

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

SAFETY LIGHT CORPORATION)

Bloomsburg, Pennsylvania Site)

(Materials License Amendment))

Docket Nos. 30-05980; 30-5982

ASLBP No. 04-833-07-MLA

NRC STAFF RESPONSE TO REQUEST FOR
HEARING FILED BY THE COMMONWEALTH OF PENNSYLVANIAINTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(1), the U.S. Nuclear Regulatory Commission Staff (Staff) hereby responds to "Commonwealth of Pennsylvania, Department of Environmental Protection's Request for Hearing," dated August 30, 2004 (Hearing Request), regarding the April 22, 2004 request of Safety Light Corp. (SLC or applicant) to renew its materials licenses. As set forth below, the Commonwealth of Pennsylvania, Department of Environmental Protection (PADEP), has shown standing to intervene, and has proffered one admissible contention. Thus, the request for hearing should be granted.¹

BACKGROUND

SLC is the holder of Materials License No. 37-00030-08, which authorizes it to possess and use certain byproduct material in the manufacture of electron tubes, self-luminous devices, foils, targets, rods and pins, and No. 37-00030-02, which authorizes SLC to possess and use radioactive material existing in contaminated facilities as of January 3, 1995, and to characterize and decommission those portions of the site. By letters dated April 22, 2004, SLC submitted requests

¹ In accordance with 10 C.F.R. §§ 2.309(g) and 2.310(a), should PADEP's hearing request be granted, the provisions of 10 C.F.R. Part 2 Subpart L would apply to the hearing.

to renew both licenses.² A notice of opportunity to request a hearing on SLC's applications was published in the *Federal Register* on June 30, 2004.³ Subsequently, PADEP filed a request for hearing on behalf of the Commonwealth of Pennsylvania on August 30, 2004,⁴ asserting that the Staff should not renew License No. 37-00030-08.⁵

DISCUSSION

NRC regulations require that a person who wishes to participate as a party in an adjudicatory proceeding must: (1) timely file a written request to intervene; (2) establish that it has standing to intervene; and (3) proffer at least one admissible contention to be litigated in the proceeding. See 10 C.F.R. § 2.309(a)–(b). PADEP's request for hearing was timely filed on August 30, 2004, meeting the deadline prescribed by the notice of opportunity to request a hearing.⁶ As discussed below, PADEP has established standing to intervene and offered one admissible contention, and thus PADEP's petition to intervene should be granted.

² See Hearing Request Ex. B (Letter from William E. Lynch, Jr., Vice-President, SLC, to Betsy Ulrich, NRC Region I (Apr. 22, 2004)).

³ See Notice of License Renewal Application for [SLC], Bloomsburg, PA and Opportunity to Request a Hearing, 69 Fed. Reg. 39,515 (June 30, 2004). The notice states that if the NRC approves the renewal requests, they will be documented as amendments to SLC's current licenses. *Id.* at 39,516.

⁴ The Staff notes that although PADEP's hearing request states in the certificate of service that it was filed on August 30, 2004, by electronic mail, PADEP served its hearing request only by that method. See Hearing Request at 28; *id.* Ex. G. at 30. Exhibits A through G to the hearing request, to which PADEP cites in support of its contentions, were served separately by express mail only. In accordance with 10 C.F.R. § 2.306, the method of service of PADEP's exhibits provides the Staff an additional two days to the time prescribed by 10 C.F.R. § 2.309(h)(1) for the Staff to file its answer to PADEP's hearing request.

⁵ See Hearing Request at 2, 12.

⁶ See Hearing Request at 1; see *also* 69 Fed. Reg. at 39,516.

A. Standing

To establish standing to intervene as a party in an adjudicatory proceeding, a petitioner must demonstrate: (1) the nature of the petitioner's right under the Atomic Energy Act of 1954, as amended (AEA), to be made a party; (2) the nature and extent of the petitioner's property, financial or other interest in the proceeding; and (3) the potential effect on the petitioner's property, financial or other interest of any decision that may be issued in the course of the proceeding. See 10 C.F.R. § 2.309(d)(1)(ii)–(iv). The regulations further provide that “[a] State . . . that desires to participate as a party in the proceeding” may also submit a request for hearing or petition to intervene, “except that a State . . . that wishes to be a party in a proceeding for a facility located within its boundaries need not address the standing requirements under this paragraph.” See 10 C.F.R. § 2.309(d)(2)(i).

PADEP asserts that it has standing under 10 C.F.R. § 2.309(d)(2)(i). See Hearing Request at 13. Alternatively, PADEP states that it meets the standing requirements of 10 C.F.R. § 2.309(d)(1)(ii)–(iv), on the basis of

significant health, safety, and welfare interests at the Safety Light facility, including: risks of exposure to workers at the site and residents of the area; contamination of soils and groundwater on site and in the Susquehanna River; and the very clear potential for having to engage in a complex and costly site remediation in the event of Safety Light's bankruptcy, inability to pay for compliance with its license requirements, or its failure to properly store and dispose of the onsite tritium waste.

Hearing Request at 13-14. PADEP states that these interests in public health and safety may be affected by a decision to grant SLC's application for license renewal. *Id.*

PADEP has demonstrated that it has standing pursuant to 10 C.F.R. § 2.309(d)(1). As the representative of the interests of the Governor of Pennsylvania in a facility located within the Commonwealth, PADEP has established its interest in protecting the public health and safety of the Commonwealth's citizens, including workers at the Bloomsburg facility and nearby residents, and in the protection of the local environment. These interests may be affected by granting SLC a renewed license that may subject the Commonwealth to the potential risk of SLC's inability to

fund decommissioning and remediation costs. The Commonwealth's strong interests in protecting the lands and people within its jurisdiction also fall within the general interests protected by the AEA. See *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), LBP-99-25, 50 NRC 25, 29-30 (1999); AEA §§ 84a.–b., 161b., 42 U.S.C. §§ 2114(a)–(b), 2201(b). Accordingly, PADEP meets the standing requirements of 10 C.F.R. § 2.309(d)(1).

B. Contentions

A petitioner must offer at least one admissible contention to participate as a party in an adjudicatory proceeding. See 10 C.F.R. § 2.309(a). A properly formulated contention must include: (1) a specific statement of the issue of law or fact to be litigated; (2) a brief explanation of its basis; (3) a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, which support the petitioner's position and on which the petitioner intends to rely at hearing; and (4) sufficient information to show that a genuine dispute exists on a material issue of law or fact, with references to the specific portions of the application that the petitioner disputes and the supporting reasons for each dispute. See 10 C.F.R. § 2.309(f)(1)(i)–(ii), (v)–(vi). If the application is alleged to be deficient, the contention must identify the deficiencies and the reasons they cause the application to be deficient. See 10 C.F.R. § 2.309(f)(1)(vi). Further, the issue raised by the contention must be shown to be both “within the scope of the proceeding” and “material to the findings the NRC must make to support the action that is involved in the proceeding.” See 10 C.F.R. § 2.309(f)(1)(iii)–(iv).

In its request for hearing, PADEP offers six contentions. Hearing Request at 16-24. Of the contentions proffered by PADEP, Contention 3 meets the requirements for admissibility of the Commission's rules of practice. The remainder are inadmissible.

Contention 1:

Safety Light's Application Fails to Comply with Applicable Regulations and the Directives of the Commission.

PADEP asserts in its first contention that SLC's application should be denied because the application does not meet applicable requirements. See Hearing Request at 16-17. PADEP provides three bases in support of its contention. First, PADEP argues that SLC's application fails to satisfy the requirements of 10 C.F.R. § 30.35(b), because the application does not contain a certification of financial assurance for decommissioning or a decommissioning funding plan. *Id.* at 16. PADEP further states that SLC's application fails to include the decommissioning cost estimate required for a decommissioning funding plan, as required by § 30.35(b)(1), (e). *Id.*

Second, PADEP asserts that SLC has failed to provide information that the Commission directed it to provide, in a 1999 Staff Requirements Memorandum (SRM), in any future license application. See *id.* at 16-17; *id.* Ex. F at 1-2.⁷ PADEP argues that the SRM requires SLC to comply with the requirements of § 30.35 in its current license renewal application.⁸ *Id.* at 16-17.

Third, PADEP notes that the Staff issued Requests for Additional Information (RAIs) to SLC on August 18, 2004, regarding SLC's compliance with the conditions of its current license and the exemption request in its current application. *Id.* at 17 & n.16. PADEP contends that the issuance of the RAIs signifies that SLC's application is deficient and should not have been accepted and docketed for review. *Id.*

Staff Response to Contention 1:

Contention 1 is inadmissible. The contention fails to establish that a genuine dispute exists on a material issue of law or fact, is outside the scope of the proceeding, lacks specificity and

⁷ Staff Requirements - SECY-99-269 - Renewal of the [SLC] Licenses at Bloomsburg, Pennsylvania (Dec. 22, 1999).

⁸ Further, by requesting an exemption from the requirements of 10 C.F.R. § 30.35, PADEP argues that SLC has ignored the Commission's directive. See Hearing Request at 17.

support, and is immaterial. See 10 C.F.R. § 2.309(f)(1)(i)–(vi), and (f)(2). PADEP is correct in that NRC regulations require applicants for licenses to possess and use byproduct material to either submit a decommissioning funding plan, or a certification that financial assurance for decommissioning has been provided. 10 C.F.R. § 30.35(b)(1)–(2). A submitted decommissioning funding plan must also contain a decommissioning cost estimate. 10 C.F.R. § 30.35(e). PADEP is further correct that SLC does not include this information in its application for renewal. See Hearing Request Ex. B. Nonetheless, SLC has requested an exemption from the requirements of 10 C.F.R. § 30.35 in its current application that if granted would excuse SLC from providing this information in its current application. See Hearing Request Ex. B at 1. Although SLC has indeed not provided information regarding a decommissioning funding plan under 10 C.F.R. § 30.35, it has made its exemption request in lieu of that information. An exemption would not alter SLC's obligation to follow NRC regulations, but would only change which requirements apply. See *Massachusetts v. NRC*, 878 F.2d 1516, 1521 (1989). The Staff acknowledges that it cannot grant SLC's application without also granting the requested exemption. Thus, the contention is inadmissible, as PADEP has failed to show that a deficiency exists in the application establishing a genuine dispute on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(vi). Additionally, PADEP's concerns regarding a previous decommissioning cost estimate, and the compliance of SLC with the conditions of its current license, are outside the scope of this proceeding as defined by the initial notice of opportunity for hearing. See 69 Fed. Reg. at 39,516. Therefore, to the extent the contention concerns SLC's compliance with its current license, the contention is outside the scope of this proceeding and is inadmissible. See 10 C.F.R. § 2.309(f)(1)(iii); *Portland Gen. Elec. Co. (Trojan Nuclear Plant)*, ALAB-534, 9 NRC 287, 289-90 & n.6 (1979).

PADEP also correctly notes that in a SRM in 1999, the Commission stated an expectation that SLC should, in any future renewal application, demonstrate compliance with 10 C.F.R. § 30.35, and that instead SLC has requested a further exemption from the requirements of that section.

This basis does not support the admission of the proffered contention, as the issue raised is not material to any finding the Staff must make to support its licensing action. See 10 C.F.R. § 2.309(f)(1)(iv). At issue in the proceeding is SLC's satisfaction of regulatory requirements in 10 C.F.R. Part 30, not the degree to which SLC has complied with a Commission memorandum. The SRM has no binding effect on the applicant and cannot be used by PADEP to support an argument that SLC's submittal is legally deficient, as "[o]nly statutes, regulations, orders, and license conditions can impose requirements upon applicants and licensees." *Curators of the Univ. of Mo.*, CLI-95-8, 41 NRC 71, 98 (1995). Further, as stated above, the fact that the applicant has requested, perhaps against prior Commission expectations, an exemption from certain requirements does not mean that SLC's current application is deficient in any respect.

With respect to RAIs issued to SLC by the Staff, the Commission has soundly rejected the proposition that the issuance of RAIs by the Staff suggests in any way that a license application is deficient. See *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 & 3), CLI-99-11, 49 NRC 328, 336-37 (1999); *Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 349-50 (1998). As the Commission has explained, "RAIs are a standard and ongoing part of NRC licensing reviews[.]" and "are a routine means for our staff to request clarification or further discussion of particular items in the application." *Calvert Cliffs*, CLI-98-25, 48 NRC at 349; *Oconee*, CLI-99-11, 49 NRC at 336. "[T]he NRC staff's mere posing of questions does not suggest that the application [is] incomplete[.]" *Calvert Cliffs*, CLI-98-25, 48 NRC at 349. Thus, an admissible contention cannot be based solely on the existence of RAIs, as the license application, not the Staff's review, is at issue in a proceeding on that application. *Id.* at 350. Indeed, the regulations expressly allow the Staff to request additional information from an applicant. See 10 C.F.R. § 2.102(a). In deciding that the application was acceptable for review, the Staff considered not only the application, but also additional information existing in the docket, and determined that sufficient information was available to warrant acceptance. Contrary to PADEP's

position that the application should not have been accepted for docketing by the Staff, the Federal courts have held that the NRC does not “violate[] any clear legal duty by proceeding first to docket [an application] and thereafter to request additional information.” *Concerned Citizens of R.I. v. NRC*, 430 F. Supp. 627, 634 (D. R.I. 1977). Other than referring generally to the Staff’s RAI, which PADEP states “bears directly on [SLC’s] willingness and ability to comply with . . . 10 CFR 30.35,” PADEP offers no other specific facts or expert opinion to demonstrate that the application is incomplete. Hearing Request at 17. “Petitioners must do more than attach a list of RAIs and declare an application ‘incomplete.’” *Oconee*, CLI-99-11, 49 NRC at 337. Accordingly, the contention lacks specificity and support, does not show that a genuine dispute exists with respect to any deficiency in the application, and is inadmissible. See 10 C.F.R. § 2.309(f)(1)(i)–(ii), (v)–(vi), and (f)(2).

Contention 2:

Safety Light has no valid exemption from the financial assurance requirements of 10 CFR 30.32(h) and 30.35(a) through 30.35(f) that can be renewed through this license application because the exemption terminated when Safety Light failed to comply with its current license.

In support of its second contention, PADEP states that SLC has failed to comply with Condition 20.A of License No. 37-00030-08, which granted SLC an exemption from the financial assurance requirements of 10 C.F.R. § 30.35, noting that the license condition states that “[t]his exemption is valid until the [December 31, 2004] or the date of any failure to comply with this license condition.” *Id.* at 18; *id.* Ex. A at 4. PADEP notes that SLC has admitted to non-compliance with this license condition in its current application, that the NRC Office of Enforcement has pursued this matter with SLC, and asserts that SLC’s previously granted exemption has expired on account of SLC’s failure to comply. *Id.* at 18. Thus, states PADEP, SLC’s application should be denied insofar as it requests a “continuation” of its exemption from 10 C.F.R. § 30.35. *Id.* at 19.

On this basis, PADEP argues that to grant a further exemption would be prohibited by § 30.11(a) as contrary to law and not in the public interest. *Id.*

Staff Response to Contention 2:

Contention 2 is inadmissible. The contention raises issues outside the scope of this proceeding. See 10 C.F.R. § 2.309(f)(1)(iii). PADEP is correct in noting that in the letter submitting its application, SLC requested “a continuation” of the exemption that it had been granted previously. See Hearing Request at 18; *id.* Ex. B at 1. PADEP offers facts, however, that relate to SLC’s compliance with the conditions of its license in the past. See Hearing Request at 18-19. Issues of past compliance with NRC requirements are inadmissible for falling outside the scope of this proceeding, which is limited to the issue of whether SLC’s request for renewal should be granted.⁹ In a license amendment proceeding, admissible contentions must focus on the issues identified in the notice of hearing, the application, and the Staff’s environmental responsibilities related to that application. See *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-91-39, 34 NRC 273, 282 (1991). Because it is not germane to those issues, the contention must be rejected.

Contention 3:

Safety Light should not be granted any further exemption from financial assurance requirements or a reduced rate of contribution into the escrow funds.

According to PADEP, SLC’s operations under License No. 37-00030-08 “plainly meet the criteria under 10 CFR 30.35 requiring financial assistance and a decommissioning funding plan,” and that SLC should not be granted a further exemption from the requirements of 10 C.F.R. § 30.35. Hearing Request at 19. PADEP claims that “current site conditions are such that significant environmental and public health hazards exist which will require significant funds to fully

⁹ See 69 Fed. Reg. at 39,516; 10 C.F.R. § 2.309(f)(1)(iii). The proper vehicle for PADEP to offer these arguments is through a request for enforcement action filed under 10 C.F.R. § 2.206.

and properly remediate.” *Id.* PADEP opines that the Staff “would seem to share this assessment” based on the Staff’s statements regarding SLC’s decommissioning cost estimate in 2001, which PADEP offers as establishing that SLC has lacked sufficient funds to carry out site characterization and decommissioning activities. *Id.* at 19-20. PADEP remarks that SLC’s lack of funds has caused it to be unable to comply with license conditions 18 and 19 of its license to fund waste disposal efforts, and unable to engage in remediation efforts at the site. *Id.* at 20. Given these issues, PADEP asserts that SLC would likewise be unable to remediate the site at the reduced level of funding as proposed in its current license renewal application. *Id.* Thus, PADEP argues that SLC’s request for an exemption should be denied because of SLC’s inability to meet its decommissioning and remediation efforts in the past. *Id.*

Staff Response to Contention 3:

Contention 3 is admissible, to the extent that it contends that SLC has not satisfied the regulatory requirements for the exemption requested in its current application. In support of its contention, PADEP recounts the history and current condition of the Bloomsburg, Pennsylvania site, to show the presence of significant levels of radiological contaminants, which respect to which SLC has failed to complete its commitments to remove.¹⁰ As stated above, insofar as PADEP raises issues of SLC’s compliance with License Conditions 18 and 19, which require SLC to dispose of radioactive wastes, or Condition 20.B., which requires SLC to provide a decommissioning cost estimate, these issues fall outside the scope of the proceeding and are inadmissible. See Hearing Request at 19-20; 10 C.F.R. § 2.309(f)(1)(iii). To the extent that PADEP seeks admission of the contention on the basis that SLC does not meet the criteria to merit another exemption from the requirements of 10 C.F.R. § 30.35, however, PADEP has established with sufficient basis that a genuine dispute exists on material issues of law and fact that are both

¹⁰ See Hearing Request at 3-10 (citing generally SECY-99-269, Renewal of the [SLC] Licenses at Bloomsburg, Pennsylvania (Nov. 17, 1999)), 19-20, & Ex. B at 2.

within the scope of the proceeding and material to the findings that the Staff would need to make to support the proposed licensing action. See 10 C.F.R. § 2.309(f)(1)(iv). Accordingly, this contention is admissible.

Contention 4:

Safety Light's exemption from financial assurance requirements gives Safety Light an unfair competitive advantage over other NRC licensees which must comply with those requirements.

PADEP states that SLC's exemption from financial assurance requirements has accorded SLC "a significant economic advantage over other NRC licensees which have had to fully comply," in the form of lower operating expenses. *Id.* at 21. This advantage, claims PADEP, has been augmented by SLC's violation of its license conditions to deposit funds into a trust account, and would be enhanced even further by a delay in satisfying these arrears or SLC's proposal to contribute less to the trust account under a renewed license. *Id.* PADEP therefore opposes the application for renewal on the basis that this economic advantage should not be continued in the form of a further exemption, which it claims are of "questionable fairness" and "would reward license violations[.]" *Id.*

Staff Response to Contention 4:

Contention 4 is inadmissible. The contention lacks support, is outside the scope of the proceeding, and is immaterial. 10 C.F.R. §§ 2.309(f)(1)(i)–(v), and (f)(2). The Commission has consistently held that the economic interests of competitors or employees are not cognizable interests protected under either the AEA or the National Environmental Policy Act (NEPA). See *U.S. Enrichment Corp.* (Paducah, Kentucky), CLI-01-23, 54 NRC 267, 276 & n.19 (2001) (noting cases that hold "that an entity's competitive interests do not bring it within the zone of interests of either the AEA or . . . [NEPA] for the purpose of policing a competitor's compliance with licensing requirements). The issues raised by the contention are thus immaterial and fall outside the scope of the proceeding. See 10 C.F.R. § 2.309(f)(1)(iii)–(iv). Moreover, to the extent

that PADEP grounds its contention on alleged violations of license conditions, the contention is inadmissible for not being within the scope of the proceeding. See 10 C.F.R. § 2.309(f)(1)(iii). Further, PADEP does not support its assertion that granting SLC's application and exemption request would work to give SLC a "significant economic advantage," Hearing Request at 21, with sufficient facts or expert opinions that are supported by any documents or other analytical information as required by 10 C.F.R. §§ 2.309(f)(1)(v), and (f)(2). NRC regulations require that PADEP make more than mere assertions; they require that PADEP offer actual support for its position. PADEP has provided none. The contention is thus inadmissible and should be rejected.

Contention 5:

Safety Light's failure to contribute to the escrow funds and their request for a reduced rate of contribution shows that Safety Light is not a viable business and thus should not have their application granted.

In support of its fifth contention, PADEP asserts that SLC has suffered from "ongoing business problems" which are at the root of its noncompliance with license conditions that require SLC to make periodic payments into a trust account, and SLC's proposal to reduce the amount of future monthly payments. *Id.* at 22. PADEP explains, "it is an open question whether [SLC] would qualify for a license were they to appear before the NRC as a new applicant[.]" *Id.* PADEP argues that the inability of SLC to meet the financial assurance requirements or exemptions thereto cast doubt on whether SLC is a viable business entity that qualifies to hold an NRC license. *Id.* PADEP also points to other instances of alleged "'business related' noncompliance" in SLC's dealings with the Commonwealth of Pennsylvania. See Hearing Request at 22 n.25. Specifically, PADEP contends that SLC is unable to satisfy the requirements of 10 C.F.R. § 30.35 and section 182a. of the AEA, 42 U.S.C. § 2232(a). *Id.* at 22.

Staff Response to Contention 5:

Contention 5 is inadmissible. The contention is an impermissible attack on NRC regulations and fails to establish that a genuine dispute exists on an issue of law or fact.

See 10 C.F.R. §§ 2.335(a), 2.309(f)(1)(iv). PADEP misconstrues the AEA and NRC regulations, arguing that SLC must meet regulatory requirements in addition to what is required of applicants for licenses to possess and use byproduct material. Section 182 of the AEA provides, in pertinent part, that “[e]ach application for a license hereunder shall be in writing and shall specifically state such information *as the Commission, by rule or regulation, may determine to be necessary to* decide such of the technical and financial qualifications of the applicant[.]” AEA § 182a., 42 U.S.C. § 2232(a) (emphasis added). The relevant regulations cited by PADEP, 10 C.F.R. §§ 30.33(a)(4)¹¹ and 30.35, only require license applicants under 10 C.F.R. Part 30 to provide financial information as it relates to decommissioning. See 10 C.F.R. § 30.35(b)(1)–(2).

Under these provisions, SLC is required to provide a decommissioning funding plan, not that it is “a viable business entity,” or that it is “financially capable of operating under a license that has the full range of financial assurances as required by the [AEA] and the NRC’s regulations,” as suggested by PADEP. See Hearing Request at 22. As the Commission has held, contentions that aim to impose regulatory requirements beyond those required by NRC regulations are impermissible attacks on the regulations and are inadmissible. See *Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 178 (2000) (an “argument that the applicant must meet financial requirements in addition to those imposed by our regulations constitutes an impermissible attack on our regulations”); *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-87-12, 26 NRC 383, 395 (1987); see also *Massachusetts v. NRC*, 924 F.2d 311, 330 (D.C. Cir. 1991). Because PADEP asserts that SLC must go beyond NRC regulations, to satisfy additional requirements, in accordance with

¹¹ PADEP cites to 10 C.F.R. § 30.32(a)(4), Hearing Request at 22, but as this appears incorrect, the Staff assumes PADEP intended to cite 10 C.F.R. § 30.33(a)(4). 10 C.F.R. § 30.37 requires license renewal applicants to comply with 10 C.F.R. § 30.32. 10 C.F.R. § 30.32(h) in turn specifies that applications for specific licenses under 10 C.F.R. Part 30 must contain the information required under § 30.35. 10 C.F.R. § 30.33(a)(4) states that the application will be granted provided the applicant satisfies 10 C.F.R. § 30.35.

10 C.F.R. § 2.335(a) the contention must be rejected. Further, because PADEP has not shown that SLC's application fails to conform to an applicable requirement, the contention fails to show that a genuine dispute exists on an issue of fact or law, and the contention is inadmissible. See 10 C.F.R. § 2.309(f)(1)(vi).

Contention 6:

Safety Light's failure to dispose of the on-site tritium waste as required by its license constitutes a violation of that license, and thus their application should be denied.

Noting that License Conditions No. 18 and 19 require SLC to dispose of, within certain time periods, all radioactive waste generated at the site, and that SLC has not complied with these license conditions, PADEP asserts that the license "should not be renewed absent meaningful enforcement of conditions 18 and 19 and adequate financial assurance measures to provide for the ultimate disposal of the tritium waste and full decommissioning of the site." *Id.* at 23. PADEP opines that SLC's apparent violations of these license conditions constitute willful misconduct subject to enforcement action, including license revocation or denial of its license application. *Id.* at 23-24. PADEP states that the continuing accumulation of radioactive waste at the site and SLC's noncompliance with license conditions may result in significant dangers to the environment and the public health and safety. *Id.* Accordingly, PADEP "seeks to have the tritium waste removed promptly through the enforcement of license conditions that set meaningful goals for waste removal and the establishment of financial assurances[.]" and desires that SLC's application not be renewed under existing terms. *Id.* at 24.

Staff Response to Contention 6:

Contention 6 is inadmissible. As detailed above, issues of compliance with regulatory requirements, such as license conditions, under the terms of previous licenses are outside the scope of this proceeding. See 10 C.F.R. § 2.309(f)(1)(iii). Again, the Staff recommends that PADEP pursue issues of enforcement through a request for action filed under 10 C.F.R. § 2.206.

CONCLUSION

For the reasons set forth above, PADEP's request for hearing should be granted. Regarding PADEP's reservation of a right to file amended or new contentions based on SLC's responses to the Staff's RAIs, see Hearing Request at 25-26, the Staff notes that PADEP must comply with 10 C.F.R. § 2.309(f)(2)(i)–(iii).

Respectfully submitted,

/RA/

Michael A. Woods
Counsel for NRC Staff

Dated at Rockville, Maryland
this 27th day of September, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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(Materials License Amendment))	ASLBP No. 04-833-07-MLA

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.314(b), the following information is provided:

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Admissions:	Court of Appeals for the State of Maryland
Name of Party:	NRC Staff

Respectfully Submitted,

/RA by Michael A. Woods for/

Lisa B. Clark
Counsel for NRC Staff

Dated at Rockville, Maryland
this 27th day of September, 2004

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Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.314(b), the following information is provided:

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Admissions:	State of Georgia Superior Court of Fulton County
Name of Party:	NRC Staff

Respectfully submitted,

/RA/

Michael A. Woods
Counsel for NRC Staff

Dated at Rockville, Maryland
this 27th day of September, 2004

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In the Matter of)	
)	
SAFETY LIGHT CORPORATION)	Docket Nos. 30-05980; 30-5982
Bloomsburg, Pennsylvania Site)	
(Materials License Amendment))	ASLBP No. 04-833-07-MLA

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO REQUEST FOR HEARING FILED BY THE COMMONWEALTH OF PENNSYLVANIA," "NOTICE OF APPEARANCE" for Lisa B. Clark, and "NOTICE OF APPEARANCE" for Michael A. Woods in the above-captioned proceeding have been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (*), or by electronic mail as indicated by a double asterisk (**) on this 27th day of September, 2004.

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/RA/

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