



Pennsylvania Department of Environmental Protection

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August 26, 2004

Bureau of Radiation Protection

717-787-2480

Mr. George Pangburn
Director, Division of Nuclear Materials Safety
U. S. Nuclear Regulatory Commission
Region I
475 Allendale Road
King of Prussia, PA 19406-1415

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Subject: REQUEST FOR COMMENTS ON SAFETY LIGHT CORPORATION'S LICENSE
RENEWAL APPLICATIONS

Dear Mr. Pangburn:

George,

This letter is in response to your letter to me dated July 26, 2004, requesting comments on the Safety Light Corporation (SLC) request to renew NRC License Nos. 37-00030-02 and 37-00030-08.

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I appreciate the opportunity to provide input to NRC staff's recommendations on this difficult licensing action. I agree that the SLC is one of NRC's more complex decommissioning sites and would add that it is by far the most complex and troubling decommissioning site in Pennsylvania.

I understand NRC staff's recommendations will be detailed in a Commission Paper as was done when the NRC last renewed the SLC licenses (*i.e.*, SECY-99-269). I also understand that NRC cannot share with Pennsylvania the Commission Paper being prepared for the current license renewal request prior to the Commission's action and release. We are also aware that an Opportunity to Request a Hearing has been noticed in the Federal Register with regards to SLC's license renewal request. Since we will not know NRC's decision regarding license renewal before the filing date, we intend to request a hearing to formally express and document our concerns and comments to the Atomic Safety and Licensing Board.

In preparing our comments, we have reviewed in detail Commission Paper SECY-99-269, Staff Requirements Memoranda SRM-99-269, Commission Voting Record CVR-99-269 as well as other pertinent licensing records.

Pennsylvania's primary concerns and comments are on the renewal of SLC license 37-0030-08 (08 License) and involve financial assurance and waste disposal issues as discussed below. We are also very concerned about the potential loss of local employment should the SLC 08 License not be renewed. However, ongoing failures by SLC to comply with existing license conditions and their failure to pay Pennsylvania licensing fees indicate this company is not a viable business, and failure of the company is

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inevitable. Recent business failures in the Commonwealth (i.e., Permagrain Products and BSI) illustrate the potential liability associated with inadequate financial assurance of licensed activities.

Again, please note that our comments are directed to the renewal of the 37-00030-08 license as we believe environmental remediation issues and concerns associated with SLC license 37-0030-02 will ultimately be resolved through the Environmental Protection Agency's (EPA) listing of SLC on the National Priority List (NPL).

Financial Assurance Issues

SLC's tritium operations clearly meet the criteria requiring a decommissioning funding plan (10 CFR 30.35). SLC received an exemption from this requirement when their license was last renewed by Condition 20.A of the 08 License. This license condition specified that monthly payments must be made into a decommissioning trust account. The condition states the exemption is valid until December 31, 2004, or the date of any failure to comply with this license condition (i.e., failure to make the specified monthly payments).

SLC, by their own admission, has failed to make the required monthly payments on numerous occasions in 2002 and 2003 and is currently \$72,000 in arrears. We are aware that NRC is in the process of determining if enforcement action is required as a result of these apparent violations. It is Pennsylvania's view that SLC no longer is exempt from the requirements of 10 CFR 30.35 based on their apparent willful decision not to comply with License Condition 20.A.

Condition 20.B of the 08 License requires that SLC provide "... a cost estimate for decommissioning of facilities and equipment authorized by this license, including disposal of waste generated..."

SLC submitted a cost estimate for decommissioning the 08 License on December 6, 2000. The SLC 08 License decommissioning cost was estimated at \$5,621,360 in year 2000 dollars. NRC evaluation of this cost estimate raised questions as to its accuracy and as a result SLC was asked to respond with a modified cost estimate. SLC's response in a letter dated January 25, 2002, concluded "... it doesn't matter which decommissioning cost estimate we use."

In our opinion, this response is indicative that SLC has no intention of properly funding the decommissioning activities that will be required upon cessation of their licensed tritium operations.

Clearly, SLC has been given a significant economic advantage over other licensees through their being exempted from the requirements of 10 CFR 30.35. Using SLC's decommissioning cost estimate of \$5.6 million, the cost of an acceptable funding mechanism (e.g., surety, insurance or guarantee) would be a significant overhead expense that other, non-exempted, licensees must bear in order to remain in business. This exemption was granted to SLC in their most recent license renewal largely on the condition that SLC contribute funds to a decommissioning trust account over the life of the license. As discussed above, this license condition has not been met and SLC has indicated in subsequent

correspondence and meetings that their making the required payments will be contingent on future economic and business conditions. SLC also proposes to contribute lesser amounts to the decommissioning trust account throughout the term of the proposed license renewal. We find this an unacceptable scenario.

The need for adequate decommissioning funding has become an extremely sensitive issue and has direct bearing on SLC's license renewal request. As noted above, two NRC licensees operating in Pennsylvania (Permagrain and BSI) have gone bankrupt, leaving large quantities of radioactive sources for disposal. In both cases, these licensees remained in operation (up to the point of declaring bankruptcy) without adequate financial assurance. In these two cases the radioactive material had to be disposed of by, or transferred to, the EPA and DOE at taxpayer expense. The total cost of these remediation activities exceeds \$3,000,000.

Pennsylvania Position Regarding Financial Assurance Requirements For License Renewal

Pennsylvania believes that SLC has received a significant financial benefit and business advantage through their exemption from the requirements of 10 CFR 30.35 and through not responsibly disposing of wastes generated by operations performed under the 08 license. SLC has received these financial benefits and has still failed to make all their required monthly payments to the NRC controlled decommissioning trust fund, citing poor business conditions as their reason.

Pennsylvania's position is that SLC's failure to make the specified monthly payments to the decommissioning trust account should have effectively revoked SLC's exemption from financial assurance requirements from the date they first missed a payment (Condition 20.A of the 08 License). We have reviewed SLC's response to NRC's Demand for Information and had representation at the closed pre-decisional enforcement conference held to discuss this violation. It is our view that the written and oral responses provided by SLC in regards to this violation do not provide adequate justification for any enforcement discretion.

Further, SLC cannot be considered a viable business that conducts its operations in a compliant manner under the present circumstances. As you know, SLC is also a DEP licensee, and has not paid invoices sent by my office for fees associated with their Pennsylvania radium license. The reasons they have cited in this regard are poor business conditions and the need to make payments to the decommissioning trust fund. I also understand that NRC has chosen not to invoice SLC for some staff decommissioning activities that would normally be the responsibility of the licensee in order to preserve SLC's limited funding. Pennsylvania believes it is not appropriate for SLC to continue to receive this business advantage nor is it appropriate to pass these costs on to taxpayers and other licensees.

Pennsylvania will only support renewal of the 08 license contingent on SLC providing an acceptable decommissioning cost estimate and a decommissioning funding plan that is in compliance with the regulations. As such, the decommissioning funding plan must contain certification that financial assurance for decommissioning has been provided in the amount of the approved decommissioning cost estimate.

Waste Disposal Issues

The following is a summary of tritium waste generated under the 08 license, the status of that waste as we understand it, and the license conditions that we believe apply to this waste.

According to SLC's license renewal application, as of December 10, 2003, there were 16,731 curies of tritium waste on site. The letter also states this material remains on-site due to NRC and SLC's joint decision to concentrate SLC's limited financial resources on completion of the silo remediation project.

Condition 18 of the 08 license states "Radioactive waste generated after January 1, 2000, from operations under this license shall be analyzed once each year, and shall be disposed of within two years of generation, providing a waste disposal site is open."

Of the 64 curies of tritium waste that SLC has generated since January 1, 2000, SLC has disposed of only 11 curies (via one waste shipment in 2001). As a result, more than 80 percent (53 curies) of the tritium waste generated since January 1, 2000, remains stored on site.

Condition 19 of the 08 license states "Radioactive waste generated from activities performed prior to January 1, 2000, shall be disposed of or otherwise removed from the site by December 31, 2004. A report of the inventory of waste in storage, and the waste disposed of each year, shall be provided to the NRC Region I Office by December 31 of each year beginning December 31, 2000".

SLC has indicated in their license renewal application that in order to dispose of waste generated by prior and current operations under their 08 license, funds would need to be diverted from the decommissioning trust account.

Pennsylvania Position Regarding Waste Disposal Issues For License Renewal

Pennsylvania is very concerned that continued operation of the SLC facility will have an adverse environmental effect on the site unless operational wastes are properly disposed of as specified in Conditions 18 and 19 of the 08 license. Indefinite storage of tritium waste on this site is not an option given its location in a flood plain and its close proximity to local residents. Again, Pennsylvania cannot consider SLC a viable company if they cannot generate sufficient revenue to pay for proper disposal of waste along with meeting their other regulatory obligations.

Therefore, Pennsylvania will support renewal of the 08 license provided Conditions 18 and 19 of the license are enforced and there is assurance that any tritium waste accumulation is included in the required decommissioning financial assurance mechanism.

Summary of Pennsylvania Comments

In summary, Pennsylvania will support the renewal of the SLC 08 license only if the financial assurance requirements of 10 CFR 30.35 are enforced and the tritium waste generated and stored on site is properly disposed of as required by their current license conditions.

In closing, I would again mention the two recent cases (i.e. Permagrain and BSI) in Pennsylvania where inadequate financial assurance and "poor business conditions" have resulted in multi-million dollar liability for the federal government. Thus, I believe it is incumbent on us as responsible regulators to ensure that this licensee operates in a manner that does not create additional financial and environmental burdens for the government.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave", written over the word "Sincerely,".

David J. Allard, CHP
Director
Bureau of Radiation Protection

cc: R. Maers, BRP
T. Crowley, SCRO
J. Maher, SCRO
M. Miller, NRC