

Gary L. Tessitore  
Chairman, President and  
Chief Executive Officer

The logo for Fansteel, featuring the word "Fansteel" in a bold, italicized, sans-serif font. The letters are black with a white outline, and there is a horizontal line of dots or a shadow effect beneath the letters.

December 24, 2003

**BY HAND**

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

**Re: Fansteel Inc., Docket No. 40-7580, License No. SMB-911  
Ministerial Changes to Financial Assurance Documents  
to Reflect Partial Settlement with State of Oklahoma**

Dear Mr. Gillen:

As you know, the "Amended Joint Reorganization Plan of Fansteel Inc. and Subsidiaries" ("Plan") was confirmed by the U.S. Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") on November 17, 2003. On December 4, 2003, the NRC issued approvals related to the Plan, including issuance of a license amendment to approve Fansteel Inc.'s ("Fansteel") proposed decommissioning plan, and consent to transfer the SMB-911 license from Fansteel to a subsidiary of Reorganized Fansteel, FMRI Inc. The license transfer approval was conditioned, among other things, upon the Plan becoming effective.<sup>1</sup> As you are also aware, Fansteel subsequently entered into negotiations with the State of Oklahoma (the "State"), in which the NRC was also involved, regarding the transfer from Fansteel to FMRI of Fansteel's Oklahoma Pollutant Discharge Elimination System ("OPDES") Permit for the Muskogee site. A settlement has been reached with the State that upon approval by the Bankruptcy Court will permit transfer of the OPDES Permit from Fansteel to FMRI without modification or reissuance.

As part of the settlement, the State will become a third party beneficiary to the FMRI Secondary Note, and a secured party under the FMRI Pledge Agreement, with rights

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<sup>1</sup> See Safety Evaluation by the Office of Nuclear Material Safety and Safeguards Related to Transfer of Facility Operating License No. SMB-911 from Fansteel Inc. to FMRI for the Muskogee, Oklahoma Facility, Docket No. 40-7580, at § 3.0.

under these respective instruments equal to the rights of the NRC. By motion dated December 19, 2004, Fansteel requested Bankruptcy Court approval of the settlement. The Settlement Agreement also necessitates modifications to the Plan. Accordingly, the Fansteel motion also sought confirmation of the Plan as modified to reflect the Settlement Agreement. A hearing on the motion was held at 4 p.m. on December 23. At that hearing, the Bankruptcy Court approved the settlement and confirmed the Second Amended Plan, making the Effective Date January 23, 2004. A copy of the Second Amended Plan (in redline, and without Exhibits) is attached hereto.

A number of the financial instruments agreed to by the NRC at the time of its Approvals will therefore require minor administrative modifications in order to conform the documents to the Settlement Agreement. In addition, two new documents will require execution by the NRC. In all respects, there will be no changes in the funding mechanism or amounts to be provided for decommissioning the Muskogee site, nor in the agreed-upon terms and conditions established in the license itself, and hence no further NRC licensing actions are required.

There are a number of administrative actions required of the NRC to implement this settlement and the Second Amended Plan. First, there are two documents currently in NRC's possession, Amendment 2 to the Standby Trust and the Decommissioning Trust, which only require the NRC to date them as of the new Effective Date. Second, the amendment to the Plan will also necessitate changing the date of the FMRI Primary Note, the FMRI Secondary Note, the Indemnification Letter and Escrow Agreement to the anticipated Effective Date, January 23, 2004. Also, in Section G of the Escrow Agreement, the termination date was changed to February 15, 2004, as a result of the new Effective Date. To accomplish this, Fansteel is providing as attachments to this letter signed originals of those documents to replace those currently in the NRC's possession, which shall concurrently be returned to Fansteel. Third, there are two new documents also attached requiring NRC's signature: (a) a revised FMRI Pledge Agreement, and (b) an Intergovernmental Agreement.

The specific changes to the Pledge Agreement are as follows: First, the date of the Pledge Agreement will be changed to reflect the new Effective Date. Second, the NRC has agreed to execute a "Waiver and Consent," which provides that the NRC permits FMRI to grant a security interest in the FMRI Secondary Note to the Oklahoma Department of Environmental Quality ("ODEQ").

The "ODEQ-NRC Intergovernmental Agreement," which is an agreement by and between the State and the NRC with respect to the FMRI Secondary Note provides:

- The NRC and ODEQ agree that each has been granted a first priority security interest in the FMRI Secondary Note.
- The liens upon the FMRI Secondary Note are in favor of the NRC and the ODEQ equally. The NRC and ODEQ each agree that the other agency, as a third party beneficiary of the FMRI Secondary Note, shall be entitled to 50% of any and all proceeds

of the Note and any and all payments received on account of the enforcement rights under the NRC Indemnification Letter and the ODEQ Indemnification Letter.

- Both the NRC and ODEQ have the right, independently of the other, to exercise its rights under and enforce the terms (as applicable) of the FMRI Secondary Note, the NRC Pledge Agreement, the ODEQ Pledge Agreement, the Indemnification Letters and the Intergovernmental Agreement.
- Both the NRC and ODEQ agree to hold any Payments received in trust and to expend any Payments solely for the satisfaction of the obligations of FMRI for costs of groundwater treatment and monitoring at the Muskogee Facility.

Finally, both of the December 4, 2003 approvals included a provision stating that, if the Fansteel corporate reorganization, as approved by the Bankruptcy Court by order dated November 21, 2003, does not become effective by December 31, 2003, the December 4 approvals become null and void unless Fansteel requests an extension in writing for good cause shown. In the telephone conference of December 17, 2003, Fansteel indicated to the NRC Staff that an extension of this date will be required to accommodate approval by the Bankruptcy Court of the Second Amended Plan. The NRC Staff indicated at that time that such an extension would be granted.

As a result of the settlement, Fansteel herein formally requests an extension of the December 4 approvals until February 15, 2004, with the understanding that the Second Amended Plan is anticipated to become effective on or before February 15, 2004. The Commission has in the past granted extensions of time in circumstances necessitated by parallel bankruptcy proceedings, and Fansteel submits that such circumstances demonstrate good cause for such an extension. *See, e.g.*, Letter from A.W. De Agazio, NRC, to T.C. Feigenbaum, NRC, "Order Modifying Order Approving Transfer of License: Transfer of Control of Great Bay Power Corporation Interest (TAC M88661), February 15, 1994. Extension of the December approvals will allow the partial settlement agreed to by the parties to become effective and allow Fansteel's successful emergence from bankruptcy, thus permitting implementation of the Amended Decommissioning Plan and preserving the benefits of a heavily negotiated Plan of Reorganization designed to provide all creditors maximum recovery. The Amended Decommissioning Plan, in turn, represents the best opportunity for successful remediation of the Muskogee site and its release for unrestricted use.

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

Sincerely,

  
Gary L. Tessitore

cc: James C. Shepherd, NRC/NMSS  
NRC Document Control Desk  
Maria E. Schwartz, Esq., NRC/OGC  
Richard Gladstein, Esq., USDOJ  
Alan Tenenbaum, Esq., USDOJ  
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Attachments