

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
[NRC-2009-0484]

In the Matter of
Magna Chek, Inc.
Madison Heights, MI

)
)
)

Docket No. 030-18632
License No. 21-19111-02
EA-09-016

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

Magna Chek, Inc., (Magna Chek or licensee) is the holder of Materials License No. 21-19111-02 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Part 30 on May 20, 1985. The license currently authorizes Magna Chek to store radioactive sources at its permanent facility in Warren, Michigan.

This Confirmatory Order is the result of an agreement reached during Alternative Dispute Resolution (ADR) mediation sessions conducted on August 4 and September 16, 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 apparent security violations of NRC

requirements. The violations are described in the Appendix to this Order. (The Appendix includes Security-Related information; therefore, it is not publicly available.)

The results of the investigation completed on December 30, 2008, were sent to Magna Chek in a letter dated April 1, 2009. This letter offered Magna Chek the opportunity either to participate in ADR mediation or to attend a Predecisional Enforcement Conference. In response to the NRC's offer, Magna Chek requested use of the NRC's ADR process to resolve the differences it had with the NRC. On May 11, 2009, the NRC and Magna Chek agreed to mediate. On August 4, 2009, the NRC and Magna Chek participated in an ADR session mediated by a professional mediator, arranged through the Cornell University Institute on Conflict Resolution. Following that session, the NRC and Magna Chek agreed to a second ADR session, which occurred on September 16, 2009. 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, an interim agreement was reached where the licensee agreed to implement corrective actions, as described in the Appendix to this Order, prior to a second ADR session. The corrective actions include Security-Related information and, therefore, are not publicly available. During the September 16, 2009, ADR session, a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

Magna Chek will establish an escrow account with an initial value of \$25,000 to cover the

eventual disposal of all radioactive sources in its possession within 30 days of the date of the Confirmatory Order unless disposal of those sources has already occurred. The account will be established so that funds may be used only to cover costs directly associated with the packaging, transport, and disposal of the sources and no funds will be spent from the account without prior written approval from the NRC. Magna Chek will make deposits of \$1000 by the 10th day of each month into the escrow account until disposal of the sources occurs. If Magna Chek is unable to make a deposit for any reason, it will notify the NRC within 10 days of the missed deposit.

Within 30 days of the date of the Order, Magna Chek will provide to the NRC documentation of the initial escrow account deposit. Magna Chek will provide to the NRC statements of the account every six months thereafter until disposal of the sources occurs.

Magna Chek will cooperate in full with the Department of Energy (DOE) and/or the Conference of Radiation Control Program Directors (CRCPD) to dispose of the sources. In conjunction with the disposal effort, Magna Chek will transfer ownership/possession of the sources to an entity to be specified by DOE or CRCPD.

Magna Chek will provide to the NRC, within 30 days of the date of the Order, a letter from its financial institution as to the maximum amount of credit that the financial institution is willing to extend to Magna Chek.

Within 48 hours following disposal of each radioactive source, if not done all at one time, Magna Chek will inform the NRC of the disposal. Magna Chek will update the National Source

Tracking System (NSTS) within 30 days. Magna Chek will submit a request for an amendment of its storage only license within 30 days.

Within 30 days of disposal of the last source, Magna Chek will submit an application to the NRC to terminate its license.

The NRC agrees not to pursue any further enforcement action in connection with the events described in the NRC's April 1, 2009, letter to Magna Chek. This does not prohibit NRC from taking enforcement action in accordance with the NRC Enforcement Policy if Magna Chek commits a similar violation in the future or violates the Confirmatory Order.

Magna Chek agrees to continue to implement the corrective actions discussed in the Appendix to this Order.

On September 30, 2009, Magna Chek consented to issuing this Order with the commitments, as described in Section V below. Magna Chek further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since Magna Chek 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 Magna Chek'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 Magna Chek's commitments be confirmed by this Order. Based on the above and Magna Chek'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. Magna Chek shall establish an escrow account with an initial value of \$25,000 to cover the eventual disposal of all radioactive sources in its possession within 30 days of the date of the Confirmatory Order unless disposal of those sources has already occurred. The account shall be established so that funds may be used only to cover costs directly associated with the packaging, transport, and disposal of the sources and no funds shall be spent from the account without prior written approval from the NRC. Magna Chek shall make deposits of \$1000 by the 10th day of each month into the escrow account until disposal of the sources occurs. If Magna Chek is unable to make a deposit for any reason, it shall notify the NRC within 10 days of the missed deposit.

Within 30 days of the date of the Order, Magna Chek shall provide to the NRC documentation of the initial escrow account deposit. Magna Chek shall provide to the NRC statements of the account every six months thereafter until disposal of the sources occurs.

Magna Chek shall cooperate in full with the Department of Energy (DOE) and/or the Conference

of Radiation Control Program Directors (CRCPD) to dispose of the sources. In conjunction with the disposal effort, Magna Chek shall transfer ownership/possession of the sources to an entity to be specified by DOE or CRCPD.

Magna Chek shall provide to the NRC, within 30 days of the date of the Order, a letter from its financial institution as to the maximum amount of credit that the financial institution is willing to extend to Magna Chek.

Within 48 hours following disposal of each radioactive source, if not done all at one time, Magna Chek shall inform the NRC of the disposal. Magna Chek shall update the National Source Tracking System (NSTS) within 30 days. Magna Chek shall submit a request for an amendment of its storage only license within 30 days.

Within 30 days of disposal of the last source, Magna Chek shall submit an application to the NRC to terminate its license.

Magna Chek shall continue to maintain the corrective actions discussed in the Appendix to this Order.

All documentation to be provided to the NRC shall be addressed to the Director, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, 2443 Warrenville Road, Suite 210, Lisle, IL 60532.

The Regional Administrator, Region III, NRC, may, in writing, relax or rescind any of the above conditions upon demonstration by Magna Chek of good cause.

Any person adversely affected by this Confirmatory Order, other than Magna Chek, 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 an 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 Federal Register on August 28, 2007, (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 website 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 website 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 website at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC Meta-System Help Desk, which is available between 8:00 a.m. and 8:00 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 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 Magna Chek 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.

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

/RA/

Cynthia D. Pederson, Deputy Regional Administrator, Region III

Dated this 27th day of October 2009