September 16, 2009

IA-09-021

Mr. Douglas L. Poling
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390(a)]

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)
[NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-2008-017]

Dear Mr. Poling:

The enclosed Confirmatory Order is being issued to you as a result of a successful Alternative Dispute Resolution (ADR) session on August 4, 2009. The enclosed commitments were made by you as part of a settlement agreement concerning your involvement in apparent violations that occurred at Magna Chek.

In a letter dated April 1, 2009, the U.S. Nuclear Regulatory Commission (NRC) provided you with the results of an investigation completed by the NRC's Office of Investigations (OI). As indicated in our letter, the NRC reached a preliminary conclusion that you deliberately caused Magna Chek to be in violation of NRC requirements. The OI also found that you deliberately provided inaccurate and incomplete information to the NRC. A Factual Summary of the OI investigation was enclosed with our letter.

Our letter of April 1, 2009, offered you a choice to: (1) attend a Predecisional Enforcement Conference; or (2) request ADR with the NRC in an attempt to resolve any disagreement on whether a violation occurred, the appropriate enforcement action, and the appropriate corrective actions. In response, you requested ADR to resolve differences you had with the NRC concerning the apparent violation. An ADR mediation session was held on August 4, 2009, at which a preliminary settlement agreement was reached. The elements of the preliminary agreement were formulated and agreed to at the mediation session and are contained within the enclosed Order. Consistent with the purposes of ADR, you and the NRC acknowledged that the session was not for the purposes of reaching any conclusions regarding any facts or circumstances as discussed in the NRC's letter dated April 1, 2009.

As part of the settlement agreement, you agreed to take a number of actions, including stepping down as Radiation Safety Officer, removing yourself from any involvement with the radioactive materials held by Magna Chek, and not being involved in any NRC licensed activities. In light of these actions, as described in the enclosed Confirmatory Order, the NRC is satisfied that its concerns will be addressed by making your commitments legally binding through the enclosed Confirmatory Order. Therefore, the NRC has agreed not to pursue any further enforcement action in connection with the issues described in our April 1, 2009, letter to you.

The Appendix to the Enclosure Contains Sensitive Unclassified Non-Safeguards Information. Upon separation, this transmittal letter is decontrolled.

We have enclosed a copy of the Confirmatory Order (Effective Immediately) to confirm the commitments made as part of the settlement agreement. As evidenced by your signed "Consent and Hearing Waiver Form" (copy enclosed) dated August 24, 2009, you agreed to issuance of this Confirmatory Order.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalties.

You are not required to respond to this letter. However, if you choose to provide a response, please provide it to me within 30 days at the U.S. Nuclear Regulatory Commission, Region III, 2443 Warrenville Road, Lisle IL 60532. Additionally, please mark your entire response "Security Related Information -- Withhold from Public Disclosure under 10 CFR 2.390." In accordance with 10 CFR 2.390(b)(1)(ii), the NRC is waiving the affidavit requirements for your response to this letter. However, to the extent possible, your response should not include any personal privacy, proprietary, or safeguards information. If you have any questions or comments concerning this letter, please contact Mr. Steven Orth of my staff at 630-810-4373.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and the Order, without its Appendix, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agency-wide Documents Access and Management System (ADAMS), accessible from the NRC Web site at http://www.nrc.gov/reading-rm/adams.html. The Order will also be published in the Federal Register. However, because the Appendix to the Order contains Security-Related Information, it will not be made available electronically for public inspection. Additionally, the Appendix must be protected from unauthorized disclosure in accordance with Section IC 6 of Attachment B to NRC Order EA-05-090. Security-Related Information is also discussed in Regulatory Information Summary RIS-2005-031, "Control of Security-Related Sensitive Unclassified Non-Safeguards Information" (ML053480073), which is available on the NRC Web site at http://www.nrc.gov/reading-rm/adams.html. The NRC will also include the letter and the Order, without the Appendix, on its Enforcement Web site at http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions. This letter and the Order will also be maintained by the Office of Enforcement (OE) in a NRC Privacy Act system of records, NRC-3, "Enforcement

Actions Against Individuals." The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from our Web site at http://www.nrc.gov/reading-rm/foia/foia-privacy.html.

Sincerely,

/RA/

Mark A. Satorius
Regional Administrator

Enclosures:
1. Confirmatory Order (with Non-Public Appendix)
2. Consent and Hearing Waiver Form

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Actions Against Individuals." The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from our Web site at http://www.nrc.gov/reading-rm/foia/foia-privacy.html.

Sincerely,

/RA/

Mark A. Satorius
Regional Administrator

Enclosures:
1. Confirmatory Order (w/o Appendix)
2. Consent and Hearing Waiver Form

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DISTRIBUTION:
See next page

DOCUMENT NAME: G:\EICS\ENFORCEMENT\Enforcement Cases 2009\IA-09-021 Magna Chek Individual\Final Letter Accompanying Order - Non-public.doc
*See previous concurrence
☑ Publicly Available ☐ Non-Publicly Available ☐ Sensitive ☑ Non-Sensitive

OFFICE	RIII	RIII	RIII	FSME	OGC	OE	RIII	RIII	RIII
NAME	Lougheed*	Bloomer	Reynolds	White for Miller[1]	Clark for Marco[2]	Bowman for Carpenter[3]	Heck	Orth	Satorius
DATE	09/11/09	09/15/09	09/14/09	09/10/09	09/09/09	09/10/09	09/15/09	09/16/09	09/16/09

OFFICIAL RECORD COPY

[1] FSME concurrence received per D. White via e-mail from G. Bowman on September 10, 2009.
[2] OE concurrence received via e-mail from G. Bowman on September 10, 2009.
[3] OGC No Legal Objection received per M. Clark via e-mail from G. Bowman on September 10, 2009.

Letter to Douglas L. Poling from Mark A. Satorius dated September 16, 2009

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)
[NRC OFFICE OF INVESTIGATIONS INVESTIGATION REPORT NO. 3-2008-017]

DISTRIBUTION:
ADAMS (PARS)
SECY
OCA
M. Virgilio, DEDMRT
C. Carpenter, OE
N. Hilton, OE
G. Bowman, OE
S. Woods, OE
M. Satorius, RIII
C. Pederson, RIII
C. Marco, OGC
M. Itzkowitz, OGC
M. Clark, OGC
C. Miller, FSME
R. Lewis, FSME
M. Burgess, FSME
G. Villamar, FSME
D. White, FSME
E. Brenner, OPA
H. Bell, OIG
G. Caputo, OI
M. Williams, OCFO
D. Holody, RI
C. Evans, RII
S. Orth, RIII
W. Jones, RIV
J. Heck, RIII
S. Reynolds, RIII
P. Louden, RIII
T. Bloomer, RIII
R. Hays, RIII
A. Barker, RIII
J. Lynch, RIII
H. Logaras, RIII
P. Lougheed, RIII
P. Pelke, RIII
M. Gryglak, RIII
V. Mitlyng, RIII
P. Chandrathil, RIII
OEMAIL
OEWEB