Gary L. Tessitore
Chairman, President and
Chief Executive Officer

Fansteel

October 15, 2003

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

Re: Fansteel Inc.
Docket No. 40-7580
License SMB-911
Additional Information Regarding Financial Assurance in
Connection with the July 24, 2003 Request for Licensing Actions

Dear Mr. Gillen:

Please find attached clean and redline versions of a revision to Chapter 15 of Fansteel Inc. ("Fansteel") Amended Decommissioning Plan which reflects updated information, including that submitted on September 24, 2003, in response to the NRC Staff's Request for Additional Information regarding financial assurance for the Muskogee, Oklahoma facility. This submission was requested during our conference call of October 2, 2003.

If you have any questions regarding this submission, please contact me at (847) 689-4900, ext. 220.

Sincerely,

Gary L. Tessitore

Attachments

cc: James C. Shepherd, NRC/NMSS
NRC Document Control Desk
Maria E. Schwartz, Esq., NRC/OGC
Richard Gladstein, Esq., DOJ
Alan Tenenbaum, Esq., DOJ
Jeffrey S. Sabin, Esq., Schulte Roth & Zabel LLP
James R. Curtiss, Esq., Winston & Strawn LLP
R. Michael McEntee, Fansteel Inc.
E. Jonathan Jackson, Fansteel Inc.
A. Fred Dohmann, Fansteel Inc.

BKRP01

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Section 15.1.9 Summary of Costs

Table 15-10 summarizes the estimated decommissioning costs described above in Sections 15.1.1 through 15.1.8 (the estimated cost for these activities is $26.46 million). Table 15-11 includes the following additional costs associated with the decommissioning of the Fansteel facility:

- $1,600,000 (Site maintenance costs in preparation for decommissioning)
- $2,250,00 (Miscellaneous costs, legal & other consulting services)
- $5,350,000 (Facility oversight through facility closure)
- $200,000 (Preparation of Environmental Report)
- $100,000 (NRC oversight of groundwater treatment)
- $1,410,000 (Groundwater treatment for 3 years during decommissioning of WIP)
- $4,230,000 (Groundwater treatment for 17 years after decommissioning of WIP)

With these additional items, the total estimated cost for decommissioning of the Fansteel facility, based on the available information at the time of this report, is $41.6 million. Table 15-11 provides a complete summary of this total cost information.

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15.3 Financial Assurance Mechanism

As the NRC is aware, on January 15, 2002, Fansteel and most of its U.S. subsidiaries filed for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court"). As such, Fansteel is operating as a debtor-in-possession under the jurisdiction of the Bankruptcy Court. Any financial settlement regarding the Muskogee Site must be approved by the Bankruptcy Court, and any

decommissioning funding mechanism would only become effective upon the emergence of Fansteel from bankruptcy protection following confirmation of a plan of reorganization. Fansteel submitted a proposed "Joint Reorganization Plan of Fansteel Inc. and Subsidiaries" ("Plan") and "Disclosure Statement with Respect to Joint Reorganization Plan of Fansteel, Inc., Et Al." ("Disclosure Statement") to the Bankruptcy Court on July 24, 2003. Upon approval of the Disclosure Statement by the Bankruptcy Court, Fansteel will solicit votes from shareholders and creditors and seek approval of its Plan. The financial assurance mechanism described herein is subject to the Plan becoming effective.

15.3.1 Reorganized Fansteel

The proposed Plan provides for Fansteel Inc. and its affiliated debtors to emerge from Chapter 11 as Reorganized Fansteel ("RF"),[1] which includes Reorganized Wellman ("RW") as a subsidiary, and four special purpose entities to be subsidiaries of RF: FMRI Inc., Lexington, Inc., North Chicago, Inc., and Waukegan, Inc. Before the Effective Date, it is contemplated that an asset sale will take place, transferring to a purchaser 100% of the land and buildings comprising the sole assets of Phoenix Aerospace Corp., as well as substantially all assets comprising the Fansteel Hydro Carbide, Plantsville, and California Drop Forge operations. On the Effective Date of the Plan or shortly thereafter, Fansteel subsidiaries Fansteel Holdings, Inc., Custom Technologies Corp., Escast, Inc., Washington Manufacturing Co., and American Sintered Technologies, Inc. shall be merged with and into RF, either directly or through a series of intermediate transactions.

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1 "Reorganized Fansteel" or "RF" refer to Fansteel Inc. as it exists *after* the Plan becomes effective. Fansteel's corporate identity will not change.

Among other things, RF will enter into a global settlement agreement as of the Effective Date with (1) the Pension Benefit Guaranty Corporation ("PBGC"), and (2) the Environmental Protection Agency and several other agencies with respect to Fansteel's North Chicago facility, concerning certain environmental claims. RF will be responsible for certain site characterization and possibly remediation at its Lexington and Waukegan facilities. RF will also agree to prosecute certain claims for insurance respecting the Muskogee, North Chicago, Lexington, Waukegan, and CERCLA potentially responsible party ("PRP") claims. For further details with respect to the organization of Fansteel following its exit from bankruptcy and the treatment of particular claims under the Plan, see the proposed Plan and Disclosure Statement.

Fansteel is proposing to transfer the Muskogee Site (including real property, equipment and improvements), and the NRC license (including the underlying licensed materials), and other valuable consideration, including Fansteel's rights under the Standby Trust established as NRC-mandated financial assurance for decommissioning ("L/C Cash Reserve"), to a wholly-owned subsidiary of RF, designated FMRI Inc. ("FMRI"), to be created on or before the effective date of the Plan. FMRI will be organized as a special purpose vehicle to fulfill obligations under the NRC license. A. Fred Dohmann, currently the general manager of the Muskogee Site, will serve as the initial president and chief executive officer of FMRI.[2] As the NRC licensee, FMRI will

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2 Subject to the requirements of the Bankruptcy Code, the initial officers of RF must be identified by the Confirmation Hearing. The existing officers of Fansteel may or may not serve RF in their current capacities after the Effective Date and absent employment agreements with the existing officers, there can be no guarantee that they will remain with RF for any period after the Effective Date. On the Effective Date, the term of the current board of directors of each debtor will expire. The initial board of RF is to (a) be comprised of five (5) members (one to be the CEO; one to be independent (selected by agreement of the PBGC, NRC, and the Official Creditors Committee), and one to be

carry out remediation of the site pursuant to NRC regulations and the terms and conditions of the license which will be transferred from the existing licensee, Fansteel Inc. FMRI will have sufficient technical resources to assure the ongoing health and safety of the public in accordance with NRC requirements.

As discussed below, the businesses retained by RF, together with the proposed borrowing from the L/C Cash Reserve, will provide FMRI with sufficient cash flow and resources to complete decommissioning on the schedule discussed below as well as to provide sufficient funds to run and expand the businesses of RF, and fulfill its other environmental cleanup and pension-related responsibilities.

FMRI will be funded as set forth below. Because this funding mechanism does not constitute one of the methods specifically identified in 10 C.F.R. § 40.36(e), Fansteel is seeking an exemption to that regulation pursuant to 10 C.F.R. § 40.14. In addition, Fansteel is, contemporaneously with this submission, filing a request for prior NRC consent to transfer its license to FMRI pursuant to 10 C.F.R. § 40.46 and associated guidance, and a request for an alternate decommissioning schedule pursuant to 10 C.F.R. § 40.42(i).

15.3.2 Funding of FMRI Under the Plan

In full settlement of any and all claims filed or to be filed by the NRC against Fansteel in its Chapter 11 case, and in order to assure that FMRI has sufficient funds to complete remediation, the following actions will be taken:

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selected by each of PBGC, NRC, and the Committee,) and (b) serve for an initial term of

- On or before the effective date of the Plan (currently estimated to be no later than December 20, 2003), Fansteel shall form FMRI.

- On the effective date of the Plan, RF will deliver $250,000 to FMRI, as the first payment on the Primary Note discussed below.

- Also on the effective date, RF will deliver to FMRI an unsecured note ("Primary Note") in the amount of $30.6 million, providing for the following:

➢ A maturity date of December 31, 2013.

➢ The NRC to be a third-party beneficiary.

➢ Minimum semi-annual payments to FMRI of $700,000 by RF. (The first semi-annual payment will be $450,000 since $250,000 will be paid on the Effective Date. All subsequent semi-annual payments will be $700,000.)

➢ Mandatory additional prepayments of up to a maximum of $4 million. These payments are to be funded by (i) 50% of RF's "Excess Available Cash"[3] (actual amount to be determined within 90 days of each fiscal year end by outside auditors) and (ii) if the aggregate amount of the minimum semi-annual payments plus the amount, if any, paid under clause (i) above, is less than the budgeted amount for the current fiscal year, then up to 50% of prior fiscal year-end cash balance of RF (subject to limitations imposed by applicable law), including cash balances at RW (to the extent that such amounts are permitted under applicable law, to be dividended or loaned to RF) shall be paid so as to satisfy in full the actual remediation costs for the prior year.

➢ Insurance proceeds, if any, received by RF with respect to Muskogee claims, and any Reorganized Debtor[4] Asset Sale Proceeds[5] are to be transferred to FMRI and to be

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one year.

3 "Excess Available Cash" means the actual change in the year-end cash balance of RF, exclusive of its post-Effective Date Subsidiaries, less any (i) net increase in borrowings by RF under its then-existing credit lines, (ii) cash proceeds from the sale by RF of property, plant, and equipment outside of the ordinary course of business, and (iii) cash contributed to capital, provided, however, that if capital expenditures of RF exceed 5% of consolidated sales in any given year, the cash effect of capital expenditures in excess of 5% of consolidated sales during such year shall be added back to RF's year-end cash balance for the purpose of determining "Excess Available Cash."

4 "Reorganized Debtor(s)" means, individually or collectively, Reorganized Fansteel and Reorganized Wellman on and after the Effective Date.

5 "Debtor Asset Sale Proceeds" means, with respect to any asset sales by RF and/or RW outside of the ordinary course of business, 50% of the first $2 million of sale proceeds, 35% of the next $3 million of sale proceeds, and 25% of all sale proceeds in excess of $5

applied by FMRI, first, to replenish amounts, if any, borrowed from the L/C Cash Reserve, and second, as additional mandatory prepayments of obligations under the Primary Note. Any such prepayments will not count against the $4 million annual cap on mandatory additional prepayments.[6]

- If, at any time after the effective date of the Plan, RF is unable to timely and/or fully fund FMRI's remediation obligations under the Primary Note, then FMRI may draw up to $2 million from the L/C Cash Reserve on a revolving basis (*i.e.*, subject to replenishment). At no time shall the aggregate amounts outstanding under such draws from the L/C Cash Reserve exceed $2 million. Future excess cash or insurance proceeds, if any, are to be applied to replenish the L/C Cash Reserve before reducing the principal amount of the Primary Note.

- After FMRI completes the schedule for Phase 2 remediation as set forth in the DP,[7] FMRI shall submit to the NRC for review and approval a Work Plan for the additional site characterization to be performed during Phase 3 of the Decommissioning Plan, as amended and approved by the NRC ("DP"). The Work Plan shall be consistent with the applicable standards set forth in the DP. After the NRC approves the Work Plan, FMRI shall perform the additional site characterization.

- Within 60 days of completing additional site characterization during Phase 3 of the DP, RF and/or FMRI will submit to the NRC (i) the results of site characterization, analyses, and conclusions as to the volume of additional soils, if any, requiring remediation (*i.e.*, in excess of the amount set forth in the DP); (ii) the incremental cost of remediation of such soils; (iii) proposed modifications, if any to the scope and nature of groundwater

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million, in each case net of (i) all transaction costs and (ii) all amounts, if any, due to RF's and/or RW's then-existing creditors as a result of such sale(s). Sale(s) by RF of material assets are to be conducted pursuant to an auction process. The NRC will have the right to (i) 30 days' prior notice of auction(s), and (ii) seek to enjoin sale(s) as inconsistent with the confirmed Plan in the U.S. District Court for the District of Delaware.

6 Affirmative and negative covenants for the Primary Note are to be consistent with the treatment set forth in the Plan. These will contemplate, among other things, (i) a secured working capital exit facility for RF (which RF will use its reasonable best efforts to obtain, and which shall, if possible, specifically provide for funding, if necessary, of a portion of RF's obligations under the Primary Note (any such funding is referred to as the "Exit Muskogee Note Funding"); (ii) no payment of dividends by RF until payment in full of all FMRI Notes; (iii) an obligation to deliver RF Asset Sale Proceeds pursuant to an agreed formula; and (iv) an obligation to deliver insurance proceeds.

7 *See* Letter from G.L. Tessitore, Fansteel, to D.M. Gillen, Fansteel, dated May 8, 2003 (and as approved by the letter from D.M. Gillen, NRC, to G.L. Tessitore, Fansteel, dated May 9, 2003) for a description of the activities to be performed in each "phase."

treatment and/or monitoring, predicated on applicable standards; and (iv) the proposed terms of any required Contingent Note. The terms of the note shall include:

- A principal amount to be proposed by RF and FMRI and determined by agreement of the NRC after completion of additional site characterization (or following dispute resolution, if there is no agreement). This principal amount will reflect, as and to the extent required, additional costs to remediate soils (in excess of costs estimated in the DP) and other additional costs (*i.e.*, costs not in the DP, but not a reserve or contingency factor) required to complete the DP and remediate and monitor groundwater.

- Minimum semi-annual payments, commencing only after the $30.6 million Primary Note described above is paid in full. The amount of the minimum payments will be proposed by RF and determined by agreement with NRC following good faith negotiations (or determined pursuant to dispute resolution, if the parties do not agree).

- Mandatory additional prepayments, to commence only after the Primary Note is paid in full, of up to an amount proposed by RF and determined by agreement of NRC in conjunction with the determination of minimum semi-annual payments. These payments are to be funded by (i) 50% of RF's "excess available cash" (actual amount to be determined within 90 days of each fiscal year end by outside auditors); and (ii) if the aggregate amount of minimum semi-annual payments plus the amount, if any, paid under clause (i) above, is less than the budgeted amount for the current fiscal year, then up to 50% of prior fiscal year-end cash balance of RF (subject to limitations imposed by applicable law), including cash balances at RW (to the extent that such amounts are permitted under applicable law, to be dividended or loaned to RF) shall be paid so as to satisfy in full the actual remediation costs for the prior year.

- A maturity date reflecting any additional time necessary to remediate soils in excess of the amount set forth in the DP (if required).

- If RF is unable to timely and/or fully fund FMRI's additional remediation obligations (if any) under the Contingent Note in a given year, then FMRI may draw up to $2 million from the L/C Cash Reserve on a revolving basis (*i.e.*, subject to replenishment). At no time shall the aggregate amounts outstanding under such draws from the L/C Cash Reserve exceed $2 million. Future excess cash or insurance proceeds, if any, will be applied to replenish the L/C Cash Reserve before reducing the principal amount of the Contingent Note.

- Insurance proceeds, if any, received by RF with respect to Muskogee claims, and any RF Asset Sale Proceeds are to be transferred to FMRI and to be applied by FMRI, first, to replenish amounts, if any, borrowed from the L/C Cash Reserve, and second, to reduce obligations under the Contingent Note.

- Upon submission to the NRC of the results of additional site characterization, estimated soil remediation costs, including any additional costs for groundwater treatment and/or monitoring, and the proposed terms of a Contingent Note, as described above, the following procedures will be implemented:

- The NRC, RF, and FMRI will negotiate in good faith for up to 30 days with respect to the amount and/or additional terms of the Contingent Note.

- If no agreement is reached by the conclusion of the 30-day period, RF will promptly deliver a Contingent Note to FMRI in the amount, and on the terms, proposed by RF/FMRI.

- With respect to any and all matters by which the terms and conditions of the Contingent Note affect the DP, unless the NRC, by issuance of an order under 10 C.F.R. § 2.202 (or any successor section), objects to the amount and terms of the Contingent Note within 180 days of its issuance, the amount and terms of the Contingent Note will become final.

- If the NRC timely objects to the amount and terms of the Contingent Note by the issuance of an Order pursuant to 10 C.F.R. § 2.202, FMRI shall have the opportunity to request a hearing on such an Order. Any such hearing shall be conducted pursuant to the procedures in 10 C.F.R. Part 2.

- The hearing procedures contained in 10 C.F.R. Part 2, Subpart G (or any successor regulations) will apply to all disputes relating to the Contingent Note, and FMRI's obligations under the SMB-911 license and the DP, as approved.

- Judicial review of any final agency action shall be conducted pursuant to the standard of review set forth in Section 706 of the Administrative Procedure Act, 5 U.S.C. § 706.

- Disputes, if any, with OKDEQ regarding matters by which the terms of the Contingent Note directly affect the NPDES Permit shall be resolved by binding arbitration in accordance with the rules of the American Arbitration Association.

- On the effective date of the Plan, RF will issue a note to FMRI for the specific purpose of satisfying obligations with respect to groundwater treatment.[8] The note will cover the estimated costs of groundwater treatment and monitoring, to be completed to a standard to be agreed upon between FMRI and NRC consistent with applicable law.

- From and after the effective date of the Plan, FMRI will report to the NRC on an annual basis all expenditures of proceeds of the FMRI Notes and certify to the NRC that the use of such proceeds has been in accordance with the DP. In addition, FMRI is to provide to the NRC its annual financial statements.

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8 On the Effective Date, RF will deliver an unsecured, non-interest bearing note of approximately $4.2 million to FMRI (the "Secondary Note"), to evidence its financing obligation to cover estimated costs of groundwater treatment and monitoring, to be completed to a standard to be agreed upon between FMRI and NRC. The note, which will name the NRC as a third-party beneficiary, will mature in 2023. Beginning in 2013 and through maturity, RF will make annual payments on the note of $282,000. If additional groundwater treatment is not ultimately required, or is less expensive than payments to be made under this note, the excess proceeds shall revert to RF and/or the balance of the note cancelled and RF's future obligations under the note forgiven.

- RF shall indemnify the NRC with respect to RF's obligations to FMRI under the FMRI Notes.
- The NRC shall have a perfected, first priority lien on all of the proceeds of the FMRI Notes. Until such time as FMRI has completed all decommissioning activities mandated by the DP and groundwater treatment and monitoring at the Muskogee site, FMRI shall use the proceeds of the FMRI Notes solely for purposes of such decommissioning and groundwater treatment and monitoring.
- As third party beneficiary, the NRC shall have standing to seek appropriate relief for any breach by RF of its obligations under the FMRI Notes.

Table 15-11 provides an estimated yearly breakdown of the funds to be provided by RF pursuant to the Notes and demonstrates that FMRI will have sufficient funds at its disposal to remediate the Muskogee site.

Upon completion of all decommissioning activities mandated by the DP, FMRI shall obtain ownership of the L/C Cash Reserve free and clear of any claim, interest or right of the NRC. FMRI will be entitled to use residual funds from the L/C Cash Reserve to complete groundwater monitoring and treatment at the Muskogee site. Payments from RF under the FMRI Secondary Note or the FMRI Contingent Note, a the case may be, shall be suspended, unless and until the balance in the L/C Cash Reserve no longer exceeds $750,000. The title to the remediated real property may be transferred, with the consent of the transferee, to the Port of Muskogee (which shall have a reasonable right of first refusal on transfers of the Muskogee real property to any other party) or other third party selected by FMRI, for consideration to be determined, or FMRI may otherwise disposition the property in a manner of its choosing. License SMB-911 will be terminated at this time, unless it is necessary to the license remain in effect for the purpose of groundwater remediation. In that event, the license will be terminated following the completion of groundwater remediation. At license termination, if FMRI has been overfunded on an

aggregate basis, FMRI will dividend, or otherwise transfer, to RF the balance of funds held by FMRI, after which FMRI is to be dissolved.

15.4 Comparison of the Cost Estimate to the Current Level of Financial Assurance

Table 15-11 ("Closure Cost Estimate by Year") presents a yearly breakdown of the total updated estimate of $41,605,000. Table 15-12 ("Cash Flow by Year"), which depicts cash flow projections for RF on a yearly basis, is presented to demonstrate the ability of FMRI to fund the required decommissioning for the site. Currently, decommissioning funding assurance exists for the site in the amount of approximately $4,604,000 — the amount of the two letters of credit drawn upon by the NRC by letters dated February 27, 2002, and March 1, 2002. The remainder of the funding to meet decommissioning funding assurance requirements is to be obtained through the mechanism described in Section 15.3, above.

Therefore, Fansteel is providing financial assurance for all costs items listed on Table 15-11 for costs estimated to be incurred beginning in 2004 as identified on the schedule. The financial assurance is the Primary Note and the Secondary Note from RF to FMRI and the "Decommissioning Trust". As such, all items are considered necessary to complete the decommissioning plan. The total costs on Table 15-11 is $41.6 million including expenditures made and estimated for 2002 and 2003 of $2,210,000. The costs on Table 15-11 beginning 2004 totals $39,395,000 for estimated cost included in the Amended Decommissioning Plan. The Primary Note is for $30.6 million, the Secondary Note is for $4.2 million and the Decommissioning Trust has $4.6 million. These 3 items total $39.4 million. In addition, the financial assurance commitment includes a Contingent Note if costs are estimated to be greater

after site characterization is completed after the material in the WIP and CAF ponds are removed offsite.

15.5 Means for Adjusting the Cost Estimate and Associated Funding Level

RF will execute the contingent note described in Section 15.3.1 as the means for adjustment to align with the revised decommissioning cost estimate and funding, based on the Phase 3 characterization activities.

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Section 15.1.9 Summary of Costs

~~The total estimated cost for decommissioning of the Fansteel facility based on the available information at the time of this report has been summarized in Table 15-10. The total estimated cost is $26.5 million.~~

Table 15-10 summarizes the estimated decommissioning costs described above in Sections 15.1.1 through 15.1.8 (the estimated cost for these activities is $26.46 million). Table 15-11 includes the following additional costs associated with the decommissioning of the Fansteel facility:

- $1,600,000 (Site maintenance costs in preparation for decommissioning)
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15.3 Financial Assurance Mechanism

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the NRC licensee, ~~MRI~~FMRI will carry out remediation of the site pursuant to NRC regulations and the terms and conditions of the license which will be transferred from the existing licensee, Fansteel Inc. ~~MRI~~FMRI will have sufficient technical resources to assure the ongoing health and safety of the public in accordance with NRC requirements.

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employment agreements with the existing officers, there can be no guarantee that they will remain with RF for any period after the Effective Date. On the Effective Date, the term of the current board of directors of each debtor will expire. The initial board of RF is to (a) be comprised of five (5) members (one to be the CEO; one to be independent (selected by agreement of the PBGC, NRC, and the Official Creditors Committee), and one to be selected by each of PBGC, NRC, and the Committee,) and (b) serve for an initial term of one year.

In full settlement of any and all claims filed or to be filed by the NRC against Fansteel in its Chapter 11 case, and in order to assure that ~~MRI~~FMRI has sufficient funds to complete remediation, the following actions will be taken:

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➢ Insurance proceeds, if any, received by RF with respect to Muskogee claims, and any Reorganized Debtor[4] Asset Sale Proceeds[5] are to be transferred to ~~MRI~~FMRI and to be

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3 "Excess Available Cash" means the actual change in the year-end cash balance of RF, exclusive of its post-Effective Date Subsidiaries, less any (i) net increase in borrowings by RF under its then-existing credit lines, (ii) cash proceeds from the sale by RF of property, plant, and equipment outside of the ordinary course of business, and (iii) cash contributed to capital, provided, however, that if capital expenditures of RF exceed 5% of consolidated sales in any given year, the cash effect of capital expenditures in excess of 5% of consolidated sales during such year shall be added back to RF's year-end cash balance for the purpose of determining "Excess Available Cash."

4 "Reorganized Debtor(s)" means, individually or collectively, Reorganized Fansteel and Reorganized Wellman on and after the Effective Date.

applied by ~~MRI~~FMRI, first, to replenish amounts, if any, borrowed from the L/C Cash Reserve, and second, as additional mandatory prepayments of obligations under the Primary Note. Any such prepayments will not count against the $4 million annual cap on mandatory additional prepayments.[6]

- If, at any time after the effective date of the Plan, RF is unable to timely and/or fully fund ~~MRI~~FMRI's remediation obligations under the Primary Note, then ~~MRI~~FMRI may draw up to $2 million from the L/C Cash Reserve on a revolving basis (*i.e.*, subject to replenishment). At no time shall the aggregate amounts outstanding under such draws from the L/C Cash Reserve exceed $2 million. Future excess cash or insurance proceeds, if any, are to be applied to replenish the L/C Cash Reserve before reducing the principal amount of the Primary Note.

- After ~~MRI~~FMRI completes the schedule for Phase 2 remediation as set forth in the DP,[7] ~~MRI~~FMRI shall submit to the NRC for review and approval a Work Plan for the additional site characterization to be performed during Phase 3 of the Decommissioning Plan, as amended and approved by the NRC ("DP"). The Work Plan shall be consistent with the applicable standards set forth in the DP. After the NRC approves the Work Plan, ~~MRI~~FMRI shall perform the additional site characterization.

- Within 60 days of completing additional site characterization during Phase 3 of the DP, RF and/or ~~MRI~~FMRI will submit to the NRC (i) the results of site characterization, analyses, and conclusions as to the volume of additional soils, if any, requiring

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5 "Debtor Asset Sale Proceeds" means, with respect to any asset sales by RF and/or RW outside of the ordinary course of business, 50% of the first $2 million of sale proceeds, 35% of the next $3 million of sale proceeds, and 25% of all sale proceeds in excess of $5 million, in each case net of (i) all transaction costs and (ii) all amounts, if any, due to RF's and/or RW's then-existing creditors as a result of such sale(s). Sale(s) by RF of material assets are to be conducted pursuant to an auction process. The NRC will have the right to (i) 30 days' prior notice of auction(s), and (ii) seek to enjoin sale(s) as inconsistent with the confirmed Plan in the U.S. District Court for the District of Delaware.

6 Affirmative and negative covenants for the Primary Note are to be consistent with the treatment set forth in the Plan. These will contemplate, among other things, (i) a secured working capital exit facility for RF (which RF will use its reasonable best efforts to obtain, and which shall, if possible, specifically provide for funding, if necessary, of a portion of RF's obligations under the Primary Note (any such funding is referred to as the "Exit Muskogee Note Funding"); (ii) no payment of dividends by RF until payment in full of all ~~MRI~~FMRI Notes; (iii) an obligation to deliver RF Asset Sale Proceeds pursuant to an agreed formula; and (iv) an obligation to deliver insurance proceeds.

7 *See* Letter from G.L. Tessitore, Fansteel, to D.M. Gillen, Fansteel, dated May 8, 2003 (and as approved by the letter from D.M. Gillen, NRC, to G.L. Tessitore, Fansteel, dated May 9, 2003) for a description of the activities to be performed in each "phase."

remediation (*i.e.*, in excess of the amount set forth in the DP); (ii) the incremental cost of remediation of such soils; (iii) proposed modifications, if any to the scope and nature of groundwater treatment and/or monitoring, predicated on applicable standards; and (iv) the proposed terms of any required Contingent Note. The terms of the note shall include:

- A principal amount to be proposed by RF and ~~MRI~~FMRI and determined by agreement of the NRC after completion of additional site characterization (or following dispute resolution, if there is no agreement). This principal amount will reflect, as and to the extent required, additional costs to remediate soils (in excess of costs estimated in the DP) and other additional costs (*i.e.*, costs not in the DP, but not a reserve or contingency factor) required to complete the DP and remediate and monitor groundwater.

- Minimum semi-annual payments, commencing only after the $30.6 million Primary Note described above is paid in full. The amount of the minimum payments will be proposed by RF and determined by agreement with NRC following good faith negotiations (or determined pursuant to dispute resolution, if the parties do not agree).

- Mandatory additional prepayments, to commence only after the Primary Note is paid in full, of up to an amount proposed by RF and determined by agreement of NRC in conjunction with the determination of minimum semi-annual payments. These payments are to be funded by (i) 50% of RF's "excess available cash" (actual amount to be determined within 90 days of each fiscal year end by outside auditors); and (ii) if the aggregate amount of minimum semi-annual payments plus the amount, if any, paid under clause (i) above, is less than the budgeted amount for the current fiscal year, then up to 50% of prior fiscal year-end cash balance of RF (subject to limitations imposed by applicable law), including cash balances at RW (to the extent that such amounts are permitted under applicable law, to be dividended or loaned to RF) shall be paid so as to satisfy in full the actual remediation costs for the prior year.

- A maturity date reflecting any additional time necessary to remediate soils in excess of the amount set forth in the DP (if required).

- If RF is unable to timely and/or fully fund ~~MRI~~FMRI's additional remediation obligations (if any) under the Contingent Note in a given year, then ~~MRI~~FMRI may draw up to $2 million from the L/C Cash Reserve on a revolving basis (*i.e.*, subject to replenishment). At no time shall the aggregate amounts outstanding under such draws from the L/C Cash Reserve exceed $2 million. Future excess cash or insurance proceeds, if any, will be applied to replenish the L/C Cash Reserve before reducing the principal amount of the Contingent Note.

- Insurance proceeds, if any, received by RF with respect to Muskogee claims, and any RF Asset Sale Proceeds are to be transferred to ~~MRI~~FMRI and to be applied by ~~MRI~~FMRI, first, to replenish amounts, if any, borrowed from the L/C Cash Reserve, and second, to reduce obligations under the Contingent Note.

- Upon submission to the NRC of the results of additional site characterization, estimated soil remediation costs, including any additional costs for groundwater treatment and/or

monitoring, and the proposed terms of a Contingent Note, as described above, the following procedures will be implemented:

- The NRC, RF, and ~~MRI~~FMRI will negotiate in good faith for up to 30 days with respect to the amount and/or additional terms of the Contingent Note.

- If no agreement is reached by the conclusion of the 30-day period, RF will promptly deliver a Contingent Note to ~~MRI~~FMRI in the amount, and on the terms, proposed by RF/~~MRI~~FMRI.

- With respect to any and all matters by which the terms and conditions of the Contingent Note affect the DP, unless the NRC, by issuance of an order under 10 C.F.R. § 2.202 (or any successor section), objects to the amount and terms of the Contingent Note within 180 days of its issuance, the amount and terms of the Contingent Note will become final.

- If the NRC timely objects to the amount and terms of the Contingent Note by the issuance of an Order pursuant to 10 C.F.R. § 2.202, ~~MRI~~FMRI shall have the opportunity to request a hearing on such an Order. Any such hearing shall be conducted pursuant to the procedures in 10 C.F.R. Part 2.

- The hearing procedures contained in 10 C.F.R. Part 2, Subpart G (or any successor regulations) will apply to all disputes relating to the Contingent Note, and ~~MRI~~FMRI's obligations under the SMB-911 license and the DP, as approved.

- Judicial review of any final agency action shall be conducted pursuant to the standard of review set forth in Section 706 of the Administrative Procedure Act, 5 U.S.C. § 706.

- Disputes, if any, with OKDEQ regarding matters by which the terms of the Contingent Note directly affect the NPDES Permit shall be resolved by binding arbitration in accordance with the rules of the American Arbitration Association.

- On the effective date of the Plan, RF will issue a note to ~~MRI~~FMRI for the specific purpose of satisfying obligations with respect to groundwater treatment.[8] The note will cover the estimated costs of groundwater treatment and monitoring, to be completed to a standard to be agreed upon between ~~MRI~~FMRI and NRC consistent with applicable law.

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8 On the Effective Date, RF will deliver an unsecured, non-interest bearing note of approximately $4.2 million to ~~MRI~~FMRI (the "Secondary Note"), to evidence its financing obligation to cover estimated costs of groundwater treatment and monitoring, to be completed to a standard to be agreed upon between ~~MRI~~FMRI and NRC. The note, which will name the NRC as a third-party beneficiary, will mature in 2023. Beginning in 2013 and through maturity, RF will make annual payments on the note of $282,000. If additional groundwater treatment is not ultimately required, or is less expensive than payments to be made under this note, the excess proceeds shall revert to RF and/or the balance of the note cancelled and RF's future obligations under the note forgiven.

- From and after the effective date of the Plan, ~~MRI~~FMRI will report to the NRC on an annual basis all expenditures of proceeds of the ~~MRI~~FMRI Notes and certify to the NRC that the use of such proceeds has been in accordance with the DP. In addition, ~~MRI~~FMRI is to provide to the NRC its annual financial statements.

- RF shall indemnify the NRC with respect to RF's obligations to ~~MRI~~FMRI under the ~~MRI~~FMRI Notes.

- The NRC shall have a perfected, first priority lien on all of the proceeds of the ~~MRI~~FMRI Notes. Until such time as ~~MRI~~FMRI has completed all decommissioning activities mandated by the DP and groundwater treatment and monitoring at the Muskogee site, ~~MRI~~FMRI shall use the proceeds of the ~~MRI~~FMRI Notes solely for purposes of such decommissioning and groundwater treatment and monitoring.

- As third party beneficiary, the NRC shall have standing to seek appropriate relief for any breach by RF of its obligations under the ~~MRI~~FMRI Notes.

Table 15-11 provides an estimated yearly breakdown of the funds to be provided by RF pursuant to the Notes and demonstrates that ~~MRI~~FMRI will have sufficient funds at its disposal to remediate the Muskogee site.

Upon completion of all decommissioning activities mandated by the DP, ~~MRI~~FMRI shall obtain ownership of the L/C Cash Reserve free and clear of any claim, interest or right of the NRC. ~~MRI~~FMRI will be entitled to use residual funds from the L/C Cash Reserve to complete groundwater monitoring and treatment at the Muskogee site. Payments from RF under the ~~MRI~~FMRI Secondary Note or the ~~MRI~~FMRI Contingent Note, a the case may be, shall be suspended, unless and until the balance in the L/C Cash Reserve no longer exceeds $750,000. The title to the remediated real property may be transferred, with the consent of the transferee, to the Port of Muskogee (which shall have a reasonable right of first refusal on transfers of the Muskogee real property to any other party) or other third party selected by ~~MRI~~FMRI, for consideration to be determined, or ~~MRI~~FMRI may otherwise disposition the property in a manner of its choosing. License SMB-911 will be terminated at this time, unless it is necessary

to the license remain in effect for the purpose of groundwater remediation. In that event, the license will be terminated following the completion of groundwater remediation. At license termination, if ~~MRI~~FMRI has been overfunded on an aggregate basis, ~~MRI~~FMRI will dividend, or otherwise transfer, to RF the balance of funds held by ~~MRI~~FMRI, after which ~~MRI~~FMRI is to be dissolved.

15.4 Comparison of the Cost Estimate to the Current Level of Financial Assurance

Table 15-11 ("Closure Cost Estimate by Year") presents a yearly breakdown of the total updated estimate of $41,605,000~~, which represents both costs which are required to be financially assured in accordance with Commission regulations totaling $26.465 million and other costs which are not required to be assured~~. Table 15-12 ("Cash Flow by Year"), which depicts cash flow projections for RF on a yearly basis, is presented to demonstrate the ability of ~~MRI~~FMRI to fund the required decommissioning for the site. ~~As discussed in detail in Section 15.1, above, the amount required to be financially assured is $26.4 million. In addition, groundwater remediation is assured through the $4.2 million Secondary Note.~~ Currently, decommissioning funding assurance exists for the site in the amount of approximately $4,604,000 — the amount of the two letters of credit drawn upon by the NRC by letters dated February 27, 2002, and March 1, 2002. The remainder of the funding to meet decommissioning funding assurance requirements is to be obtained through the mechanism described in Section 15.3, above.

Therefore, Fansteel is providing financial assurance for all costs items listed on Table 15-11 for costs estimated to be incurred beginning in 2004 as identified on the schedule. The financial assurance is the Primary Note and the Secondary Note from RF to FMRI and the "Decommissioning Trust". As such, all items are considered necessary to complete the

decommissioning plan. The total costs on Table 15-11 is $41.6 million including expenditures made and estimated for 2002 and 2003 of $2,210,000. The costs on Table 15-11 beginning 2004 totals $39,395,000 for estimated cost included in the Amended Decommissioning Plan. The Primary Note is for $30.6 million, the Secondary Note is for $4.2 million and the Decommissioning Trust has $4.6 million. These 3 items total $39.4 million. In addition, the financial assurance commitment includes a Contingent Note if costs are estimated to be greater after site characterization is completed after the material in the WIP and CAF ponds are removed offsite.

15.5 Means for Adjusting the Cost Estimate and Associated Funding Level

RF will execute the contingent note described in Section 15.3.1 as the means for adjustment to align with the revised decommissioning cost estimate and funding, based on the Phase 3 characterization activities.