



# Record of Decision

DEC 23-H104

In the Matter of

Persons  
named in or  
subject to  
order

Mississauga Metals & Alloys Inc.;  
1420561 Ontario Inc.; and  
Richter Advisory Group Inc./Richter Groupe  
Conseil Inc.

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Purpose

Review of Designated Officer Order dated  
March 21, 2023

Date of  
Commission's  
review

September 1, 2023

Record of  
Decision  
Date

November 1, 2023

**RECORD OF DECISION – DEC 23-H104**

Persons named in or subject to order:	Mississauga Metals & Alloys Inc. (MM&A); 1420561 Ontario Inc.; and Richter Advisory Group Inc./Richter Groupe Conseil Inc.
Address/Location of MM&A site:	71 Middleton Street, Brantford, Ontario, N3S 7X1
Purpose:	Review of Designated Officer Order dated March 21, 2023
Order issued:	March 21, 2023
Date of Commission's review:	September 1, 2023
Record of Decision Date:	November 1, 2023
Hearing	Hearing in Writing - Opportunity to be Heard
Panel of Commission:	R. Velshi, Presiding Member

**Designated Officer Order: Revoked**

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## 1.0 INTRODUCTION

1. Pursuant to paragraph 37(2)(f) of the [Nuclear Safety and Control Act](#) (NSCA), a designated officer (DO) of the Canadian Nuclear Safety Commission<sup>1</sup> (CNSC) issued an [order](#) on March 21, 2023,<sup>2</sup> to the following: Mississauga Metals & Alloys Inc. (MM&A), a metal recycling company based in Brantford, Ontario; 1420561 Ontario Inc., the owner of the premises at 71 Middleton Street, Brantford, Ontario; and Richter Advisory Group Inc./Richter Groupe Conseil Inc. (Richter), the Trustee in Bankruptcy. The order was related to nuclear substances being stored on the former MM&A site at 71 Middleton Street, Brantford, Ontario (the “MM&A site”).
2. The site at 71 Middleton Street, Brantford, Ontario is owned by 1420561 Ontario Inc. On August 20, 2021, MM&A and 1420561 Ontario Inc. were deemed to have made an assignment in bankruptcy pursuant to section 50.4(8) of the [Bankruptcy and Insolvency Act](#). Richter was appointed as Bankruptcy Trustee of MM&A and 1420561 Ontario Inc.
3. MM&A previously held a CNSC licence to possess, transfer, store and manage nuclear substances. The licence expired on February 28, 2022.<sup>3</sup> MM&A did not apply for the renewal of this licence, nor did it make provision for the disposition of the nuclear substances in its possession. The DO issued the order by reason of there being unlicensed possession and storage of nuclear substances on the MM&A site. The nuclear substances in question are stored in 18 trailers/containers.
4. Pursuant to subsection 37(6) of the NSCA, the order was referred to the Commission for review on March 23, 2023. In accordance with the NSCA, upon review the Commission must confirm, amend, revoke or replace the order. On April 20, 2023, pursuant to paragraph 40(1)(d) of the NSCA, the Commission provided an opportunity to be heard in respect of the review of the order to MM&A, 1420561 Ontario Inc. and Richter Advisory Group Inc./Richter Groupe Conseil Inc. as the entities that are subject to and named in the order.
5. The DO submitted written information on June 6, 2023 (CMD 23-H104). As submitted by the DO in section 2.2 of CMD 23-H104, Richter responded to the order on March 30, 2023, stating that it was invoking section 14.06(4) of the *Bankruptcy and Insolvency Act* and formally abandoning/releasing/disposing of any interest it might have in the property or with respect to the nuclear substances. Richter’s response is included as Appendix A in CMD 23-H104. David Sharpe, on behalf of MM&A and 1420561 Ontario Inc., availed himself of the opportunity to be heard through a written submission. The Ontario Ministry of Environment, Conservation and Parks (MECP),

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<sup>1</sup> The *Canadian Nuclear Safety Commission* is referred to as the “CNSC” when referring to the organization and its staff in general, and as the “Commission” when referring to the tribunal component.

<sup>2</sup> [Order by a Designated Officer Under Paragraph 37\(2\)\(f\) and Subsection 35\(2\) of the Nuclear Safety and Control Act](#), issued March 21, 2023.

<sup>3</sup> Waste Nuclear Substance Licence, Mississauga Metals and Alloys Inc., WNSL-W2-3750.00/2022.

having a potential role in the future of the MM&A site, also requested to provide a written submission.

6. This *Record of Decision* describes the Commission's review of the order and the reasons for its decision in this matter.

#### Issue

7. In its review of the order, the Commission was required to confirm, amend, revoke or replace the order, pursuant to subsection 37(6) of the NSCA.

#### Opportunity to be Heard

8. Pursuant to section 22 of the NSCA, the President of the Commission established herself as a Panel of the Commission to review the order. The Commission, in making its decision, considered the March 21, 2023 order, and the information referred to in the order. The Commission also considered the submissions from the DO (CMD 23-H104), David Sharpe on behalf of MM&A and 1420561 Ontario Inc. (CMD 23-H104.1), and the Ontario Ministry of Environment Conservation and Parks (CMD 23-H104.2).

## **2.0 DECISION**

9. Based on its consideration of the matter and as described in more detail in the following sections of this *Record of Decision*,

the Commission, pursuant to subsection 37(6) of the *Nuclear Safety Control Act*, revokes the designated officer order issued to Mississauga Metals & Alloys Inc., 1420561 Ontario Inc., and Richter Advisory Group Inc./Richter Groupe Conseil Inc. on March 21, 2023.

10. With this decision, the Commission directs CNSC staff to liaise with applicable municipal and provincial entities, as well as with MM&A and 1420561 Ontario Inc., to work towards a solution to ensure the safety and security of the MM&A site and of the nuclear substances located on the MM&A site. The Commission directs CNSC staff to proceed with the characterization, including amounts and physical forms of the nuclear substances present on the MM&A site, in a timely manner. Pursuant to subsection 24(6) of the NSCA, the Commission further directs CNSC staff to access and use the existent financial guarantee, to the extent possible, towards this characterization and any future work.

11. The Commission directs CNSC staff to provide an update on this matter, including an action plan and timeline for the characterization of the nuclear substances at the March 2024 Commission public meeting, as part of the periodic *Regulatory Oversight Report on the Use of Nuclear Substances in Canada*, and as new information becomes available.

### **3.0 ISSUES AND COMMISSION FINDINGS**

12. Pursuant to subsection 37(6) of the NSCA, the Commission reviewed the order, as well as the submissions provided for the opportunity to be heard. The Commission considered the reasonableness of the order, the actions and measures identified in the order, the additional information brought forth by the DO after the order was issued, and the submissions from David Sharpe and the Ontario Ministry of Environment Conservation and Parks.

#### **3.1 Circumstances Leading to the Making of the Order**

13. In section 1.2 of CMD 23-H104, the DO provided that on August 20, 2021, MM&A and 1420561 Ontario Inc. were deemed to have made an assignment in bankruptcy, pursuant to section 50.4(8) of the *Bankruptcy and Insolvency Act*. Richter was appointed as Bankruptcy Trustee. MM&A held a licence to possess, transfer, store and manage nuclear substances at MM&A site, which expired on February 28, 2022. The CNSC did not receive an application to renew the licence for the nuclear substances present on the MM&A site.
14. In section 2 of CMD 23-H104, the DO submitted that, since March 2022, CNSC staff have contracted a third-party security provider to have 24/7 presence on site to ensure that the nuclear substances remain secure. Furthermore, the DO also noted that CNSC staff had inspected the site 3 times since March 2022, to verify that the containers are intact and to confirm that the radiation levels outside of the trailers remained at background levels.<sup>4</sup>
15. As reported by the DO in CMD 23-H104, over much of 2022 until early 2023, CNSC staff engaged with Richter to pursue an approach by which Richter could be a Court-appointed receiver in order to find a solution related to the authority to undertake the needed work (i.e., material characterization, disposition) on the MM&A site. In October 2022, Richter advised the CNSC that it had not been able to obtain financing to cover its receivership costs so would not be amenable to becoming a receiver.

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<sup>4</sup> The annual average effective dose from [natural background radiation](#) is approximately 1.8 milliSieverts (mSv) in Canada.

16. Thereafter, pursuant to subsection 35(1) and paragraph 37(2)(f) of the NSCA, the DO issued the order to Richter, MM&A and 1420561 Ontario Inc. on March 21, 2023, to have a person licensed by the CNSC take possession of and store, characterize, plan for, and complete the removal of the nuclear substances from the MM&A site.

### **3.2 Actions and Measures of the Order**

17. The order of March 21, 2023 listed the following actions and measures that MM&A, 1420561 Ontario Inc., and Richter were required to perform:
1. By April 3, 2023, take measures to secure the premises against unauthorized access.
  2. By April 17, 2023, have a person licensed by the CNSC undertake possession and storage of the nuclear substances located on the premises, in a manner that ensures the safety and security of those nuclear substances.
  3. By April 1, 2024, have a person licensed by the CNSC:
    - a. Verify the amounts of and physical form of all nuclear substances on the premises.
    - b. Provide a written report of the physical inventory verification to the satisfaction of the designated officer.
  4. By May 6, 2024, have a person licensed by the CNSC provide a written plan, including schedule, for the safe and secure removal of the nuclear substances from the premises, subject to any other federal, provincial or municipal legislation, to the satisfaction of the designated officer.
  5. By February 3, 2025, have a person licensed by the CNSC complete the removal of the nuclear substances from the premises to the satisfaction of the designated officer.
18. In CMD 23-H-104, the DO is recommending that the Commission revoke the order. The DO submits the following rationale for this recommendation:
- the bankruptcy trustee has formally renounced any interest in the MM&A site at 71 Middleton Street, Brantford, Ontario
  - the bankruptcy trustee took the position that it is not responsible for executing the order
  - the bankrupt companies are not legally entitled to possess or use the site

The DO has submitted that the CNSC is investigating alternatives for a path forward to ensure the characterization and safe disposition of the nuclear substances at the MM&A site.

### 3.3 Actions since the Making of the Order

19. As reported by the DO in CMD 23-H104, on March 30, 2023, Richter responded to the order stating that it was invoking section 14.06(4) of the *Bankruptcy and Insolvency Act* and was formally abandoning, releasing or disposing of any interest it had in the property at 71 Middleton Street in Brantford, Ontario or with respect to the nuclear substances.
20. In CMD 23-H104, the DO reported that CNSC staff visited the MM&A site in April 2023, and requested access to the building located on the MM&A site. During the visit, CNSC staff confirmed that there was no evidence of nuclear substances within this building. CNSC staff noted that, during the visit, David Sharpe expressed interest in restarting the business in the future and that he enquired about the possibility of moving the containers of nuclear substances to a different location.
21. Following the April 2023 visit, a CNSC inspector issued an [Inspector's Order](#)<sup>5</sup> to David Sharpe and MM&A on May 24, 2023, to ensure that the trailers/containers containing nuclear substances are not moved, relocated, or transferred to another location.
22. In CMD 23-H104, the DO noted that "MM&A maintained a financial guarantee of \$200,000 through a letter of credit. The funds are currently in a prepaid account and have not yet been accessed." The DO further noted that "the amount of \$200,000 is largely insufficient to fund a complete characterization and removal of the radioactive waste."

### 3.4 Opportunity to be Heard

23. David Sharpe, on behalf of Mississauga Metals & Alloys and 1420561 Ontario Inc., filed a written submission (CMD 23-H104.1) in exercise of the opportunity to be heard in regard to the review of the DO order issued on March 21, 2023. In the submission David Sharpe expressed an interest in discussing further with CNSC staff the topic of the nuclear substances and waste located at the former MM&A site. David Sharpe indicated his willingness to take measures to secure the premises, apply for a licence to allow storage of the material on site, confirm the inventory, and prepare plans for the safe and secure removal of the nuclear substances.
24. The MECP, identified by the DO in CMD 23-H104 as potentially having a role in the future of the MM&A site, requested and was permitted to file a written submission in this matter. In CMD 23-H104.2, the MECP submitted its concerns regarding the request to revoke the DO's order and "requested that the Commission decline to revoke the order or defer its decision until a judicial determination had been made on the possession of the bankrupt's property."<sup>6</sup> The MECP also submitted that it does not have

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<sup>5</sup> [Order under section 35 or paragraph 37\(2\)\(f\) of the Nuclear Safety and Control Act, issued to David Sharpe, President Mississauga Metals and Alloys Inc.](#) on May 24, 2023.

<sup>6</sup> Page 2, CMD 23-H104.2.



any expertise or specialized knowledge or resources necessary to deal with or manage nuclear substances.

### **3.5 Commission Findings**

25. The Commission acknowledges the trustee's position and that it has formally renounced any interest it might have had in the property or with respect to the nuclear substances. In considering the legal context of the bankruptcies and the position of the bankruptcy trustee, the Commission concludes that there is no clear possessor of the land or the nuclear substances on the MM&A site.
26. Based on the information submitted on record and summarized above, the Commission does not see a need or interest on the part of the safety regulator to pursue enforcement of the order at this time. In light of the situation of the site being without effective control by a possessor of the nuclear substances, the fact that the trustee has abandoned any interest in the property, and the safety interest in finding a workable solution, a protracted legal battle would not be the best way at the time for the CNSC to discharge its mandate for the safety and security of the site. Therefore, pursuant to subsection 37(6) of the NSCA, the Commission revokes the DO order issued to Mississauga Metals & Alloys Inc., 1420561 Ontario Inc., and Richter Advisory Group Inc. on March 21, 2023. The Commission comes to this conclusion based on the fact that:
  - the bankruptcy trustee formally renounced any interest in the MM&A site
  - the bankrupt companies are not legally entitled to possess or use the site
27. The Commission acknowledges the MECP's concern regarding the appropriate management of the nuclear substances on the MM&A site. The Commission notes that the CNSC is a nuclear safety regulator with the mandate to ensure that nuclear safety and the security of the nuclear substances on the MM&A site are maintained. Therefore, the Commission underlines the importance of characterizing the nuclear substances on the MM&A site and determining a path forward for their disposition as soon as possible. The Commission instructs CNSC staff to proceed with the characterization of the nuclear substances and liaise with appropriate entities of the province and municipality to determine the suitable actions to dispose of the nuclear substances and remediate the site.
28. The Commission acknowledges that the financial guarantee is not sufficient to cover both characterization of the nuclear substances and their disposition. However, the Commission notes the importance of characterizing the nuclear substances on the MM&A site, without delay. Therefore, the Commission directs CNSC staff to access and use the existent financial guarantee, to the extent possible, towards the characterization of the nuclear substances present on the MM&A site, in a timely manner.

29. The Commission directs CNSC staff to present an update on this matter, including an action plan and timeline for the characterization of the nuclear substances at the March 2024 Commission public meeting, as part of the periodic *Regulatory Oversight Report on the Use of Nuclear Substances in Canada*, and as new information becomes available. It will be important as well for the CSNC staff to discuss with other responsible entities a way forward for the responsible treatment of the site, and to update the Commission with respect to this.

#### 4.0 CONCLUSION

30. The Commission has considered the information in the order issued to Mississauga Metals & Alloys Inc., 1420561 Ontario Inc., and Richter Advisory Group Inc., and the information submitted by the DO, David Sharpe on behalf of MM&A and 1420561 Ontario Inc., and the MECP.
31. Pursuant to subsection 37(6) of the NSCA, the Commission revokes the DO order issued to Mississauga Metals & Alloys Inc., 1420561 Ontario Inc., and Richter Advisory Group Inc. on March 21, 2023 in the manner described in this *Record of Decision*.



Rumina Velshi  
Presiding Member,  
Canadian Nuclear Safety Commission

November 1, 2023

Date