; and
  - b. considering possible methods for well reconditioning or re-completion; and
  - c. considering existing wells in selecting the locations of proposed wells.
10. The Site Characterization Plan dated August 9, 1989, indicates that additional information may need to be collected; however, it does not describe the criteria that will be used for deciding if additional information is needed. The Work Plan must describe the criteria that will be used to determine whether there is a need for: a) additional sampling; b) installation of additional wells; and c) conducting large-scale pump tests. The Work Plan or amended site characterization plan must provide the basis and rationale for the number and location of additional sampling wells. NRC believes that at least five (5) additional wells are needed within the flood plain near the old canal to better define the direction of groundwater flow and extent of contamination. Existing data suggests that contamination is moving oblique or perpendicular to apparent groundwater flow. Therefore, in locating the new wells, consideration should be given to the areas southeast of the disposal pits and offsite. Also, based on regional geological maps and water use in the area, a low shale aquifer is known to underlie the surficial aquifer at the site. In order to evaluate the water and hydrologic qualities of the lower aquifer, at least three (3) wells must be constructed with straddles or well nests to enable measurement of water quality and hydrologic parameters in both aquifers.
11. In locating new wells, the Work Plan must consider inaccuracies in the current conceptual model of site hydrology, especially when data suggest that at least some contamination is not moving in the assumed direction of groundwater flow.
12. The Work Plan must discuss plans for conducting surveys of off-site wells and water users, and include plans for monitoring existing off-site wells.

13. The Work Plan or amended site characterization plan must provide detailed procedures for obtaining and using existing records of regional and site specific information for the hydrogeological characterization. This should include published reports, inventory records, and data from the licensee and the USNRC.
14. The Work Plan or amended site characterization plan must describe plans for investigating regional and local hydrostratigraphy. Site studies should verify that deeper aquifers are not hydrologically connected to the surface aquifer.
15. The Work Plan must describe how data will be evaluated so that immediate hazards to workers or the public will be promptly recognized and an appropriate response developed.
16. The Work Plan must include providing split samples to the NRC for analysis.





UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

SEP 21 1989

United States Radium Corporation  
USR Industries, Inc.  
USR Lighting, Inc.  
USR Chemical, Inc.  
USR Metals, Inc.  
USR Natural Resources, Inc.  
ATTN: Ralph T. McElvenny, Chairman  
550 Post Oak Blvd., Suite 550  
Houston, Texas 77027

Dear Mr. McElvenny:

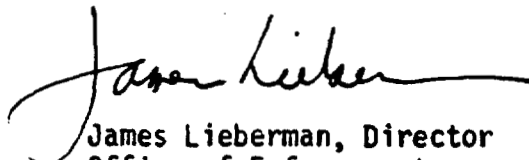
By letter dated September 8, 1989, Mr. A. Patrick Nucciarone, on your behalf, answered the Commission's August 21, 1989 Order which was immediately effective and required, among other things, that a trust agreement be submitted by September 20, 1989 to establish over 12 months a \$1,000,000 fund to implement a site characterization plan at your former Bloomsburg facility and for necessary immediate remedial action. The answer sought a hearing and a stay of the effectiveness of the Order pending the results of the hearing.

On September 19, 1989, you supplemented that answer with a letter that describes your difficulties in complying with that Order and seeks a 60 day extension of the filing dates in the Order.

We note that you have known since the late 1970's of the need to clean up the Bloomsburg facility. If the NRC were to grant your request, there would be no assurance that the funding requirements of the Order would be met. Therefore, your request for a 60 day extension is denied and the Order remains effective.

Within the next few weeks we intend to consider what enforcement action NRC should take to obtain compliance with the Order. Enforcement action could include referring this matter to the Department of Justice. The efforts made by USR to meet the requirements of the Order, including the required funding, will be considered in determining what enforcement action will be taken. In this regard, we encourage you to negotiate a trust agreement and obtain full funding of the agreement by your resources, insurance funds, and Safety Light.

Sincerely,

  
James Lieberman, Director  
Office of Enforcement

cc: Jack Miller  
D. Jane Drennan, Esq.



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

OCT 11 1989

United States Radium Corporation  
USR Industries, Inc.  
USR Lighting, Inc.  
USR Chemicals, Inc.  
USR Metals, Inc.  
USR Natural Resources, Inc.  
ATTN: Ralph T. McElvenny, Chairman  
550 Post Oak Blvd., Suite 545  
Houston, Texas 77027

Dear Mr. McElvenny:

This responds to your letter of September 22, 1989, in which you renewed your request for an extension of time in which to file the trust agreement and otherwise comply with the Order issued August 21, 1989 by the NRC. Your latest request sought an extension of 30 days, the same amount of time that was granted to Safety Light Corporation. We have also received Mr. Charnoff's and Mr. Shapar's letter of October 5, 1989 advising of their representation and seeking additional time.

These letters describe the various problems that you face. However, the issues that you raise are similar to those raised in your letter of September 20, 1989. Unlike Safety Light Corporation, USR Industries has not made any specific substantive corporate commitments as to funding or as to how or when the Order will be satisfied. For example, Safety Light provided specific information describing the steps it is taking to finalize a trust agreement and made specific firm commitments to establish a trust account, make an initial deposit of 50% of the prior month's profits, and thereafter to commit 50% of its monthly profits to the trust. While these commitments, when satisfied, will not necessarily constitute full compliance with the August 21, 1989 Order, they do constitute good cause for Safety Light's requested extension. Because you have not made satisfactory firm commitments, you have not shown good cause for granting the requested extension.

It should be emphasized that the August 21, 1989 Order was immediately effective, your requests for an extension of time do not affect the immediate effectiveness of the Order, and the immediate effectiveness determination in that Order constitutes final agency action within the meaning of the Administrative Procedure Act and the Commission's regulations. Accordingly, you have 60 days from August 21, 1989, in which to file a petition for review of that Order in the appropriate U.S. Court of Appeals and the NRC does not have authority to change that deadline.

It should be clear to you that prompt action on your part is required to fully fund the site characterization plan. The NRC will consider the speed with which you develop and submit a trust agreement and commence setting aside funds, and the amount thereof, in determining appropriate enforcement action, including possible referral to the Department of Justice. In that regard, we encourage

OCT 11 1989

USR Industries

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you to take every possible step to fund and implement the site characterization plan. Likewise, we will consider any information your attorneys may wish to bring to our attention by way of an Answer to the Order; such consideration on our part, of course, does not stay the immediate effectiveness of the Order or relax its requirements.

Original Signed by  
James Lieberman

James Lieberman, Director  
Office of Enforcement

cc: Mr. Jack Miller  
D. Jane Drennan, Esq.  
G. Charnoff, Esq.