

RAS 7148



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

DOCKETED
USNRC

December 16, 2003 (12:15PM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

December 8, 2003

Via Facsimile and U.S. Mail First Class

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attention: Rulemakings and Adjudications Staff

Re: In the Matter of Fansteel, Inc., Request to Transfer Source Materials
License No. SMB-911, U.S. Nuclear Regulatory Commission, Docket
No. 40-7580-MLA-3

Sir or Madam:

Enclosed please find an original of the State of Oklahoma's Objection to Issuance of Environmental Assessment and Findings of No Significant Impact, and three conformed copies thereof, prepared for filing with the U.S. Nuclear Regulatory Commission in the referenced matter. Pursuant to 10 C.F.R. 2.708(f) (2002), only one Request for Hearing is being transmitted by facsimile as the original and three conformed copies will be transmitted by certified U.S. mail.

Upon receipt, please return the remaining file-stamped copies of the enclosed to this office in the self-addressed, stamped envelope enclosed for that purpose.

Thank you in advance for your assistance in this matter. Should you have any questions, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink that reads "Sarah E. Penn".

SARAH E. PENN
ASSISTANT ATTORNEY GENERAL

SEP/jb
Enclosures

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
FANSTEEL, INC.,) Docket No. 40-7580-*MLA-3*
)
(Request to Amend Source Materials)
License No. SMB-911))

**STATE OF OKLAHOMA'S OBJECTION TO ISSUANCE OF
ENVIRONMENTAL ASSESSMENT and FINDING OF NO SIGNIFICANT
IMPACT**

**W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA**

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Dated: December 8, 2003

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the Matter of)	
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FANSTEEL, INC.,)	Docket No. 40-7580
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(Request to Amend Source Material)	
License No. SMB-911))	

**STATE OF OKLAHOMA'S OBJECTION TO ISSUANCE OF
ENVIRONMENTAL ASSESSMENT and FINDING OF NO SIGNIFICANT
IMPACT**

The Attorney General of the State of Oklahoma, W.A. Drew Edmondson, by and through the undersigned, Sarah E. Penn, Assistant Attorney General, on behalf of the State of Oklahoma ("Oklahoma"), hereby submits its Objection to Issuance of Environmental Assessment and a Finding of No Significant Impact ("FONSI"). The FONSI issued by the NRC pursuant to Fansteel's, Inc. ("Fansteel") Request for License Amendment should be rejected and an Environmental Impact Statement should be prepared. The Environmental Assessment fails to properly consider the relevant factors, addresses issues which are outside the jurisdiction and expertise of the NRC and the Decommissioning Plan ("DP") proffered by Fansteel will significantly affect the quality of the human environment. The decision of the Nuclear Regulatory Commission Staff ("Staff") to issue a FONSI in this instance is arbitrary and capricious and should be overturned.

BACKGROUND

The Fansteel Facility is located on 110 acres of land located directly on the western bank of the Arkansas River (Webbers Falls Reservoir) in eastern Oklahoma near the City of Muskogee. It is bounded on the west by State Highway 165 (a/k/a the Muskogee Turnpike) and on the south by U.S. Highway 62. From 1958 until 1989, the Fansteel Facility was a rare metal extraction operation, producing tantalum and columbium metals from raw and beneficiated ores, and tin slag feedstock. EARTH SCIENCES CONSULTANTS, INC., REMEDIATION ASSESSMENT, FANSTEEL, INC. - MUSKOGEE, OKLAHOMA 1-2 (1993). The raw materials used for tantalum and columbium production contained uranium and thorium as naturally occurring trace constituents in such concentrations that Fansteel was required to obtain an NRC license. Id. The Fansteel Facility was licensed by NRC in 1967 to process ore concentrates and tin slags in the production of refined tantalum and niobium products. U.S. NUCLEAR REGULATORY COMMISSION, ENVIRONMENTAL ASSESSMENT-LICENSE AMENDMENT FOR MATERIAL LICENSE NO. SMB-911, 1-1 (December 1997). Processing operations at the Fansteel Facility substantially ceased in December of 1989. Id. As a result of operations and various accidents and releases, the Fansteel Facility, including its soils, groundwater, and surface waters have been and continue to be contaminated by uranium, thorium, ammonia, arsenic, chromium, metals, cadmium, ammonia, methyl isobutyl ketone (MIBK), and fluoride. EARTH SCIENCES CONSULTANTS, INC., REMEDIATION ASSESSMENT, FANSTEEL, INC. - MUSKOGEE, OKLAHOMA 1-2 (1993).

ARGUMENT

NEPA requires federal agencies to prepare a detailed statement of the environmental impact for "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. §4332(C). This is a recreational area, across the river is a boat launching area which is being discussed for use as a marina. Numerous recreational lakes, including Fort Gibson and Lake Eufala surround the area. During public tours, John Hunter and other facility staff have repeatedly emphasized the "natural character" of the facility, pointing out various fish and animals that have infiltrated the ponds. The area surrounding the Fansteel Facility is graced with natural scenic beauty, including the picturesque Illinois and Arkansas Rivers. Nearby wildlife refuges, such as the Robert S. Kerr Unit of the McClellan-Kerr Wildlife Refuge, and the Cherokee Gruber Wildlife Refuge are a testament to the special character of the areas immediately surrounding the Fansteel Facility. The area surrounding the Fansteel Facility is an important tourism asset, and is frequented by Oklahoma citizens and other persons for numerous recreational purposes. If the site is not immediately developed (or becomes undeveloped in the future), it is not possible to preclude the probability that sportsmen and outdoor enthusiasts will take fish, game, or natural plants from the area for food use. Although the Port of Muskogee is attempting to develop this area as an industrial park, the area is not solidly industrial. The EA does not consider the significant impacts and the use of the industrial scenario in the DP will have significant impact on the quality of the human environment. The DP is replete with inaccurate and insufficient data which precludes NRC staff from conducting an adequate review. Further,

as described in the Decommissioning Plan, the industrial land use scenario is utilized yet the dose effects of alternate, reasonable land use scenarios were not evaluated nor considered. As a result, the implementation of the DP proposed by Fansteel will have significant impacts on the quality of human environment and therefore the FONSI should be rejected and an Environmental Impact Statement should be required.

The second relevant factor which was not appropriately considered by the NRC staff deals with the chemical contamination at the site. On page 2 the NRC Assessment says "In fulfilling its obligations under the National Environmental Policy Act (NEPA) the NRC must evaluate the environmental impacts associated with approval of the DP and subsequent terminationBoth radiological and non-radiological impacts must be considered." However no evaluation of non-radiological impacts was considered. In fact, Section 3.1.2 on page 3 states: "The 1993 characterization data demonstrates that the site has chemical contamination including ammonia, fluoride, and Methyl Isobutyl Ketaone (MIBK). The NRC does not have regulatory authority to address the known chemical contamination at the site." In fact, the NRC's lack of jurisdiction over chemical contaminants has been acknowledged by the Presiding Officer in this case. He states in the Memorandum and Order issued on November 3, 2003 in relevant part "... that it (chemical contaminants) is outside the bounds of the NRC's authority to address can scarcely be deemed of relevance in this adjudicatory proceeding." Memorandum & Order @ pg.9

Although the NRC determined through a conversation with the Office of the Attorney General that the State would exercise jurisdiction over remediation of the chemical

contamination no further consultation with the state was performed. In a case where the contaminants are so co-mingled that no independent exercise of jurisdiction is available until the completion of the decommissioning plan, consultation and cooperation with the state agency exercising jurisdiction must be a relevant factor. The NRC did not follow its usual practice of submitting a draft EA to the Oklahoma Department of Environmental Quality (ODEQ) for comments, it merely asked if the State intended to exercise jurisdiction. An affirmative response by the State should have prompted the NRC to consult the State for guidance in the appropriate remediation of the non-radiological contaminants, since both the Staff and the Presiding Officer agree the NRC has no exercise or jurisdiction over chemical contaminants. NEPA "prohibits uninformed-rather than unwise-agency action." *Custer County Action Ass'n v. Garvey*, 256 F.3rd 1024, 1034. The NRC did not consult nor cooperate with the ODEQ to determine whether the non-radiological contamination at the site will be properly addressed pursuant to the DP and has no expertise to determine such a consideration on its own. Additionally, Item 4.2 states "Fansteel will remediate existing contamination in the ground water." Per OAC 252:611-5-1(b) "Any person proposing a remediation project relating to ground water or required to undertake such a project by the DEQ is required to obtain prior approval by the DEQ of a site assessment plan and remediation plan." Again, the ODEQ was not consulted nor does Fansteel have the approval necessary to implement its groundwater remediation plan. The NRC's decision to issue a FONSI is on the uninformed opinions and fails to consider relevant agency's expertise and therefore the FONSI should be rejected.

Finally, despite the fact that NRC staff states that a financial assurance review is not related to the environment and will not be discussed, it is a relevant factor and should be considered. The inadequate budget proposed by Fansteel in the Decommissioning Plan will continue this contamination process by not providing any realistic amount of money for remediation of soil and groundwater contamination. Fansteel, originally estimated 57 million dollars would be necessary to remediate the site, yet the estimate is now 26.4 million and the site has incurred probable additional contamination and none of the original contamination has been remediated. The Decommissioning Plan wholly fails to adequately fund the remediation of the Fansteel Facility. As such, contamination to the soil and groundwater at the Fansteel Facility will continue to contaminate the property and contaminate waters owned by Oklahoma whose citizens rely upon the Arkansas Rivers for recreational purposes, and as a source of water for consumption, irrigation, and livestock. To state that financial assurance review has no impact on the environment is a deliberate effort to avoid a discussion of the crux of environmental remediation - money. NRC staff, through negotiation, agreed with Fansteel on a certain dollar amount in order to facilitate Fansteel's efforts in the Bankruptcy court. However, in so doing, the staff circumvents its rules for financial assurance, jeopardizes the health and safety of the citizens of Oklahoma and tries to preclude the State from saying anything about it. This is not acceptable, the State will at every opportunity point out the failure of Fansteel to appropriately fund the clean-up of the Muskogee site and the concurrence of Staff to permit such an avoidance.

CONCLUSION

The approval of the of the DP will be a major federal action which will significantly affect the quality of the human environment at and around the Fansteel site in Muskogee Oklahoma. The NRC staff failed to consider relevant factors and made uninformed decisions about the chemical contaminants at the site. As a result the issuance of a Finding of No Significant Impact is arbitrary and capricious and as such should be rejected and an Environmental Impact Statement should be required.

Respectfully Submitted,

**W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA**

A handwritten signature in black ink, reading "Sarah E. Penn", written over a horizontal line.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 8th day of December, 2003, a true and correct copy of the foregoing, State of Oklahoma's Objection to Issuance of Environmental Assessment and Findings of No Significant Impact, was served upon the persons listed below by U.S. mail, first class, postage prepaid, and by electronic mail where indicated with a single asterisk. A copy was also sent by facsimile transmission to the Office of the Secretary.

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