

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR MATERIALS
SAFETY AND SAFEGUARDS
RELATED TO TRANSFER OF FACILITY OPERATING LICENSE
NO. SMB-911
FROM FANSTEEL, INC. TO FMRI FOR
THE MUSKOGEE, OKLAHOMA FACILITY
DOCKET NO. 40-7580

1.0 INTRODUCTION

Pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (the Act), and Sections 40.31 and 40.32 of Title 10 of the Code of Federal Regulations (10 CFR), Fansteel, Inc. (Fansteel), by application dated July 24, 2003, requested that the Nuclear Regulatory Commission (NRC) consent to a direct transfer of Facility Operating License No. SMB-911 for the Muskogee, Oklahoma site. Fansteel has filed this application about a comprehensive reorganization and restructuring of the businesses and operations of Fansteel because of voluntary bankruptcy. Fansteel proposes to assign the Muskogee site to a new entity that will be a subsidiary of Fansteel. The additional financial details provided in a supplement to the initial submittal dated July 24, 2003, and October 15, 2003, did not expand the application beyond the scope of the Federal Register notice of the application (68 FR 50558, August 21, 2003).

2.0 BACKGROUND

On January 5, 2001, Fansteel filed a petition for relief under Chapter 11 of the United States Bankruptcy Code. As stated by Fansteel, the goal of the bankruptcy was to halt the deterioration of Fansteel's financial position, restore the company to financial health, and continue in the normal course of business. On July 24, 2003, Fansteel Corporation filed with the Bankruptcy Court a comprehensive Plan of Reorganization (Plan) for Fansteel. Under the Plan, Fansteel will transfer operating authority for and ownership of the Muskogee site to a new limited liability company named FMRI. According to the July 24, 2003, application, Fansteel will disaggregate and restructure the current businesses. Fansteel will divide its operations and the assets of its business as described in the Disclosure Statement With Respect to Joint Reorganization Plan of Fansteel, Inc. (ADAMS ML032190239). The assets and liabilities associated with the current business at the Muskogee site, will be transferred to FMRI, a wholly owned subsidiary to be formed as part of the reorganization. FMRI will operate the Muskogee site and will become the NRC operating licensee.

3.0 FINANCIAL QUALIFICATIONS ANALYSIS

FMRI is subject to a financial qualification review by the NRC. Specifically, FMRI must meet the requirements of 10 CFR 40.36 by providing the following information:

- a. It must show that it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license.
- b. As a newly formed entity organized primarily for the purpose of remediating a materials site, it must show: (a) the legal and financial relationships it has or proposes to have

with its stockholders or owners; (b) its financial ability to meet any contractual obligation to the entity that they have incurred or propose to incur; and (c) any information considered necessary by the NRC to enable it to determine the applicant's financial qualification.

In addition, 10 CFR 40.36(a) requires that FMRI must provide information indicating how it will provide reasonable assurance that funds will be available to decommission the facilities. FMRI's proposals for decommissioning funding assurances are discussed in Section 4.0 of this evaluation.

Following the proposed restructuring and license transfer, the financing and financial reporting for the FMRI business will occur at the FMRI level of the organization. As indicated in the projected cash flow statement below, FMRI should be a financially sound entity because of its contract with the Reorganized Fansteel.

The projected revenues from the proposed primary and secondary notes indicate that FMRI, as the operator, will meet its financial obligations as the owner. The application provided the projected Cash Flow for Reorganized Fansteel in Table 15-12 of the DP of the July 24, 2003 supplement to the DP, shown below.

The NRC staff also concludes that projected total operating expenses appear to be reasonable, based on the NRC staff's experience in reviewing such information for similar facilities. FMRI provides for additional expenses, if necessary, through use of a contingent note submitted by Fansteel. Furthermore, Reorganized Fansteel will not pay any dividends to its stockholders until it pays the primary note in full. Given this information, the NRC staff finds that the application has satisfied the requirements of 10 CFR 40.36(d) for FMRI.

	Cash Flow by Year (000's)										Cumulative
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
Reorganized Fansteel											
Intercast	2,657	2,902	3,123	3,470	3,470	3,470	3,470	3,470	3,470	3,470	32,972
Washington	800	824	1,418	1,548	1,548	1,548	1,548	1,548	1,548	1,548	13,878
American Sintered Products	809	1,132	1,118	1,242	1,237	1,237	1,373	1,462	1,462	1,462	12,534
Wellman	136	275	32	1,337	1,337	1,337	1,433	1,433	1,433	1,433	10,186
PBGC Note	(750)	(750)	(750)	(750)	(750)	(1,150)	(1,150)	(1,150)	(1,150)	(1,150)	(9,500)
Headquarters (RF)	(821)	(37)	305	293	828	774	713	785	(94)	(1,220)	1,526
Subtotal Operations	2,831	4,346	5,246	7,140	7,670	7,216	7,387	7,548	6,669	5,543	61,596
North Chicago	(734)	(356)	(114)	(29)	(30)	(32)	(33)	(34)	(36)	(37)	(1,435)
Waukegan	(10)	(24)	(175)	(554)	(34)	(34)	(35)	(36)	(36)	(16)	(954)
Lexington	(18)	(48)	(578)	(574)	(26)	(26)	(27)	(28)	(28)	(29)	(1,382)
Subtotal Environmental	(762)	(428)	(867)	(1,157)	(90)	(92)	(95)	(98)	(100)	(82)	(3,771)
Operating Cash Flow	2,069	3,918	4,379	5,983	7,580	7,124	7,292	7,450	6,569	5,461	57,825
Muskogee											
Total spending	(2,165)	(3,781)	(2,030)	(3,635)	(4,857)	(4,857)	(4,855)	(5,209)	(3,067)	(282)	(34,738)
Funds from (to) standby trust	765	1,235	(1,553)	(58)	(389)	0	0	0	0	0	0
Spending by RF	(1,400)	(2,546)	(3,583)	(3,693)	(5,246)	(4,857)	(4,855)	(5,209)	(3,067)	(282)	(34,738)
Annual	669	1,372	796	2,290	2,334	2,267	2,437	2,241	3,502	5,179	23,087
Cumulative	669	2,041	2,837	5,127	7,461	9,728	12,165	14,406	17,908	23,087	
Cash Balance (Beginning \$953)	1,622	2,994	3,790	6,080	8,414	10,681	13,118	15,359	18,861	24,040	

Accordingly, under the terms and conditions proposed in the application, including but not limited to the terms in the agreement, the NRC staff finds that FMRI will be financially qualified to possess (i.e., own) the facility, provided the following are made conditions of approval of the transfer:

The Bankruptcy Court has approved the Fansteel Reorganization Plan and the Plan has become effective.

Fansteel has instituted FMRI, and a Board of Directors.

FMRI has received from Reorganized Fansteel all financial assurance instruments identified in the Settlement Agreement.

Reorganized Fansteel has transferred to FMRI a cash payment of \$250,000.

In summary, based on the information provided in the application, satisfying the requirements of 10 CFR 40.36, the NRC staff finds that FMRI will be financially qualified to possess, use, and operate the Muskogee site as proposed.

4.0 DECOMMISSIONING FUNDING

The NRC has determined that the requirements to provide assurance of adequate decommissioning funding are necessary to ensure the adequate protection of public health and safety. Section 40.36 of 10 CFR requires that an application for a license for a materials facility contain information indicating how reasonable assurance will be provided that funds will be available to decommission the facility. An external Nuclear Decommissioning Trust presently provides partial decommissioning funding assurance for the Muskogee site as authorized by 10 CFR 40.36(e). According to the application, Fansteel will transfer to FMRI the interest in the Nuclear Decommissioning Trust associated with the Muskogee site. The funds will be outside its administrative control. A trustee will continue to manage investment of the funds in accordance with a master trust agreement and applicable NRC requirements and license conditions. The funds will be used only in a manner consistent with the terms of the trust agreement. The promissory notes will provide the balance of decommissioning funding discussed in §3 above. The settlement agreement requires that all funds must be used only for decommissioning purposes.

The value of the Muskogee site Nuclear Decommissioning Trust as of September 30, 2003, was approximately \$4.5 million. Based on the application, the NRC staff has determined that the current fund balance is approximately 10% of the estimated decommissioning cost determined by Fansteel. The FMRI Notes provide the balance of the funding. The Notes provide financial assurance by an alternate method found acceptable to the staff. Therefore, Fansteel has requested, and the staff has granted, an exemption to the requirements of 10 CFR 40.36(e). The transfer to FMRI of Fansteel's interest in the Decommissioning Trust is subject to the approval of the Bankruptcy Court as part of the confirmation of the Reorganization Plan.

The staff concluded further that, consistent with the application and bankruptcy settlement, the license transfer shall not be effective until after the receipt by the NRC of signed originals of the following financial assurance instruments:

The primary promissory note from Fansteel to FMRI for \$30.6 million;

The secondary promissory note from Fansteel to FMRI for \$4.2 million;

The contingent note from Fansteel to FMRI, the value of which shall be determined after additional site characterization and detailed work plans for remediation are completed;

The Certificate of Financial Assurance;

The Decommissioning Trust Agreement;

The Indemnity Letter from Fansteel; and

The Pledge Agreement from FMRI.

Signed originals of the financial instruments listed above were delivered to the NRC on November 24, 2003. Based on the above, the NRC staff finds that there is reasonable assurance of adequate decommissioning funding for the Muskogee site.

5.0 TECHNICAL QUALIFICATIONS

5.1 Purpose of the Evaluation

The purpose of this evaluation is to ensure that the corporate management of the proposed operator is involved with, informed of, and dedicated to the safe remediation of the Muskogee site and, that sufficient qualified technical resources will be provided to support safe plant decommissioning and maintenance, and to evaluate proposed changes to the operating organization that may occur because of the license transfers. FMRI is the only proposed operator of the Muskogee site; therefore, the NRC staff has evaluated FMRI's technical qualifications, as described below.

The NRC staff used the following regulations and guidance to complete its evaluation:

- * 10 CFR 40.36
- * NUREG-1757, Vol. 3

5.2 Management and Technical Support Organization

Using the regulations and guidance stated above, the NRC staff reviewed the application to determine the acceptability of the corporate management and technical support organization for the proposed transferee, FMRI. The NRC staff evaluated the application using the applicable acceptance criteria contained in NUREG-1757, Vol. 1, Rev.1, Section 17.2.

The July 24, 2003, submittal states that after the transfer "A. Fred Dohmann will serve as the initial president and chief executive officer of [F]MRI ... [and] will continue to be the principal contact for License SMB-911. Following the transfer, there will be no change to the Radiation Safety Officer or other persons responsible for radiation safety or authorized to use licensed material." Further, the application states that "Aside from name change ... there will be no changes in the licensed place of use, in the facilities where licensed material is stored, or in the equipment used in the licensed program. Similarly, there will be no procedural changes." In total, the technical qualifications of the FMRI management, site, and support organizations will be equivalent to those of the existing Fansteel organization.

Based on the July 24, 2003, submittal, the NRC staff concludes that the application has described FMRI's organization for managing and its means of providing technical support to the plant staff for decommissioning of the units after the license transfers. The NRC staff concludes that FMRI will have an acceptable management organization and adequate resources to provide off-site technical support for the decommissioning of the Muskogee site.

5.3 Operating Organization

Using the regulations and guidance stated above, the NRC staff reviewed the application to determine the acceptability of FMRI's operating organization, evaluating changes to the current operating organization proposed because of the license transfers. The initial operating organization was determined to be acceptable by the initial licensing review. NRC required subsequent safety-related changes to the operating organization to be evaluated with an appropriate methodology, and the NRC staff is not aware of any deficiencies with the current operating organization. Consequently, the NRC staff review focused on evaluating any changes to the operating organization proposed because of the transfers. Staff notes the following:

The July 24, 2003, submittal shows that the current on-site organizations at the Muskogee site will be transferred intact to FMRI.

The existing structure of the Muskogee site organizations, as shown in the Muskogee site license will remain unchanged after the transfer.

The personnel qualification requirements presently defined in the plant license will not be changed and will continue to be met.

Based on the above, the proposed operating organization that FMRI will have for the Muskogee site, and the qualifications of the FMRI operating personnel in that organization will be essentially equivalent to the current organization and qualifications of Fansteel. Accordingly, the NRC staff concludes that following the proposed license transfer, FMRI's organization for operating and maintaining the Muskogee site will be acceptable and in accordance with regulations.

5.4 Conclusions With Respect to Technical Qualifications

The application has described FMRI's corporate level management and technical support organization and the on-site operating organization responsible for the decommissioning and maintenance of the Muskogee site after the license transfer. The NRC staff concludes that FMRI will have an acceptable corporate organization, on-site organization, and adequate resources to provide technical support for the safe decommissioning and maintenance of the Muskogee site after the license transfer. The application adequately addresses the relevant requirements of 10 CFR 40.32(b).

Based on this evaluation, the NRC staff concludes that FMRI will be technically qualified to hold the operating authority under the Muskogee site license.

5.5 State Consultation

In accordance with the Commission's regulations, NRC notified Oklahoma State of the proposed issuance of the amendment. The State requested a hearing pursuant to 10 CFR 2.1306. That request was denied (CLI-03-13).

6.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of the transfer of license issued by the NRC. Accordingly, the actions involved meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for approval of the application.

7.0 CONCLUSIONS

Based on all of the foregoing, the NRC staff has concluded that with the appropriate conditions discussed above, FMRI is qualified to be the license holder for the Muskogee site to the extent requested, and the transfer of the license to FMRI is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

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