

November 7, 2003

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

SUBJECT: NRC AGREEMENT TO FANSTEEL'S PROPOSED LICENSE AMENDMENTS

Dear Mr. Tessitore:

The U.S. Nuclear Regulatory Commission (NRC) has reviewed Fansteel's requests for license amendments to authorize decommissioning of the Muskogee site, and to transfer its NRC license (SMB-911) to FMRI, an as-yet-not-created wholly-owned subsidiary of Reorganized Fansteel.

Because the decommissioning plan (DP) Fansteel submitted on January 14, 2003, and amended on May 8 and July 24, 2003, was defined as "conceptual in nature," the staff has identified certain license conditions that must be included in its license to make the DP acceptable. Except for certain details on funding, discussed below, the NRC is prepared to issue the amendment approving the DP, as amended by the license conditions, which includes an alternate decommissioning schedule. The Safety Evaluation Report (SER) supporting this action will be issued when the licensing action is taken. The proposed license with revised license conditions is enclosed. The environmental assessment is available on the NRC website (<http://www.nrc.gov/reading-rm/adams.html>).

Staff also has reviewed Fansteel's request for transfer of its license to FMRI. The staff has determined that Fansteel's proposed structure of FMRI is acceptable to NRC and is prepared to transfer the license to FMRI, subject to certain prerequisites. These prerequisites, discussed below, must be satisfied before the amendment transferring the license can be issued. The SER for this action will also be issued when the action is taken. Because this is an administrative action, it is categorically excluded from further environmental review by 10 CFR 51.22(c)(21).

The DP currently is not funded. Fansteel has submitted its proposed financial instruments that, when executed, will provide the necessary funding. NRC has reviewed these instruments and has concluded that, when executed and in combination with license conditions regarding financial accounting, planning, reporting, payment collection, and Trust Fund replenishment, they are acceptable in form and content to provide funding for decommissioning of the Muskogee site. However, these instruments must be executed and delivered to NRC before the NRC can approve the DP and the transfer of Fansteel's license to FMRI.

These documents, when executed, also will provide the NRC with the basis for granting Fansteel's request for an exemption from the specified methods in the Commission's regulations, for providing financial assurance.

Therefore, upon satisfaction of the following prerequisites, NRC will issue (1) a license amendment approving Fansteel's DP plan as revised, which includes an alternate decommissioning schedule, and (2) a license amendment approving Fansteel's request for transfer of its license to FMRI, which includes an exemption from the requirements in 10 CFR 40.36(e):

- 1.0 Approval by the U.S. Bankruptcy Court of:
  - 1.1 Fansteel's proposed amended reorganization plan as provided on September 18, 2003; and,
  - 1.2 Fansteel's proposed financial documents as reviewed and approved by the NRC on November 5, 2003.
- 2.0 Creation of FMRI with the following resources established:
  - 2.1 A board of directors;
  - 2.2 A cash payment from Reorganized Fansteel of \$250,000 as described in Fansteel's proposed amended reorganization plan;
  - 2.3 The executed Promissory Notes, Pledge Agreement, and Indemnity Letter identified in Fansteel's proposed amended reorganization plan;
  - 2.4 The executed Decommissioning Trust Agreement; and,
  - 2.5 Other personnel, assets, and property as described in Fansteel's proposed amended reorganization plan.
- 3.0 Execution of the Primary, Secondary, and Contingent Notes in the exact form reviewed and agreed to by NRC on November 5, 2003, and receipt by the NRC of signed originals of the instruments.
- 4.0 Execution of the Pledge Agreement, Indemnity Letter, Decommissioning Trust Agreement, and Certification of Financial Assurance in the exact form reviewed and agreed to by NRC on November 5, 2003, and receipt by the NRC of signed originals of the instruments.

Mr. G. Tessitore

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If there are any changes to conditions 1 through 4, above, NRC reserves the right to review such changes to determine if they are consistent with NRC requirements before issuing the license amendments.

Sincerely,

***/RA/***

Daniel M. Gillen, Chief  
Decommissioning Branch  
Division of Waste Management  
Office of Nuclear Material Safety and  
Safeguards

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

Enclosures: 1. Revised License No. SMB-911 to approve the DP  
2. Revised License No. SMB-911 to approve the License Transfer

cc: Michael Broderick, Oklahoma Department of Environmental Quality  
James R. Curtiss, Esq., Winston & Strawn LLP  
A. Fred Dohmann, Fansteel, Inc.  
Richard M. Gladstein, Esq., U.S. Department of Justice  
Sara E. Penn, Esq., Office of the Attorney General, Oklahoma  
Jeffrey S. Sabin, Esq., Schulte Roth & Zabel LLP

Mr. G. Tessitore

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Sincerely,

**/RA/**

Daniel M. Gillen, Chief  
Decommissioning Branch  
Division of Waste Management  
Office of Nuclear Material Safety and  
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Docket No.: 40-7580  
License: SMB-911

Enclosures: 1. Revised License No. SMB-911 to approve the DP  
2. Revised License No. SMB-911 to approve the License Transfer

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