

June 30, 1992

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
SAFETY LIGHT CORPORATION)	Docket Nos. 030-05980-ML/ML-2
UNITED STATES RADIUM)	030-05982-ML/ML-2
CORPORATION)	
USR INDUSTRIES, INC.)	
USR CHEMICAL PRODUCTS, INC.)	(ASLBP Nos. 92-659-01-ML
USR METALS, INC.)	and 92-664-02-ML-2)
USR LIGHTING, INC.)	
U.S. NATURAL RESOURCES, INC.)	
LIME RIDGE INDUSTRIES, INC.)	
METREAL, INC.)	
(Bloomsburg Site Decommissioning)	
and License Renewal Denials))	

NRC STAFF'S STATEMENT OF UNDISPUTED
MATERIAL FACTS AS TO WHICH NO GENUINE ISSUE REMAINS

1. On March 16, 1956, the Atomic Energy Commission ("AEC") issued License Number 37-30-1 to the United States Radium Corporation ("U.S. Radium") "[f]or preparation of sealed sources for experimental use within the laboratory and for resale to AEC licensed users."¹
2. The activities identified in (1), *supra*, were authorized at a site located at 4150 Old Berwick Road, Bloomsburg, Pennsylvania ("the Bloomsburg site").
3. On June 20, 1956, the AEC issued License Number 37-30-2 (now License No. 37-00030-02) to U.S. Radium for "RESEARCH AND DEVELOPMENT as defined in Section 11(q) Atomic Energy Act of 1954[]" and "PROCESSING FOR REDISTRIBUTION to AEC licensed users."²
4. License No. 37-00030-02 replaced License No. 37-03-1.

¹ License No. 37-30-1, March 16, 1956 (Staff Exh. 1).

² License No. 37-00030-02, June 20, 1956 (Staff Exh. 2).

5. On May 16, 1962, the AEC issued License No. GL 122 (now License No. 37-00030-10G) to U.S. Radium.³
6. On April 16, 1965, the AEC issued License No. 37-30-7 (now License No. 37-00030-07E) to U.S. Radium⁴ (the NRC terminated License No. 37-00030-07E on October 10, 1991).
7. On January 13, 1966, the AEC issued License No. GL 237 (now License No. 37-00030-09G) to U.S. Radium.⁵
8. License Nos. 37-00030-10G, 37-00030-07E, and 37-00030-09G originally authorized use, possession, and distribution of products containing hydrogen-3 (tritium), but since 1972 have not authorized anything other than distribution of certain products.
9. On April 25, 1969, U.S. Radium applied to renew License No. 37-00030-02.⁶

³ License No. 37-00030-10G, May 16, 1962 (Staff Exh. 3). The 10G license provided that, "[p]ursuant to Section 30.24(j), 10 CFR 30, the licensee is authorized to manufacture the sealed self-luminous sources listed in Condition 10 below, and when such sources have been manufactured, tested, and labelled in accordance with the provisions of this license and Sections 30.24(j) and 30.25 of 10 CFR 30, to distribute the sources to persons generally licensed pursuant to Section 30.21(d) of 10 CFR 30."

⁴License No. 37-00030-07E, April 16, 1965 (Staff Exh. 4). The 07E license authorized "[a]pplication of tritiated luminous paint to timepiece hands and dials for sale or distribution to persons exempt from the requirements for a license pursuant to Section 30.10(a), Title 10, Code of Federal Regulations, Part 30, 'Licensing of Byproduct Material.'"

⁵ License No. 37-00030-09G, January 13, 1966 (Staff Exh. 5). License condition 9 specified that "[p]ursuant to Section 32.51, Title 10, Code of Federal Regulations, Part 32, the licensee is authorized to manufacture luminous devices specified in Condition No. 10 of this license subject to the conditions and limitations contained herein and to distribute such devices to persons generally licensed pursuant to Section 31.5, Title 10, Code of Federal Regulations, Part 31, or equivalent provisions of the regulations of any Agreement State."

⁶ Application for Byproduct Material License, April 25, 1969. (Staff Exh. 6).

10. The license application identified in (9), *supra*, requested a new license, or in the alternative, amendment of License No. 37-00030-02 to authorize new activities.
11. The application identified in (9), *supra*, requested the AEC to renew License No. 37-00030-02, independent of the request identified in (10), *supra*.
12. U.S. Radium's renewal of License No. 37-00030-02 proposed in (11), *supra*, would have then authorized possession of byproduct material at the Bloomsburg site for "[d]econtamination, clean-up and disposal of areas previously used for research, development and processing under this license."⁷
13. In response the application identified in (9), *supra*, on August 5, 1969, the AEC issued License No. 37-00030-08 to U.S. Radium for "[p]rocessing for distribution to authorized recipients[]" and "[r]esearch and development as defined in 10 CFR 30.4(q)."⁸
14. In addition to the response identified in (13), *supra*, the AEC renewed License No. 37-00030-02 for the purposes requested in the application.⁹
15. On January 25, 1979, the NRC issued amendment number 40 to License No. 37-00030-02,¹⁰ which included license conditions 13 and 14 requiring 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.
16. 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.¹¹

⁷ *Id.*

⁸ License No. 37-00030-08, August 5, 1969 (Staff Exh. 7). The AEC issued this license rather than amending the 02 license at U.S. Radium's request.

⁹ License No. 37-00030-02, Amendment No. 36. (Enclosed with Staff Exh. 2).

¹⁰ Amendment number 40 and the materials it incorporates by reference are included in Staff Exh. 2.

¹¹ See Staff Exh. 2.

17. Beginning in 1979, U.S. Radium, a publicly held company, engaged in a series of transactions, culminating in 1980, that resulted in U.S. Radium becoming a wholly-owned subsidiary of USR Industries along with USR Lighting, Inc., USR Metals, Inc., USR Chemical Products, Inc., and U.S. Natural Resources, Inc.
18. The plan for the series of transactions identified in (17), *supra*, is set forth in USR Industries' Form S-14, "Registration Statement Under the Securities Act of 1933" ("S-14"),¹² which it filed with the Securities and Exchange Commission on May 16, 1980, and its American Stock Exchange listing application of August 21, 1980 ("ASE Listing Application").¹³
19. Metreal, Inc. was incorporated in January of 1979.
20. U.S. Radium conveyed a portion of the land and contaminated buildings on the Bloomsburg site to Metreal upon the latter's incorporation.
21. Metreal is a subsidiary of Safety Light today, and there is no issue as to the NRC's jurisdiction over Metreal.
22. USR Metals, Inc., USR Chemical Products, Inc., USR Lighting, Inc., and U.S. Natural Resources, Inc., were incorporated in June of 1979.¹⁴
23. At the time of their incorporation, the companies identified in (22), *supra*, were nominally capitalized.
24. At the time of the incorporation of the companies identified in (22), *supra*, the incorporators of those companies immediately transferred them to U.S. Radium.

¹² "Securities and Exchange Commission Washington, D.C., 20549, Form S-14, Registration Statement Under the Securities Act of 1933, USR Industries, Inc. (Exact name of registrant as specified in its charter.)" (May 16, 1980)(Staff Exh. 8).

¹³ "Listing Application No. 12145, American Stock Exchange, Inc.," (with attachments)(Feb. 11, 1981)(Staff Exh. 9).

¹⁴ Articles of Incorporation for USR Metals (Staff Exh. 10); Articles of Incorporation for USR Lighting Products (Staff Exh. 11); Articles of Incorporation for USR Chemical Products (Staff Exh. 12); Articles of Incorporation for U.S. Natural Resources (Staff Exh. 13).

25. On May 14, 1980, U.S. Radium, a publicly held corporation, caused the incorporation of USR Industries, Inc.¹⁵
26. Concurrent with the transaction identified in (25), *supra*, USR Industries caused the incorporation of Industries Merger Co., Inc.
27. As of May 16, 1980, U.S. Radium owned, possessed, and operated the business located on the Bloomsburg site.
28. As of May 16, 1980, U.S. Radium owned all the outstanding stock of USR Industries, Inc.
29. As of May 16, 1980, USR Industries, Inc., owned all the outstanding stock of Industries Merger Co., Inc.
30. As of May 16, 1980, U.S. Radium, USR Industries, and Industries Merger Company were Delaware corporations.¹⁶
31. At the time of the incorporation of USR Industries and Industries Merger Company on or about May 14, 1980, the Board of Directors of U.S. Radium was identical to that of USR Industries, Inc.
32. At the time of the incorporation of USR Industries and Industries Merger Company on or about May 14, 1980, the same individual was Chairman of the Board of U.S. Radium, USR Industries, and Industries Merger Company.¹⁷
33. At the time of their incorporation, both USR Industries and Industries Merger Co. were only nominally capitalized.¹⁸

¹⁵ ASE Listing Application, *supra*, note 13, at 1.

¹⁶ *Id.*

¹⁷ ASE Listing Application, *supra*, note 13, at 4; "Agreement and Plan of Merger," at A-7 dated May 16, 1980, Exhibit A to United States Radium Corporation Proxy Statement dated July 11, 1980 ("Proxy Statement") (included with the ASE Listing Application, *supra*, note 13).

¹⁸ Proxy Statement, *supra*, note 24, at 16.

34. The "Agreement and Plan of Merger," dated May 16, 1980, Exhibit A to United States Radium Corporation Proxy Statement dated July 11, 1980 ("Merger Plan"), describes that, on execution of the Merger Plan, each share of U.S. Radium (publicly held) would convert to a share of USR Industries.
35. The Merger Plan identified in (34), *supra*, describes that on implementation of the Merger Plan, 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.
36. The Merger Plan identified in (34), *supra*, describes that on implementation of the Merger Plan, all shares of USR Industries outstanding prior to execution of the Merger Plan (all of which were held by U.S. Radium) would be canceled.¹⁹
37. The Board of Directors of U.S. Radium before implementation of the Merger Plan identified in (34), *supra*, would constitute the Board of Directors of USR Industries after execution of the Merger Plan.²⁰
38. As further described in U.S. Radium's Proxy Statement dated July 11, 1980, after the merger, U.S. Radium, as a wholly-owned subsidiary of USR Industries, would transfer its Chemical Products Division, its Lighting Products Division, and its Metals Division, each with its own line of business, and its oil and gas interests, to separate wholly-owned subsidiaries of USR Industries.
39. The Proxy Statement identified in (38), *supra*, names the separate wholly-owned subsidiaries of USR Industries identified in (38), *supra*, as USR Chemical Products, Inc., USR Lighting Products, Inc., USR Metals, Inc., and U.S. Natural Resources, Inc.²¹
40. The Proxy Statement identified in (38), *supra*, describes that U.S. Radium would not transfer but would retain its Nuclear Products Division, which operated its safety lighting business (its only business licensed by the NRC).

¹⁹ *Id.*, Article II, at A-3.

²⁰ 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 (accompanying Proxy Statement, *supra*, note 16).

²¹ Proxy Statement, *supra*, note 16, at 15; S-14, *supra*, note 12, at 22-23.

41. On August 27, 1980, U.S. Radium, USR Industries, and Industries Merger Co. executed the Merger Plan identified in (34), *supra*.²²
42. On execution of the Merger Plan identified in (34), *supra*, the members of the boards of directors of U.S. Radium and USR Industries did not change.
43. The only assets that USR Industries acquired through execution of the Merger Plan identified in (34), *supra*, were assets of U.S. Radium before the merger.²³
44. On November 24, 1980, U.S. Radium entered into an agreement with USR Lighting Products to transfer the assets of the Lighting Products Division of U.S. Radium to USR Lighting Products.²⁴
45. On November 24, 1980, U.S. Radium entered into an agreement with USR Metals to transfer the assets of the Metals Division of U.S. Radium to USR Metals.²⁵
46. On November 24, 1980, U.S. Radium entered into an agreement with USR Chemical Products to transfer the assets of the Chemical Products Division of U.S. Radium to USR Chemical Products.
47. U.S. Radium completed the reorganization described in (22)-(46), *supra*, by simultaneously contributing the assets of the various divisions into corporate subsidiaries of USR Industries, as identified in (44)-(46), *supra*.
48. U.S. Radium continued to own and operate the business of the Nuclear Products Division of U.S. Radium as organized before the transaction identified in (41), *supra*.²⁶

²² ASE Listing Application, *supra*, note 13, at 3.

²³ Letter dated July 11, 1980, *supra*, note 21, at 2.

²⁴ Asset transfer agreement between U.S. Radium and USR Lighting Products (Nov. 24, 1980) (Staff Exh. 14).

²⁵ Asset transfer agreement between U.S. Radium and USR Metals (Nov. 24, 1980) (Staff Exh. 15).

²⁶ Deposition of Ralph T. McElvenny, Jr. ("McElvenny Deposition"), Tr. at 79 (Staff Exh. 16).

49. Metreal, Inc., whose sole assets were portions of the contaminated land and buildings on the Bloomsburg site, and the Nuclear Products Division were the only assets retained by U.S. Radium after the transactions identified in (22)-(48), *supra*.
50. By letter dated December 15, 1980, U.S. Radium informed the Commission that it had changed its name to Safety Light Corporation.²⁷
51. By letter dated January 21, 1981, U.S. Radium requested the NRC to change the name on License No. 37-00030-02 to Safety Light.²⁸
52. U.S. Radium made the request identified in (51), *supra*, notwithstanding that it was not until June 22, 1981, that the Board of Directors of U.S. Radium consented to a resolution changing U.S. Radium's name to Safety Light Corporation, to be effective on July 15, 1981.²⁹
53. On June 24, 1981, USR Industries, Inc., as the sole stockholder of U.S. Radium consented to the adoption of the following resolution:

RESOLVED, that the Certificate of Incorporation of [U.S. Radium] shall be amended effective July 15, 1981 by changing Article First thereof so that, as amended, said Article shall be and read as follows:

"FIRST. The name of the corporation is Safety Light Corporation." ³⁰

²⁷ Letter from Jack Miller, President, Safety Light Corp., to Paul Guinn, NRC (Dec. 15, 1980) (Staff Exh. 17).

²⁸ Letter from Jack Miller, President, Safety Light Corp., to Paul Guinn, NRC (Jan. 21, 1981) (Staff Exh. 18).

²⁹ U.S. Radium Corp. Unanimous Consent of Board of Directors (June 22, 1981)(Staff Exh. 19).

³⁰ U.S. Radium Corp. Action of Sole Stockholder In Lieu of Meeting (June 24, 1981) (Staff Exh. 20).

54. The amendment to U.S. Radium's Certificate of Incorporation identified in (53), *supra*, was filed with the Secretary of State of Delaware on December 21, 1981.³¹
55. Prior to the December 15, 1980, letter identified in (50), *supra*, none of the corporations involved in the transactions identified in (22)-(54), *supra*, informed the NRC of any of those transactions.³²
56. Prior to the December 15, 1980, letter identified in (50), *supra*, no individual informed the NRC of any of the transactions identified in (22)-(54), *supra*.³³
57. No corporation involved with the transactions identified in (22)-(48), *supra*, requested the NRC's prior permission or consent to transfer control of U.S. Radium's licenses with regard to those transactions.³⁴
58. The NRC has never made a finding that any transaction identified in (22)-(48), *supra*, was in accordance with the Atomic Energy Act of 1959, as amended.
59. The NRC Staff has never given its written consent to any of the transactions identified in (22)-(48), *supra*.³⁵
60. On May 24, 1982, USR Industries sold its wholly-owned subsidiary, Safety Light Corporation, to Lime Ridge Industries, Inc.³⁶

³¹ Certificate of Amendment to Certificate of Incorporation of United States Radium Corporation (Dec. 21, 1981) (Staff Exh. 21).

³² Affidavit of Francis Costello (June 26, 1992)(Staff Exh. 22)("Costello Affidavit"), at ¶¶ 12, 14, 16, and 18; McElvenny Deposition, Tr. at 181-182.

³³ *Id.*

³⁴ Costello Affidavit at ¶ 12; McElvenny Deposition, Tr. at 204-205; Deposition of John T. Miller ("Miller Deposition"), Tr. at 163 (Staff Exh. 25); Deposition of Charles R. White ("White Deposition"), Tr. at 69 (Staff Exh. 26).

³⁵ Costello Affidavit at ¶¶ 19, 21; McElvenny Deposition, Tr. at 182-183.

³⁶ Letter from Jack Miller, President, Safety Light Corporation to U.S. Nuclear Regulatory Commission, Materials Licensing Branch, Division of Fuel Cycle & Materials (continued...)

61. At the time of the transaction identified in (60), *supra*, three individuals, namely John T. Miller, President of Safety Light, and Charles R. White, Vice-President of Safety Light, and David J. Watts, owned 100% of the stock of Lime Ridge Industries.
62. After the transaction identified in (60), *supra*, Lime Ridge Industries, Inc., merged into Safety Light Corporation, with Safety Light being the surviving corporation.
63. No corporation involved with the transaction identified in (60), *supra*, informed NRC of that transaction prior to May 24, 1982.
64. No individual informed the NRC of the transaction identified in (60), *supra*, prior to May 24, 1982.
65. No corporation involved with the transaction identified in (60), *supra*, requested the NRC's prior permission or consent to transfer control of the licenses with regard to that transaction.³⁷
66. The NRC has never made a finding that the transaction identified in (60), *supra*, was in accordance with the Atomic Energy Act of 1959, as amended.³⁸
67. The NRC has never given its written consent to the transaction identified in (60), *supra*.³⁹

³⁶(...continued)

Safety (Nov. 11, 1983)(Staff Exh. 23); Safety Light Corporation 1982 Sale Documents (Staff Exh. 24).

³⁷ Costello Affidavit at ¶ 15; McElvenny Deposition, Tr. at 204-205; Deposition of John T. Miller ("Miller Deposition"), Tr. at 163 (Staff Exh. 25); Deposition of Charles R. White ("White Deposition"), Tr. at 69 (Staff Exh. 26).

³⁸ Costello Affidavit at ¶ 20.

³⁹ *Id.* at ¶¶ 19, 21.