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Chairman, President and  
Chief Executive Officer



July 24, 2003

Daniel M. Gillen, Chief  
Decommissioning Branch  
Office of Nuclear Material Safety and Safeguards  
Mail Stop T-7F27  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

**Re: Fansteel Inc.  
Docket No. 40-7580  
License SMB-911  
Requests for Licensing Actions in Connection with the  
Decommissioning Plan for the Muskogee, Oklahoma Site**

Dear Mr. Gillen:

On January 14, 2003, as supplemented by letter dated May 8, 2003, and May 9, 2003, Fansteel Inc. ("Fansteel") submitted to the Nuclear Regulatory Commission ("NRC") a decommissioning plan ("DP") for its Muskogee, Oklahoma facility. By letter dated May 9, 2003, the NRC accepted the DP for review. Fansteel subsequently learned that the NRC Staff terminated its review of the DP because Fansteel had not submitted a license amendment request in connection with the DP. Thereafter, by letter dated June 26, 2003, Fansteel withdrew the DP. Following further consideration of the DP in the context of Fansteel's ongoing bankruptcy proceeding, Fansteel herein re-submits the DP originally filed on January 14, 2003, including supplements as described below, and requests that the NRC re-initiate its review of the DP. In conjunction with your consideration of the DP, as supplemented, the following licensing actions are requested:

- an amendment to License SMB-911 to reflect approval of the DP;
- an alternate decommissioning schedule pursuant to 10 C.F.R. § 40.42(i); and
- an exemption from the Nuclear Regulatory Commission's ("NRC") decommissioning financial assurance requirements at 10 C.F.R. § 40.36(e).



### License Amendment Request

License SMB-911 will require an amendment to authorize remediation and decommissioning activities to be carried out in accordance with the approved DP, as supplemented. This amendment would be issued upon the conclusion of your review and approval of the DP. This amendment, which would revise License Condition 26, would require the remediation of the Muskogee facility in accordance with the DP, as supplemented.

This proposed amendment to License Condition 26 would read as follows:

Remediation and decommissioning activities at the Muskogee facility shall be performed in accordance with the decommissioning plan and supplemental correspondence submitted by letter dated January 14, 2003 and supplemented by letters dated May 8, 2003, May 9, 2003, July 24, 2003, [others to be added by the NRC at the conclusion of its review], and the Order of the United States Bankruptcy Court for the District of Delaware confirming the "Joint Reorganization Plan of Fansteel Inc. and Subsidiaries," dated \_\_\_\_\_.

In addition, License Condition 27 currently incorporates in the license certain criteria for unrestricted use in accordance with the criteria identified in the Site Decommissioning Management Plan ("SDMP") Action Plan. *See* 10 C.F.R. § 20.1401(b). These criteria will be superseded by those set forth in the DP, which will be incorporated into the license pursuant to License Condition 26 (discussed above). Accordingly, License Condition 27 should be deleted.

Also enclosed is a supplement to DP Chapter 15, comprised of sections 15.3 through 15.5, concerning financial assurance for decommissioning of the Muskogee site. The discussion contained therein reflects Fansteel's proposed Plan of Reorganization, currently pending before the U.S. Bankruptcy Court for the District of Delaware. It should be noted that the two tables which were submitted as proprietary attachments to Fansteel's letter of May 9, 2003, are herein being resubmitted as Tables 15-11 and 15-12 to Chapter 15, without a proprietary designation. Table 15-12 has been updated to reflect the increased cash flow resulting from the inclusion of Reorganized Wellman as a subsidiary of Reorganized Fansteel. Any other necessary supplements or modifications to the DP will be provided over the course of the NRC Staff's review.

Finally, pursuant to 10 C.F.R. § 40.44, please find attached NRC Form 313, "Application for Material License."



### **Request for Alternate Decommissioning Schedule**

Pursuant to 10 C.F.R. § 40.42(i)(5), Fansteel hereby requests an alternate schedule for decommissioning the Muskogee, Oklahoma site and termination of the SMB-911 license. Under the DP, as supplemented, Fansteel has proposed the following four-phased decommissioning approach for the Muskogee site, to be implemented by MRI Inc., a subsidiary of Reorganized Fansteel:

- Phase 1 will involve the remediation and offsite disposal of residue material in Ponds 2 and 3 (the "WIP material"). Remediation is scheduled to begin by September 1, 2004, and to be completed by March 31, 2006, taking into account considerations of preparation, scheduling, cost and weather. The methodology for remediating and removing the WIP material is set forth in the DP.
- Phase 2 will involve remediation and offsite disposal of material in Ponds 5-9 (the "CAF material"). Fansteel plans to begin this phase by January 1, 2007, and complete the work by April 30, 2011. The methodology for removing and remediating the CAF material is set forth in the DP.
- Phase 3 will involve completion of the remediation, including buildings, equipment and soils. During this phase, any additional needed site characterization will be conducted. Fansteel's objective is to complete all presently contemplated radiological remediation in 2011. Final site grading activities are to be completed in 2012, resulting in a nine-year cleanup schedule.
- Phase 4 will involve groundwater monitoring and remediation. It is the intent of Fansteel not to seek termination of the license until groundwater is satisfactorily remediated, or until alternative arrangements acceptable to the NRC are made.

As the NRC is aware, Fansteel and most of its U.S. subsidiaries filed for relief under Chapter 11 of the United States Bankruptcy Code. As such, Fansteel is unable to meet the financial assurance requirements of 10 C.F.R. § 40.36 as it emerges from bankruptcy protection, and is seeking an exemption to those requirements pursuant to 10 C.F.R. § 40.14. As a part of its Plan of Reorganization, Fansteel will finance MRI's decommissioning of the Muskogee site based upon excess cash flow generated by the operations of Reorganized Fansteel using a formula negotiated with the NRC.

This decommissioning schedule is the product of settlement discussions regarding Fansteel's ongoing Chapter 11 bankruptcy case. As previously mentioned, by letter dated May 9, 2003, Fansteel submitted to the NRC a cost estimate, broken down by year, now included in the DP as Table 15-11, as well as a statement of projected cash flow for Reorganized Fansteel, which documents Reorganized Fansteel's ability to generate cash flow to complete

decommissioning on this schedule. (As noted above, the statement of projected cash flow has since been updated, and is included in the DP as Table 15-12.) Pursuant to such discussions, the decommissioning schedule set forth in the January 14, 2003 DP has been accelerated. Based upon the best information available regarding the projected operations of Reorganized Fansteel, the duration of this proposed schedule is necessary in order to effectively complete Muskogee site decommissioning *as well as* provide sufficient funds to run and expand the businesses of Reorganized Fansteel, and allow Reorganized Fansteel to fulfill its other environmental cleanup and pension-related responsibilities. Accordingly, the alternate decommissioning schedule is warranted pursuant to 10 C.F.R. § 40.42(i)(5).

Fansteel acknowledges that the dates in the schedule as described above are contingent upon NRC approval of the DP, as supplemented. Circumstances can change over the course of decommissioning. If it is determined that decommissioning cannot be completed by MRI as outlined in the above schedule, it will provide an updated schedule will be provided to the NRC.

#### **Request for Exemption to 10 C.F.R. § 40.36(e)**

Pursuant to 10 C.F.R. § 40.14, Fansteel requests an exemption from the requirements of 10 C.F.R. § 40.36(e). Fansteel has previously been in compliance with NRC financial assurance requirements pursuant to 10 C.F.R. § 40.36(e)(2) via the use of two letters of credit which assured the then-current decommissioning cost estimate of approximately \$4.5 million. This estimate was based on an amendment to the Fansteel license authorizing construction of a processing plant which, when operable, was designed to extract commercially valuable materials from certain of the radioactive residues on the Fansteel site, and cause the resulting new residues to be disposed of offsite. At the time, it was contemplated that approximately 10 years would be needed to process and remediate all of the existing radioactive residues, other than soils underlying the residues. Fansteel's then-proposed DP requested NRC approval for the construction of an onsite containment cell into which the contaminated soils would be placed.

Pilot production from the plant began in late 1999; however, Fansteel encountered production problems and never achieved processing at commercially viable production levels. The market price of tantalum severely declined, and, as a consequence, Fansteel concluded that aggregate projected revenues in the processing operation would be insufficient to recover operating costs and suspended commercial processing efforts. The determination not to operate the processing plant required that Fansteel take a pre-tax loss, in the third quarter of 2001, of \$83,500,000, representing a charge of \$31.5 million for construction, equipment and pilot production costs of the processing facility and a reserve of \$52 million representing estimated costs for offsite decommissioning of all contaminated residues and soils. As indicated above, Fansteel filed for Chapter 11 bankruptcy protection on January 15, 2002, and has thereafter been unable to comply with the requirements of 10 C.F.R. § 40.36(e) in light of the substantially increased decommissioning cost estimate and the requirements of the Bankruptcy Code. The



NRC an aggregate of approximately \$4.5 million from the existing letters of credit on February 27, 2002, and March 2, 2002.

As discussed above, in order for Fansteel to emerge from bankruptcy, it is not possible to meet the technical requirements of Section 40.36. Fansteel has made an alternate proposal to provide funding on an ongoing basis via payments to an unsecured note or notes following confirmation of its Plan of Reorganization, based on Reorganized Fansteel's ability to generate cash. Our letter to you dated May 9, 2003, and its associated attachments (a cost estimate by year for Muskogee site remediation activities, and a statement of projected cash flow for Reorganized Fansteel during the pendency of remediation activities) (now Table 15-11 and updated Table 15-12) set forth the key assumptions for Fansteel's current decommissioning cost estimate. Fansteel submits that this is a reasonable alternative which maximizes the funds available for decommissioning the Muskogee site while providing the necessary treatment for Fansteel's creditors in compliance with the requirements of the Bankruptcy Code. However, because this funding mechanism does not meet the strictures of Section 40.36(e), an exemption is required pursuant to 10 C.F.R. § 40.14. The exemption is authorized by law and will not endanger life or property or the common defense and security. Moreover, this exemption is in the public interest in that it maximizes the funding available and permits Fansteel to complete remediation of the site.

### Conclusion

As you are aware, as part of Fansteel's exit from Chapter 11 bankruptcy, license SMB-911 will be transferred to a subsidiary of Reorganized Fansteel. Each of the licensing actions requested above for Fansteel will need to be incorporated in the license transferred to MRI as part of Fansteel's emergence from bankruptcy. That license transfer request is being submitted to the NRC today, under separate cover.



Pursuant to our earlier discussions on the matter of timing, Fansteel requests that this licensing action be issued no later than October 31, 2003. If you have any questions regarding this submission, please contact me at (847) 689-4900, extension 220.

Sincerely,



Gary L. Tessitore  
Chief Executive Officer

Enclosures

cc: NRC Document Control Desk  
James C. Shepherd, NRC/NMSS  
Maria E. Schwartz, Esq., NRC/OGC  
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