

NUCLEAR REGULATORY COMMISSION

[NRC-2009-0421; IA-09-021]

In the Matter of Mr. Douglas Poling; Confirmatory Order (Effective Immediately)

I

Mr. Douglas Poling held the positions of President and Chief Executive Officer for Magna Chek, Inc. Magna Chek is the holder of Materials License No. 21-19111-02 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on May 20, 1985. The license currently authorizes Magna Chek to store radioactive sources previously used in radiography operations at its permanent radiography facility in Warren, Michigan. Mr. Poling was named as Radiation Safety Officer on the license in 2008.

This Confirmatory Order is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on August 4, 2009.

II

On May 1, 2008, the NRC conducted an onsite inspection at the Magna Chek storage location in Warren, Michigan. The purpose of the inspection was to review the corrective actions taken by Magna Chek in response to a Notice of Violation issued on December 19, 2007 (EA-09-260 and EA-09-265). As a result of the inspection observations, the NRC Office of Investigations (OI) initiated an investigation (OI Case No. 3-2008-017). Based on the evidence developed during the inspection and investigation, the NRC identified that Mr. Poling's deliberate actions caused the Magna Chek licensee to be in violation of NRC requirements. The violations are described in the Appendix to this Order.

The results of the investigation were sent to Mr. Douglas Poling in a letter dated April 1, 2009. This letter offered Mr. Poling the opportunity to either participate in ADR mediation or to attend a Predecisional Enforcement Conference. In response to the NRC's offer, Mr. Poling requested use of the NRC's ADR process to resolve the differences he had with the NRC. On May 18, 2009, the NRC and Mr. Poling agreed to mediate. On August 4, 2009, the NRC and Mr. Poling participated in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. As used by the NRC, ADR is a process in which a

neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute. This confirmatory order is issued pursuant to the agreement reached during the ADR process.

III

During the August 4, 2009, ADR session, a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

1. Mr. Douglas Poling agrees to not be involved in any NRC-licensed activities for a period of five years from the date of the Order.

2. Mr. Douglas Poling agrees to provide a copy of the Order to each NRC Agreement State within which he plans to conduct activities involving radioactive materials.

3. Mr. Douglas Poling agrees to not be involved in any decisions, financial or otherwise, regarding the handling, storage, security, or disposal of the radioactive materials possessed by Magna Chek for a period of five years from the date of the Order.

4. Mr. Douglas Poling agrees that he will not access the radioactive materials possessed by Magna Chek for a period of five years from the date of the Order.

5. Mr. Douglas Poling agrees to provide all copies of the keys providing access to the radioactive material, all copies of any documents related to the radioactive material or its storage (both electronic and paper), and any other items related to the radioactive material to the Magna Chek Chief Financial Officer within one day of the date of the Order.

6. Mr. Douglas Poling agrees to step down as the Radiation Safety Officer as of the date of the Order.

7. The NRC agrees to not pursue any further enforcement action in connection with the NRC's April 1, 2009, letter to Mr. Douglas Poling. This does not prohibit the NRC from taking an enforcement action, in accordance with the NRC Enforcement Policy, if Mr. Poling commits a similar violation in the future or violates the Order.

On August 24, 2009, Mr. Douglas Poling consented to issuing this Order with the commitments, as described in Section V below. Mr. Poling further agreed that this Order is to be effective upon issuance and that he has waived his right to a hearing.

IV

Since Mr. Douglas Poling has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its

concerns can be resolved through issuance of this Order.

I find that Mr. Poling's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Mr. Poling's commitments be confirmed by this Order. Based on the above, and Mr. Poling's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, *it is hereby ordered, effective immediately:*

1. Mr. Douglas Poling shall not be involved in any NRC-licensed activities for a period of five years from the date of the Order. Mr. Poling further shall notify the NRC within one week of the first time he becomes involved in NRC-licensed activities after the five years has expired.

2. Mr. Douglas Poling shall provide a copy of the Order to each NRC Agreement State should he plan to conduct activities involving radioactive materials, including serving as a Radiation Safety Officer, prior to beginning any work and extending for a period of five years from the date of the Order.

3. Mr. Douglas Poling shall not be involved in any decisions, financial or otherwise, regarding the handling, storage, security, or disposal of the radioactive materials possessed by Magna Chek for a period of five years from the date of the Order.

4. Mr. Douglas Poling shall not access the radioactive materials possessed by Magna Chek for a period of five years from the date of the Order.

5. Mr. Douglas Poling shall provide all copies of the keys providing access to the radioactive material, all copies of any documents related to the radioactive material or its storage (both electronic and paper), and any other items related to the radioactive material to either the Magna Chek Chief Financial Officer or to someone designated by the Chief Financial Officer as being trustworthy and reliable, within one day of the date of the Order.

6. Mr. Douglas Poling shall step down as the Radiation Safety Officer as of the date of the Order.

The Regional Administrator, NRC Region III, may, in writing, relax or rescind any of the above conditions

upon demonstration by Mr. Poling of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than Mr. Douglas Poling, may request a hearing within 20 days of the Order's publication in the **Federal Register**.

Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in the August 28, 2007, **Federal Register** (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the Internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at hearingdocket@nrc.gov, or by calling (301) 415-1677, to request: (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate also is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at

<http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC Meta-System Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The Meta-System Help Desk can be contacted by telephone at 1-866-672-7640 or by e-mail at MSHD.Resource@nrc.gov.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order or policy of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their works.

If a person other than Mr. Douglas Poling requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires, if a hearing request has not been received. A request for hearing shall not stay the immediate effectiveness of this order.

Dated this 16th day of September 2009.

For the U.S. Nuclear Regulatory Commission.

Mark A. Satorius,

Regional Administrator, Region III.

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