

July 8, 2003

Mr. Gary L. Tessitore
Chief Executive Officer
Fansteel Inc.
Number One Tantalum Place
North Chicago, Illinois 60064

SUBJECT: RESPONSE TO FANSTEEL SUBMITTAL OF JUNE 26, 2003

Dear Mr. Tessitore:

This is to acknowledge your letter of June 26, 2003, in which Fansteel withdrew its proposed decommissioning plan (DP) of January 16, 2003, supplemented by additional information submitted by letter dated May 8, 2003, in accordance with 10 CFR §§ 40.42(d) and (g). Based on Fansteel's submittal and the fact that Fansteel's current license contains a license condition addressing a previously approved DP (i.e., License Condition 26), the NRC Staff (staff) assumed that Fansteel's May 8, 2003, letter evinced its desire to amend its license to approve the activities identified in its proposed DP.

As you are aware, the staff undertook a preliminary review of the proposed DP and by letter dated April 28, 2003, informed Fansteel that the January submittal lacked certain information that was necessary for staff acceptance for an in-depth review, including an explicit license amendment request. After additional discussions, by letter dated May 8, 2003, Fansteel stated that it intended "to undertake a four-phased remediation of the Muskogee site." The staff, in a letter dated May 9, 2003, responded that it had sufficient information to proceed with a detailed technical review; however, the four-phased approach is not one that was previously approved in Fansteel's existing License Condition 26. Therefore, the staff treated the submittal as a request for licensing action. Also in the letter of May 9, 2003, the staff stated it planned to prepare the required safety evaluation report and environmental assessment and make a determination regarding the request for approval of the new decommissioning plan by October 31, 2003. The staff also advised you that any licensing action requires a 30-day period for public comment and an opportunity for a request for hearing.

Following a request for hearing by the State of Oklahoma, Fansteel informed NRC that it should not consider submittal of the DP for review and approval as a request for a license amendment. Staff informed Fansteel that before it could complete its review of the DP, NRC licensing requirements in this situation require a license amendment request. By letter of June 26, 2003, Fansteel formally withdrew the DP.

Notwithstanding Fansteel's June 26, withdrawal of the DP, the NRC staff is prepared to proceed with its review of the DP, upon receipt of notification in writing that the proposed DP should again be considered for review. Fansteel also must file a request for license amendment according to 10 CFR 40.44. Upon receipt of such a notice and filing, staff will recommence the review process. The staff is concerned about meeting the October 31, 2003, target date in light of Fansteel's withdrawal of the proposed DP. Fansteel should promptly reinstate its proposed DP and make an explicit request for a license amendment and should provide complete responses to any RAIs in a timely manner thereafter in order not to prejudice meeting the October 31, 2003, target date.

It should be noted that in accordance with 10 CFR 2.1205(m), the filing or granting of a request for a hearing or petition for leave to intervene will not delay staff action on the application. Further, the staff intends that when the decision or action on the application is made it shall be effective pending any decision by a Presiding Officer, although in accordance with 10 CFR 2.1263, a stay may be sought from the Presiding Officer at the time a request for a hearing or petition to intervene is filed or within 10 days of the staff's action, whichever is later. In addition, when Fansteel requests to transfer its license to another entity, the staff intends to process such a request as an application for transfer of an NRC license under 10 CFR Part 2, Subpart M. If a hearing is granted on such application, pursuant to Subpart M of Part 2, the staff intends to promptly issue approval or denial of the license transfer request, in accordance with 10 CFR 2.1316. Again, the staff intends that when such decision or action is made, it shall be effective pending any decision by a Presiding Officer, although in accordance with 10 CFR 2.1327, a stay may be sought from the Presiding Officer within 5 days of the issuance of the notice of staff action pursuant to § 2.1316(a).

The staff is aware that Fansteel is currently in bankruptcy under Chapter 11. Notwithstanding that fact, Fansteel is subject to the regulatory requirements of 10 CFR Part 40. Unless Fansteel requests an alternate schedule, as provided for in 10 CFR 40.42 (g)(2), pursuant to 10 CFR 40.42(d), Fansteel must submit a DP no later than December 22, 2003, and commence decommissioning of the Muskogee site upon NRC approval of the DP. In addition, because Fansteel's current license contains a license condition addressing a previously approved DP (i.e., License Condition 26), Fansteel must also submit a license amendment request. Section 40.42(h)(2) states that decommissioning should be completed within twenty-four months of initiation. If Fansteel is not able to meet the 24 month decommissioning schedule, it may request Commission approval for an alternate schedule for completion of decommissioning addressing the criteria set forth in Section 40.42(h)(2)(i).

Section 40.36(d) requires licensees to submit a decommissioning funding plan that contains a cost estimate and a method of assuring decommissioning funds as described in Section 40.36(e). If Fansteel is not able to meet these requirements, it may submit a request for an exemption from this requirement, setting out the basis for such a request.

In compliance with Section 40.31(c), applications for amendment of your license are made available to the public; therefore, if you wish certain material withheld from the public, it must be accompanied with a request pursuant to 10 CFR 2.790. If NRC determines the information does not meet criteria for withholding the information from the public, you may withdraw it. Information that is withdrawn does not meet the submittal requirements of Sections 40.36 and 40.42, discussed above. In addition, staff practice is to issue a notice of receipt of your license amendment request in the *Federal Register*, at which time an opportunity to request a hearing will be provided.

If you have any questions on this matter, please contact me at (301) 415-6712 or jcs2@nrc.gov.

Sincerely,

/RA/

J. C. Shepherd, Project Engineer
Section B
Decommissioning Branch
Division of Waste Management
Office of Nuclear Material Safety and Safeguards

Docket No.: 40-7580
License: SMB-911

cc: Walter Beckham
Pamela Bishop
Mike Broderick
George Brozowski
James Curtiss, Esq.
A. F. Dohmann
Phillip Fielder
Richard Gladstein, Esq.
Timothy Hartsfield
Sarah Penn, Esq
Quang Pham
Kevin Sampson
Susan Webster

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Timothy Hartsfield Sarah Penn, Esq Quang Pham Kevin Sampson
Susan Webster

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DATE	07/08/03		07/08/03		07/08/03		07/08/03	
OFC	RIV		OGC		DCB		DWM	
NAME	DSpitzberg		M Zobler		DGillen			
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