

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
FANSTEEL INC., <u>et al.</u> , ¹)	Case No. 02-10109 (JJF)
)	(Jointly Administered)
Debtors.)	

**DEBTORS' NOTICE OF EMERGENCY MOTION OF FANSTEEL INC., ET AL
FOR ORDER IN AID OF IMPLEMENTATION OF CONFIRMED JOINT
REORGANIZATION PLAN PURSUANT TO 11 U.S.C §§ 105, 1123(a)5 AND 1142**

To: (a) the Office of the United States Trustee, (b) counsel for the Committee, (c) the Attorney General for the State of Oklahoma, (d) counsel for the Nuclear Regulatory Commission and the Environmental Protection Agency, (e) the Oklahoma Department of Environmental Quality and (f) those persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure:

Fansteel Inc. ("Fansteel"), a Delaware corporation, and its direct and indirect subsidiaries, as debtors and debtors in possession (the "Debtors") have filed with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801 (the "Bankruptcy Court") the attached *Emergency Motion for an Order In Aid of Implementation of their Joint Reorganization Plan Pursuant to 11 U.S.C. §§105, 1123(a)(5) and 1142*, (the "Motion"). By the Motion the Debtors seek entry of an order (i) determining that the December 1, 2003 Comments and the December 8, 2003 EA Objection, each as defined herein, of the Attorney General for the State of Oklahoma ("the "OAG") contravenes the Confirmation Order² and accordingly are of no force and effect and shall be null and void; (ii) enjoining the OAG from taking any action to collaterally attack the Confirmation Order, or the findings of fact

¹ The Debtors are the following entities: Fansteel Inc., Fansteel Holdings, Inc., Custom Technologies Corp., Escast, Inc., Wellman Dynamics Corp., Washington Mfg. Co., Phoenix Aerospace Corp., and American Sintered Technologies, Inc.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed in the Motion.

and/or conclusions of law therein, including any act that would directly or indirectly interfere with or delay the transfer of Fansteel's NPDES Permit or any subsequently issued renewal or replacement thereof to FMRI, Inc. ("FMRI"); (iii) authorizing, if necessary, the Oklahoma Department of Environmental Quality ("ODEQ") to enforce the provisions of the Confirmation Order relating to the issuance of the OPDES Permit and transfer of the Joint Permit and/or OPDES Permit; and (iv) enjoining the ODEQ from taking any action that would directly or indirectly interfere with or delay the administrative transfer of the Joint Permit, the OPDES Permit, or the Permit Application to FMRI.

PLEASE TAKE NOTICE THAT the Court shall conduct an emergency hearing at a time and date to be determined, before the Honorable Joseph J. Farnan, Jr., United States District Court Judge, in the United States District Court for the District of Delaware, J. Caleb Boggs Federal Building, 844 N. King Street, Wilmington, Delaware 19801, Courtroom 4b.

[Remainder of Page Intentionally Left Blank]

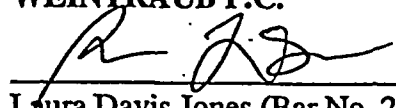
**YOU WILL RECEIVE FURTHER NOTICE OF THE TIME AND DATE OF THE
HEARING.**

SCHULTE ROTH & ZABEL LLP

Jeffrey S. Sabin (JSS 7600)
919 Third Avenue
New York, New York 10022
Telephone: (212) 756-2000
Facsimile: (212) 593-5955

-and-

**PACHULSKI, STANG, ZIEHL, YOUNG, JONES &
WEINTRAUB P.C.**



Laura Davis Jones (Bar No. 2436)
Rosalie L. Spelman (Bar No. 4153)
919 North Market Street, 16th Floor, P.O. Box 8705
Wilmington, Delaware 19899-8705 (Courier 19801)
Telephone: (302) 652-4100
Facsimile: (302) 652-4400

Counsel for Fansteel Inc., et al.
Debtors and Debtors In Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
FANSTEEL INC., <u>et al.</u> , ¹)	Case No. 02-10109 (JJF)
)	(Jointly Administered)
Debtors.)	

**DEBTORS' MOTION TO SHORTEN TIME OF NOTICE PERIOD WITH RESPECT
TO EMERGENCY MOTION OF FANSTEEL INC., ET AL FOR ORDER
IN AID OF IMPLEMENTATION OF CONFIRMED JOINT
REORGANIZATION PLAN PURSUANT TO 11 U.S.C §§ 105, 1123(a)5 AND 1142**

Fansteel Inc., a Delaware corporation, and its direct and indirect subsidiaries, as debtors and debtors in possession (the "Debtors") hereby move the Court pursuant to Rule 9006(c) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Del.Bankr.LR 9004-1(e), and 11 U.S.C. § 105 for an Order shortening the notice period under Bankruptcy Rule 2002(a)(2) with respect to the attached *Emergency Motion for an Order In Aid of Implementation of their Joint Reorganization Plan Pursuant to 11 U.S.C. §§105, 1123(a)(5) and 1142*, (the "Motion"). Specifically, the Motion seeks entry of an order (i) determining that the December 1, 2003 Comments and the December 8, 2003 EA Objection, each as defined herein, of the Attorney General for the State of Oklahoma ("the "OAG") contravenes the Confirmation Order² and accordingly are of no force and effect and shall be null and void; (ii) enjoining the OAG from taking any action to collaterally attack the Confirmation Order, or the findings of fact and/or conclusions of law therein, including any act that would directly or indirectly interfere

¹ The Debtors are the following entities: Fansteel Inc.; Fansteel Holdings, Inc., Custom Technologies Corp., Escast, Inc., Wellman Dynamics Corp., Washington Mfg. Co., Phoenix Aerospace Corp., and American Sintered Technologies, Inc.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed in the Motion.

with or delay the transfer of Fansteel's NPDES Permit or any subsequently issued renewal or replacement thereof to FMRI, Inc. ("FMRI"); (iii) authorizing, if necessary, the Oklahoma Department of Environmental Quality ("ODEQ") to enforce the provisions of the Confirmation Order relating to the issuance of the OPDES Permit and transfer of the Joint Permit and/or OPDES Permit; and (iv) enjoining the ODEQ from taking any action that would directly or indirectly interfere with or delay the administrative transfer of the Joint Permit, the OPDES Permit, or the Permit Application to FMRI.

1. On December 1, 2003, the Office of the Attorney General for the State of Oklahoma (the "OAG") submitted a letter to the ODEQ that commented on the NPDES Permit and requested a public hearing (the "Comments"). The OAG's Comments to the transfer and issuance of the NPDES Permit raise issues of fact that have already been fully and finally litigated by this Court. The Court, pursuant to the Confirmation Order and at the Confirmation Hearing has already addressed each of the issues raised by the OAG in their Comments, namely financial feasibility, the authority to transfer the NPDES Permit, and the jurisdiction (or lack thereof) of the state of Oklahoma with respect to the monitoring and remediation of environmental conditions at the Muskogee Facility.

2. On December 8, 2003, in addition to the OAG's Comments, the OAG also filed an Objection to Issuance of Environmental Assessment and Findings of No Significant Impact filed with the NRC on December 8, 2003 (the "EA Objection"). The EA Objection challenges the Environmental Assessment ("EA") and Finding of No Significant Impact ("FONSI") issued by the NRC Staff on October 31, 2003 in connection with the NRC License and as a predicate to the approval of the Amended Decommissioning Plan issued on December 5, 2003. The EA Objection argues the following three points: (a) NRC's application of the industrial worker

scenario for the Muskogee Facility amended decommissioning plan is inappropriate, (b) the NRC Staff failed to properly consult with the ODEQ with respect to non-radiological contamination at the Muskogee Facility and (c) that budget proposed by Fansteel in the Decommissioning Plan is "inadequate". The arguments presented by the OAG in the EA Objection go directly to the findings of the Court as set forth in the Confirmation Order regarding the financial feasibility of the Plan and funding of the Special Purpose Subsidiaries and the jurisdiction of the NRC over the Muskogee Facility.

3. The OAG's comments and EA Objection constitute an improper collateral attack on the Confirmation Order that should be enjoined before they are able to irreparably harm the Debtors. The OAG's Comments will delay the transfer of the NPDES Permit to FMRI such that the Debtors will be unable to meet the conditions to the Effective Date on or before December 20, 2003 as required under Article IX.B of the Plan. The Debtors believe that the timely consummation of their Plan is critical to their reorganization and, absent the ability to satisfy the conditions to the Effective Date, the Debtors may be required to withdraw the Plan. The Debtors, therefore, believe that it is essential for this Court to resolve the matter now in the interest of protecting and preserving the integrity of the reorganization process of these Chapter 11 Cases as set forth under the Bankruptcy Code and Bankruptcy Rules. Therefore, the Debtors seek an Order from this Court shortening the notice period on this Motion.

4. Given the nature of OAG's disregard for the Confirmation Order, the jurisdiction of the Court and rules of judicial procedure, as well as the lack of any cognizable prejudice endured by requiring the OAG to adhere to the same rules as other parties-in-interest in these Chapter 11 Cases, the Debtors respectfully submit that this Motion must be heard on an expedited basis. Accordingly, under the circumstances the Debtors have requested an emergency

hearing on December 15, 2003 to hear the Motion. Debtors submit that such a shortening of the notice time will not prejudice the rights of any party in interest and is in the best interest of the estates and the Debtors' creditors.

5. This Motion to Shorten Time and the Motion will be immediately served on the United States Trustee, counsel to the Committee, the OAG and the ODEQ, and the Department of Justice as counsel to the EPA, the NRC and certain other government agencies, counsel to the PBGC and all parties who have requested notice in this case.


Dated: December 11, 2003

SCHULTE ROTH & ZABEL LLP

Jeffrey S. Sabin (JSS 7600)
919 Third Avenue
New York, New York 10022
Telephone: (212) 756-2000
Facsimile: (212) 593-5955

-and-

**PACHULSKI, STANG, ZIEHL, YOUNG, JONES &
WEINTRAUB P.C.**



Laura Davis Jones (Bar No. 2436)
Rosalie L. Spelman (Bar No. 4153)
919 North Market Street, 16th Floor, P.O. Box 8705
Wilmington, Delaware 19899-8705 (Courier 19801)
Telephone: (302) 652-4100
Facsimile: (302) 652-4400

Counsel for Fansteel Inc., et al.
Debtors and Debtors In Possession

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
FANSTEEL INC., et al.,¹) Case No. 02-10109 (JF)
Debtors.) (Jointly Administered)
)

**EMERGENCY MOTION OF FANSTEEL INC., ET AL FOR ORDER
IN AID OF IMPLEMENTATION OF CONFIRMED JOINT
REORGANIZATION PLAN PURSUANT TO 11 U.S.C §§ 105, 1123(a)5 AND 1142**

Fansteel Inc. ("Fansteel" and the "Debtor") and its direct and indirect wholly-owned subsidiaries, Fansteel Holdings, Inc., Custom Technologies Corp., Escast, Inc., Wellman Dynamics Corp., Washington Mfg. Co., Phoenix Aerospace Corp., and American Sintered Technologies, Inc., each as a debtor and debtor-in-possession (collectively, the "Debtors"), by and through their counsel, Schulte Roth & Zabel LLP and Pachulski, Stang, Ziehl, Young, Jones & Weintraub, P.C., hereby request entry of order, substantially in the form annexed hereto as Exhibit "A", in aid of execution and implementation of their joint reorganization plan (the "Plan") confirmed by order of this Court on November 17, 2003 (Docket #1622) (the "Confirmation Order") pursuant to 11 U.S.C. §§105, 1123(a)(5) and 1142, (i) determining that the December 1, 2003 Comments and the December 8, 2003 EA Objection, each as defined herein, of the Attorney General for the State of Oklahoma ("the "OAG") contravenes the Confirmation Order and accordingly are of no force and effect and shall be null and void; (ii) enjoining the OAG from taking any action to collaterally attack the Confirmation Order, or the findings of fact and/or conclusions of law therein, including any act that would directly or

¹ The Debtors are the following entities: Fansteel Inc., Fansteel Holdings, Inc., Custom Technologies Corp., Escast, Inc., Wellman Dynamics Corp., Washington Mfg. Co., Phoenix Aerospace Corp., and American Sintered Technologies, Inc.

indirectly interfere with or delay the transfer of Fansteel's NPDES Permit² or any subsequently issued renewal or replacement thereof to FMRI, Inc. ("FMRI"); (iii) authorizing, if necessary, the Oklahoma Department of Environmental Quality ("ODEQ") to enforce the provisions of the Confirmation Order relating to the issuance of the OPDES Permit³ and transfer of the Joint Permit⁴ and/or OPDES Permit; and (iv) enjoining the ODEQ from taking any action that would directly or indirectly interfere with or delay the ministerial transfer of the Joint Permit, the OPDES Permit, or the Permit Application⁵ to FMRI (collectively, the "Motion"). The affidavit of R. Michael McEntee, Chief Financial Officer and Vice President of Fansteel (the "McEntee Affidavit") is attached hereto as Exhibit "B" in support of this Motion. In further support of the Motion the Debtors rely on those findings of fact and conclusions of law presented on the record at the confirmation hearing and set forth in the Confirmation Order and respectfully represent as follows:

6. Jurisdiction

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are Sections 105, 1123(a)(5) and 1142 of the United States Bankruptcy Code (the "Bankruptcy Code"). Further, this Court has expressly retained jurisdiction pursuant to Article XI of the Plan to, among other things:

² Capitalized terms not otherwise defined herein shall have the meanings ascribed in the Plan.

³ At times the NPDES Permit is/has also been referred to as the OPDES Permit. To avoid undue confusion and for the purposes of this Motion, the existing permit shall be referred to as the "Joint Permit"; the proposed renewal of the Joint Permit currently under consideration, if issued, shall be the "OPDES Permit" and Fansteel's application for renewal, reissuance and transfer of the Joint Permit shall be referred to as the "Permit Application". Therefore, the NPDES Permit, as defined in the Plan, means, collectively, the Joint Permit, the OPDES Permit and the Permit Application.

⁴ See footnote 3.

⁵ See footnote 3.

¶ (7) Enter such orders as may be necessary or appropriate to implement or consummate the provisions of this Plan and all contracts, instruments, releases, settlement agreements, consent decrees, and other agreements or documents created in connection with this Plan, the Disclosure Statement or the Confirmation Order;

¶ (8) Hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of this Plan, including disputes arising under agreements, documents, or instruments executed in connection with this Plan;

¶ (10) Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with consummation, implementation or enforcement of this Plan or the Confirmation Order, except as otherwise provided herein

See Plan at Article XI as adopted by the Court pursuant to paragraph 31 of the Confirmation Order.

Background

1. On January 15, 2002 (the "Petition Date"), the Debtors filed voluntary petitions for relief under 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"). Thereafter, the Court entered an order pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), directing that the Debtors' separate chapter 11 cases (the "Chapter 11 Cases") be procedurally consolidated and jointly administered by this Court.

2. The Debtors continue to manage their respective properties and operate their respective businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On January 29, 2002, the Office of the United States Trustee for the District of Delaware appointed an official committee of unsecured creditors (the "Committee") for these Chapter 11 Cases. No trustee or examiner has been appointed in any of the Chapter 11 Cases.

4. The Joint Reorganization Plan of Fansteel Inc and Subsidiaries was filed by the Debtors and the Committee with this Court, together with a proposed Disclosure Statement, on July 24, 2003. (Docket No. 1109). Thereafter and on September 18, 2003, the Amended Joint

Reorganization Plan of Fansteel Inc and Subsidiaries (the "Plan") was filed with this Court, together with the First Amended Disclosure Statement for the Joint Reorganization Plan (the "Disclosure Statement") (Docket # 1346). On September 30, 2003, the Court entered an order approving the Disclosure Statement and scheduled the hearing on confirmation of the Debtors' Plan for November 17, 2003. (Docket No. 1387).

5. On October 31, 2003, November 7, 2003 and November 16, 2003, respectively, the Debtors filed with the Court the Plan Supplement (Docket No. 1532) and First Amended Plan Supplement (Docket Nos. 1564 and 1565) and Plan Supplement Amendment (Docket No. 1615) (together, and as may be further amended, modified, or supplemented, the "Plan Supplement") containing certain documents and other information related to the Plan, as specified in the Plan.

6. On November 10, 2003, the OAG filed an objection to confirmation (the "Objection") of the Debtors' Plan (Docket #1573) challenging the Debtors' Plan on the basis of financial feasibility and good faith. In summary, the Objection asserted that the Debtors' Plan was not feasible because (A) it failed to (i) adequately address a prospective balloon payment that the OAG presumed would be due following the maturity of the FMRI Primary Note; (ii) define or adequately explain how either "excess available cash" or insurance proceeds would be paid to support the obligations of FMRI or Reorganized Fansteel, as the case may be; (iii) demonstrate any reasonable assurance of success in terms of satisfying the obligations under the FMRI Notes; (iv) demonstrate Reorganized Fansteel's ability to service the FMRI Notes; (v) take into account the costs of any treatment or monitoring of groundwater at the Muskogee Facility; (vi) properly assess the difficulty of obtaining the necessary NRC Approvals provided in the Plan, specifically the waiver of financial assurances from the NRC; (vii) address the

difficulty of obtaining the necessary renewal and transfer of the OPDES Permit for the Muskogee Facility and (B) it was not proposed in good faith.

7. On November 14, 2003, the Debtors filed their Memorandum in Support of Confirmation of the Joint Reorganization Plan and in Response to the Objections of the State of Oklahoma (the "Confirmation Brief"). The Confirmation Brief was supported by numerous affidavits, supporting documentation and other evidence (collectively, the "Supporting Evidence") demonstrating that the Debtors' Plan satisfied all requirements for confirmation. In particular the Confirmation Brief and the Supporting Evidence addressed particular aspects of the financial feasibility of the Debtors' Plan and issues related to the Muskogee Facility and other Environmental Claims/Obligations. (Docket No. 1613) The Confirmation Brief, the Supporting Evidence and a copy of the proposed Confirmation Order were served by email, fax and overnight mail on the OAG on November 14, 2003.

8. On November 17, 2003, at the hearing to consider confirmation of the Debtors' Plan and the OAG's Objection thereto (the "Confirmation Hearing"), the Court, upon consideration of the evidence presented by and on behalf of the Debtors and the proffered testimony of the Debtors' witnesses in support of the Plan, and the OAG having notice of the confirmation hearing and an opportunity to be heard and to cross-examine any of the Debtors' witnesses⁶, overruled all objections of the OAG and entered the Confirmation Order on the record confirming the Debtors' Plan as of November 17, 2003. (Docket No. 1622). Notice of entry of the Confirmation Order was served on the OAG on November 25, 2003. (Docket Nos. 1661 and 1662).

⁶ Notwithstanding the Objection by the OAG, the OAG failed to participate in any way, either in person, teleconference or further responsive memorandum, in the Confirmation Hearing. Prior to the hearing, counsel for the Debtors made several attempts to contact the OAG to coordinate witnesses and prepare for the hearing but all calls went unreturned.

FMRI

9. Among other things, the Plan provides for the formation of a wholly-owned, single-purpose entity, FMRI, whose sole purpose will be to decommission the Muskogee Facility. Upon the Effective Date of the Plan, Fansteel will transfer title to the Muskogee Facility to FMRI and FMRI will assume all obligations associated with the operation and decommissioning of the facility. The transfer of the Muskogee Facility includes a transfer of the NPDES Permit and an assumption of all obligations related thereto by FMRI.

10. At the Confirmation Hearing, the Debtors presented evidence to demonstrate that the transfer of the NPDES Permit will not involve any material change to the wastewater treatment process or to the nature of the discharge to the Arkansas River. In addition, FMRI will continue to operate the groundwater interceptor trench system and to treat the groundwater collected by the interceptor trench and the French drain so as to act in accordance with the provisions of the NPDES Permit. The Debtors further provided evidence and testimony to demonstrate that the transfer to FMRI will not result in any change in operations at the Muskogee Facility nor have any impact on the permitted wastewater discharge to the Arkansas River or the environmental conditions at the Muskogee Facility. See Confirmation Brief, Dohmann Affidavit at ¶13 attached hereto as Exhibit "C".⁷

11. In connection with the Plan, as indicated above, Fansteel is required to transfer its NPDES Permit to FMRI. The Plan provides that all approvals necessary to implement the Plan, including a transfer of the NPDES Permit, must be obtained on or before December 20, 2003. See Article IX.B of the Plan. As set forth in detail below, Fansteel has sought to renew its Joint

⁷ As the Confirmation Brief has been filed in these cases and is publicly available, the Debtors have not attached a copy of the entire Confirmation Brief but rather only those documents referenced herein.

Permit and/or cause the issuance of the OPDES Permit and to effect the transfer thereof to FMRI in order to satisfy these conditions to the Plan's Effective Date.

The NPDES/OPDES Permit

12. In October 2001, Fansteel timely submitted a permit application to ODEQ to renew its Joint Permit, which was then scheduled to expire in April 2002. ODEQ acknowledged receipt of the renewal application in December 2001. In May 2002, the ODEQ confirmed that the Joint Permit was being administratively extended, in all respects, until such time as a new permit could be issued under the Oklahoma Pollution Discharge Elimination System ("OPDES") permit program. See Confirmation Brief, Dohmann Affidavit at ¶ 14, attached hereto as Exhibit "C".

13. On March 18, 2003, ODEQ issued a preliminary draft OPDES permit to Fansteel. At the Confirmation hearing the testimony of Fred Dohmann, Manager of the Specialty Metals Division of Fansteel, was proffered in support of confirmation and in response to the objection of Oklahoma. The testimony of Fred Dohmann included Fansteel's discussions regarding the terms of the proposed OPDES Permit with representatives of the Industrial Permit Section of the ODEQ Water Quality Division. Mr. Dohmann advised ODEQ that the Plan provided for the transfer of either the Joint Permit or, if applicable, the OPDES Permit to a subsidiary of Reorganized Fansteel in connection with the Effective Date of the Plan. Mr. Dohmann was further advised that the ODEQ wanted to issue the OPDES Permit and that the transfer to FMRI could be accomplished after the proposed OPDES Permit was issued. ODEQ representatives did not express any reservations about, nor indicate that, there would be any problems with either the issuance and/or transfer of the proposed OPDES Permit to Fansteel and FMRI, respectively. See Confirmation Brief, Dohmann Affidavit at ¶ 15, Exhibit "C" hereto.

14. After considering the comments of Fansteel and the EPA⁸ Region 6 office, having concurred with the proposed OPDES Permit, the ODEQ issued a final proposed OPDES permit on September 12, 2003. The issuance of the final proposed OPDES Permit by the ODEQ represents the ODEQ's administrative finding that the permit should be issued. On September 16, 2003, Fansteel was advised by ODEQ that the OPDES Permit would be automatically transferred upon receipt of a letter from Fansteel requesting such transfer unless there was an active enforcement action at the time of transfer. See Confirmation Brief, Dohmann Affidavit at ¶16, Exhibit "C", hereto.

15. Following Fansteel's receipt of the final proposed OPDES Permit from the ODEQ and, in connection therewith, on October 21, 2003, Fansteel published notice of the proposed OPDES Permit in the Muskogee Daily Phoenix thereby commencing a thirty-day public comment period.⁹ A copy of the publication is attached as Exhibit 6 to the Dohmann Affidavit, attached hereto as Exhibit "C". Absent the filing of any comments prior to November 30, 2003 (the deadline for the public comment period based on the October 31, 2003 publication by the ODEQ), the ODEQ would immediately and, in any event prior to December 20, 2003, issue the OPDES Permit to Fansteel and immediately acknowledge the transfer by Reorganized Fansteel of such permit to FMRI.

⁸ In December 1996, ODEQ was authorized by EPA to administer and issue NPDES permits under the state OPDES program. Pursuant to this delegation of authority, ODEQ has primary responsibility for issuing, administering and enforcing existing NPDES permits and new OPDES permits with EPA retaining secondary authority to take enforcement actions in the absence of adequate ODEQ action and to review proposed permits. In November 1997, ODEQ informed Fansteel that the agency had assumed responsibility for the Joint Permit.

⁹ Subsequent, and in addition, to the publication by Fansteel, the ODEQ published notice of the proposed OPDES Permit to interested parties. The provisions regarding the 30-day public comment period are OAC 252:605-3-6(a)(1) incorporating by reference the federal 30 day comment period contained in 40 CFR 122.61 and OAS 27A-2-6-205.1.C, the state OPDES statute that also sets forth a 30 day comment period.

16. In addition to and separate from Fansteel's application and the publication of the proposed OPDES Permit on October 21, 2003 which triggered the start of the 30-day public comment period for the proposed OPDES permit, on November 13, 2003, Fansteel and FMRI gave written notice to the ODEQ pursuant to OAC 252:605-3-64 of their intent to transfer either the Joint Permit, or the OPDES Permit, if issued, to FMRI. The transfer of either permit shall be automatic unless the ODEQ, prior to the effective date of such transfer, has advised Fansteel that a permit modification, revocation or reissuance is required. A copy of the November 13, 2003 notification for automatic transfer (the "Automatic Transfer Notice") pursuant to OAC 252:605-3-64 is attached hereto as Exhibit "D". See OAC 252:605-3-64 which provides that:

(a) A permit may only be transferred automatically when the DEQ: (1) Has received a timely and proper notice of the transfer intent, signed by both the prospective transferor and transferee, which meets the requirements of 40 CFR § 122.61(b) and which lists complete information about Oklahoma licenses and permits issued or denied to, and the compliance history of, the prospective transferor and transferee. The notice shall also contain a written certification by the prospective transferee acknowledging full responsibility for complying with the terms and conditions of the discharge permit to be transferred; and (2) Has not notified the prospective transferor in writing prior to the stated date of transfer that permit modification or permit revocation and reissuance will be required.

(b) Compliance prerequisite. As a prerequisite for an approved transfer, the transferor shall be in substantial compliance with the terms and conditions of the permit and the transferor and the transferee shall be in substantial compliance with rules of the DEQ and the Environmental Quality Code. [Source: Added at 11 Ok Reg 69, eff 10-13-93 (emergency); Added at 11 Ok Reg 2093, eff 5-26-94; Amended at 13 Ok Reg 2027, eff 7-1-96; Amended at 17 Ok Reg 1139, eff 6-1-00]

17. On or about November 26, 2003, the ODEQ contacted Fansteel and requested that Fansteel withdraw the Automatic Transfer Notice with respect to the OPDES Permit so as to expedite the issuance of the final OPDES Permit. The ODEQ strongly suggested that such a

withdrawal would avoid undue delay¹⁰ and that the transfer could be implemented immediately thereafter. Fansteel, expressed concern that such a withdrawal might impede or delay the issuance and transfer of the OPDES Permit but on November 26, 2003 ultimately acceded to the ODEQ's request in the interest of expediting issuance of the OPDES Permit.

18. On December 1, 2003, the Office of the Attorney General for the State of Oklahoma (the "OAG") submitted a letter to the ODEQ that commented on the proposed OPDES Permit and requested a public hearing (the "Comments"). A copy of the OAG's Comments are attached hereto as Exhibit "E". Although the Debtors and FMRI believe that the OAG's Comments were not timely submitted,¹¹ the ODEQ has advised the Debtors that it has elected to treat the Comments as timely.

19. On December 2, 2003, Fansteel and FMRI provided the ODEQ with a written response to the OAG's Comments and advised the ODEQ that the Comments raised by the OAG were fully and finally adjudicated at the Confirmation Hearing. A copy of the December 2, 2003 response is attached hereto as Exhibit "F". Consequently, Fansteel has been advised by representatives of the ODEQ that the issuance of the final OPDES Permit and transfer to FMRI will be delayed for a minimum of 30 days, the effect of which would be to cause the likely withdrawal of the Plan.

20. On December 5, 2003, the NRC issued its approval of the Amended Decommissioning Plan and consented to transfer of the license to FMRI and provided a copy

¹⁰ The ODEQ suggested that the November 13, 2003 letter might be construed as a public comment to the Permit Application.

¹¹ The state OPDES statute sets forth a 30 day comment period at OAS 27A-2-6-205.1.C. This period was commenced by Fansteel's publication on October 21, 2003 and thus expired November 20, 2003. The ODEQ has, however, advised the Debtors that it does not believe the public comment period commenced until its publication on October 31, 2003 thereby expiring November 30, 2003 and extended to December 1, 2003 as such date was a Sunday. The Debtors have not conceded this issue and continue to contend that the OAG Comments were not timely filed and must be disregarded.

thereof to the OAG via email. These approvals represent satisfaction of the most material of the conditions necessary for the Effective Date (i.e., written approval of the Amended Decommissioning Plan and the transfer of the NRC License). In addition to the NRC Approvals, the Debtors are in the process of finalizing the Exit Facility¹² and related documents which would satisfy another substantial condition to the occurrence of the Effective Date.

21. On December 8, 2003, Fansteel and FMRI again advised the ODEQ in writing that the Joint Permit shall be transferred to FMRI pursuant to OAC 252:605-3-64 on December 12, 2003, (the "Automatic Transfer Date") immediately following the expiration of the thirty-day notice period.¹³ On December 10, 2003, in a separate writing, Fansteel and FMRI also advised the ODEQ that upon such transfer, the pending applicant with respect to the proposed OPDES Permit would be FMRI. Copies of these notices are attached hereto as Exhibits "G" and "H", respectively.

22. In addition to the OAG's Comments, on December 8, 2003, the Debtors also received a copy of the OAG's Objection to Issuance of Environmental Assessment and Finding of No Significant Impact filed with the NRC on December 8, 2003 (the "EA Objection"). The EA Objection challenges the Environmental Assessment ("EA") and Finding of No Significant Impact ("FONSI") issued by the NRC Staff on October 31, 2003 in connection with the NRC License and as a predicate to approval of the Amended Decommissioning Plan for the Muskogee Facility. Specifically, the OAG argues that the decision of the NRC to issue a FONSI was "arbitrary and capricious" and "should be rejected."

¹² The Debtors anticipate filing a separate emergency motion immediately preceding this Motion to seek approval of the fully negotiated Exit Facility documentation.

¹³ On November 26th, Fansteel withdrew its request to transfer the proposed OPDES permit to FMRI after being informed by the ODEQ that this request would likely delay the issuance of the proposed OPDES permit since the request would have to be considered a comment filed during the 30 day public comment period. However, the withdrawal of its request to transfer the proposed OPDES permit did not affect in any way Fansteel's November 13, 2003 notice of its intent to transfer the Joint Permit to FMRI.

23. The EA Objection argues the following three points: (a) NRC's application of the industrial worker scenario for the Muskogee Facility amended decommissioning plan is inappropriate, (b) the NRC Staff failed to properly consult with the ODEQ with respect to non-radiological contamination at the Muskogee Facility and (c) that budget proposed by Fansteel in the Decommissioning Plan is "inadequate". The arguments presented by the OAG in the EA Objection go directly to the findings of this Court regarding the financial feasibility of the Plan and funding of the Special Purpose Subsidiaries and the jurisdiction of the NRC over the Muskogee Facility.

Relief Requested

24. The Comments and EA Objection set forth by the OAG are a further, thinly veiled, attempt by the OAG to derail the Debtors' Plan. The Comments filed with respect to the issuance of the OPDES Permit are without merit and amount to nothing more than an improper collateral attack on the Confirmation Order and the jurisdiction of this Court. The following table represents a summary of the issues that were previously determined by this Court in connection with the Confirmation Hearing and Confirmation Order and which the OAG now seeks to relitigate and/or improperly challenge:

[Remainder of Page Intentionally Left Blank]

Issues Fully Adjudicated by Court			Collateral Attacks by OAG	
Confirmation Hearing	Confirmation Order	Supporting Evidence/ Testimony	OAG Comments	OAG EA Objection
<p>Financial Feasibility</p> <p>Held that Plan and funding of Special Purpose Subsidiaries is adequate and financially feasible stating "the record of evidence is overwhelming, that the financial aspects of the plan are certainly feasible".</p> <p>Transcript at Page 26, Lines 7-21</p> <p>Proffer of witness testimony, Transcript pages 11-15</p>	<p>Found "evidence proffered or adduced at or prior to or in the Supporting Affidavits... thereby satisfying section 1129(a)(11)...and there will be sufficient funds to satisfy the Reorganized Debtors' obligations under the Plan"</p> <p>Confirmation Order ¶ R</p>	<p>Confirmation Brief Affidavits & exhibits thereto of: Michael McEntee, Ex. B, ¶¶ 7-11 Michael Dufrayne, Ex. D, ¶¶ 9-14 Fred Dohmann, Ex. F, ¶¶ 12-13 Scott C. Blauvelt Ex. H, ¶¶ 24-25 Bert Smith, Ex. I, ¶¶ 11-18 Ken Malek, Ex. J, ¶¶ 4-13</p> <p>Ex. K – NRC License Amendments</p> <p>Ex. O – NRC EA & FONSI</p> <p>Ex. R – NRC Inspection Report</p> <p>Plan Supplement, including the Notes therein</p>	<p>Argues that "No showing has been made to demonstrate that FMRI meets the financial accountability requirements."</p> <p>Comments at ¶ 2</p> <p>Objection duplicates Confirmation Objection at page 3 which states "[Plan] does not indicate that [the Debtor] can generate the cashflow necessary to meet its obligations"</p>	<p>Argues that "inadequate budget proposed by Fansteel in the Decommissioning Plan" and "Decommissioning Plan wholly fails to adequately fund the remediation of the Fansteel Facility."</p> <p>EA Objection, Page 7</p> <p>Objection duplicates Confirmation Objection at page which states "Plan fails to adequately address the liability of the Muskogee site..."</p>

Issues Fully Adjudicated by Court			Collateral Attacks by OAG	
Confirmation Hearing	Confirmation Order	Supporting Evidence/ Testimony	OAG Comments	OAG EA Objection
<div>Permit Transferability</div> <p>Held that in absence of a voluntary "transfer of the permit down to FMRI", Court will override ODEQ decisions and cause the transfer</p> <p>Transcript at page 31, Lines 2-14</p> <p>Proffer of witness testimony, Transcript at pages 19-21</p>	<p>Confirmation Order ¶¶ AA, GG, 8, 13-17</p> <p>Plan clearly provides for the transfer of the Muskogee Facility to FMRI, which by definition includes the NPDES Permit. See Plan Definitions 10 and 108 and Article IV,</p>	<p>Confirmation Brief Affidavits and exhibits thereto of:</p> <p>Fred Dohmann, Ex. F, ¶¶ 5-19</p> <p>November 13, 2003 Transfer Notice from Fansteel & FMRI Ex. D to Motion</p> <p>December 8, 2003 Transfer Affirmation Ex. G to Motion</p> <p>December 9, 2003 Permit Transfer Notice Ex. H to Motion</p> <p>Confirmed the authority of Fred Dohmann to authorize the transfer by their letter December 2, 2003</p> <p>Ex. F to Motion</p>	<p>Argues that "no showing that Fred Dohmann has the necessary legal authority to request such a transfer on behalf of Fansteel or FMRI". Comments at ¶ 2.</p>	<p>Not applicable</p>

Issues Fully Adjudicated by Court			Collateral Attacks by OAG	
Confirmation Hearing	Confirmation Order	Supporting Evidence/ Testimony	OAG Comments	OAG EA Objection
<p>Jurisdiction over Muskogee Facility</p> <p>Held that the exclusive jurisdiction to monitor such contaminants rests with the NRC based on commingling of radioactive and nonradioactive contaminants.</p> <p>Transcript at pages 27-31.</p> <p>Proffers of witness testimony, Transcript Pages 16-21</p>	<p>Found that "radiological and non-radiological contaminants at the Muskogee Facility are inextricably commingled" and "to the extent there exist any state of Oklahoma environmental statutes alleged to be relevant to the de-commissioning of the Muskogee Facility, such statutes are preempted by federal law" Confirmation Order ¶¶ II</p> <p>Ordered that "until such time that the NRC License is terminated, except with respect to jurisdiction over the NPDES Permit (provided such jurisdiction is not exercised in any way inconsistent with the NRC License...) the State of Oklahoma shall have no jurisdiction to regulate directly or indirectly..."</p> <p>Confirmation Order ¶¶ 31& 32</p>	<p>Confirmation Brief Affidavits and Exhibits thereto of:</p> <p>Scott C. Blauvelt Ex. H, ¶¶ 3, 23-26</p> <p>Bert Smith, Ex. I, ¶18</p> <p>Representations of Counsel for EPA and NRC at Confirmation Hearing Transcript at pages 27-31</p>	<p>Argues that "draft permit indicates no limits or monitoring requirements have been placed on contaminants of thorium and uranium"</p> <p>OAG Comments at ¶ 3</p> <p>Objection duplicates Confirmation Objection at pages 3-4 which states "At issue (one of several) is the failure of the debtor to present a groundwater treatment plan for radiological contamination."</p>	<p>Argues that "<u>no evaluation of non-radiological impacts was considered</u>"</p> <p>"NRC does not have regulatory authority to address the known chemical contamination at the site"</p> <p>"[chemical contamination] is outside the bounds of the NRC's authority to address".</p> <p>EA Objection, Page 6</p> <p>Objection duplicates Confirmation Objection at pages 3-4 which states "Debtor has <u>failed to address groundwater treatment plan for non-radiological contaminants with the State</u>"</p>

25. The tables above present a summary of the issues that were considered by this Court in the context of Confirmation and the relative outcome and findings with respect to each issue. These matters were directly brought into issue by the OAG's Objection to confirmation. The OAG's voluntary election not to participate in the Confirmation Hearing following its Objection does not excuse the OAG from being bound by the findings of this Court or the Confirmation Order. The OAG is now, however, seeking collaterally a second, and even a third bite at the apple by way of its Comments and EA Objection. The relief requested by this Motion is essential to the Debtors' ability to consummate their Plan and to enforce the provisions of the Confirmation Order.

26. The Debtors' Plan is dependent upon a transfer of either the Joint Permit or of the subsequently issued OPDES Permit to the special purpose subsidiary, FMRI on or before December 20, 2003. In the event that the Debtors are unable to go effective with their Plan by this date, there can be no assurance that parties-in interest, such as the Committee, the NRC, the EPA, the PBGC or others would agree to waive these Plan conditions or extend the deadline for the Effective Date conditions. In addition, the commitment for the Exit Facility will expire on December 31, 2003 such that any delay in the Effective Date may result in either a termination or modification of the Exit Facility commitment and additional expense to the Debtors' estates. Further, the Debtors believe that relationships with various vendors and customers could be severely compromised if the Plan was not consummated prior to year-end as has been represented. See McEntee Affidavit as Exhibit "B" hereto. The Debtors, therefore seek entry of an order in aid of implementation of the Plan that (i) provides that the Comments and the EA Objection directly contravene the Confirmation Order and shall be null and void and of no force and effect; (ii) enjoins the OAG from taking any action to collaterally attack the Confirmation

Order, or the findings of fact and/or conclusions of law therein, including any act that would directly or indirectly interfere with or delay the transfer of Fansteel's NPDES Permit or any subsequently issued renewal or replacement thereof to FMRI; (iii) authorizes, if necessary, the ODEQ to enforce the provisions of the Confirmation Order relating to the issuance of the OPDES Permit and transfer of the Joint Permit and/or OPDES Permit; and (iv) enjoins the ODEQ from taking any action that would directly or indirectly interfere with or delay the ministerial transfer of the Joint Permit, the OPDES Permit, or the Permit Application to FMRI, all as set forth in the proposed order as Exhibit "A" hereto. None of the relief contained herein shall be construed to preclude the OAG's rights, to the extent they have standing, to bring a proper appeal of the Confirmation Order. As the actions and efforts of the OAG will impede the Debtors' ability to implement their Plan and obtain the necessary approvals of the Effective Date on or before December 20, 2003 deadline pursuant to Article IX.B of the Plan, the relief sought herein is appropriate and within the jurisdiction of this Court.

OAG's Comments and EA Objection are in Contravention of the Confirmation Order and Should be Deemed Null and Void

27. This Court has the authority to "direct a debtor and any necessary party to execute or deliver or to join in the execution or delivery of an instrument required to effect a transfer of property dealt with by a confirmed plan and to perform any other act... that is necessary for the consummation of the Plan." 11 U.S.C. §1142(b). The Court's power to enforce all aspects of its confirmation order should be viewed as an inherent power. See In re Continental Airlines, Inc., 236 B.R. 318, 326 (D. Del. 1999) (substantial consummation of a plan does not divest a court of its *inherent* jurisdiction to enforce a confirmation order). This power may, and has been, broadly construed by courts in this and other Circuits. See In re Cinderella Clothing Industry, Inc., 93

B.R. 373 (Bankr. E.D. Pa., 1988), In re Goldblatt Bros. Inc., 1991 Bankr. LEXIS 1408 (Bankr. N.D. Ill. 1991); In re Consolidated Pioneer Mortgage, 248 B.R. 368 (B.A.P. 9th Cir. 2000).

28. The matters raised by the OAG's Comments and the EA Objection, namely the financial capacity of Reorganized Fansteel and FMRI to cover costs associated with the NPDES Permit and associated with the Amended Decommissioning Plan, the authority of the ODEQ to intervene or control the decommissioning of the Muskogee Facility, and the authority of the Debtors to transfer the Muskogee facility to FMRI, are issues that have already been considered by this Court and for which the Court, at the Confirmation Hearing, expressly reserved its authority to address. See Transcript of Confirmation Hearing (the "Transcript") at page 33, lines 20-24, 1-7 attached hereto as Exhibit "I".

29. The jurisdiction of the Court with respect to orders issued pursuant to Section 1142 emanates from the Court's jurisdiction pursuant to 28 U.S.C. §1334. District Courts have original and exclusive jurisdiction over all cases under title 11 pursuant to 28 U.S.C. §1334(a) and original but not exclusive jurisdiction of those matters "arising in or related to" cases under title 11 pursuant to 28 U.S.C. § 1334(b). On January 22, 2002, the Court entered an order, (Docket No. 39), pursuant to 28 U.S.C. §157(d) withdrawing the reference to the bankruptcy court with respect to these Chapter 11 Cases and asserting its original and exclusive jurisdiction. Consequently, this Court currently has the sole and exclusive jurisdiction over these Chapter 11 Cases and matters related to confirmation of a plan of reorganization under 11 U.S.C. § 1129.

30. There can be no question that the matters brought before this Court and the relief requested by this Motion are within the subject matter jurisdiction of the Court. The Debtors are seeking an order in aid of implementation of their Plan and the Confirmation Order as entered by this Court. Such matters "arise under" and "arise in" these Chapter 11 Cases thereby vesting this

Court with the full jurisdiction. This Court has subject matter jurisdiction to enter the temporary injunction as a "related to" proceeding under 28 U.S.C. §1334(b) and the equitable authority to impose such relief under 11 U.S.C. §105 in that the Comments by the OAG will clearly have an effect on the estate being administered in these Chapter 11 Cases. See Confirmation Order ¶ 31.

31. Courts have broadly interpreted their powers under Section 105 and 1142 and where intervention is necessary, as in this case, the Court has the power to enjoin the OAG/ODEQ from impeding the implementation of the Plan. The Court's powers are not limited to the Debtors but may be imposed on third parties. See In re Erie Hilton Hotel Joint Venture, 137 B.R. 165 (Bankr. W.D. Pa. 1992) (ordering investor to advance committed funds necessary to implement a plan); see also, In re Cinderella Clothing Industry, Inc., 93 B.R. 373 (Bankr. E.D. Pa., 1988) (ordering parties to submit to 2004 examinations to determine compliance with the plan).

32. The OAG should be enjoined from pursuing its (a) Comments with respect to the OPDES Permit and (b) EA Objection with respect to the NRC Approvals as they directly contravene the findings which underlie the Confirmation Order and involve matters previously addressed by this Court and impair the Debtors' ability to make the Plan effective. The relief sought hereunder is necessary to cause (i) the ODEQ to promptly consider the application for the OPDES Permit, (ii) to ensure the OAG does not interfere with the transfer of the NPDES Permit and (iii) to prohibit any further collateral attacks by the OAG on the Confirmation Order. At least two courts have considered similar injunctive relief and deemed that it was within the scope of the court's authority under Section 1142. See In re Karta Corp., 296 B.R. 305 (Bankr. S.D.N.Y. 2003) and In re Krypton Broadcasting of Ft. Pierce, Inc., 181 B.R. 657 (Bankr. S.D. Fla. 1995). In the Karta case, where prior to the petition date a city agency issued a notice of

permit violations and intent to terminate a special permit/variance for the operation of a recycling facility, the court enjoined the city agency from terminating the permit until such time that the defaults under the permit could be cured because the operation of the property was necessary for the chapter 11 reorganization. In the case of In re Krypton Broadcasting of Ft. Pierce, Inc., 181 B.R. 657 (Bankr. SD Fla. 1995), the court considered both injunctive relief and sanctions against a party that sought to delay or prevent consummation of a confirmed plan. In the Krypton case the plan of reorganization was premised upon a sale of the debtor's radio station that required a transfer of the debtor's FCC license to the third party buyer. The confirmation order authorized the debtors to execute and deliver the FCC applications, among other things; and authorized and directed the directors to execute any necessary documents related to the transfer. The transfer of the FCC license was, nonetheless, subject to approval by the FCC following a public comment period. In anticipation of a closing, the Debtors submitted the necessary application to the FCC to cause the license transfer but before the transfer was approved, and during the comment period, a director of the debtor, also interested in acquiring the assets, filed an objection to the transfer with the FCC with the intent to delay or impede the sale. The objection to the transfer in the FCC proceeding followed a confirmation order in the case that approved the sale and authorized the transfer of the FCC license by the debtor. Certain of the creditors in the Krypton case filed a motion seeking to enjoin the dissenting party from pursuing its objection to the transfer of the FCC License and seeking sanctions for a willful violation of the confirmation order. Although based on the facts presented, the Krypton court concluded that the creditors failed to demonstrate the necessity of the injunctive relief, the court made clear that such relief was within its purview under Section 1142. Krypton at 664. In addition, the Court demonstrated the breadth of its authority by approving sanctions against the dissenting party for what it found

to be a knowing and willful violation of the confirmation order. Krypton at 666. The court reasoned that the dissenting party's actions "constituted[d] at least in part an impermissible collateral attack on what has been accomplished in the bankruptcy case" and that such actions were a "willful clear and direct violation of the confirmation order." Krypton at 662 and 663.

33. The injunctive relief sought by the Debtors is not only appropriate and warranted but is necessary to avoid a withdrawal of the Debtors' Plan. The Debtors have satisfied each of the aspects necessary to warrant such injunctive relief, namely, (i) the Debtors can demonstrate strong probability of success on the merits, (ii) the actions of the OAG will, if unchecked, cause irreparable injury, (iii) the injunctive relief will not harm or prejudice any party-in-interest and (iv) the public interest will be served by affording the relief sought pursuant to this Motion. See Colliers 15th Ed., R7065 *citing In re Service Merchandise Co.*, 256 B.R. 755 (Bankr. M.D. Tenn. 2000).

34. As to the likelihood of success on the merits, the Debtors are seeking an order in aid of implementation of the Plan as confirmed by this Court based on matters that have already been fully and finally adjudicated, on notice to the OAG and the OAG having been afforded a full and fair opportunity to be heard. See Summary Chart at ¶34. There can, therefore, be no question as to the Debtors' likelihood of success on the merits. As to irreparable harm, the actions of the OAG, and potentially the ODEQ, if not enjoined are likely to prevent the consummation of the Plan causing a liquidation of the Debtors' estates as set forth in the McEntee Affidavit annexed hereto. Consequently, there is clearly irreparable harm. Further, the Debtors rely on the overwhelming approval for the Debtors' Plan, the fact that the OAG had an opportunity to participate in the Confirmation Hearing and the fact that the OAG has an alternate, and procedurally proper, course for remedy, namely an appeal of the Confirmation

Order to demonstrate that the only prejudice to be suffered can be to the creditors of the estates in the absence of the Plan going effective. The public interest is, therefore, best served if the Debtors are permitted to reorganize, make distributions to creditors pursuant to the Plan and address the decommissioning of the Muskogee Facility. The public interest cannot be served by permitting the OAG to collaterally attack the Confirmation Order and thereby the very foundation of the principles of reorganization upon which the Bankruptcy Code relies.

35. The nature of the injunctive relief sought hereunder is to cause the Comments and EA Objection to be deemed null and void and to enforce the provisions of the Confirmation Order and to enable the Debtors to implement their Plan consistent with that order such that an adversary proceeding need not be commenced to pursue such relief. See In re Continental Airlines, Inc., 236 B.R. 318, 327 (D. Del. 1999) (adversary proceeding is not necessary where nature of relief sought is enforcement of an existing injunction such as that provided by Section 1141 of the Bankruptcy Code binding all parties to the provisions of a Plan).

36. Section 1142 vests with this Court the authority to direct any necessary party to perform any act necessary for consummation of the confirmed plan. The order sought by the Debtors in aid of implementation of the Plan is essential to enable the Debtors to implement the Plan and administer their estates. Such orders are appropriate under these circumstances. See In re Erie Hilton Hotel Joint Venture, 137 B.R. 165, 170 (Bankr. WD Pa. 1992); see also In re Harlow Properties, Inc., 56 B.R. 794, 798 (BAP 9th Cir. 1985) (subsection (b) implicitly contemplates the court's authority to direct a recalcitrant debtor or other party to perform acts necessary to consummate the Plan). Further, the injunctive powers afforded to this Court which may be necessary to provide for implementation of this Plan may not now be contested by the OAG, after having failed to address such authority under the Confirmation Order. See Monarch

Life Insurance Co. v. Ropes and Gray, 65 F.3d 973, 983 (1st Cir. App., 1995) (holding that a

party is precluded from challenging the injunctive powers of the court where such party did not previously oppose nor appeal the confirmation order setting forth such powers).

37. The Debtors, throughout the pendency of these Chapter 11 Cases, have repeatedly attempted to resolve or affirmatively address the concerns of the OAG with respect to the Muskogee Facility. These efforts included multiple meetings and calls with the OAG and other representatives for the state and two formal written settlement proposals, each of which was rejected. Notwithstanding these diligent efforts, the OAG has refused to work towards a reasonable and manageable settlement and, more significantly, has failed to identify, with specificity, how the concerns might be resolved. Notwithstanding the unresolved issues with the OAG, the Debtors' Plan reflects the culmination of long and difficult negotiations with numerous parties representing significant and varied interests in these cases. Given the collaboration of these many and diverse interests, including the Committee, the NRC, the PBGC, the EPA and the DOJ representing a variety of governmental agencies and departments, the Debtors are hard pressed to believe that the OAG's position is motivated by anything other than factors beyond the scope of these Chapter 11 Cases and the Debtors' control; especially given the significant funding to be provided for the decommissioning of the Muskogee Facility. The OAG's efforts should, therefore, be viewed as nothing more than an unfettered attempt to prevent confirmation of the Plan regardless of the costs and injury to all others involved. The Court should not permit the OAG to continue to interfere in the reorganization process and should enjoin the OAG from (a) pursuing those Comments presented to the ODEQ that are directed at and shall delay the transfer of either the existing NPDES Permit or issuance and transfer of the proposed OPDES

Permit, (b) the EA Objection before the NRC and (c) any other collateral attack on the Confirmation Order.

**OAG Must be Enjoined from Relitigating Findings
of Facts of This Court and Collaterally Attacking The Confirmation Order**

38. The OAG's Comments to the issuance of the OPDES Permit raise issues of fact that have already been fully and finally litigated by this Court. The Court has conclusively determined that the Debtors' Plan and all aspects thereof are financially feasible and warranted to effect a necessary reorganization. The Court, pursuant to the Confirmation Order and at the Confirmation Hearing has already addressed each of the issues raised by the OAG in their Comments, namely financial feasibility, the authority to transfer the NPDES/OPDES Permit, and the jurisdiction (or lack thereof) of the State of Oklahoma with respect to the monitoring and remediation of environmental conditions at the Muskogee Facility. (With respect to financial feasibility, see Transcript at Page 26, Lines 7-21 and Confirmation Order ¶ R, with respect to the transfer, see Confirmation Order at ¶¶ AA, 8, 13, 14 & 15 and with respect to the jurisdiction of the state over the Muskogee Facility, see Transcript Pages 27-31 and Confirmation Order at ¶¶ II, 31 and 32). The OAG previously raised each of the issues set forth in their Comments in their Objection to confirmation and then failed to appear at the Confirmation Hearing. This Court has already determined each of these issues based on the evidence and testimony presented by the Debtors and other parties offered in support of the Plan. Notwithstanding OAG's having brought these matters to the forefront of the Confirmation Hearing, the OAG now seeks to collaterally attack the Confirmation Order not only through their Comments pending before the ODEQ but also in a further Objection to Issuance of Environmental Assessment and Findings of No Significant Impact filed with the NRC on December 8, 2003 (the "EA Objection"). See Exhibit "J" hereto. A confirmation order is res judicata as to all issues that were decided or which could

have been decided at the confirmation hearing. See Donaldson v. Bernstein, 104 F.3d 547, 554 (3d. Cir. App. 1997) *citing* In re Szostek, 886 F.2d 1405, 1408 (3d Cir. 1989). Further the OAG has boldly and publicly indicated that it shall continue to ignore the Confirmation Order and endeavor to frustrate the Debtors' efforts to reorganize. See EA Objection at Page 8 stating that "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".

39. The doctrine of collateral estoppel provides this Court with the authority to bar the OAG from relitigating issues that (i) are the same as in the prior action, (ii) were actually litigated, (iii) were determined by a valid and final judgment and (iv) were essential to that prior judgment. See In re Doctoroff, 133 F.3d, 210, 214 (App. 3d Cir. 1997); PIC, Inc. v. Prescon Corp., 485 F.Supp 1302, 1308 (D. Del. 1980) *citing* Lawlor v. National Screen Service Corp., 349 U.S. 322 (1955). The underlying findings of fact of this Court may be reviewed for clear error only, and in that case only by appeal and not through a collateral attack. See Monarch Life Insurance Co. v. Ropes and Gray, 65 F. 3d 973, 978 (1st Cir. 1995). The issues now raised by the OAG in their Comments cannot be distinguished from the findings of this Court as to the financial feasibility of the Reorganized Debtors and Special Purpose Subsidiaries under the Plan. These findings were not only brought into issue by the OAG's Objection and fully litigated at the confirmation hearing, but such findings were essential and necessary elements for confirmation as set forth under 11 U.S.C. § 1129. The OAG unilaterally and voluntarily elected not to attend the Confirmation Hearing and now refuses to acknowledge and be bound by the Confirmation Order and underlying findings of fact of this Court.

40. The Plan includes a transfer of the NPDES Permit from Fansteel to FMRI. Notwithstanding the findings of this Court with respect to the financial feasibility and the

adequacy of the funding for the Special Purpose Subsidiaries, including without limitation, FMRI, the OAG has again attempted to put into question the financial capacity of Fansteel and FMRI not only in respect of the NPDES Permit but also in the context of the Amended Decommissioning Plan. The OAG's EA Objection argues "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." (emphasis added) See EA Objection at Page 7. The OAG's Comments also bring into issue financial feasibility as they argue that "No showing has been made to demonstrate that FMRI meets the financial accountability requirements." See Comments at ¶ 2.¹⁴ This Court, based on the uncontested and uncontroverted evidence and testimony presented at the Confirmation Hearing, fully adopted by this Court, has already determined that "the record of evidence is overwhelming, that the financial aspects of the plan are certainly feasible". See Transcript at Page 26, Lines 16-19.

41. The OAG also again brings into question the authority of Fansteel, and/or Reorganized Fansteel, to transfer the NPDES Permit to FMRI pursuant to the Plan. The OAG Comments argue that "There has been no showing that Fred Dohmann has the necessary legal authority to request such a transfer on behalf of Fansteel or FMRI". See Comments at ¶ 2. The

¹⁴ The Debtors note that the OAG's comments argue that OAC 252:616-3-4(g), which requires a showing of legal authority and financial accountability be demonstrated by the transferee, has not been satisfied. The Debtors believe that the OAG has improperly relied on this provision and that no such provision of the OAC is applicable with respect to the Joint Permit or the OPDES Permit.

Plan and Confirmation Order clearly provides for the transfer of the Muskogee Facility to FMRI, which by definition includes the NPDES Permit. See Plan Definitions 10 and 108 and Article IV, see also Confirmation Order at ¶¶ AA, GG, 8, 13-17. Further, and lest there be any confusion and notwithstanding the approval for the transfers and corporate authority set forth in the Confirmation Order, the Debtors confirmed the authority of Fred Dohmann to authorize the transfer by their letter December 2, 2003 attached as Exhibit "F" hereto.

42. Lastly, the OAG's Comments and EA Objection have raised questions regarding the monitoring of certain radiological and non-radiological contaminants through the NPDES Permit although this Court previously determined that the exclusive jurisdiction to monitor such contaminants rests with the NRC. See Transcript at page 28-30. This Court has, based on the evidence presented and the testimony offered not only by the Debtors but also the NRC and the DOJ concluded that the "commingling" of radiological and non-radiological contaminants at the Muskogee Facility vests sole jurisdiction with the NRC. The OAG, however, in complete disregard for the findings of this Court has, in two separate pleadings outside of the scope of these Chapter 11 Cases, sought to relitigate these issues. See OAG Comments at ¶ 3 ("draft permit indicates no limits or monitoring requirements have been placed on contaminants of thorium and uranium", each a radiological contaminant under the complete control of the NRC); see also EA Objection at Page 6. ("...no evaluation of non-radiological impacts was considered... The NRC does not have regulatory authority to address the known chemical contamination at the site...[chemical contamination] is outside the bounds of the NRC's authority to address...").

43. The OAG's actions are in direct contravention of this Court's findings of fact and related relief and are a transparent collateral attack on the Confirmation Order. Any challenge to the findings of the Court can only be brought before the Court in an appropriate and timely

appeal of the Confirmation Order. "In the bankruptcy context, courts have specifically, and consistently, held that the bankruptcy court retains jurisdiction, inter alia, to enforce its confirmation order." In re Continental Airlines, Inc., 236 B.R. 318, 326 (D. Del. 1999). The OAG has a choice: it may seek relief from the Confirmation Order before this Court or through a proper appeal or remain silent and be bound by the enforceable provisions of the Confirmation Order. See Maryland v. Antonelli Creditors Liquidating Trust, 123 F.3d 777, 782 (4th Cir. 1997) (a party that has notice, while not required to challenge the plan, cannot later seek to challenge it collaterally, the judicial system's need for order and finality requires orders of the bankruptcy courts having jurisdiction to enter them be obeyed until reversed, even if proper grounds exist to challenge them).

44. Confirmation orders may not be collaterally attacked. See In re Permaco Int'l, Inc., 3 Fed. Appx. 38, 41 (4th Cir. 2001) ("Confirmation orders by bankruptcy courts may not be attacked collaterally even if proper grounds exist to challenge such orders."); Adair v. Shermann, 230 F.3d 890, 895 (7th Cir. 2000) ("allowing collateral attacks ... would give debtors an incentive to refrain from objecting in the bankruptcy proceedings and would thereby destroy the finality that bankruptcy confirmation is intended to provide"); Boullion v. McClanahan, 639 F.2d 213, 214 (5th Cir. 1981) *citing* Allen v. McCurry, 449 U.S. 90 (1980) (proper recourse is not an independent action but appeal of the [confirmation] order as a matter of right); see also, In re Coffee Cupboard, Inc., 119 B.R. 14, 15 (S.D.N.Y. 1990) ("Creditors may not attack confirmation orders by simply characterizing their attempt as an independent cause of action").

45. The OAG was presented with a full and fair opportunity to be heard but voluntarily elected (without any prior notice to this Court or the Debtors) not to participate at the Confirmation Hearing beyond their filed Objection, which was, in any event, considered by the

Court in the OAG's absence. Notwithstanding the OAG's absence at the Confirmation Hearing, it was the OAG that brought into question the aspects of financial feasibility and jurisdiction of these matters. The OAG has repeatedly questioned the Debtors' financial capacity to undertake critical components of the Plan, including the administration of the NPDES Permit, but has refused to evaluate the evidence and testimony presented. Rather the OAG has been content to continue to don the emperor's new clothes, blindly refusing to acknowledge the clear and convincing evidence in support of financial feasibility and the state of Oklahoma's limited jurisdiction (at least until termination of the NRC License) that has been overwhelmingly adopted by the other parties-in-interest in these Chapter 11 Cases. The Debtors believe that the OAG, if permitted, will continue to attempt to frustrate the reorganization of the Debtors and the effectiveness of the Plan. See EA Objection at Page 8. Consequently, and in an effort to circumvent expected future collateral attacks on the Confirmation Order, the OAG must be enjoined from taking any further action to impede execution of the Confirmation Order and the Plan.

ODEQ May Rely on Confirmation Order To Address the Comments of the OAG and Shall Immediately Give Effect to the Transfer of the NPDES/OPDES Permit

46. The Debtors have attempted to resolve their issues with the OAG on numerous occasions to no avail and ultimately, therefore, elected to proceed with a Plan in the absence of such a resolution. The Debtors believe, for the reasons set forth herein, that the OAG is estopped from seeking a hearing or review of the proposed OPDES Permit renewal or objecting to the EA approvals by the NRC on grounds of financial feasibility or adequacy of monitoring for "radiological" or "non-radiological" elements. The Debtors regret having to resort to this Motion which has been necessitated by the repeated wrongful collateral attacks of the OAG on

the Confirmation Order. Notwithstanding that the Confirmation Order is unambiguous as to the findings of the Court, the Debtors believe that it is now necessary to seek the intervention of this Court with respect to the OAG and may similarly be necessary to ensure the ODEQ's recognition of the Automatic Transfer Notice by Fansteel and FMRI and the ODEQ's consideration of the OPDES Permit.

47. The Debtors believe that the OAG has attempted to assert its considerable political power and influence over the ODEQ in an effort to dictate the outcome of the permit renewal and transfer request in their favor notwithstanding numerous prior representations from the ODEQ that the OPDES Permit would be issued and transferred without delay. This Court is empowered to enjoin and/or preempt OAG from taking actions that would interfere with the restructuring transactions provided for under the Plan and to cause the transfer of the Joint Permit, and/or OPDES Permit, to FMRI on or before the Effective Date. Further, the Court is empowered to authorize the ODEQ to rely upon the findings of the Court as set forth in the Confirmation Order with respect to feasibility and the exclusive jurisdiction of the NRC over the Muskogee Facility and to mandate that the ODEQ acknowledge the transfer of the Joint Permit and/or OPDES Permit, upon issuance, to FMRI.

48. Section 1123(a)(5) provides in relevant part that "notwithstanding any other applicable non-bankruptcy law, a plan shall... provide adequate means for the plan's implementation such as...the transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of the plan". 11 U.S.C. § 1123(a)(5). Courts have interpreted the intent of this Code Section to provide that the Bankruptcy Court is vested with the authority to "preempt nonbankruptcy laws that would otherwise apply to bar, among other things, transactions necessary to implement the

reorganization plan." In re Pacific Gas & Electric Co., 283 B.R. 41, 47 (ND Ca. 2002) *reversed and remanded* No. 02-80113, D.C. No. CV-02-01550-VRW, at 16281, 9th Cir., Nov. 19, 2003; *see also*, e.g., In re Public Service Co., 180 B.R. 854 (Bankr. D. N.H. 1989); Universal Coops, Inc. v. FCX, Inc., 853, F.2d 1149 (4th Cir. 1988).

49. Specifically, in Pacific Gas, the district court on appeal from the bankruptcy court held that "state laws and regulators may not stand as an impediment to the restructuring provisions of a chapter 11 plan of reorganization although these laws will again apply to the reorganized debtor and any new entities created pursuant to the plan." Pacific Gas, 283 B.R. at 46.

50. On November 19, 2003, following the Debtors' Confirmation Hearing, the Ninth Circuit Court of Appeals issued an opinion which reversed and remanded the aforementioned holding of the district court in Pacific Gas. The Court of Appeals, however, overturned the district court solely on the basis that the district court, which relied on the express preemptive rights of Section 1123(a)(5), interpreted the court's authority too broadly and failed to consider whether the preempted utility regulation was "relating to a financial condition" as required pursuant to Section 1142(a).¹⁵ While the Debtors believe that the neither the issuance nor the transfer of the NPDES Permit are subject to any "law, rule or regulation relating to financial condition", the Comments of the OAG clearly demonstrate that the OAG that the applicable regulations do encompass the "financial condition" of the Debtor. To the extent that the view of the OAG is adopted, the Debtors believe such express preemptive rights would clearly exist and this Court would have the express authority to preempt the state scheme, subject to the

¹⁵ The Debtors wish to advise the Court that at the time of filing of the Confirmation Brief and at the Confirmation Hearing that the Debtors nor their counsel was aware of the pending appeal of the Pacific Gas opinion and would, otherwise have notified this Court of any such pending appeal. The discovery of the Ninth Circuit's opinion came about somewhat fortuitously as it was referenced in a periodical that was brought to counsel's attention after the fact.

provisions of the Plan for the assumption and performance by FMRI of all obligations under the NPDES Permit, to the extent it interferes with the implementation of the Plan. The Court of Appeals has remanded the matter for further consideration and a decision, to the best of the Debtors' knowledge, has not yet been rendered.

51. Further, the Court of Appeals acknowledged that neither the District Court nor it reached the question of whether "certain state laws...may be so onerous as to interfere with the bankruptcy adjudication itself". Pacific Gas & Electric Co. v. California, No. 02-80113, D.C. No. CV-02-01550-VRW, at 16281, 9th Cir., Nov. 19, 2003. The Court of Appeals further went on to acknowledge In re Baker & Drake, Inc., 35 F.3d 1348 (9th Cir. 1994), another Ninth Circuit opinion for the proposition that a state law may be contravened for the purpose of administering a plan of reorganization, noting that the test was whether the "state law stands as an obstacle to the accomplishment on the execution of the full purposes and objectives of Congress. Id. Consequently, the Ninth Circuit Court of Appeals has expressly left open the right of the bankruptcy court to consider the applicability of implied preemption.

52. While the Ninth Circuit has now drawn into question its interpretation of the breadth of the provisions of Section 1123(a)(5), it has not foreclosed the possibility of an exercise of the bankruptcy court's broad powers to administer reorganization cases. Further, at least one other court within this Circuit has held that extraordinary circumstances may justify the exercise of such general and broad powers. See In re Metro Transportation Co., 64 Bankr. 968 (Bankr. ED Pa 1986) (holding that the bankruptcy court had the authority to enjoin the Pennsylvania Utilities Commission from recalling taxi cab operator certificates where the basis for such authority was purely discretionary.) In the instant Chapter 11 Cases, the regulations governing the transfer are purely ministerial and provide that a transfer of the NPDES Permit

shall be “automatic” absent notice from the ODEQ that a permit must be modified, revoked or reissued. Fansteel has received no such notice from the ODEQ and has been informed by its representatives that the transfer was a routine matter. Indeed, the ODEQ has acknowledged the reasonableness of the transfer by issuing the proposed OPDES Permit to Fansteel.

53. Further, in the present case, the Debtors are not, by their Plan, seeking to truncate the authority of ODEQ to regulate wastewater discharge through the NPDES Permit or any other authority that ODEQ may have with respect to the Muskogee Facility. The Debtors have acknowledged ODEQ's authority with respect to the NPDES Permit and at all times prior to and during these Chapter 11 Cases have complied with the provisions of the NPDES Permit. The Debtors are merely seeking intervention of this Court, to the extent necessary, to cause the ODEQ to acknowledge the automatic transfer of the Joint Permit, and the OPDES Permit to the extent applicable, without delay to avoid any interference with the bankruptcy adjudication. The Debtors believe that such actions are entirely consistent with the administrative findings of the ODEQ as evidence by their issuance of the final proposed OPDES Permit on September 12, 2003.

54. This Court has indicated that in the event of an unwarranted refusal to acknowledge and/or issue such transfer, this Court believed that an exercise of its power under Section 1123(a)(5) would be appropriate. See Transcript at Page 31. The ODEQ has no known basis for withholding transfer of the NPDES Permit to FMRI and similarly would have no basis for refusing such a transfer once the OPDES Permit has been issued. As acknowledged by the Courts in Baker & Drake, Inc. and Metro Transportation, “ungrounded and arbitrary” state regulations should not be permitted to impede the processes of the Bankruptcy Code, particularly

where there is no substantial intrusion into state power. See Baker & Drake at 1344 and Metro Transportation at 973-974.

55. The Debtors assert that an arbitrary refusal by the ODEQ to acknowledge the transfer the NPDES Permit would not only be inconsistent with its administrative findings as evidenced by issuance of the final proposed OPDES Permit but also with the overall intent of the Bankruptcy Code and in frustration of Section 1123(a)(5) such that this Court has the authority to enjoin and/or direct the ODEQ, as the case may be, to enable the Debtors to implement their Plan. The Debtors believe that if the ODEQ were directly authorized to rely on the findings of the Confirmation Order and to disregard the efforts of the OAG to collaterally attack such order, the ODEQ would act accordingly and without delay. As noted by one court, the "paramount policy and goal of Chapter 11, to which all bankruptcy policies are subordinated, is the rehabilitation of the debtor." In re Ionosphere Clubs, Inc., 98 B.R. 174, 176 (S.D.N.Y. 1989). That reorganization "cannot work without substantial restructuring of the corporate entity that is relatively prompt and free from litigation costs and delays and fragmented proceedings in numerous other forums apart from the reorganization court." Pacific Gas at 60 (citations omitted). The Court's intervention is necessary to ensure that the Debtors' reorganization is not subject to further interference by the OAG.

Conclusion

For the reasons set forth herein and as represented in the McEntee Affidavit, the Debtors hereby request entry of an order that (i) provides that the Comments and the EA Objection directly contravene the Confirmation Order and shall be null and void and of no force and effect; (ii) enjoins the OAG from taking any action, in any forum (whether administrative or judicial) to collaterally attack the Confirmation Order, or the findings of fact and/or conclusions

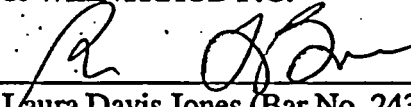
of law therein, including any act that would directly or indirectly interfere with or delay the transfer of Fansteel's NPDES Permit or any subsequently issued renewal or replacement thereof to FMRI; (iii) authorizes, if necessary, the ODEQ to enforce the provisions of the Confirmation Order relating to the issuance of the OPDES Permit and transfer of the Joint Permit and/or OPDES Permit; (iv) enjoins the ODEQ from taking any action that would directly or indirectly interfere with or delay the ministerial transfer of the Joint Permit, the OPDES Permit, or the Permit Application to FMRI; and (v) granting such other relief as may be necessary and appropriate to implement the Debtors' Plan without further intervention by the OAG/ODEQ.¹⁶

Dated: Wilmington, Delaware
December 11, 2003

SCHULTE, ROTH & ZABEL LLP
Jeffrey S. Sabin (JSS 7600)
919 Third Avenue
New York, New York 10022
Telephone: (212) 756-2000

and

PACHULSKI, STANG, ZIEHL, YOUNG, JONES
& WEINTRAUB P.C.



Laura Davis Jones (Bar No. 2436)
Rosalie L. Spelman (Bar No. 4153)
919 North Market Street, 16th Floor
P.O. Box 8705
Wilmington, Delaware 19899-8705
Telephone: (302) 652-4100

¹⁶ The Debtors reserve for this Court to consider whether relief may be appropriate against the OAG pursuant to 28 U.S.C. § 1927.

Exhibit "A"
Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
FANSTEEL INC., <u>et al.</u> , ¹)	Case No. 02-10109 (JJF)
)	(Jointly Administered)
Debtors.)	

**ORDER IN AID OF EXECUTION OF CONFIRMED JOINT REORGANIZATION
PLAN PURSUANT TO 11 U.S.C §§ 105, 1123(a)5 AND 1142**

Upon the Motion of Fansteel Inc. ("Fansteel" and the "Debtor") and its direct and indirect wholly-owned subsidiaries, Fansteel Holdings, Inc., Custom Technologies Corp., Escast, Inc., Wellman Dynamics Corp., Washington Mfg. Co., Phoenix Aerospace Corp., and American Sintered Technologies, Inc., each as a debtor and debtor-in-possession (collectively, the "Debtors"), by and through their counsel, Schulte Roth & Zabel LLP and Pachulski, Stang, Ziehl, Young, Jones & Weintraub, P.C., for entry of order in execution and implementation of their joint reorganization plan (the "Plan") confirmed by order of this Court on November 17, 2003 (Docket #1622) (the "Confirmation Order") pursuant to 11 U.S.C. §§105, 1123(a)(5) and 1142, (i) determining that the Comments² and the EA Objection of the Attorney General for the State of Oklahoma ("the "OAG") contravene the Confirmation Order and accordingly are of no force and effect and shall be null and void; (ii) enjoining the OAG from taking any action to

¹ The Debtors are the following entities: Fansteel Inc., Fansteel Holdings, Inc., Custom Technologies Corp., Escast, Inc., Wellman Dynamics Corp., Washington Mfg. Co., Phoenix Aerospace Corp., and American Sintered Technologies, Inc.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed in the Motion.

collaterally attack the Confirmation Order, or the findings of fact and/or conclusions of law therein, including any act that would directly or indirectly interfere with or delay the transfer of Fansteel's NPDES Permit or any subsequently issued renewal or replacement thereof to FMRI, Inc. ("FMRI"); (iii) authorizing, if necessary, the Oklahoma Department of Environmental Quality ("ODEQ") to enforce the provisions of the Confirmation Order relating to the issuance of the OPDES Permit and transfer of the Joint Permit and/or OPDES Permit; (iv) enjoining the ODEQ from taking any action that would directly or indirectly interfere with or delay the ministerial transfer of the Joint Permit, the OPDES Permit, or the Permit Application to FMRI; and (v) granting such other relief as may be proper (collectively, the "Motion"); and due and proper notice having been given, and upon the record of this Court at the Confirmation Hearing on November 17, 2003; and upon the findings of fact and conclusions of law of this Court in respect of the Confirmation Order; and upon the OAG having been presented with a full and fair opportunity to participate in these Chapter 11 Cases and having availed themselves of such opportunity from time to time but having voluntarily elected not to appear at the Confirmation Hearing; and upon appearing that the relief requested is well taken and will benefit the estates and the Debtors' creditors, it is hereby,

ORDERED that the OAG is hereby immediately enjoined from any further pursuit of the Comments presented to the ODEQ with respect to the NPDES Permit or OPDES Permit; and it is further

ORDERED that the OAG is hereby immediately enjoined from any further pursuit of the EA Objection presented to the NRC with respect to the Environmental Assessment ("EA") and Finding of No Significant Impact ("FONSI") issued by the NRC Staff on October

31, 2003 in connection with the NRC License and as a predicate to the Amended Decommissioning Plan for the Muskogee Facility; and it is further

ORDERED that the OAG shall hereby be enjoined from taking any action, directly or indirectly, in any forum (whether administrative or judicial) to collaterally attack the Confirmation Order and the findings of fact or conclusions of law therein; and it is further

ORDERED that the OAG's Comments with respect to the financial capacity of Fansteel and/or FMRI, the transfer of the NPDES Permit and OPDES Permit, and the monitoring of radiological contaminants under the proposed OPDES Permit are each matters that have been fully and finally adjudicated by this Court at the Confirmation and that the OAG is therefore estopped from further raising or attempting to relitigate such matters, regardless of the forum or venue; and it is further

ORDERED that the OAG's EA Objection with respect to the financial capacity of Fansteel and/or FMRI as they relate to the decommissioning of the Muskogee Facility, the NRC's obligations to include, incorporate or consider the recommendations of the ODEQ with respect to the decommissioning of the Muskogee Facility and the ODEQ or other state agencies authority or jurisdiction with respect to the Muskogee Facility are each matters that have been fully and finally adjudicated by this Court at the Confirmation and that the OAG is therefore estopped from further raising or attempting to relitigate such matters, regardless of the forum or venue; and it is further

ORDERED that the Comments and the EA Objection shall be deemed null and void and of no force or effect; and it is further

ORDERED that the ODEQ shall disregard the Comments of the OAG, the NRC shall disregard the EA Objection, and the ODEQ, or any other regulatory or governing body,

agency or department shall similarly disregard any challenge by the OAG of issues of fact that have previously been adjudicated by this Court as set forth herein and in the Confirmation Order, in the context of any regulatory approval or hearing; and it is further

ORDERED that any efforts by the OAG to raise issues of fact or conclusions of law that have been previously and properly addressed by the Court, whether as set forth in the OAG's Comments before the ODEQ or in the OAG's EA Objection presented to the NRC, shall be deemed to be an improper collateral attack on the Confirmation Order and shall be considered null and void in their entirety; and it is further

ORDERED that any action or requirement by the OAG and/or ODEQ or other state agency to require Fansteel or FMRI to obtain approvals from the ODEQ or other state agency to undertake remediation of groundwater at the Muskogee Facility pursuant to OAC 252:611-5-1(b) is expressly pre-empted and any such action shall be deemed null and void, without effect, pursuant to the Confirmation Order and findings of fact thereunder which include a determination that the commingling of radiological and non-radiological contaminants at the site vest sole jurisdiction with the NRC; and it is further

ORDERED that the provisions of the Confirmation Order that authorized the transfer of assets and the assumption of liabilities and other obligations pursuant to the Plan as set forth above shall be interpreted to authorize and direct the ODEQ to immediately acknowledge the transfer of the NPDES Permit, and OPDES Permit when issued, pursuant to the automatic transfer provisions set forth at OAC 252:605-3-64; and it is further

ORDERED that the Joint Permit shall be deemed to have been transferred to FMRI and such transfer shall be immediately effective, without any further action or notice, as of the Automatic Transfer Date provided that the ODEQ has not, prior to such date, notified

Fansteel in writing prior that "permit modification or permit revocation and reissuance will be required"; and it is further

ORDERED that the applicant of the Permit Application shall be deemed to be FMRI, as the transferee of the Joint Permit, without any further action or notice, upon with the transfer of the Joint Permit to FMRI in the immediately preceding paragraph.

Dated: December __, 2003

THE HONORABLE JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT COURT JUDGE

Exhibit "B"
McEntee Affidavit

Exhibit "B"
McEntee Affidavit

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
FANSTEEL INC., <u>et al.</u> , ¹)	Case No. 02-10109 (JJF)
)	(Jointly Administered)
Debtors.)	
)	

**AFFIDAVIT AND STATEMENT OF R. MICHAEL McENTEE, VICE PRESIDENT AND
CHIEF FINANCIAL OFFICER OF FANSTEEL INC., IN SUPPORT OF DEBTORS'
EMERGENCY MOTION OF FANSTEEL INC., ET AL FOR ORDER IN AID OF
IMPLEMENTATION OF CONFIRMED JOINT REORGANIZATION PLAN
PURSUANT TO 11 U.S.C §§ 105, 1123(a)5 AND 1142 AND RELATED RELIEF**

R. MICHAEL McENTEE, being duly sworn, deposes and states:

I am the Chief Financial Officer and Vice President of Fansteel Inc. ("Fansteel"), one of the debtors and debtors in possession herein, and the direct or indirect parent corporation of all the Debtors (as defined below). I am also a director of each of the other Debtors. In these capacities, I have responsibility for ongoing financial and operational matters of Fansteel. I have been employed by Fansteel since 1979 and I am intimately familiar with the Debtors' day-to-day operations, business affairs and books and records. I have also been directly involved in the Debtors' efforts since the commencement of these chapter 11 cases (the "Chapter 11 Cases") to achieve a consensual agreement for the proposed joint plan of reorganization among the Debtors'

¹ The Debtors are the following entities: Fansteel Inc., Fansteel Holdings, Inc., Custom Technologies Corp., Escast, Inc., Wellman Dynamics Corp., Washington Mfg. Co., Phoenix Aerospace Corp., and American Sintered Technologies, Inc.

not expressly defined herein shall have the meaning ascribed to such terms in the Motion, as defined herein.

Background

1. On January 15, 2002 (the "Petition Date"), the Debtors filed voluntary petitions for relief under 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"). Thereafter, the Court entered an order pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), directing that the Debtors' separate chapter 11 cases (the "Chapter 11 Cases") be procedurally consolidated and jointly administered by this Court. The Debtors continue to operate their businesses and manage their affairs as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On January 29, 2002, the Office of the United States Trustee for the District of Delaware appointed an official committee of unsecured creditors (the "Committee") for these Chapter 11 Cases. No trustee or examiner has been appointed in any of the Chapter 11 Cases. On July 24, 2003, the Debtors and the Committee filed, as co-proponents, their disclosure statement in support of the proposed Joint Reorganization Plan of Fansteel Inc and Subsidiaries. Thereafter, on September 18, 2003, the Debtors filed with this Court their Amended Joint Reorganization Plan of Fansteel Inc and Subsidiaries (the "Plan"), together with the First Amended Disclosure Statement for the Joint Reorganization Plan (the "Disclosure Statement"). On September 30, 2003, the Court entered an order approving the Disclosure Statement as containing "adequate information" within the meaning of 11 U.S.C. §1125(a)(1) and scheduled the hearing on confirmation of the Debtors' Plan for November 17, 2003.

3. On November 10, 2003, the Attorney General for the State of Oklahoma (the "OAG") filed an objection to confirmation (the "Objection") of the Debtors' Plan (Docket #1573) challenging the Debtors' Plan on the basis of financial feasibility and good faith. In response to the Objection, on November 14, 2003, the Debtors filed their Memorandum in Support of Confirmation of the Joint Reorganization Plan and in Response to the Objections of the State of Oklahoma (the "Confirmation Brief). The Confirmation Brief included numerous affidavits, supporting documentation and other evidence in support of confirmation. In particular the Confirmation Brief addressed particular aspects of the financial feasibility of the Debtors' Plan and issues related to the Muskogee Facility and other Environmental Claims/Obligations. (Docket No. 1613) The Confirmation Brief, together with the Supporting Documents were served by email, fax and overnight mail on the OAG on November 14, 2003.

4. On November 17, 2003 the Court held a hearing to consider the Objection of the OAG and a confirmation of the Plan. At that hearing, upon considered the testimony of representatives of Fansteel and the evidence presented, the Court overruled the Objection by the OAG and determined that the Debtors' Plan was financially feasible and satisfied all necessary provisions of the Bankruptcy Code. That same day, in open court, the Court entered a confirmation order setting forth findings of fact and conclusions of law with respect to the Plan and approving the Debtors' Plan.

5. I submit this Affidavit in support of the Debtors' Emergency Motion for Order in Aid of Implementation of the Plan. All of the facts set forth in this Affidavit are based upon my personal knowledge, upon information supplied to me by others at the Debtors,

including without limitation the Confirmation Brief and related affidavits and exhibits thereto, upon my review of relevant documents or upon my opinion based upon my experience and knowledge of Debtors' operations and financial condition. To the extent any of the following statements concern conclusions of law, those statements are based on information and advice provided to me by Debtors' third party professionals. If I were called upon to testify, I could and would testify competently to the facts set forth herein.

Statement

6. The Plan, as presented, represents an agreement in principle with Fansteel's primary creditors constituents, namely the Creditors' Committee, the PBGC, the DOJ on behalf of several governmental agencies, the EPA and the NRC, for the reorganization of the Debtors and the treatment of claims and interests. The Plan is structured to maximize value for creditors while minimizing costs to the Estates. In light of its financial difficulties, Fansteel believes their chapter 11 filing was necessary to enable the company to develop the business model embodied within the Plan that will permit the company to sell off non-essential assets, stabilize operations and maximize the value of Fansteel's business for its stakeholders while managing current and potential future environmental liabilities. Absent the Plan, the Debtors do not believe that they will have the financial wherewithal to continue operations, to make distributions on account of outstanding claims in excess of those provided for under the Plan or to provide for the ongoing remediation and monitoring of the various facilities owned and/or operated by the Debtors.

7. Fansteel's key objective is to effect a consolidation of operations and

recapitalization of existing debt/obligations through the Plan such that the Reorganized Debtors will be able to service outstanding debts and to fund operations of the Special Purpose Subsidiaries, including without limitation, FMRI and its administration of water discharges through the NPDES Permit, so FMRI may address on-going environmental obligations and liabilities associated with the Muskogee Facility.

8. The Plan contemplates, among other things, the creation of four wholly owned, special purpose subsidiaries of Reorganized Fansteel, including without limitation FMRI which shall own and remediate the Muskogee Facility with funds provided by Reorganized Fansteel's future cash flows and other assets. The operation of the Muskogee Facility by FMRI requires, among other things, approvals by the NRC of Fansteel's Amended Decommissioning Plan for the Muskogee Facility and other related actions. The Plan also requires the continuation and transfer of the NPDES Permit to FMRI. The Debtors believe that each aspect of the restructuring, including the transfer of the Muskogee Facility to FMRI as set forth in the Plan, the Motion and referenced herein, are critical components of the Plan that are necessary for its implementation.

9. Absent a transfer of the NPDES Permit to FMRI, the Debtors would be unable to meet the requirements for the Effective Date of their Plan. The Debtors believe that there would be serious adverse implications of their failure to satisfy the conditions for the Plan's Effective Date prior to year-end. These adverse affects may cause the Debtors to withdraw their Plan in which case, in the Debtors' opinion, a liquidation would be likely.

10. Among other things, the Debtors believe that failing to satisfy the

conditions of the Effective Date by December 20, 2003 and any subsequent delay of the Effective Date would adversely impact their relationships with both customers and vendors. The debtors' customers and vendors, while in many cases cooperating with the Debtors based upon their history with the company, have endured the entirety of the Debtors' Chapter 11 Cases with considerable apprehension. These customers and vendors have closely monitored the Debtors' Chapter 11 Cases and believe that the Plan is to go effective before year-end. These parties are aware of the Debtors' position that absent the reorganization, the Debtors would likely be forced to consider liquidation and any delay of the Plan's Effective Date would likely be viewed by these parties as an indication that Debtors' efforts have failed. The Debtors further believe that the adverse impact on these relationships could impair their ability to effectively administer their Plan.

11. The Plan provides and is conditioned upon, appropriate exit financing of at least \$3 million. On October 15, 2003, the Debtors executed a proposal letter from Congress Financial Corp. setting forth the terms and conditions for the Exit Facility. The Proposal letter reflects a \$10 million facility. The Debtors have subsequently received and reviewed drafts of the proposed credit agreement for the Exit Facility consistent with the proposal letter and believe that the Exit Facility will be implemented on or before the Effective Date absent further delay with respect to the NPDES Permit transfer. The commitment from Congress shall expire on December 31, 2003 if not closed prior to that time.

12. Congress has relied on the Debtors' projections and representations set forth in the Plan regarding the transfer of any liability associated with the Muskogee Facility,

including the NPDES Permit, to FMRI. The Debtors believe that absent FMRI's ability to administer the NPDES Permit and to undertake the obligations associated therewith, the Debtors may not be able to meet the terms and conditions set forth for the Exit Facility. I believe that absent a closing prior to year-end, Congress may seek to either terminate the Exit Facility or substantially modify its terms to the detriment of the Debtors. I do not believe that any assurance can be given as to the Debtors' ability to obtain financing with a replacement lender for the Exit Facility either on substantially similar terms or within sufficient time meet the deadlines for the Effective Date set forth in the Plan. Further, I do not believe that the Debtors have the financial resources to maintain operations long-term absent implementation of their Plan or in the absence of access funding through the Exit Facility.

13. The Debtors believe that, as the transfer of the NPDES Permit is a condition to the Plan's Effective Date, and the Plan has already been confirmed, that there is substantial uncertainty that those parties that have agreed to the provisions of the Plan would agree to waive such conditions. Absent such a waiver, the Debtors could not meet the requirements for the Plan's effective Date.

14. The Debtors believe that a delay of the Effective Date will result in substantial additional expense to the Debtors' estates. Among other things, such a delay could result in additional expenses associated with the termination of the Fansteel Consolidated Pension Plan, additional fees or expenses payable to Congress, additional professional fees and expenses, and additional costs associated within maintaining both vendor and customer relationships. Further, an inability to effect the Plan in the near term is likely to lead to a

liquidation of the Debtors' businesses. The Debtors have previously demonstrated that the results of such liquidation would result in a substantially reduced recovery to creditors and holders of interests and insufficient resources to fund the various Environmental Claims/Obligations set forth in the Plan. The Debtors do not believe that there has been any change in facts or circumstances that would alter this outcome in a liquidation.

15. The Plan represents, in the Debtors' opinion and in the opinion of its creditors and other parties in interest, including the Committee as a Plan co-proponent, as evidenced by the overwhelming majority of votes to accept the Plan, the greatest probability for success and to maximize the return to stakeholders while addressing all of the various environmental concerns of the Debtors and permitting the rehabilitation of the Debtors' business. The Debtors' Plan is feasible and may be implemented in a timely manner provided that the NPDES Permit is transferred without delay by the ODEQ.

16. The Debtors were previously advised by the ODEQ that the NPDES Permit transfer would be initiated without undue delay and was treated as a purely ministerial matter. Fansteel was led to believe that the renewal and transfer will be timely implemented by the ODEQ. In this regard, Fansteel agreed to accede to the ODEQ's request to withdraw their November 13, 2003 notice of transfer of the proposed OPDES Permit. Fansteel has subsequently, advised the ODEQ in writing as of December 8, 2003 of its continued intent to cause transfer of the Joint Permit, and OPDES Permit when issued, as well as, the Permit Application to FMRI effective December 12, 2003. See Exhibits G & H to the Motion.

17. The Debtors believe that the ODEQ Comments and EA Objection are

nothing more than a continued attempt by the OAG to derail the Debtors' Plan and the arguments set forth therein are without merit. The ODEQ Comments and EA Objection are in direct contravention of the Confirmation Order and findings of fact of the Court at the November 17, 2003 Confirmation Hearing in that they attempt to again bring into issue those elements of the OAG's Objection to confirmation, namely, (a) the financial capability/feasibility of Reorganized Fansteel and FMRI to fund the obligations associated with the Muskogee Facility, including the NPDES Permit obligations, (b) the jurisdiction and authority of the ODEQ vis-à-vis the NRC to regulate the Muskogee Facility and (c) the authority of Fansteel to transfer the Muskogee Facility, including the NPDES Permit to FMRI, all of which have already been adjudicated by this Court. The Debtors have provided testimony and evidence with respect to each of these matters that was considered by this Court at the Confirmation Hearing and determined to be sufficient to overrule the Objection of the OAG and to find that the aspects of the Plan for the Special Purpose Subsidiaries were financially feasible and permissible.

18. In addition to financial capacity, Fansteel provided evidence and testimony with respect to the NRC's jurisdiction over the Muskogee Facility and the adequacy of the Amended Decommissioning Plan. This Court, based on the findings of fact at the Confirmation Hearing, concluded that the ODEQ does not have authority to impose remedial activities at the Muskogee Facility through the NPDES Permit/OPDES Permit program that are inconsistent with the terms of the Amended Decommissioning Plan nor to cause Fansteel to accelerate the scheduling of those obligations in an NPDES compliance schedule.

19. The Debtors fully intend, and have continued to comply with all statutory

requirements and the provisions of the NPDES Permit. FMRI, upon transfer of the NPDES Permit, FMRI will be subject to all conditions and regulations regarding such permit imposed by the ODEQ. The OAG should not, therefore, be afforded the right to collaterally attack the Debtors' Plan and unfairly discriminate against the Debtors simply because of their Chapter 11 Cases.

20. The Comments and EA Objection by the OAG with respect to the financial capacity of either Fansteel or FMRI to service and support the obligations under the NPDES Permit or the decommissioning of the Muskogee Facility are the same financial issues considered and adjudicated by this Court at the Confirmation Hearing and in the Confirmation Order. To the best of my knowledge, nothing has changed with respect to the evidence or facts presented at the Confirmation Hearing. The Debtors have satisfied or will have satisfied all requirements of the Effective Date, with the possible exception of transfer of the NPDES Permit as discussed in the Motion, and believe that the improper intervention of the OAG continues to be the only significant obstacle to consummating the Plan.

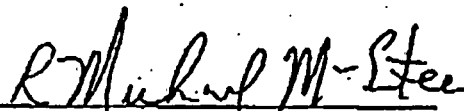
21. The Debtors believe that the actions by the OAG to delay or deny renewal or transfer of the NPDES Permit are in direct contradiction of prior representations made to the Debtors and the Confirmation Order entered by this Court. The actions by the OAG severely jeopardize the Debtors' ability to consummate its Plan and, therefore the Debtors ability to effectively monitor or remediate of the Muskogee Facility and the OAG should be enjoined from any action to further delay of impede the Debtors' Plan.

22. For the foregoing reasons, I respectfully submit that the relief sought in

the Debtors' Motion should be granted, and the OAG's efforts to blindly attempt to derail the Debtors' Plan without reason be put to an end to avoid any further undue expense or delay.

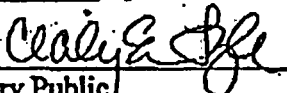
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NOT.



R. Michael McEntee
Chief Financial Officer and Vice President of
Fansteel Inc.

Sworn before me
this 11th day of December 2003



Notary Public

My Commission Expires: 1-21-07

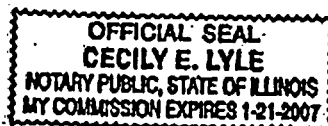


Exhibit "C"
Confirmation Brief, Dohmann Affidavit

14.....DeltaView comparison of iManage://NYDMS1/NEWYORK/9552103/5 and
iManage://NYDMS1/NEWYORK/9552103/6. Performed on 12/11/03.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE :
FANSTEEL Inc., et al., : Chapter 11 :
Debtors. :
Case No. 02-10109 (JJF) :
 : (Jointly Administered)
 :

X

AFFIDAVIT OF A. FRED DOHMANN

STATE OF OKLAHOMA)
 : ss.:
COUNTY OF MUSKOGEE)

A. Fred Dohmann, being duly sworn, deposes and says:

1. Since April 2000, I have been the general manager of the Specialty Metals Division of Fansteel, Inc. located at the facility in Muskogee, Oklahoma (the "Muskogee Facility"). In this capacity, I have been responsible for overall management of the Muskogee Facility, including establishing business plan and budgeting, developing sales and marketing strategy, supervising the design and re-engineering of plant processes. In addition to these general responsibilities, I have had significant involvement with state and federal regulatory compliance matters including creating an administrative management system to maintain compliance with the requirements of the Nuclear Regulatory Commission ("NRC"), negotiating an alternative groundwater treatment system with the United States Environmental Protection Agency ("EPA") and the Oklahoma Department of Environmental Quality ("ODEQ") as well as

modifications to various environmental permits. As a result of these responsibilities, I am personally familiar with the current and former operations at the Muskogee Facility.

2. I am writing this affidavit in support of the confirmation of the "*Amended Joint Reorganization Plan of Fansteel, Inc. and Subsidiaries*" dated September 18, 2003 (the "Plan") and the "*Memorandum of Fansteel, Inc., et al, in Support of Confirmation of Amended Joint Reorganization Plan and Reply to Objections to Confirmation of the Debtors' Joint Reorganization Plan*".

3. After the effective date of the Plan, Reorganized Fansteel will transfer the Muskogee Facility to a wholly-owned subsidiary, FMRI Inc. that will be responsible for decommissioning the Muskogee Facility. FMRI was formed on November 12, 2003. I am the President of FMRI and will have the primary responsibility for implementing and completing the decommissioning plan that will be approved by the NRC.

4. The Muskogee Facility began operating in 1958, and processed ores and tin slags for columbium and tantalum to produce refined tantalum products. In 1967, the Muskogee Facility became subject to regulation by the NRC and was issued its NRC License. In 1969, the Oklahoma Water Resources Board ("OWRB") issued a permit to the Muskogee Facility to discharge wastes into the Arkansas River (the "OWRB Permit"). In 1974, EPA issued a permit under the National Pollution Discharge Elimination System ("NPDES") permit that required the Muskogee Facility to satisfy stricter wastewater discharges requirements that were about to be promulgated by EPA under the federal Clean Water Act. Pursuant to the compliance schedule in the NPDES permit, the Muskogee Facility constructed a wastewater treatment system and a series of lined impoundments to store waste residues from the processing operation as well as

holding ponds to store treated wastewater prior to discharge into the Arkansas River (collectively the "Ponds"). The Ponds were also constructed in accordance with the standards established by the OWRB at that time. Both the OWRB Permit and the NPDES Permit were renewed every five years throughout the 1980s and 1990s until 1997 when EPA issued a NPDES permit that superceded and replaced the OWRB permit. Shortly before EPA issued the 1997 NPDES permit for the Muskogee Facility, EPA granted ODEQ the authority to administer the NPDES program. As a result, a NPDES permit jointly administered by EPA and ODEQ was issued in March 1997 (the "Joint Permit "). In November 1997, the Muskogee Facility was advised that the ODEQ had assumed responsibility over its Joint Permit. In 1998, the Joint NPDES/OPDES Permit was amended to incorporate the interceptor trench system that was to be constructed on the downgradient perimeter of the Muskogee Facility to collect groundwater and rout it to the wastewater treatment plant.

5. Under its OWRB and NPDES permits, the Muskogee Facility has been required to monitor its treated discharge to the Arkansas River for certain non-radiological chemical parameters as well as certain radiological parameters specified in its NRC License. In addition, Fansteel has been required to monitor the groundwater for certain non-radiological parameters from specified locations at the Muskogee Facility as well as certain radiological parameters specified in its NRC License. The NPDES permit has also required the Muskogee Facility to satisfy the ODEQ standard conditions for the surface impoundments located at the Muskogee Facility. The Muskogee facility has been and continues to be in compliance with the terms of its NPDES Permit as well as the related discharge and monitoring requirements of its NRC License. Attached as Exhibit 1 are the Discharge Monitoring Reports for 2003 that the Muskogee Facility has been required to file each month under its Joint Permit.

6. In 1982, data from groundwater wells near Pond 3 and the French drain that collected groundwater from beneath the liner of Pond 3 suggested that the pond liner was leaking. The Muskogee Facility contacted the NRC which approved a plan for disposing lime into Pond 3 to plug the leak. In 1984, the NRC informed the Muskogee Facility that it was no longer necessary to add the lime to Pond 3 because the solution had apparently worked. In 1989, Pond 3 suffered a failure of its liner, allowing radiological/ non-radiological materials to escape from the side of the pond. The Muskogee Facility notified EPA, the NRC and the OWRB and immediately took steps to address the impact of the leak. In addition, Fansteel proposed to conduct a remedial assessment ("RA") to identify impacts from past and current operations. In August 1992, the OWRB advised Fansteel that the RA satisfied the state standards for a site assessment. Fansteel's NRC license was then amended in December 1992 to incorporate the RA as a foundation for decommissioning of the Muskogee Facility. The RA was performed during the winter of 1992 and 1993. The RA revealed that the soils and shallow groundwater near the six Ponds and immediately downgradient of the buildings where reprocessing took place were impacted from radiological and non-radiological contaminants.

7. Fansteel conducted decommissioning activities on 35 acres located in the northwest portion of the Muskogee Facility. The NRC approved this area for unrestricted use in August 1999 and removed the parcel from the jurisdiction of the NRC License. Fansteel subsequently sold 19.51 acres of this property to the Port of Muskogee in 1999 (the "Port"). In July 2003 letter, the director of Port informed the ODEQ that the Muskogee Facility was identified in the Port's Master Plan of Redevelopment as a property suitable for further expansion of the Port and that the Port was interested in ultimately acquiring all of the Muskogee Facility and that the Port was interested in moving forward to acquire additional parcels of the Muskogee

Facility as soon as possible. The Port sent a copy of this letter to the Sarah Penn, the attorney from the office of the Oklahoma Attorney General working on the objection to the Plan. A copy of this letter is attached as Exhibit 2.

8. Fansteel completed construction of a groundwater interception trench along the eastern perimeter of the Muskogee Facility in 1999 to capture the shallow groundwater migrating from the Muskogee Facility. The trench is connected to the existing wastewater treatment system and the treated groundwater is then discharged to the Arkansas River in compliance with the NPDES permit. Fansteel is continuing to monitor the shallow groundwater as a condition of its NPDES permit and the interceptor trench system continues to collect and route the groundwater to the wastewater treatment system.

9. In 1999, a moderate strength tornado passed through the area near the Port of Muskogee. Wind-blown debris associated with the tornado tore the liners of Ponds 3, 8 and 9 above the water line and damaged a stored soil cover. The strong winds also damaged bags stored in a secure place and containing material excavated from Pond 5, allowing low-level radiological material to spread over a 10-foot diameter area. Fansteel collected and removed the material pursuant to NRC approval.

10. In February 2000, a small amount of hydrofluoric acid was released into the air from the Muskogee Facility's scrubber system. No radiological materials were emitted and the incident did not effect the buildings, equipment or soils at the Muskogee Facility.

11. In 1989, operations ceased at the Muskogee Facility which triggered the NRC decommissioning requirements. Fansteel posted financial assurances in the amount of \$750,000 in 1990 to cover the estimated decommissioning costs which was increased to approximately

\$4.5 million in 1995 following a revision to the NRC regulations. Also in 1995, Fansteel submitted an amended decommissioning plan to allow it to reprocess the WIP and CaF as part of the decommissioning process. The NRC approved this amendment in 1997 and Fansteel began constructing a reprocessing plant at the Muskogee Facility. In 1999, Fansteel proposed to amend its decommissioning plan to construct a containment cell on the Muskogee Facility but withdrew this proposal because of local opposition and because off-site disposal costs became more competitive, making the containment cell unnecessary. After the price of tantalum collapsed in 2001, the reprocessing plant was no longer a viable alternative. Fansteel decided to suspend the reprocessing activities but the write-off of this effort triggered certain technical defaults in Fansteel's loans that forced the company to file a petition for relief under chapter 11 of the United States Bankruptcy Code. In March 2002, the NRC drew upon the \$4.5 million financial assurance and denied Fansteel's request to delay implementation of decommissioning or to extend its license. In January 2003, Fansteel submitted an amended decommissioning plan. Following negotiations in 2003, Fansteel was able to reach an agreement with the NRC to implement the four-phase decommissioning of the Muskogee Facility as outline in the Plan. On November 7, 2003, NRC informed Fansteel that the agency was prepared to issue an amendment to its NRC License approving the amended decommissioning plan. In this letter, NRC also advised Fansteel that the financial instruments proposed to be used to satisfy its decommissioning financial assurance requirements combined with the amended NRC License would be acceptable when the financial instruments were executed. A copy of this letter is attached as Exhibit 3.

12. In connection with the approval of the amended decommissioning plan, the NRC prepared an Environmental Assessment (the "NRC EA") to determine the environmental

impacts of the approval of the amended decommissioning plan, the subsequent release of the Muskogee Facility for unrestricted use and the termination of the NRC License. On the basis of the NRC EA, the NRC concluded that there would be no significant environmental impacts from the proposed action and that the amendment of the NRC License does not warrant preparation of an Environmental Impact Statement. Therefore, the NRC concluded it was appropriate to make a "Finding of No Significant Impact ("FONSI"). A notice of the NRC EA and the FONSI was published in the November 7, 2003 issue of the Federal Register (68 FR 63134). A timeline of the significant events for the Muskogee Facility is attached as Exhibit 4.

13. Upon the effective date of the Plan, Fansteel will transfer title to the Muskogee Facility to FMRI. This transfer will not involve any material change to the wastewater treatment process or to the nature of the discharge to the Arkansas River. In addition, FMRI will continue to operate the groundwater interceptor trench system and to treat the groundwater collected by the interceptor trench and the French drain. In short, the transfer to FMRI will not result in any change in operations at the Muskogee Facility nor have any impact on the discharge to the Arkansas River or the environmental conditions at the Muskogee Facility.

14. In October 2001, Fansteel timely submitted a permit application to ODEQ to renew its Joint Permit, which was scheduled to expire in April 2002. ODEQ acknowledged receipt of the renewal application in December 2001. In May 2002, the ODEQ confirmed that the expired Joint Permit was being administratively extended until such time as a new permit could be issued under the Oklahoma Pollution Discharge Elimination System ("OPDES") permit program.

15. On March 18, 2003, ODEQ issued a preliminary draft OPDES permit (the "OPDES Permit") to the Muskogee Facility. I personally discussed the terms of the proposed OPDES permit with Edward Dührberg. During this period of time, I also discussed the proposed Plan with Afsaneh Jabbar. I advised them that the Plan provided for the transfer of the Joint Permit to a subsidiary of reorganized Fansteel following the effective date of the Plan. At this time, I was personally aware of the objections of the Oklahoma Attorney General to the proposed decommissioning plan and was concerned about whether the actions filed by the Attorney General would have an impact on the processing and transfer of the proposed OPDES permit. I asked ODEQ how Fansteel should handle this issue. In particular, I asked if Fansteel should request to transfer the existing Joint NPDES/OPDES to the FMRI subsidiary, modify its permit application to provide for FMRI to become a named permittee on the OPDES permit or simply proceed with the issuance of the proposed OPDES permit. I was informed that the ODEQ wanted to issue the new OPDES permit and that the transfer to FMRI could be accomplished after the proposed OPDES Permit was issued. At no time during my conversations with the ODEQ representatives did they ever express any reservations about or indicate that there would be any problems with the transfer of the proposed OPDES permit to FMRI.

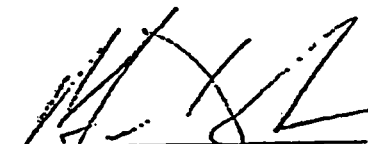
16. After considering the comments of Fansteel and obtaining approval from the EPA Region 6 office, ODEQ issued a final draft OPDES permit on September 12, 2003 which is attached as Exhibit 5. Because of the objections to Fansteel's decommissioning plan filed by the Oklahoma Attorney General, I visited the ODEQ offices on September 16, 2003 to discuss what Fansteel needed to do to transfer the OPDES permit to FMRI. I was advised by Afsaneh Jabbar that once the OPDES Permit was issued, it may be automatically transferred upon receipt of a

letter from Fansteel requesting such transfer unless there was an active enforcement action at the time of transfer. I am not aware of any environment actions filed against the Muskogee Facility.

17. After the proposed OPDES Permit was issued, the Muskogee Facility arranged to have a public notice of the proposed OPDES Permit published in the local paper on October 22, 2003 as required by the state OPDES program. ODEQ published its own notice of the proposed permit in a Oklahoma City newspaper on October 31, 2003. The publication of these notices triggered the start of the 30 day public comment period for the proposed OPDES permit. A copy of the notice filed by Fansteel is attached as Exhibit 6.


18. Based on conversations I had with Afsaneh Jabbar on November 12, 2003, no adverse comments have been received by ODEQ on the proposed OPDES Permit and Afsaneh Jabbar reaffirmed to me that the OPDES Permit could be automatically transferred to FMRI upon the conclusion of the public comment period. Based on the October 31st publication date of ODEQ's public notice, I was also told that the final OPDES would probably be issued during the first week of December.

19. As a result, on November 13, 2003, I submitted a letter to the ODEQ requesting that the existing NPDES be transferred to FMRI, or alternatively, that the proposed OPDES Permit be issued to FMRI. A copy of this letter is attached as Exhibit 7.


A. Fred Dohmann

Sworn to before me this

13th day of November, 2003

 David Adams
Notary Public

Public in the
Muskogee Daily Phoenix
& Times Democrat
October 21, 2003

NOTICE OF HEARING
PERMIT

POLLUTANT DISCHARGE
APPLICATION NO.
OKD001643

Notice is hereby given that
Fensteel, Inc., 10710 Midlum
Place, Muskogee, OK
74403, has filed on the 11th
day of November, 2001, an
application with the
Oklahoma Department of
Environmental Quality
(ODEQ) to renew their permit
to discharge industrial
wastewater from their
facility located in Section
16, Township 15N,
Range 19E, Muskogee
County, Oklahoma, or east
of Highway 165 and north of
Highway 202 in Muskogee,
Oklahoma. The proposed
discharge, which will consist
of process wastewater from
secondary treatment
facility, 1. contaminated
groundwater, plant wash
down water, compressor
cooling water, and storm
water from areas
undergoing remediation
(Outfall 001), and storm
water runoff (Outfall 002,
003, and 005), will be to the
Arkansas River. Outfall 001
is located in the SE1/4,
NW1/4, SW1/4, Section 16,
T15N, R19E, Muskogee
County, Oklahoma, at
Latitude N 35° 45' 22.283",
Longitude W 95° 18'
03.555". Outfall 002 is
located in the SE1/4,
NW1/4, SW1/4, Section 16,
T15N, R19E, Muskogee
County, Oklahoma, at
Latitude N 35° 45' 28.733",
Longitude W 95° 18'
05.114". Outfall 003 is
located in the NE1/4,
NW1/4, SW1/4, Section 16,
T15N, R19E, Muskogee
County, Oklahoma, at
Latitude N 35° 45' 28.020",
Longitude W 95°
18'08.602". Outfall 005 is
located in the SE1/4,
SW1/4, SW1/4, Section 16,
T15N, R19E, Muskogee
County, Oklahoma, at
Latitude N 35° 48' 15",
Longitude W 95° 18' 15".
The facility also proposes to
operate 22 flow-through
surface impoundments,
F01-F04, and three total
retention surface
impoundments, T01-T03.
These impoundments are
located in the SW1/4 of
Section 16, Township 15N,
Range 19E, Muskogee

In the Court of County,
State of Oklahoma

Plaintiff

vs.

Defendant

Affidavit of Publication

STATE OF OKLAHOMA

SS:

MUSKOGEE COUNTY

Terry L. Sumner of lawful age, being duly sworn, upon oath states that she is the Accounting Clerk
of the Oklahoma Press Publishing Company, a corporation, owner and publisher of the Muskogee Daily Phoenix, a daily newspaper,
printed in the English language; that said newspaper is printed and published in Muskogee County, Oklahoma, and has a paid general
subscription circulation (therein); that said newspaper is admitted and delivered to the United States Mails within Muskogee County,
Oklahoma as second-class mail matter; that said newspaper has been published in said county continuously and uninterruptedly during
a period of one hundred forty (104) week consecutively, prior to the first publication of the notice or advertisement of which a copy
is hereto attached.

Affiant states that said newspaper has complied with all the provisions of Section 1 of Senate Bill No. 47 of the Nineteenth
Legislature of the State of Oklahoma, passed and approved April 13, 1943, and the amendments thereto, and has complied with all
the laws of the State of Oklahoma necessary to authorize it to publish legal notices and legal advertisements.

The advertisement above referred to, a true and printed copy of which is hereto attached, was published in said newspaper
on the following dates, to-wit:

1st Insertion	<u>October 21, 2003</u>	20	6th Insertion	20
2nd Insertion	20	7th Insertion	20	
3rd Insertion	20	8th Insertion	20	
4th Insertion	20	9th Insertion	20	
5th Insertion	20	Last Insertion	20	

Said notice was published in the regular edition of said newspaper and not in a supplement thereof.

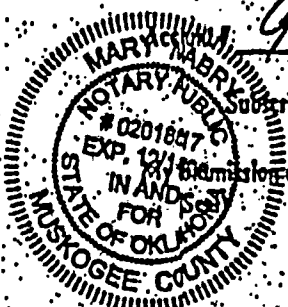
Publication Fee \$

8481

9987

Subscribed and sworn to before me this 21 day of Oct A.D., 2003

12/14/2006



(Signature)

Notary Public

This is to give notice that the DEQ has prepared a draft permit based on the application. In addition to the conditions of the proposed draft permit, the permittee will be required to comply with Oklahoma's Water Quality Standards, as amended, the Oklahoma Pollutant Discharge Elimination System Act (OPDES Act) 27A O.S. § 2-6-201 et seq., and Rules of the DEQ promulgated thereunder. Any person interested in obtaining additional information, reviewing the application and draft permit, submitting written comments, or objections relating to the issuance of this draft permit should contact:

KIM WYATT
OKLAHOMA
DEPARTMENT OF
ENVIRONMENTAL
QUALITY
P.O. BOX 1677
OKLAHOMA CITY, OK
73101-1677
(405) 702-8173

Persons wishing to file written comments on the draft permit may do so to the DEQ at the above address within 30 days after the date of publication. The comments should include: (1) name and address of the interested person; (2) the application name to which the objection or comment(s) relates; (3) the nature and basis of the interest of the person affected; and (4) a statement of the objection or comment, the basis therefor, and any requested action by the DEQ. A copy of the request must also be sent to the applicant.

The application, draft permit and other relevant documents may be viewed at the DEQ's central office at 801 N. Robinson, Oklahoma City, between 9:00 a.m. and 4:00 p.m., Monday through Friday. Any person wishing to view these documents should contact Kim Wyatt at the above address and phone number to schedule an appointment. A copy of the draft permit application and other relevant documents are also available for viewing at the Muskogee Public Library, 801 W. Okmulgee Avenue, Muskogee, between 9:00 a.m. and 7:00 p.m. on Monday-Thursday; between 9:00 a.m. and 5:00 p.m. Friday; and between 9:00 a.m. and 8:00 p.m. on Saturday. The contact person for Fanduel is A. Fred Dornhenn, who can be reached at the above address for Fanduel or at (918) 687-6303. Within ninety (90) days after the end of the comment period, the DEQ shall prepare written responses to any comments received, and either issue the permit as drafted, modify the permit or deny the permit.

Exhibit "D"
Automatic Transfer Notice of November 13, 2003

15. DeltaView comparison of iManage://NYDMS1/NEWYORK/9552103/5 and iManage://NYDMS1/NEWYORK/9552103/6. Performed on 12/11/03.



*SENT VIA FAX TO 405-702-8101
HARD COPY TO FOLLOW*

November 13, 2003

Ms. Afsaneh Jabbar PE
Manager, Industrial Permit Section
Water Quality Division
Oklahoma Department of Environmental Quality
707 North Robinson
P.O. Box 1677
Oklahoma City, Oklahoma 73101

Re: DEQ Application No. OK0001643, Fansteel, Inc., Muskogee, Oklahoma
Facility ID: No. I-51000040

Dear Ms. Jabbar:

As you know, the above referenced revised draft OPDES permit and accompanying fact sheet was issued on September 12, 2003 by the Oklahoma Department of Environmental Quality ("ODEQ") to replace the existing "Joint Authorization To Discharge Under the National Pollutant Discharge Elimination System and the Oklahoma Pollutant Discharge Elimination System" permit No. OK0001643 (the "Joint Permit") issued by the EPA to Fansteel, Inc ("Fansteel") on March 7, 1997.

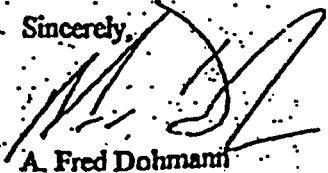
Pursuant to the "Amended Joint Reorganization Plan of Fansteel, Inc. and Subsidiaries" dated September 18, 2003 (the "Plan"), Fansteel has formed a wholly-owned subsidiary, FMRI, Inc. ("FMRI") and will transfer ownership of the above-referenced facility to FMRI upon the effective date of the Plan. The transfer to FMRI is necessary to effectuate the Plan. This transfer will not involve any material change to the wastewater treatment process at the Muskogee Facility or to the nature of the discharge to the Arkansas River. In addition, FMRI will continue to operate the groundwater interceptor trench system and to treat the groundwater collected by the interceptor trench and the French drain located at the Muskogee Facility. In short, the transfer to FMRI will not result in any change in operations at the Muskogee Facility, nor have any impact on the discharge to the Arkansas River or the environmental conditions at the Muskogee Facility.

A. Fred Dohmann
President FMRI, Inc.
A wholly owned subsidiary of Fansteel, Inc.
#Ten Tantalum Place, Muskogee, OK 74403
Phone 918-687-6303 / Fax 918-687-6112

Pursuant to OAC 252:605-3-64 and our prior conversations, where you indicated these permits could be automatically transferred to FMRI upon Fansteel's request, I am hereby requesting the Joint Permit (or if applicable if issued the OPDES Permit) be automatically transferred to FMRI on or before December 19, 2003; as required by the Plan. Fansteel is in full compliance with the terms of the Joint Permit. As President of FMRI, I certify that FMRI will be accepting full responsibility for complying with the terms and conditions of the Joint Permit and/or the OPDES Permit.

Please feel free to contact me at 918-687-6303 if you need further information or have any questions about this transfer request.

Sincerely,



A. Fred Dohmann
President
FMRI

Copy to: Gary Tessitore
Mike McEntee

Exhibit "E"
OAG Comments to OPDES Permit



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

Kim Wyatt
Water Quality Division
Oklahoma Department of Environmental Quality
P.O. Box 1677
Oklahoma City, OK 73102-1677

RECEIVED
DEC 01 2003
WATER QUALITY DIVISION

December 1, 2003

Dear Ms. Wyatt:

On behalf of the State of Oklahoma and pursuant to OAC 252:605-1-5(b)(4)(H) & (I) which adopts by reference 40 CFR §§124.10, 124.11, the Office of Attorney General of the State of Oklahoma hereby offers the following comments to permit application number OK0001643.

- 1) Based on a review of Fansteel Inc.'s ("Fansteel") permit application, draft permit and fact sheet, no information has been submitted by Fansteel which would demonstrate that the financial capability requirement of OAC 252:616-3-4(f) has been met.
- 2) A review of the file finds a letter from Fred Dohmann, President of FMRI, Inc. ("FMRI") to Afsaneh Jabbar, Manager, Industrial Permit Section of the Water Quality Division of the Oklahoma Department of Environmental Quality ("ODEQ") dated November 13, 2003. Said letter indicates that the permit held by Fansteel must be transferred to FMRI and that this letter is to be considered a request for transfer of Fansteel's Joint Permit (or if applicable the OPDES permit) to FMRI.

OAC 252:616-3-4(g) requires that the transferee has legal authority and financial accountability, and that both parties agree to the transfer. First there has been no showing that Fred Dohmann has the necessary legal authority to request such a transfer on behalf of Fansteel or FMRI. No showing has been made to demonstrate that FMRI meets the financial accountability requirements. Finally, nothing in the file indicates that Fansteel agrees to the request for transfer of the permit application.

- 3) A review of the draft permit indicates no limits or monitoring requirements have been placed on the contaminants of thorium and uranium.

In order for a permit to be issued to the applicant and for the request for transfer of the permit application to be granted, the comments raised above should be addressed and the applicant must fully comply with the DEQ's regulatory requirements.



FROM FANSTEEL INC.

02-12-03 09:55am From-

(TUE)12 2 2003 10:40/ST.10:39/NO.5011267303 P 3

T-818 P.03/03 F-133

On behalf of the State of Oklahoma and pursuant to OAC 252:605-1-5(b)(4)(I)&(J) which adopts by reference 40 CFR §§124.11, 124.12 and pursuant to §§ 2-14-302 and 2-14-303 of Oklahoma Uniform Environmental Permitting Act, the Office of Attorney General of the State of Oklahoma requests a public meeting on the proposed draft permit.

Respectfully submitted,



Sarah E. Penn
Assistant Attorney General
OK Bar Number 16032
Office of the Attorney General
State of Oklahoma
4545 N. Lincoln Blvd., Suite 260
Oklahoma City, OK 73105
(405) 522-4413
(405) 522-1867 (fax)
Sarah.Penn@oag.state.ok.us

cc: Don Maisch,
Environmental Attorney Supervisor
Afshanah Jabbar,
Manager, Industrial Permit Supervisor
Water Quality Division

Exhibit "F"
December 2, 2003 Response to OAG Comments

17.....DeltaView comparison of iManage://NYDMS1/NEWYORK/9552103/5 and
iManage://NYDMS1/NEWYORK/9552103/6. Performed on 12/11/03.

Fansteel

Ms. Afsaneh Jabbar PE
Manager, Industrial Permit Section
Water Quality Division
Oklahoma Department of Environmental Quality
707 North Robinson
P.O. Box 1677
Oklahoma, Oklahoma 73101

Re: DEQ Application No. OK0001643, Fansteel Inc., Muskogee, Oklahoma
Facility ID No. I-51000040 (the "Draft OPDES Permit")

Dear Ms. Jabbar:

We are responding to the filed "comments" set forth in the December 1, 2003 letter (the "Letter") requesting a public meeting on the above referenced Draft OPDES Permit¹ by the Office of the Attorney General of the State of Oklahoma (the "OAG").

As you know, the Oklahoma Department of Environmental Quality ("ODEQ") caused the publication of the Draft OPDES Permit on October 31, 2003² which triggered the 30-day public comment period for the Draft OPDES Permit. Based on the October 31, 2003 publication by ODEQ, the public comment period expired on November 30, 2003.³ Based on our numerous discussions, and in the absence of any timely comments on the Draft OPDES Permit, we understood that the ODEQ would promptly issue the final OPDES Permit and immediately thereafter approve a transfer to FMRI, Inc. ("FMRI"), the wholly-owned subsidiary of Fansteel prior to December 19, 2003 in accordance with Fansteel's joint reorganization plan (the "Plan") confirmed by the United States District Court for the District of Delaware on November 17, 2003 in Fansteel's chapter 11 cases. On November 13, 2003, FMRI wrote to you regarding the

¹ The Draft OPDES Permit and accompanying fact sheet was issued on September 12, 2003 by the ODEQ to replace the existing "Joint Authorization To Discharge Under National Pollutant Discharge Elimination System and the Oklahoma Pollutant Discharge Elimination System", Permit No. OK0001643 (the "Joint Permit") issued by the United States Environmental Protection Agency ("EPA") to Fansteel Inc. ("Fansteel") on March 7, 1997.

² In fact, Fansteel itself caused publication of the Draft OPDES Permit in the Muskogee Daily Phoenix and Times Democrat on October 21, 2003, at its own expense, in order to give the general public the broadest possible opportunity for public comment.

³ Fansteel has been advised by ODEQ that since November 30, 2003 was a Sunday, ODEQ may elect to treat the December 1, 2003 Letter from the OAG as timely filed.

FILE

Fansteel

significance of the timely transfer of the Draft OPDES Permit to FMRI with respect to Fansteel's Plan.⁴ Fansteel, and FMRI, have not been advised that any further comments were submitted to ODEQ with respect to the Draft OPDES Permit and do not believe that the comments set forth in the OAG Letter have merit. By this letter we are, therefore, seeking confirmation from the ODEQ that the Draft OPDES Permit will be promptly approved and issued to Fansteel and transferred to FMRI pursuant to the Plan and in accordance with our prior discussions and correspondence.

Fansteel and FMRI request that the ODEQ immediately address the OAG's comments to the Draft OPDES Permit and their request for a public meeting to avoid any delay that might unduly jeopardize Fansteel's ability to implement its Plan. As previously indicated, in order for the Plan to go "effective" the Draft OPDES Permit, including the transfer to FMRI, must be approved no later than December 17, 2003.⁵ Failure to satisfy this condition may have severe adverse impact on Fansteel and its related debtor subsidiaries, including the possibility that Fansteel's Plan may not go effective to the detriment of all parties-in-interest, including the OAG. Fansteel believes that it has satisfied all requirements for issuance of the final OPDES Permit such that it should be approved without further delay. Further, for the reasons set forth below, Fansteel believes that the ODEQ has the authority to immediately issue and transfer the OPDES Permit notwithstanding the Letter received by the OAG.

As indicated above, the Plan was confirmed on November 17, 2003 by order (the "Confirmation Order") of the District Court (the "Court") for the District of Delaware. A copy of the Confirmation Order (which includes as an exhibit the Plan) has been enclosed herewith for your reference. Among other things, the Court, upon a review of the evidence and testimony presented by Fansteel at the confirmation hearing held on November 17, 2003, including the Memorandum in Support of Confirmation of the Plan and the accompanying affidavits and exhibits thereto filed by Fansteel on November 14, 2003 (a copy of which will be provided upon request), concluded that the formation of the special purpose subsidiaries ("SP Subs") and the transfer of assets and assumption of environmental obligations by these SP Subs, including without limitation, FMRI and the transfer of the final OPDES Permit, were essential and necessary components to implementation of Fansteel's Plan and "shall be deemed to

⁴ Fansteel and FMRI withdraw the November 13, 2003 letter to avoid any undue confusion with respect to the public comment period, based on discussions with the ODEQ, in the interest of expediting the administration of the Draft OPDES Permit application.

⁵ Article IX.B of the Plan, a copy of which is provided with the Confirmation Order that has been enclosed for your reference, requires that the Draft OPDES Permit and transfer to FMRI occur on or before December 20, 2003 as a condition to the Effective Date. As December 20, 2003 is a Sunday, and as various documents, including the Exit Facility, will require evidence of the transfer, Fansteel is seeking to have approval no later than December 17, 2003. This is consistent with the information provided in Fansteel's November 13, 2003 letter regarding the transfer to FMRI.

Fansteel

the hearing or to challenge the evidence presented by Fansteel with respect to financial feasibility of the Plan, including those aspects relating to FMRI and the continued operation under the Joint Permit and/or final OPDES Permit. The OAG is, therefore, now estopped from attempting to challenge the Court's findings of fact in this regard or to collaterally attack the Confirmation Order as it is attempting to do by its late comments.

As to the OAG's second comment, FMRI has withdrawn the November 13, 2003 letter requesting the transfer on or about November 26, 2003. See footnote 4 herein. Further, the OAG's assertion that FMRI has no authority to request the transfer and that there is no evidence that both parties have agreed to the transfer is simply spurious. The Confirmation Order, as discussed above, authorizes and approves the transfer of the permit by Fansteel to FMRI as expressly set forth in the Plan. See Plan at Article IV, see also, Confirmation Order at ¶¶ AA and GG. Moreover, the Certificate of Incorporation and By-Laws of FMRI filed with the Plan Supplement, a public document, clearly set forth the authority of FMRI to undertake all necessary actions with respect to the Joint Permit and/or final OPDES Permit. However, in the event that there still remains any doubt, this letter has been executed by officers of both Fansteel and FMRI with the authority to designate such consent to a transfer of the Joint Permit and/or final OPDES Permit.

Lastly, as to OAG's assertion that the Draft OPDES Permit fails to identify any limits or monitoring requirements for thorium or uranium, Fansteel acknowledges that the Draft OPDES Permit does not have discharge monitoring requirements for those elements, although the Draft OPDES Permit does require Fansteel to monitor for alpha particles on a semi-annual basis.⁷ The Joint Permit and all prior permits did not contain such monitoring requirements. In fact, Part II.J of the Draft OPDES Permit specifically provides that the discharge and disposal of "radioactive materials" shall be done in accordance with the NRC License. Discharges of "radioactive materials" are subject to the exclusive jurisdiction of the NRC and expressly provided for in the NRC License. Again, the jurisdiction of the NRC over the discharge of "radioactive materials" was conclusively determined by the Court at the confirmation hearing and may not now, after the hearing, be challenged by the OAG. See Transcript at Pages 27-31. The OAG's comments, therefore, are entirely without merit and should not delay issuance of the Draft OPDES Permit and transfer to FMRI by ODEQ.

Fansteel and FMRI would also like to bring to your attention that in furtherance of the Court's Confirmation Order and Fansteel's efforts to implement the Plan, the Court indicated on the record at the confirmation hearing, that in exercise of its authority under 11 U.S.C. § 1125(a)(5), it would enjoin any effort by the OAG to delay

⁷ See Part II.H(3) and (6) of the Draft OPDES Permit.

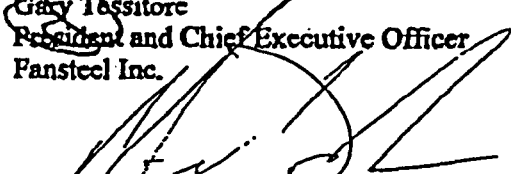
Fansteel

or stay transfer of the Joint Permit and/or the final OPDES Permit to FMRI to the extent such actions would likely prevent implementation of the Plan. See Transcript Page 31, Lines 2-14.

Based on the foregoing, Fansteel and FMRI do not believe that the OAG has a valid basis to interfere with, cause delay, or collaterally attack the issuance of the Draft OPDES Permit and immediate transfer to FMRI. We, therefore, ask that ODEQ either immediately (i) approve the Draft OPDES Permit and subsequently authorize transfer to FMRI or (ii) authorize transfer of the Joint Permit to FMRI so as not to unduly interfere with implementation of Fansteel's Plan. Please advise no later than 4:00 P.M., central time, Thursday, December 4, 2003 as to the ODEQ's position so that we may determine what appropriate actions, if any, may be necessary to preserve the interests of Fansteel's estates.

Sincerely,



Gary Tessitore
President and Chief Executive Officer
Fansteel Inc.

A. Fred Dohmann
President
FMRI, Inc.



constitute transfers in exchange for reasonably equivalent value and fair consideration under the Bankruptcy Code and applicable non-bankruptcy law and shall be valid and enforceable transfers regardless of whether consent thereto has been granted or denied by any Governmental Unit". See Confirmation Order at ¶¶ AA and GG. The Court also concluded that the Plan was financially "feasible" and that the funding of the SP Subs through the various notes to be issued by Reorganized Fansteel was sufficient to address all necessary environmental obligations, including those to be assumed by FMRI with respect to the Joint Permit and/or final OPDES Permit, as the case may be. See Page 26, Lines 7-21 of the transcript from the confirmation hearing (the "Transcript"), also enclosed. The Court further concluded that Fansteel has complied with, and "FMRI will comply with all obligations imposed by the NPDES Permit" following the Effective Date of the Plan. See Confirmation Order at ¶ II(vi). Based on the Court's findings of fact and conclusions of law at the confirmation hearing and as set forth in the Confirmation Order, the Court approved, among other things, the transfer of the Muskogee Facility assets to FMRI and FMRI's assumption of all environmental obligations related thereto, including the Joint Permit and/or the final OPDES Permit, as the case may be. See Confirmation Order at ¶¶ 8 & 13. Further the Plan and all terms and conditions set forth therein are binding not only on Fansteel and the SP Subs but also upon any "Governmental Unit with respect to any Environmental Obligation treated or assumed under the Plan", see Confirmation Order at ¶ 12, including, without limitation, the ODEQ and the OAG.

Further Fansteel has reviewed the comments of the OAG and finds them to be entirely without merit such that ODEQ is not required to hold a public meeting as requested by the OAG. Paragraph 1 of the OAG comments states that Fansteel has not submitted any information to demonstrate it satisfies the financial capability requirements of OAC 252:616-3-4(f). In the first instance, we wish to point out that Fansteel has not been required to make such a demonstration in the past under the prior or Joint Permit since this requirement pertains to the closure of the lagoons and is subject to the exclusive jurisdiction of the Nuclear Regulatory Commission ("NRC"). Further, the NRC has approved the financial assurance mechanism for decommissioning the Muskogee Facility⁶, including the closure of the lagoons. See Transcript at Pages 24-25, & 26-31. As indicated above, the Court, after a review in an open and public confirmation hearing of the evidence and testimony presented by Fansteel with respect to the financial assurances and feasibility of its Plan, and upon consideration of the OAG's objection to confirmation that it filed on or about November 10, 2003 which challenged financial feasibility and good faith, expressly overruled the objections of the OAG and found that the "record of evidence was overwhelming, that the financial aspects of the plan are certainly feasible". See Transcript Page 26, Lines 7-24. The OAG, which was fully aware of the confirmation hearing, elected not to attend

⁶ Capitalized terms not otherwise defined herein shall have the meanings ascribed in the Plan.

Exhibit "G"
December 8, 2003 Notice Re: NPDES Transfer



December 8, 2003

Ms. Afsaneh Jabbar
Engineering Manager I
Water Quality Division
Oklahoma Department of Environmental Quality
707 North Robinson
P.O. Box 1677
Oklahoma City, Oklahoma 73101

Re: DEQ Application No. OK0001643, Fansteel, Inc., Muskogee, Oklahoma
Facility ID. No. I-51000040

Dear Ms. Jabbar:

On November 13, 2003, Fansteel, Inc. ("Fansteel") requested that the above-reference draft OPDES permit be transferred to its newly-formed, wholly-owned subsidiary, FMRI, Inc. ("FMRI") by the effective date of the Fansteel plan of reorganization (the "Plan"). If the OPDES Permit would not be issued by the effective date of the Plan, Fansteel indicated that it intended to have its existing NPDES Permit transferred to FMRI pursuant to OAC §252:605-3-64.¹

Since the November 13th letter, Judge Joseph Farnan of the United States District Court for the District of Delaware held a confirmation hearing on the Plan and issued a confirmation order providing for the transfer of all assets of Muskogee Facility (including the Joint Permit) to FMRI² and requiring FMRI to comply with the terms of the Joint Permit.³

Since the Plan was confirmed, Fansteel is now able to estimate the effective date of the Plan. We are writing to advise you that Fansteel intends to transfer the Joint Permit to FMRI pursuant to OAC §252:605-3-64 on December 12, 2003 as of 5 PM Central Standard Time..

¹ On November 26th, Fansteel withdrew its request to transfer the proposed OPDES permit to FMRI after being informed by you that this request would likely delay the issuance of the proposed OPDES permit since the request would have to be considered a comment filed during the 30 day public comment period that would necessitate the scheduling of a public hearing. However, the withdrawal of its request to transfer the proposed OPDES permit did not affect in any way Fansteel's notice of its intent to transfer its existing "Joint Authorization To Discharge Under the National Pollutant Discharge Elimination System and the Oklahoma Pollutant Discharge Elimination System" permit No. OK0001643 (the "Joint NPDES Permit") to FMRI.

² Confirmation Order of Judge Farnan dated November 17, 2003 ("Confirmation Order") at ¶ 13. Pursuant to the Plan and the Confirmation Order, Fansteel will transfer ownership of the Muskogee facility and all equipment to FMRI upon the effective date of the Plan. The transfer to FMRI is necessary to effectuate the Plan.

³ Confirmation Order at ¶ II(vi)

This transfer will not involve any material change to the wastewater treatment process at the Muskogee Facility or to the nature of the discharge to the Arkansas River. FMRI will continue to use the same personnel that Fansteel has utilized to operate its wastewater treatment system, will continue to operate the groundwater interceptor trench system, and to treat the groundwater collected by the interceptor trench and the French drain located at the Muskogee Facility. In short, the transfer to FMRI will not result in any change in operations at the Muskogee Facility nor have any impact on the discharge to the Arkansas River or the environmental conditions at the Muskogee Facility.

In accordance with OAC §252:605-3-64(a)(1), FMRI is certifying by the signature below of its President, Fred Dohmann, that it will accept full responsibility for complying with the terms and conditions of the Joint Permit. In addition, the Confirmation Order provides that FMRI shall comply with the terms of the Joint Permit after it is transferred to FMRI.⁴

Pursuant to OAC § 252:605-3-64(b), a prerequisite for an automatic transfer of wastewater discharge permit is that the transferor be in substantial compliance with the terms of its permit and the transferee be in substantial compliance with DEQ requirements. Fansteel is and has been in substantial compliance with the terms of the Joint Permit. FMRI has not yet commenced operations but will comply with all applicable DEQ requirements once it commences operations at the Muskogee Facility.

⁴ Confirmation Order ¶ II(vi)



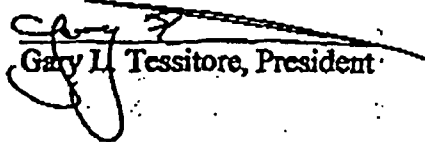
Please feel free to contact Mr. Fred Dohmann at 918-687-6303 if you need further information or have any questions about this notice of transfer.

Very truly yours,

FMRI, Inc.

FANSTEEL INC.

A. Fred Dohmann, President

A handwritten signature in black ink, appearing to read "Gary L. Tessitore". The signature is written over a horizontal line that separates it from the printed name below.
Gary L. Tessitore, President

Fansteel

Please feel free to contact Mr. Fred Dohmann at 918-687-6303 if you need further information or have any questions about this notice of transfer.

Very truly yours,

FMRL Inc.


A. Fred Dohmann, President

FANSTEEL INC.


Gary L. Tessitore, President

Exhibit "H"
December 10, 2003 Notice Re: Transfer of OPDES Application

ansteel

Specialty Metals

December 10, 2003

Ms. Afsaneh Jabbar
Engineering Manager I
Water Quality Division
Oklahoma Department of Environmental Quality
707 North Robinson
P.O. Box 1677
Oklahoma City, Oklahoma 73101

Re: DEQ Application No. OK0001643, Fansteel, Inc., Muskogee, Oklahoma
Facility ID. No. I-51000040

Dear Ms. Jabbar:

On November 13, 2003, Fansteel, Inc. ("Fansteel") requested that the above-reference proposed OPDES permit be transferred to its newly-formed, wholly-owned subsidiary, FMRI, Inc. ("FMRI") by the effective date of the Fansteel plan of reorganization (the "Plan").¹

ODEQ subsequently orally notified advised Fansteel on December 1, 2003 that the Water Quality Division of the Oklahoma Department of Environmental Quality ("ODEQ") would not issue the above-referenced proposed OPDES permit by the December 18, 2003 effective date of the Plan because of comments received by the Office of Attorney General ("OAG").²

Please be advised that on November 17, 2003, Judge Joseph Farnan of the United States District Court for the District of Delaware held a confirmation hearing on the Plan and issued a confirmation order providing for the transfer of all assets of Muskogee Facility (including permits) to FMRI³. Accordingly, to comply with the terms of the Confirmation Order and in my capacity.

¹ On November 26th, Fansteel withdraw its request to transfer the proposed OPDES permit to FMRI after being informed by you that this request would likely delay the issuance of the proposed OPDES permit since the request would have to be considered a comment filed during the 30 day public comment period.

² The 30 day comment period mandated by OAS §27A-2-14-301 and set forth in the form of "Notice of Tier II Draft Permit" provided by ODEQ to Fansteel, and which Fansteel caused to be published in the Muskogee Daily Phoenix and Times Democrat expired prior to the time that the OAG submitted its comments on the proposed OPDES Permit to the ODEQ.

³ Confirmation Order of Judge Farnan dated November 17, 2003 ("Confirmation Order") at ¶ 13. Pursuant to the Plan and the Confirmation Order, Fansteel will transfer ownership of the Muskogee facility and all equipment to FMRI upon the effective date of the Plan. The transfer to FMRI is necessary to effectuate the Plan.

A. Fred Dohmann
President FMRI, Inc.

A wholly Owned Subsidiary of Fansteel, Inc.
#Ten Tantalum Place, Muskogee, OK 74403
Phone 918-687-6303 / Fax 918-687-6112

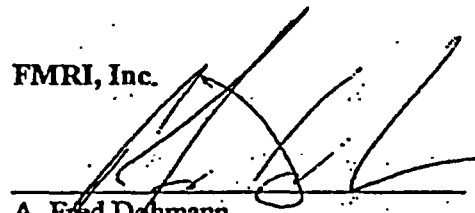
as both the current general manager of Fansteel's Muskogee facility and the President of FMRI, I am advising you that upon the effective date of the Plan, the name of the applicant for the above-referenced proposed OPDES permit shall change from Fansteel Inc. to FMRI, Inc.

This name change will not in any way involve any material change to the wastewater treatment process at the Muskogee Facility or to the nature of the discharge to the Arkansas River. FMRI will continue to use the same personnel that Fansteel has utilized to operate its wastewater treatment system, will continue to operate the groundwater interceptor trench system, and to treat the groundwater collected by the interceptor trench and the French drain located at the Muskogee Facility. In short, changing the name of the applicant to FMRI will not result in any change in operations at the Muskogee Facility nor have any impact on the discharge to the Arkansas River or the environmental conditions at the Muskogee Facility.

Please feel free to me at 918-687-6303 if you need further information or have any questions about this notice of this name change.

Very truly yours,

FMRI, Inc.



A. Fred Dohmann
President, FMRI

AFD/la

Attachments

Copy to: Jon Jackson
Keyton Payne
File

A. Fred Dohmann
President FMRI, Inc.
A wholly Owned Subsidiary of Fansteel, Inc.
#Ten Tantalum Place, Muskogee, OK 74403
Phone 918-687-6303 / Fax 918-687-6112

Exhibit "I"
Transcript of Confirmation Hearing

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
FANSTEEL, INC.,) Case No. 02-44 JJF
Debtors.)

Wilmington, Delaware
844 King Street
Courtroom 4B
November 17, 2003
5:00 p.m.

BEFORE: HONORABLE JOSEPH J. FARNAN, JR.,
United States District Court Judge

APPEARANCES:

LAURA DAVIS JONES, ESQ.
PACHULSKI, STANG, ZIEHL, YOUNG, JONES
& WEINTRAUB

-and-

JEFFREY SABIN, ESQ.
RONALD RICHMAN, ESQ.
SCHULTE, ROTH & ZABEL
For the Debtors

ADAM LANDIS, ESQ.
LANDIS, RATH & COBB
For the Creditors Committee

RICHARD GLADSTEIN, ESQ.
DEPARTMENT OF JUSTICE

MARIA SCHWARTZ, ESQ.
For the NRC

0

2

1 Appearances, Continued:

2

3

4

5

HOWARD COHEN, ESQ.
REED SMITH, LLC
For J.P. Morgan Chase

CARL KUNZ, ESQ.
MORRIS, JAMES, HITCHENS & WILLIAMS
Page 1

Fansteel.txt
For Tamus State Bank

DAVID BOOKBINDER, ESQ.
OFFICE OF THE UNITED STATES TRUSTEE

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

3

1 THE COURT: Good afternoon.

2 MS. JONES: Good afternoon, Your
3 Honor.

4 THE COURT: All right. We're here
5 in the Fansteel matter.

6 MS. JONES: Yes, Your Honor. Good
7 afternoon. Laura Davis Jones of Pachulski,
8 Stang, Ziehl, Young, Jones & Weintraub on behalf
9 of Fansteel and related debtors.

10 Your Honor, if I may, I'd like to
11 refer to the amended notice of agenda scheduled

12 for hearing today.

13 Your Honor, the first matter is our
14 motion for approval of sale of the assets related
15 to the Plainfield site. You separately heard of
16 no competing bids, Your Honor, and indeed we had
17 no auction.

18 So what we're looking for is
19 approval of a sale for \$1 million cash, and
20 assumption of all of the environmental exposure.
21 The proceeds of the sale will provide additional
22 cash for distribution under the plan.

23 The timing supports the 1146(c)
24 exception that we seek as part of the motion

4

1 because this is imminent to a plan, indeed the
2 one that we'll be presenting today.

3 There have been no objections lodged
4 to the motion, and we'll ask that it be approved.

5 THE COURT: All right. Anybody wish
6 to be heard?

7 (No response.)

8 THE COURT: All right, it's
9 approved, and the order is executed.

10 MS. JONES: Thank you, Your Honor.
11 Matter 2, Your Honor, is the motion for an order
12 approving a key operating manager severance
13 package and granting related relief. This covers
14 five key operating employees. It only comes into
15 play if within six months of the effective date
16 of the plan that we'll present to the court today
17 the new board would discharge any or all of these

18 employees without cause.

19 The Debtors believe it's critical to
20 obtain, retain, and reorganize Fansteel's
21 operating subsidiaries. None of the five
22 employees have employment contracts; therefore,
23 we think it's even more critical to try to have
24 some program in place for them.

5

1 There's been no objections lodged to
2 this, and we ask that it be approved.

3 THE COURT: Anybody wish to be
4 heard?

5 (No response.)

6 MS. JONES: We've sought the
7 approval as part of the plan confirmation order
8 that we would submit to the court at the end of
9 this hearing if we should get finally to this
10 point.

11 Your Honor, the third matter
12 likewise has no objection, but there have been
13 pro se letters. I'd like to yield the podium to
14 our co-counsel to present that matter to Your
15 Honor.

16 THE COURT: All right, thank you.

17 MR. RICHMAN: Good afternoon, Your
18 Honor. Ronald Richman from Schulte, Roth &
19 Zabel.

20 The third item is an October 31,
21 2003 motion by the Debtors for determination that
22 the Debtors satisfy the financial requirements
23 for a distress termination of the Fansteel

24 consolidated employees pension plan.

6

1 The test for that determination is
2 that unless the plan is terminated, the Debtors
3 will be unable to pay debts pursuant to a plan of
4 reorganization, and will be unable to continue in
5 business outside of the reorganization process.

6 In short, the test is whether the
7 Debtor will be unable to reorganize and to
8 continue in business without the plan
9 termination.

10 In support of the motion, we have
11 submitted affidavits for the actuary of the plan
12 who has laid out the funding requirements for ten
13 years, as well as the, we've gone into the cash
14 requirements that have to be paid, both funding
15 and PBGC; Pension Benefit Guarantee Corporation
16 premiums.

17 We also have an affidavit from the
18 CFO of Fansteel Inc. who has laid out why the
19 plan of reorganization would not be able to go
20 forward if the plan weren't terminated.

21 And thirdly, we have an affidavit of
22 the chairman of the unsecured creditors
23 committee, who has stated that no reorganization
24 would take place without a distressed termination

7

1 of the pension plan.

2 All the affiants are in the court
3 today and certainly able to respond to any of
4 Your Honor's inquiries.

5 There were five plan participants
6 who responded to a notice that went out to all of
7 the plan participants. Some of these letters
8 just went to Schulte, Roth & Zabel, some of them
9 I believe were documented by the court.

10 It does not appear that any of these
11 five individuals will have their benefits reduced
12 by the plan termination. And that is because
13 their benefits are below certain levels, and
14 occur under certain circumstances so that it does
15 not appear that any of them will have their
16 benefits reduced, any of these five individuals.

17 We have also received nine telephone
18 calls that we have logged in response to the
19 notice, and again, we're not aware of an
20 individual who has placed the call who will have
21 their benefits reduced as a result of the planned
22 termination.

23 The finding that we request, Your
24 Honor, in connection with the pension plan, is

8

1 also part of the global confirmation proposed
2 order, and key part here is that the Debtor's
3 deal with the Pension Benefit Guarantee
4 Corporation is contingent upon that, upon the
5 confirmation, and the PBGC is the Pension Benefit
6 Guarantee Corporation, is a key to an essential
7 plan of reorganization.

8 THE COURT: I'm satisfied with the
9 representation about the inquiries that have
10 been, the responders that made inquiries. Is

11 there anybody else that wants to be heard?

12 (No response.)

13 THE COURT: Then we'll adopt the
14 finding as part of the global plan.

15 MR. RICHMAN: Thank you, Your Honor.

16 MR. SABIN: I don't know if it's
17 good afternoon or evening, Your Honor, but in any
18 event, thank you.

19 THE COURT: Everybody will feel
20 better if you say afternoon.

21 MR. SABIN: Jeffrey Sabin from
22 Schulte, Roth & Zabel. We are now at the last
23 item on the agenda, which is a contested matter.
24 It is contested at least in the first part by

9

1 three objections to confirmation, two of which
2 are now resolved, and I'll outline those to you,
3 and one objection which is also resolved to the
4 assumption and assignment of a particular
5 executory contract, and that dispute has to do
6 with a cure amount.

7 The first objection has to do with
8 J.P. Morgan Chase, and had to do with rights
9 under a certain trust and indenture and related
10 documents in connection with the financing in
11 Pennsylvania of certain of the assets of a
12 division of the Debtor, Fansteel Inc.

13 I'm happy to report that inside is
14 the red lined version submitted to the court as
15 part of the voluminous filings that we made on
16 the 14th, a red lined version of the non-material

17 changes to the plan. It preserves the right in
18 effect in the settlement of this objection by
19 which J.P. Morgan Chase will set off
20 approximately \$6,000 of moneys it holds in its
21 hand that the Debtors thought was there in fees
22 and expenses against the documents. The vat of
23 the money, approximately \$70,000, will be
24 returned to Fansteel and will be able to draw

10

1 with prejudice the claim filed of roughly \$8
2 million.

3 MR. COHEN: Good afternoon, Your
4 Honor. Howard Cohen, Read Smith LLP, on behalf
5 of J.P. Morgan Chase. Your Honor, that is
6 correct. The language in the revised
7 confirmation order resolves our objection. Thank
8 you.

9 THE COURT: All right, thank you.
10 The objection will be considered resolved.

11 MR. SABIN: Thank you, Your Honor.
12 The second one had to do with a filing of an
13 objection with the IRS in connection with their
14 rights of set off to a certain amount of refund
15 claimed by the Debtor, and certain claims by the
16 IRS.

17 We have preserved those rights again
18 in the proposed revisions, non-material revisions
19 to the plan, and we've also included some
20 language that the IRS wanted specifically carving
21 out in the release section of the plan.

22 So those two objections are

23 resolved, and that leads to the third objection,
24 which is the State of Oklahoma. They were served

11

1 with all of the files, including the confirmation
2 brief, the affidavits in support.

3 I'm happy to tell you also that each
4 of the affiants whose affidavits were included
5 with submissions of November 14th are here in
6 court, ready, willing, and able to be examined
7 either by this court or by anyone else here.

8 I do not see the State of Oklahoma
9 here, and we made efforts reach out to them.
10 They have chosen for whatever reason not to be
11 here, Your Honor.

12 The essence of their objection is I
13 think fairly stated as twofold. One is a partial
14 objection to feasibility at least as it deals
15 with that part of the plan that provides funding
16 by the reorganized parent to a special purpose
17 entity which will be formed as a subsidiary which
18 will assume the obligation to decommission and
19 mediate the commission in the State of Oklahoma
20 currently owned by Fansteel Inc., which facility
21 will be transferred as a matter of law down to
22 the special purpose, and I will go through those
23 in a minute.

24 The second piece of their

12

1 obligation, of their objection, Your Honor, deals
2 with a good faith obligation, and their couching

3 of an objection in the form of good faith to say
4 that somehow this plan improperly overrides a
5 jurisdiction that we have under their statutes to
6 regulate some matters related to the Muskogee
7 facility.

8 For reasons set forth in the
9 affidavit as factual findings and for reasons set
10 forth in three primary cases, Brown vs. McGee,
11 the second of which is Northern States Power vs.
12 Monsanto, the third of which is Pacific Gas &
13 Electric. We believe that as a matter of fact
14 and as a matter of law, any and all of the
15 concerns with respect to this plan in any way
16 attempting to avoid jurisdiction that Oklahoma
17 may have does not do that, and that this court
18 can confirm this plan.

19 With that, Your Honor, may I tender
20 a summary of the relevant facts from the
21 affidavits. The witnesses are here, so that if
22 you want any more questioning or any more
23 proffering, the witnesses are here to supplement
24 it.

13

1 Your Honor, you may recall that we
2 are seeking confirmation of an amended joint plan
3 that reflects the results of slightly more than
4 one year of complex negotiations and the
5 significant contributions for which I thank many
6 in this courtroom of the Debtors' directors and
7 officers and employees; of the members and
8 representatives of the creditors committee; of

9 the professionals employees and representatives
10 of the Nuclear Regulatory Commission who are here
11 in court; of the EPA; Pension Benefit Guarantee
12 Corporation, who are also here in court;
13 Department of Navy; Department of Defense,
14 Department of Interior; NOAA, I wish I could tell
15 you what that acronym stands for; the City of
16 North Chicago; the Kentucky Department of
17 Environmental Quality; the City of Muskogee; and
18 the Illinois EPA all to arrive at and present an
19 almost fully consensual plan, providing the
20 following key items.

21 One, reorganization of these
22 Debtors. Two, the sale and distribution of
23 proceeds from the previously approved sale, and
24 now previously approved sales, of certain

14

1 divisions of Fansteel, Inc. to provide a cash
2 recovery to general unsecured creditors estimated
3 to be slightly in excess of 50 cents on the
4 dollar.

5 Three, the formation of special
6 purpose entities as subsidiaries of the
7 reorganized Fansteel which will take title to and
8 assume and perform various fully negotiated
9 environmental obligations in respect to the
10 Muskogee facility, Muskogee, Oklahoma; in respect
11 to the North Chicago facility in North Chicago,
12 Illinois; with respect to certain properties in
13 Lexington, Kentucky and Waukegan, Illinois, all
14 with funds to be provided in substantial part

15 from unsecured non-interest bearing notes from
16 reorganized Fansteel.

17 Those notes fully negotiated in
18 terms of the terms and amounts, are payable when
19 the remediation or decommissioning efforts are to
20 be performed. And those amounts are consistent
21 with the projected cash flows of reorganized
22 Fansteel.

23 Next and most importantly, the plan
24 effects, now that this court has ruled, a

15

1 termination of Fansteel's consolidated pension
2 plan, and the settlement as a result thereof of
3 approximately \$20 million of joint and several
4 termination liability owed to the PBGC by each of
5 these Debtors. The essence of that settlement
6 with the PBGC permits a reorganization of these
7 Debtors, permits general unsecured creditors not
8 only to get that estimated 50 cents cash or more,
9 but also to receive approximately 30 cents of
10 value in reorganized stock in the parent
11 reorganized Fansteel.

12 It permits shareholders, the equity
13 shareholder of the party of this company to keep
14 25 percent in the aggregate in the company's
15 reorganized company stocks. It permits the PBGC
16 to recover roughly 22 and a half percent
17 ownership in the new company, to recover cash and
18 other consideration on the account of an allowed
19 \$1.5 million general unsecured claim, and to
20 receive a note in the aggregate amount of \$9.5

Fansteel.txt
21 million payable over ten years without interest,
22 and for the most part, without collateral.

23 Finally, the plan settles more than
24 200 million of asserted EPA Cercla pre-petition,

16

1 the various Cercla Superfund sites, and settles
2 that for a participation in a general unsecured
3 creditor recovery and net insurance proceeds if
4 anyone received any.

5 For more than six months, Your
6 Honor, the only real objector to this plan has
7 been and unfortunately remains the State of
8 Oklahoma. And that's notwithstanding numerous
9 efforts from all that appear before you today to
10 try to achieve a consensus and compromise most
11 recently by actually writing a settlement during
12 September. Unfortunately, it has been rejected,
13 and unfortunately, we do not have consensus
14 today.

15 I understand the nature is twofold.
16 First, a partial attack on feasibility regarding
17 the primary notes and secondary notes which are
18 the essence of the funding mechanism by the
19 parent reorganized Fansteel to support its
20 subsidiary who shall perform work in connection
21 with the to-be-approved decommissioning plan.

22 The essence of the second objection,
23 Your Honor, as indicated, is an attack under the
24 guise of good faith and release predicated upon

17

1 what we believe to be an improper application of
Page 13

2 the-applicable facts and/or law as to the extent
3 of jurisdiction that Oklahoma today has as
4 opposed to jurisdiction that they will have when
5 the NRC license terminates, to regulate its
6 statutes regarding the clean-up of the Muskogee
7 facility.

8 At this juncture, Your Honor, I
9 would break down the affidavits into two
10 categories to respond and to support the Debtors'
11 view as set forth in its confirmation brief as to
12 why this court can consider and hopefully enter
13 confirmation.

14 Stated simply first, the affidavits
15 of Michael McEntee, Ken Malick -- Michael McEntee
16 is the CFO of the Debtors. Ken Malick, financial
17 advisor to the committee, I believe he's here
18 court.

19 And Michael Dufrayne, a principal of
20 Executive Sounding Board, the financial advisors
21 for the Debtor, together with the confirmation
22 brief and together with, and I thank the
23 government for the supporting brief filed by the
24 Department of Justice on behalf of all its

18

1 clients, the combination of those, Your Honor, I
2 think make clear that this plan is indeed
3 feasible, not only did the Debtors themselves and
4 with the help of their financial advisors develop
5 a business plan, develop a liquidation analysis,
6 develop projections, but through many months
7 which have led through that consensus, the

8 creditors committee, the Department of Justice,
9 the NRC, the PBGC with their own independent
10 experts have had a chance to vote, negotiate, and
11 look for themselves and see for themselves
12 whether indeed those projections in this plan end
13 the particular notes that support the
14 environmental obligations to be assumed by the
15 special purpose are indeed feasible.

16 I'm happy to say that I believe that
17 the affidavits set forth more than a credible
18 basis for this court to overrule that part of
19 the objection of Oklahoma.

20 At this juncture, I'll pause and ask
21 whether this court would like any questions of
22 any of those witnesses with respect to
23 feasibility.

24 THE COURT: No.

19

1 MR. SABIN: Your Honor, for the
2 second set of affidavits, deals with three. The
3 first is Fred Doughman, who is in court, who is
4 the manager of the Wisconsin facility for the
5 Debtors.

6 And the second are two experts who
7 are in court, experts who were retained by
8 Schulte Roth under its retainer order here on
9 condition, Your Honor, that any and all of the
10 fees that they have charged for their services
11 today will be subject under 1129(a)(4) for this
12 Court's review. And Scott Blouvet is in court,
13 and also Burt Smith, who is in court.

14 The essence of the facts that we
15 think these affidavits support and would reduce
16 is as follows. Mr. Blouvet, having testified
17 several times as an expert before, has been
18 involved in his prior tenure with Earth Sciences,
19 the court-approved environmental consultants for
20 the Debtor, but who is now simply unrelated to
21 Earth Science, but in his tenure there, spent
22 many hours at the Muskogee site.

23 And he also had the opportunity most
24 recently to be back at that site and review all

20

1 of the data, including without limitation the
2 amended decommissioning plan as proposed before
3 the NRC, the results of the 1993 remedial
4 assessment, the results of numerous testings made
5 subsequent to 1998 by these Debtors and all the
6 information related in his affidavit.

7 The material conclusions he reaches
8 that support finding of facts and findings of law
9 and conclusions of law that we think are most
10 material are as follows: One, he concludes that
11 the radioactive and the nonradioactive
12 contaminants are commingled at all times at all
13 places at the Muskogee facility, both above
14 surface soil and below surface soil.

15 Number two, he concludes that the
16 ground water contamination is addressed by the
17 continuous operation of a French drainage
18 interceptor trench and by the operation of a
19 waste water treatment plan, which in essence has

20 been designed and constructed and operated since
21 1999, so as to make sure that if any of their
22 contamination, radioactive and nonradioactive, as
23 it filters through the soils and gets down to a
24 bedrock level, captured by this French drain, and

21

1 then is sent by a series of pipes and pumps to
2 the waste water treatment facility where it is
3 then mixed with lime, and the resulting mixture
4 is then sent to various settling ponds where the
5 contaminants set out in one pond then another
6 pond then a third pond.

7 And at the end of the third pond
8 comes the critical component as I understand the
9 jurisdiction. It is the end of that pond where
10 the waters are then clean enough where it is
11 discharged roughly into neighboring Arkansas
12 River pursuant to the NPDES permit, as that
13 provision is provided for that in plan.

14 That permit was issued jointly by
15 the EPA and Oklahoma. Oklahoma pursuant to a
16 delegated authority regulates that permit, and
17 you'll hear more about it in a minute.

18 In any event, those discharges into
19 the river after the process that I just explained
20 have all met the standards at all times for that
21 permit.

22 The next thing that he concludes is
23 that although there is another aquifer below the
24 level of bedrock and shale, he has concluded that

22

1 there is no known contamination, radioactive or
2 nonradioactive, below this, so that indeed his
3 conclusion is the intercepted trench is working
4 and doing its job. Nothing falls through the
5 cracks, if you will.

6 The next critical component of
7 Mr. Blouvet's affidavit and direct testimony in
8 effect, Your Honor, is that his review of the
9 amended decommissioning plan and the proposed NRC
10 license, including all of the conditions as
11 publicly announced by letter of Dan Gillan and
12 publication of October 7th by the NRC, require
13 the current decommissioning of radioactive and
14 nonradioactive constituents.

15 Translated for us guys, when they go
16 in under this amended decommissioning plan and
17 they pick up the various contaminants, they pick
18 up both radioactive and nonradioactive. They
19 take it off site and dispose of it pursuant to
20 this plan through a licensed facility that is
21 licensed to accept this kind of material and to
22 dispose of it.

23 Finally, Your Honor, Mr. Blouvet
24 would indicate that the NRC license conditions

23

1 again as set forth by the November 7th filings,
2 provide, contrary to the assertions of the State
3 of Oklahoma, that after the removal of the
4 surface radioactive and nonradioactive whip and
5 calf, as so-called materials are called, that the

6 licensed conditions do provide for continued
7 ground water treatment and monitoring.

8 Again, translated as I understand
9 it, the continued operation of the interceptor
10 trench, even after the materials are removed.

11 So as to make sure for a period of
12 years, I believe at least ten years, that the
13 interceptor trench, the waste water system
14 treatment system and the whole methodology is in
15 place.

16 The second affidavit, Your Honor,
17 that is critical to understanding the position of
18 the Debtors for support for confirmation, is from
19 Burt Smith, whose affidavit and direct testimony
20 makes clear that based upon the current data
21 which he has reviewed, much of the same
22 information that I referred to Mr. Blouvet looked
23 at.

24 He concludes that but for the

24

1 radioactive contaminants, the current level of
2 the nonradioactive contaminants, based on his
3 experience of many years in Oklahoma, of Oklahoma
4 applying its standard and practices, would not
5 even require remediation.

6 The final supporting affidavit, Your
7 Honor, is from the affidavit of Fred Doughman.
8 Not only does he set forth an entire history --
9 by the way, there's an exhibit appended to set
10 forth in gory or good detail the entire history
11 since the 1950s of the history of Wisconsin.

12 But the entirety of his testimony
13 goes through addressing the threat of Oklahoma to
14 hold hostage confirmation and the effect of this
15 plan with respect to its asserted rights under
16 its statute dealing with the NPDES permit.

17 That's that permit that regulates,
18 if you will, that final discharge on a quarterly
19 basis after it goes through waste water
20 treatment, after it goes through the settling
21 ponds and goes into the river.

22 The essence of Mr. Doughman's
23 affidavit sets forth in relevant part a
24 troublesome story from our perspective. That is

25

1 the most recent history, is that the Debtors'
2 dealings and most particularly Mr. Doughman's
3 dealings with the representatives of Oklahoma
4 Department of Environmental Quality had led to
5 what we thought and what we still think
6 notwithstanding the threat and the asserted
7 objection, is as follows.

8 That recently, the exact form of
9 proposed new NPDES, or some people call OPDES,
10 permit, has been not only agreed to by Oklahoma
11 PDC but signed off by the EPA and after that
12 published because under the statutes of Oklahoma,
13 publication is required and a 30-day common
14 period is required. The 30-day common period has
15 not ended yet, I believe it is to end somewhere
16 around November 30th.

17 To date, Your Honor, there have been

18 no public comments and no objections to the form
19 of proposed new permit.

20 In addition, included in the
21 materials is a letter dated November 13th and
22 sent by Fansteel pursuant to conversations that
23 we have had requesting a transfer, either of the
24 permit as it exists today, which is in complete

26

1 compliance in terms of the Debtors, or if this
2 new permit is issued to Fansteel requesting a
3 transfer in accordance to the plan on the
4 effective date down to the special purposes
5 subsidiary known as FMRY.

6 We believe, Your Honor, that the
7 affidavits of these three gentlemen, if taken as
8 their direct testimony, which I hereby proffer
9 them as, together with the exhibits to those
10 affidavits as submitted which I would also now
11 move into evidence, form the basis not only for
12 the factual findings as set forth in the proposed
13 order, but for conclusions of law based on two
14 sets of cases. And I have copies if you would
15 like to review them, is that the NRC has
16 exclusive jurisdiction when the facts show that
17 radiological contaminants are commingling as they
18 are in this case, we would assert, with
19 nonradiological, and when the proposed
20 decommissioning plan addresses as a matter of
21 concurrent matter of decommissioning set of
22 proposals at the time. That is the essence of
23 Brown vs. McGee. And the United States by their

24 also citing that case confirms their view of that

27

1 law.

2 The second one which may or may not
3 be needed is the Pacific Gas & Electric Case, and
4 its view together with a press-setting case
5 involving Public Service of New Hampshire,
6 section 1128(a)(5), otherwise is read in a fact
7 pattern like this to indicate that if for some
8 reason Oklahoma does not either issue or give its
9 ministerial consent to the transfer of the
10 existing or new NPDES/OPDES permit, this court
11 can override that consent, so long as the
12 subsidiary in essence after the effective date
13 agrees to assume the obligations, which it does,
14 of the permit.

15 As a result of that, Your Honor, we
16 would submit that Oklahoma's regulatory
17 jurisdiction today is limited. It's limited to
18 in essence enforcing the NPDES permit, discharges
19 into the river in a manner not inconsistent with
20 the amended decommissioning plan, and the NRC
21 license, assuming that the NRC approves, which we
22 would understand would be forthcoming as soon as
23 we deliver in executed form certain the documents
24 that are included in the plan supplement.

28

1 I will point out, Your Honor, as I
2 have been asked to point out by Richard Gladstein
3 here from the Department of Justice, that
4 although that is the collective view I think of

5 the Debtors all here in the room, that Oklahoma
6 still has rights as a party-in-interest to appear
7 and be heard in an administrative hearing before
8 the NRC, and that we are not attempting in any
9 way to take away in this specific language in the
10 order of confirmation that preserves those
11 rights.

12 Your Honor, I have not alluded to
13 the other affidavits, those include Gary
14 Tessitore and others, whose affidavits I would
15 submit to you form the basis for several things
16 more that this court needs to find.

17 One is that the proposed
18 non-material changes to the plan just that,
19 pursuant to Bankruptcy Section 1127 and
20 Bankruptcy 3019, none of the changes adversely
21 effect creditors or shareholders. The affidavits
22 also support under bankruptcy 9019 and the
23 principles of TNT trailer support the plan, the
24 EP settlement, the North Chicago settlement, and

29

1 the settlement with the PBGC.

2 Finally, I'm also happy to indicate
3 that the objection has been settled, and
4 therefore the affidavits also support the
5 provisions in the plan governing assumption and
6 assignment of executory contracts.

7 With that, Your Honor, as I
8 indicated, all the witnesses whose affidavits
9 have been submitted are in court. To my
10 knowledge they are all ready, willing and able to

11 confirm that their affidavits are true and
12 correct today, that they are willing to answer
13 any question of this court or anyone else in this
14 court that would like to ask them a question on
15 cross or otherwise, and I would move their
16 affidavits and attachments as exhibits and the
17 exhibits as evidence of in support of
18 confirmation.

19 And at this juncture, I would yield
20 the podium to anyone who has got questions or who
21 would like to make statements.

22 MR. GLADSTEIN: Good afternoon,
23 Your Honor. I'm Richard Gladstein with the
24 Department of Justice, and I have with me Maria

30

1 Schwartz, who is an attorney with the general
2 counsel's office with the NRC.

3 THE COURT: Good afternoon.

4 MR. GLADSTEIN: I would concur with
5 everything just about that Mr. Sabin has said.
6 It's been a long road, and we worked hard, and as
7 I said in our memorandum to you, it's not a
8 perfect plan, but that's the nature of
9 bankruptcy, Your Honor.

10 And we believe that everyone has
11 sacrificed here in the interest of trying to get
12 the most over time, and we believe that it is in
13 everyone's interest to give the Debtor the
14 opportunity to reorganize.

15 I would note that with respect to
16 the notes to the subsidiaries related to the

17 nuclear clean-up and in our Chicago clean-up,
18 that we have North Chicago, that we have
19 indemnifications from the parent relating to
20 those notes. So it's just not just a
21 relationship to the subsidiary. The parent is
22 standing behind those notes, and we have standing
23 as third-party beneficiary if the parties don't
24 follow through, or the sub doesn't follow through

31

1 with its responsibility.

2 We are asking the court to approve
3 two separate agreements this afternoon. One
4 related to North Chicago, which is with the EPA
5 as well as several other federal agencies. The
6 other is called a settlement agreement with
7 solely the EPA related to about four different
8 Superfund sites. Those, both the consent decree
9 and the settlement agreement, were noticed in the
10 Federal Register to allow opportunity for
11 comment, and we received no comments. I believe
12 that Mr. Sabin has the originals which he will
13 tender to the court for its signature.

14 THE COURT: All right. Anyone else
15 wish to be heard?

16 MR. LANDIS: Your Honor, for the
17 record, Adam Landis from Landis, Rath & Cobb,
18 Delaware counsel for the committee of unsecured
19 creditors. I'm here today with Francis Decker
20 and Mr. Opp, who is the chair of the creditors
21 committee.

22 The creditors committee rises in

23 support of confirmation plan of reorganization.
24 We echo Mr. Sabin's and Gladstein's comments

32

1 about the enormous amount of work on an almost
2 fully consensual basis, and we're pleased to be
3 heard in support of the plan.

4 THE COURT: All right. Anybody else
5 wish to be heard?

6 (No response.)

7 THE COURT: All right. With regard
8 to the only two objections, both of which are
9 interposed by the State of Oklahoma, and
10 characterized as an objection premised on
11 feasibility and objection premised on good faith,
12 on the feasibility objection, I'm going to reject
13 it and overrule it, finding that the record
14 evidence as cited by counsel and accepted into
15 the record regarding the parent notes to
16 subsidiary and other matters is, the record
17 evidence is overwhelming, that the financial
18 aspects of the plan are certainly feasible, and
19 as the Department has said, there are provisions
20 that even further support the feasibility of the
21 plan.

22 With regard to the good faith
23 objection, I'm satisfied and will accept the
24 proffered recital of counsel as well as the

33

1 affidavits and other record evidence that's been
2 submitted.

Fansteel.txt

3 I do have a couple of questions. As
4 I understand it, and the record should reflect
5 that this hearing was noticed and there is no one
6 here from the State of Oklahoma, and I had
7 intended to ask the questions of the
8 representatives of the State of Oklahoma. But I
9 think I might be able to get my answers from, is
10 it Ms. Schwartz?

11 MS. SCHWARTZ: Yes.

12 THE COURT: I understand the project
13 as it's been described, and the extent of the
14 remediation required from the expert affidavits.

15 I'm trying to understand the
16 position of the State of Oklahoma, and am I
17 correct that absent the NRC supervision, the
18 supervision that the State of Oklahoma would
19 undertake with regard to the discharge into the
20 Arkansas River, that's a delegated supervision?

21 MS. SCHWARTZ: That's delegated from
22 the EPA.

23 THE COURT: From the EPA, correct.

24 MS. SCHWARTZ: Yes.

34

1 THE COURT: And there is no
2 implication of the regulations of the NRC in that
3 discharge?

4 MS. SCHWARTZ: No.

5 THE COURT: And that's the typical
6 delegation that you see throughout the United
7 States with regard to freshwater?

8 MS. SCHWARTZ: Yes, it is.

9 THE COURT: So that -- do you know
10 if in this particular delegation, that the
11 supervision is shared or is it a -- in Delaware
12 we have a true delegation, the Department of
13 Environmental Resources never involves the EPA,
14 although the EPA can come in and undertake an
15 investigation.

16 MS. SCHWARTZ: It works the same
17 way, Your Honor.

18 THE COURT: It works the same way,
19 okay.

20 Now, with regard -- so I would find
21 on that delegation that the objection of the
22 State of Oklahoma in that regard should be
23 rejected and overruled.

24 Now I think the more troublesome one

35

1 is the one the state interposes when there is a
2 mix of radioactive and nonradioactive
3 contamination or potential contamination. Could
4 you tell me your client's position with regard to
5 your authority vis-a-vis the State of Oklahoma?

6 MS. SCHWARTZ: As I understand it,
7 when there is radiological and nonradioactive
8 contamination that's mixed as it is in this
9 situation, the Atomic Energy Act stipulates that
10 the Nuclear Regulatory Commission has
11 jurisdiction over the contamination in total.

12 If there was a pile of contamination
13 at the site that was solely nonradiological, the
14 state would have jurisdiction over it. But in

15 this case, that doesn't happen to be the case.

16 THE COURT: That's not the facts of
17 this case; correct?

18 MS. SCHWARTZ: Right.

19 THE COURT: Now, if a little bit
20 down the road a dispute arose and you had to come
21 back into this court, which is probably where
22 you'd have to come back to -- well, I guess you
23 wouldn't have to come back here.

24 But let's assume everybody did. The

36

1 NRC would take the position that any arrangement
2 made with regard to regulation and supervision by
3 the State of Oklahoma, if the state's actual
4 underpinnings of the issue were that there were
5 mixed contamination, that they had exclusive
6 jurisdiction, and I would have to reject any
7 position of the State of Delaware?

8 MS. SCHWARTZ: I would agree with
9 that, yes.

10 THE COURT: Can you foresee any
11 situation where other than the isolated
12 nonradioactive contaminated materials where the
13 State of Oklahoma would share jurisdiction with
14 the NRC?

15 MS. SCHWARTZ: No, I can't.

16 THE COURT: All right. Does anybody
17 else -- thank you very much.

18 Does anybody else have any matters
19 that they wanted to inquire of or place on the
20 record?

Fansteel.txt
(No response.)

21
22 THE COURT: Based on the responses
23 and my understanding, I'll make my findings in
24 the recitals of the proposed order. But

37

1 specifically, we'll overrule the good faith
2 objection of the State of Oklahoma, and reject
3 the premises of it, finding that the, what I will
4 characterize as limited supervision that we have
5 under a discharge delegation to freshwater
6 tributary doesn't amount to particularly in the
7 circumstances of this case, or potential case
8 where there is mixed radiological and
9 nonradiological materials, that their regulatory
10 is in any way impugned or affected to the extent
11 they have any in the context of the plan being
12 approved.

13 And I just want to ask the
14 Department if there's anything I should add to
15 that, or does that make it real clear in case
16 they decide they want to appeal the plan order?

17 MR. GLADSTEIN: We agree with that,
18 and that's why I asked Mr. Sabin whether
19 procedural due process rights within the NRC
20 proceed are reserved, and they're exercising
21 those rights at that time. That's why I asked
22 Mr. Sabin to add the language.

23 THE COURT: And I agree with that
24 and I will approve by executing the agreements

38

1 when presented. All right.

2 MR. SABIN: Before I tendered three
3 different orders for your actual signature, I
4 wanted clarification. That is in addition to the
5 extent that Oklahoma does not timely act in
6 connection with the November 13 request of
7 Fansteel to transfer the NPDES to FMRY, this
8 court finds a proper basis under 1125(a)(5) and
9 the note found at 248 FR 341 a decision of August
10 30, 2001, Pacific Gas, that indeed this plan and
11 this court would override that consensus to
12 transfer the permit down to FMRY to meet all the
13 environmental obligations that flow therewith?

14 THE COURT: You're correct.

15 MR. SABIN: Your Honor, with that --

16 THE COURT: And I know our friends
17 from the federal government agree with that.

18 MR. GLADSTEIN: Yes, Your Honor.

19 THE COURT: It's always good to have
20 them on board. I mean, they can cause more
21 aggravation over a trickle of water than you
22 could imagine.

23 MR. SABIN: It is nice to reach the
24 end of this process in full consensus, Your

39

1 Honor.

2 With that, I will indicate that we
3 have included on our filed submission and
4 circulated version late on the 13th, early on the
5 14th a form of order, we have received some minor
6 comments, as Mr. Gladstein indicated.

7 We've also had some comments that

8 satisfy the concerns of Mr. Bookbinder from the
9 U.S. Trustee's office, and we've I understand
10 added language to satisfy the concerns of J.P.
11 Morgan Chase.

12 With that, I have an order for your
13 signature and a black lined version, if I may
14 approach.

15 THE COURT: Yes.

16 MR. SABIN: In connection with the
17 execution of the order, Your Honor, and I thank
18 you, I also don't want to assume, so the record
19 is clear, the affidavits are accepted as direct
20 testimony and exhibits themselves or as of
21 evidence?

22 MR. SABIN: I thought I said that
23 during my little recital, that I was accepting
24 those affidavits and the other record evidence

40

1 that had been offered.

2 MR. SABIN: Thank you.

3 For my last approach, Your Honor,
4 Mr. Gladstein referred to two documents which
5 through his own processes within the federal
6 government, although the confirmation order has
7 been approved, we're asking to you append your
8 signature on the two documents, the final form
9 and actually executed version of the North
10 Chicago decree, and the settlement agreement, if
11 I may approach.

12 THE COURT: Yes.

13 MR. SABIN: I would indicate one
Page 32

14 thing in the confirmation order, Your Honor, and
15 that is as you will recall from day one of these
16 cases, we approached, Ms. Jones and I approached
17 and asked for this court to take the entire
18 reference of this case. We will be doing any
19 number of claims objections and other things.

20 There is a provision in the
21 confirmation order to send many of those
22 administrative things back down, if you will, to
23 the bankruptcy court to deal with while retaining
24 for this court jurisdiction of NRC, EPA, Oklahoma

41

1 matters that are consistent with that withdrawal
2 of reference, if that is acceptable to this
3 court.

4 THE COURT: That's fine. Just note
5 that in the order, with regard to payment, as
6 typically is, there are a couple of blanks, but
7 I've executed them.

8 MR. GLADSTEIN: Yeah, the USA phone
9 number, those will be filled in.

10 THE COURT: Okay.

11 MR. GLADSTEIN: Thank you.

12 MR. SABIN: Consistent with ultimate
13 peace, Your Honor, something that is not on the
14 agenda letter but that occurred subsequent to the
15 issuance of the agenda, I'm happy to yield the
16 podium to Ms. Jones. It has to deal with the
17 M & I Bank may have received in connection with
18 certain pre-petition accounts that you may recall
19 emanated from pre-bankruptcy activity.

20 We have reached a proposed
21 settlement, and Ms. Jones is going to in essence
22 propose that methodology for dealing with
23 negative notice for handling that matter.

24 Thank you again, and thank everyone

42

1 else here. Thank you.

2 THE COURT: Thank you.

3 MS. JONES: Your Honor, very briefly
4 in that regard, we will be filing a joint motion
5 for an order approving that settlement that
6 Mr. Sabin referred to between the Debtors,
7 Northern Trust individually and as agent for M &
8 I, Marshall & Ilsley Bank.

9 Your Honor, what we would propose,
10 if it would suit the court, is that we be able to
11 send that motion out on ten days' negative
12 notice. Your Honor will note that according to
13 9019, it typically requires 30 days' notice, but
14 we ask given the involvement of all the parties
15 in this case and the level of participation, that
16 we think ten days will be sufficient to review
17 it, and if they have any thoughts on it, make
18 them known, and if there is no objection, submit
19 an order to the court. And if there was an
20 objection, it would be submitted for hearing at
21 such time the court deems appropriate.

22 THE COURT: All right, anybody wish
23 to be heard? Mr. Bookbinder?

24 MR. BOOKBINDER: Your Honor, Dave

43

1 Bookbinder on behalf of United States Trustee.
2 As with all items that get added to the agenda,
3 there are possibly the ulterior motives. Not
4 casting any aspersions. We have a holiday called
5 Thanksgiving that comes up within the next ten
6 days, so if the court approved a negative notice
7 on ten days' notice and the document is filed
8 today, that notice period is going to expire
9 prior to Thanksgiving, and I would suggest that
10 under the circumstances and given the holiday,
11 the local rules ought to be complied with.

12 If the settlement is meaningful and
13 meets the 9019 standards, no one is going to
14 object, and it should be approved. But I think
15 that under the circumstances and the advent of
16 the holiday season, there doesn't appear to be
17 any extraordinary reason why time should be
18 shortened here.

19 The fact that the parties in the
20 room may agree is wonderful, but there are many
21 other parties in this case, and the additional
22 five or ten days' notice period should not affect
23 the approval of the settlement. And I would
24 oppose the shortened time request.

44

1 THE COURT: Anyone else wish to be
2 heard?

3 (No response.)

4 MS. JONES: Your Honor, the ten days
5 would, if we use ten days literally would fall

6 right on Thanksgiving, and indeed Mr. Bookbinder
7 is correct on that, and I should have been maybe
8 a little more clear that I wasn't going to --

9 THE COURT: You will probably be in
10 your office. I won't be here.

11 MS. JONES: You're probably correct.

12 THE COURT: That was said
13 goodnaturedly.

14 MS. JONES: Your Honor, may I
15 suggest maybe splitting the difference with
16 Mr. Bookbinder and Your Honor? 15 days would
17 take us to December 2nd, which would be the
18 Tuesday after the holiday.

19 THE COURT: Add five days to the
20 negative notice?

21 MS. JONES: Yes.

22 THE COURT: Mr. Bookbinder won't
23 agree, but I'll order the 15 days; I think that's
24 more reasonable. Thank you.

45

1 MS. JONES: Thank you, Your Honor.
2 Your Honor, a couple other
3 housekeeping matters. One, you were, I do have a
4 copy of the order with respect to the Plainfield
5 sale that I talked about at the beginning of the
6 hearing, if I may submit that to the court.

7 And lastly, Your Honor, there was a
8 stipulation filed with the court with respect to
9 the motion of Tamus State Bank to compel payment
10 of post-petition rent under a personal property
11 lease. That was already submitted to the court,

Fansteel.txt
12 was already approved by the court, and counsel
13 have now found a typo in a reference to the
14 exhibit.

15 And Your Honor, what we'd like to do
16 is submit a revised order to the court that only
17 corrects that exhibit reference.

18 MR. KUNZ: I'm sorry, Your Honor,
19 Carl Kunz, Morris James on behalf of Tamus State
20 Bank. It's actually a more substantive revision
21 of that, but the one we saw in court was the
22 change of the exhibit.

23 The original stipulation order
24 required payments to be made pursuant to the plan

46

1 and pursuant to this stipulation through 2004,
2 through August of 2004, with a big balloon
3 payment, and should have been 2005 with a big
4 balloon payment, and that change has been made.
5 So in fact, the payments will remain through
6 August of 2005.

7 The bottom line numbers don't change
8 because the number was based on a bottom line
9 number, but it was actually a stream that will be
10 longer from Tamus State Bank. And the
11 calculation of those figures was also based on a
12 somewhat convoluted depreciation schedule.

13 We now agree what the numbers should
14 be and are, and we've plugged those into the
15 stipulation so there doesn't have to be the
16 reference to the depreciation schedule and
17 everything else.

18 But the terms of the stipulation
19 have really not changed in any substantive way.
20 So we'd ask if we could have hand up the revised
21 stipulation order and have that supercede the
22 previous one.
23 THE COURT: Anyone else wish to be
24 heard on this application?

47

1 (No response.)
2 THE COURT: Okay, you can pass it up
3 and we'll get it signed.
4 MR. KUNZ: Thank you, Your Honor.
5 MS. JONES: Your Honor, may I
6 approach with the sale order, as well?
7 THE COURT: Yes, you may.
8 MS. JONES: Your Honor, I have
9 revised the proposed order that I would submit to
10 the court with respect to the shortening of time
11 and the form of notice with respect to the
12 settlement of the bank, if I may approach.
13 THE COURT: Pass that up.
14 Mr. Landis?
15 MR. LANDIS: Your Honor, thank you:
16 I have a housekeeping matter and half a
17 housekeeping matter for the court's
18 consideration.
19 You may recall, Your Honor, that in
20 February this year, the creditors committee filed
21 an application to retain special regulatory
22 counsel. That matter had been discussed,
23 litigated, and resolved on consent of the

24 parties.

48

1 We in I believe it was October, most
2 recently, October 20th, the creditors committee
3 filed a certification of counsel certifying to
4 the resolution of the disputes in connection with
5 that matter, and allowing the retention of that
6 special regulatory counsel.

7 At this stage in the case, we are in
8 the position of being ready to file a final fee
9 application for special regulatory counsel,
10 although we can't do that until counsel is
11 retained. Because we did file the certification
12 of counsel most recently in October, there were
13 no objections to it. I suspect that it might
14 have fallen through the cracks, and I would like
15 to hand up --

16 THE COURT: No, we actually talked
17 about it at a hearing, and had some conversation.
18 It didn't fall through the cracks, but wherever
19 it was parked, it was knowledgeably parked.

20 But if you have a document you need
21 signed, we'll get that taken care of for you.

22 MR. LANDIS: I do, Your Honor, and I
23 guess it was optimistically, hoping it fell
24 through the cracks. But indeed if it was parked,

49

1 we could perhaps unpark it, because I do have a
2 certification with the order.

3 THE COURT: We talked about it a
4 couple of hearings ago. You weren't here, so
Page 39

5 there was a lot of conversation about it.

6 MR. LANDIS: Things go on with me
7 outside the room all the time. If I may approach
8 with the order.

9 THE COURT: We'll get it signed for
10 you.

11 It's executed.

12 MR. LANDIS: Thank you, Your Honor.

13 And the half a housekeeping matter is something I
14 know was intentionally parked, and I have been
15 discussing with Mr. Bookbinder on occasion in a
16 good-natured way how the parties may be able to
17 resolve the dispute that arose early in the case
18 over the --

19 THE COURT: Trip.

20 MR. LANDIS: The trip expenses.

21 Your Honor, I suspect that is still parked, but I
22 wanted to, despite the good-natured discussions,
23 the U.S. Trustee's office and the committee has
24 been unable to come to a resolution of the matter

50

1 of \$7,000 on trip expenses to attend the meeting
2 to appoint the committee, so that is still under
3 submission. And I just wanted to advise the
4 court that we've not been able to resolve it.

5 THE COURT: I'm just trying to avoid
6 the creation of a lot of bad law in the circuit,
7 and I thought sometimes maybe those kind of
8 things, they're minuscule, then they turn into a
9 principle that effects your ability to practice
10 in this area in my view.

11 But I'm certainly going to approve
12 that \$7,000, but whether it's by agreement, which
13 I was hoping for, or not. But it's only one way.

14 MR. LANDIS: That's correct, Your
15 Honor.

16 THE COURT: I remember the whole
17 thing. I'll approved it for one way, on the way
18 home after you've been selected.

19 MR. LANDIS: I knew that Your Honor
20 only selected good law. Maybe the U.S. Trustee's
21 office would have a discussion with me and avoid
22 the creation of any law whatsoever.

23 THE COURT: I will approve it if you
24 can't work it out, and approve it under the

51

1 premises it was presented.

2 MR. LANDIS: Thank you, Your Honor.

3 Okay. Anything else that we need to
4 take care of to wrap this up?

5 MS. JONES: I don't think so, Your
6 Honor. We wanted to thank you again for your
7 patience and indulgence in this case. You've
8 given us a lot of hearings and kind of pushed us
9 forward when we needed pushing, and we appreciate
10 it.

11 THE COURT: You all worked real
12 hard. Sometimes things are win/win. This is a
13 sequence of wins, as was presented, and you're
14 all to be congratulated. It really did turn out
15 to be a very significant accomplishment for you
16 all, and you're to be congratulated.

Fansteel.txt

17 All right, we'll be in recess.
18 (Whereupon, court stood in recess at
19 6:02 p.m.)
20
21
22
23
24

52

1 State of Delaware }
2 New Castle County }

3

4

5

CERTIFICATE OF REPORTER

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

Jennifer M. Guy

23

24

Exhibit "J"
OAG EA Objection

21.....DeltaView comparison of iManage://NYDMS1/NEWYORK/9552103/5 and
iManage://NYDMS1/NEWYORK/9552103/6. Performed on 12/11/03.

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

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,

SARAH E. PENN
ASSISTANT ATTORNEY GENERAL

SEP/jb
Enclosures

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

In the Matter of

FANSTEEL, INC.,

(Request to Amend Source Materials
License No. SMB-911)

)
)
)
)
)
)

Docket No. 40-7580

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

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

**SARAH E. PENN
ASSISTANT ATTORNEY GENERAL
ENVIRONMENTAL PROTECTION UNIT**

4545 N. Lincoln Blvd., Suite 260
Oklahoma City, Oklahoma 73105
Telephone: (405) 521-4274
Telefax: (405) 528-1867

Dated: December 8, 2003

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the Matter of)
)
FANSTEEL, INC.,)Docket No. 40-7580
)
(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.

OKLAHOMA

Respectfully Submitted,
W.A. DREW EDMONDSON
ATTORNEY GENERAL OF

UNIT

SARAH E. PENN
ASSISTANT ATTORNEY GENERAL
ENVIRONMENTAL PROTECTION

4545 N. Lincoln Blvd., Suite 260
Oklahoma City, Oklahoma 73105
Telephone: (405) 522-4413

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.

G. Paul Bollwerk, III*
Administrative Judge
Presiding Officer
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555-0001
E-mail: gpb@nrc.gov

Office of Commission Appellate
Adjudication
Mail Stop: O-16C1
U.S. Nuclear Regulatory
Washington, D.C. 20555-0001

Gary L. Tessitore, Chairman, President*
and Chief Executive Officer
Fansteel, Inc.
Number One Tantalum Place
North Chicago, IL 60064

Office of the Secretary*, **
Attn: Rulemaking & Adjudications Staff
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, D.C. 20555-0001
E-mail: hearingdocket@nrc.gov
Telefax: (301) 415-1101

Marian L. Zobler, Esq.*
Office of the General Counsel*
U.S. Nuclear Regulatory Commission
Mail Stop: O-15D21
Washington, D.C. 20555-0001

E-mail:

ogcmailcenter@nrc.gov

E-mail: mlz@nrc.com

James R. Curtiss, Esquire*
Mark J. Wetterhahn, Esquire*
Brooke D. Poole*
Winston & Strawn
1400 L Street, NW

E-mail: gtessore@fansteel.com

Jeffrey S. Sabin, Esq.*

Schulte, Roth & Zabel, LLP

bpoole@winston.com

919 Third Avenue

New York, NY 10022

E-mail: jeffrey.sabin@srz.com

Washington, D.C. 20005

E-mail: jcurtiss@winston.com

E-mail: mwetterh@winston.com

E-mail:

Law Clerk Brian Corbin*

bfc@nrc.gov

SARAH E. PENN

** Original and 3 copies