

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 7237

ATOMIC SAFETY AND LICENSING BOARD PANEL

DOCKETED 01/14/04

SERVED 01/14/04

Before Administrative Judge:

Alan S. Rosenthal, Presiding Officer
Dr. Richard F. Cole, Special Assistant

In the Matter of

FANSTEEL, INC.

(Muskogee, Oklahoma Facility)

Docket No. 40-7580-MLA-3

ASLBP No. 04-816-01-MLA

January 14, 2004

MEMORANDUM AND ORDER

On November 3, 2003, in LBP-03-22, 58 NRC_, I granted the hearing request of the State of Oklahoma in this proceeding on the application of Fansteel, Inc. (Licensee) for an amendment to its materials license (No. SMB-911). Issued under 10 C.F.R. Part 40, that license authorizes the possession at the Licensee's site near Muskogee, Oklahoma, of source material consisting of up to 400 tons of natural uranium and thorium in any form. The sought amendment relates to a decommissioning plan for the Muskogee site that had been submitted by the Licensee last January and thereafter supplemented.

A month later, on December 8, Oklahoma filed what it characterized as an Objection to Issuance of Environmental Assessment and Findings of No Significant Impact that had been published in the Federal Register on November 7, 2003. 68 F.R. 63,134. The Objection was based on the State's disagreement with the employment of the industrial use scenario for this site; its belief that the Environmental Assessment should have considered Licensee's financial assurance for decommissioning; and the perceived failure of the NRC Staff to consult properly with the State with regard to non-radiological contamination on the site. On various grounds, the Objection has been opposed by both the Licensee and Staff.

I have not been provided with an adequate procedural basis for the filing of such an Objection, particularly at this stage of a Subpart L proceeding. Accordingly, the Objection must be dismissed. This does not perforce mean, however, that the concerns expressed in the Objection are not subject to ventilation in the State's written presentation due for filing at the end of the month.

To the contrary, there is a clear link between the concern regarding the industrial use scenario referred to in the Objection and the challenge to employment of that scenario to be found in the fourth area of concern set forth in the hearing request. Moreover, Judge Cole and I are satisfied that a sufficient link exists between the financial assurance issue raised in the Objection and the concern set forth in the third area of concern regarding the cost estimates for remediation that have been furnished by the Licensee. On the other hand, the State's complaint regarding the failure of the Staff to consult with it regarding non-radiological contamination seems plainly out-of-bounds.

Accordingly, the Oklahoma December 8, 2003 Objection is dismissed but the concerns set forth therein may be addressed in the State's written presentation on its hearing request to the extent indicated above.

It is so ORDERED.

BY THE PRESIDING OFFICER¹

/RA/

Alan S. Rosenthal
ADMINISTRATIVE JUDGE

Rockville, MD
January 14, 2004

¹ Copies of this memorandum and order were sent this date by Internet electronic mail transmission to the counsel for the Petitioner, the Licensee and the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
FANSTEEL INC.) Docket No. 40-7580-MLA-3
MUSKOGEE, OKLAHOMA)
)
(Materials License Amendment))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER DATED JANUARY 14, 2004 have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Alan S. Rosenthal, Presiding Officer
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Richard F. Cole, Special Assistant
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

W. A. Drew Edmondson, Esquire
Attorney General of Oklahoma
Sarah E. Penn, Esquire
Assistant Attorney General
Environmental Protection Unit
4545 N. Lincoln Blvd., Suite 260
Oklahoma City, OK 73105

Marian L. Zobler, Esquire
Lisa B. Clark, Esquire
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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

James R. Curtiss, Esquire
Mark J. Wetterhahn, Esquire
Brooke D. Poole, Esquire
Winston & Strawn LLP
1400 L Street, NW
Washington, D.C. 20005

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 14th day of January 2004