

RAS 6957



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

September 10, 2003

DOCKETED
USNRC

September 10, 2003 (2:00PM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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., License Amendment Request, License
No. SMB-911, U.S. Nuclear Regulatory Commission, Docket No. 40-
7580**

Sir or Madam:

Enclosed please find an original State of Oklahoma's Request for Hearing, 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 to Respond 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 me at (405) 521-4274.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah E. Penn".

SARAH E. PENN
ASSISTANT ATTORNEY GENERAL

SEP/jb
Enclosures



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

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

STATE OF OKLAHOMA'S REQUEST FOR HEARING

**W.A. DREW EDMONDSON
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Dated: September 10, 2003

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the Matter of)	
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FANSTEEL, INC.,)	Docket No. 40-7580
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License No. SMB-911))	

STATE OF OKLAHOMA’S REQUEST FOR HEARING

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 Request for Hearing pursuant to 10 C.F.R. § 2.1205(2)(i) on the matter of Fansteel, Inc.’s (“Fansteel”) request to amend Source Material License No. SMB-911 at Fansteel’s facility in Muskogee, Oklahoma (the “Fansteel Facility”), and decommissioning for the unrestricted use pursuant to 10 C.F.R. § 20.1402 (the “Proceeding”). Herein, Oklahoma requests an informal hearing to present evidence to show why the decommissioning of the Fansteel Facility proposed in the Decommissioning Plan (“DP”)(as hereinafter defined) is not in compliance with U.S. Nuclear Regulatory Commission (“NRC”) statutes and regulations, and to detail the dangerous consequences that would result from any approval of the Decommissioning Plan and the resulting amendment of the Source Material License No. SMB-911.

I. BACKGROUND

A. FACTUAL HISTORY

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).

B. PROCEDURAL HISTORY

On July 6, 1998, Fansteel submitted its proposed Decommissioning Plan for the Fansteel Facility, therein requesting an amendment to Source Materials License SMB-911 to decommission the Fansteel Facility. Fansteel thereafter supplemented the Proposed Decommissioning Plan on December 4, 1998. On September 14, 1999, NRC caused to be published in the Federal Register its Notice of Consideration of an Amendment Request for the Fansteel Facility in Muskogee, Oklahoma and Opportunity for a Hearing (the "Notice"), relating to the Restricted Release Decommissioning Plan. In response, on October 14, 1999, the Oklahoma Attorney General filed a Request for Hearing Pursuant to 10 C.F.R. § 2.1205. Fansteel filed its Response to the Request for Hearing on October 29, 1999, and NRC Staff filed its response on November 5, 1999.

In a Memorandum and Order, dated December 29, 1999, the Presiding Officer Granted the Oklahoma Attorney General's Request for Hearing based on the finding that Oklahoma had the requisite standing to participate as a party and that Oklahoma specified areas of concern germane to the Proceeding.

On January 13, 2000 Fansteel, Inc.'s appealed from the Presiding Officer's Decision to Grant a Hearing to Oklahoma. On February 2, 2000, NRC Staff responded to Fansteel's appeal to the Presiding Officer's decision, stating that Oklahoma was properly granted a hearing, as it successfully demonstrated both standing and injury-in-fact, as well as areas of concern germane to the proceeding. Oklahoma filed its Counter-Statement in Opposition to Fansteel Inc.'s Appeal on February 2, 2000.

On May 9, 2000 Fansteel, Inc. requested that the NRC staff discontinue review of Fansteel's Restricted Release Decommissioning Plan and on July 25, 2000, the NRC staff agreed to discontinue review of Docket No. 40-7580-MLA, ASLBP No. 00-772-01-MLA. Pursuant to the agreement of NRC staff to discontinue review of the Restricted Release Decommissioning Plan, Fansteel, Inc., Oklahoma and the NRC staff filed a joint motion to dismiss on January 2, 2001. On January 31, 2001, the Presiding Officer determined Fansteel Inc.'s appeal moot and accordingly, dismissed the case.

On January 14, 2003, Fansteel submitted a new DP to terminate the License No. SMB-911 for unrestricted use in accordance with 10 C.F.R. §20.1402. On January 15, 2003 Fansteel, Inc., filed for Chapter 11 bankruptcy protection.

On April 28, 2003 NRC staff member Daniel M. Gillen, (Gillen) Chief, Decommissioning Branch, Division of Waste Management sent a letter to Gary Tessitore, (Tessitore) Chief Executive Officer, Fansteel, Inc. indicating the Results of Preliminary Review of Fansteel's Decommissioning Plan dated January 2003. The letter stated that NRC staff had concluded that the DP did not contain sufficient information to conduct a detailed review at this time, and further added that many sections, chapters were conceptual only and that the radiological status of the site was incomplete, nor did the DP demonstrate how the estimated cost of remediation was reduced to less than half of the previous estimate of Fansteel's bankruptcy filing.

On May 8, 2003 Tessitore sent a letter to Gillen which stated it was a follow-up to the April 28, 2003 letter, as well as the discussions and meeting held between the NRC and

Fansteel regarding the licensee's bankruptcy. This letter outlined, in one page, a four-phased approach (hereinafter described) to decommissioning the Fansteel Facility, Muskogee site by a new entity MRI (a wholly-owned subsidiary of Reorganized Fansteel). On May 9, 2003, Gillen responded to Tessitore's letter of May 8, 2003, stating NRC staff had now reviewed Fansteel's one page submittal of May 8, 2003 and concluded that Fansteel had now submitted sufficient information to proceed with the detailed technical review of the DP.

On May 15, 2003, Oklahoma received the May 9, 2003 letter indicating acceptance of the Fansteel DP for Technical Review.

On June 16, 2003, the State filed a Request for Hearing in connection with Fansteel's January 14, 2003, Decommissioning Plan ("DP"). Thereafter, Gary Tessitore, CEO of Fansteel, indicated the withdrawal of Fansteel's DP due to NRC Staff's ("Staff") suspension of review in Fansteel's letter of June 26, 2003. The reasons for Staff's suspension of review are stated in a July 8, 2003, letter to Tessitore.

On July 9, 2003, a Presiding Officer was designated to rule on, inter alia, petitions for leave to intervene and/or requests for hearing in this proceeding. Also on July 9, the Presiding Officer issued an Order directing the State of Oklahoma to show cause, in light of Fansteel's withdrawal of its DP, why this proceeding should not be dismissed.

On July 15, 2003, Fansteel filed a Notification to request the Presiding Officer to suspend the show cause schedule to allow Fansteel until July 25, 2003, to decide whether it would resubmit its DP for NRC consideration. The State objected on the same day to Fansteel's request for abeyance. Staff filed a response on July 16, 2003, stating it did not

object to the request for abeyance.

On July 16, 2003, the Presiding Officer denied Fansteel's request for abeyance indicating that the schedule established in the Presiding Officer's July 9, 2003, Order to Show Cause would remain in effect. On July 17, 2003 the State filed its Objection and Show of Harm to Fansteel Inc.'s Withdrawal of Decommissioning Plan. On July 24 and 25, 2003, Fansteel and Staff filed a Response. Also, on July 24, 2003, Fansteel submitted a request for license amendment to approve the site DP submitted on January 14, 2003, as amended by letter dated May 8, 2003. In addition to Fansteel's NRC filing, on July 24, 2003, Fansteel filed its Re-Organization Plan and Disclosure Statement with the United States Bankruptcy Court in the District of Delaware. The State filed a Motion for Leave to Reply based on the resubmission of the DP and its supplements and the filings in the Bankruptcy Court. Leave to file a reply was granted by the Presiding Officer on July 31, 2003. The State filed its Reply on August 7, 2003.

On August 5, 2003, NRC caused to be published in the Federal Register its Notice of Consideration of an Amendment Request for the Fansteel Facility in Muskogee, Oklahoma and Opportunity for a Hearing (the "Notice").

II. REQUEST FOR HEARING

A. REQUIREMENTS FOR REQUESTS FOR HEARING

The provisions of 10 C.F.R. Part 2, Subpart L, titled Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings, govern any adjudication

initiated by a request for hearing in a proceeding for the amendment of a materials license subject to 10 C.F.R. Part 40. 10 C.F.R. § 2.1201(a)(1). This Request for Hearing relates to Fansteel's request to amend its 10 C.F.R. Part 40 license for the decommissioning of the Fansteel Facility and its unrestricted release for license termination. This Request for Hearing also relates to Fansteel's request for exemption from the requirements of 10 C.F.R. § 40.36. Therefore, this Request for Hearing is subject to Subpart L.

In Subpart L informal adjudications, a request for a hearing by a person other than the applicant must describe in detail (1) the interest of the requestor in the proceeding; (2) how those interests may be affected by the results of the proceeding; (3) the requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and (4) the circumstances establishing the timeliness of the hearing request. 10 C.F.R. § 2.1205(e)(1)-(4) (1999).

Additionally, the requestor must demonstrate standing, taking into consideration (1) the nature of the requestor's right under the Atomic Energy Act to be made a party to the proceeding, (2) the nature and extent of the requestor's property, financial, or other interests in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding upon the requestor's interest. 10 C.F.R. § 2.1205(h)(1)-(3) (1999). In determining whether a requestor's interest may be affected by a licensing proceeding, NRC looks to judicial concepts of standing. 10 C.F.R. § 2.1205(h) (1999). Thus, a requestor's injury must arguably fall within the zone of interests sought to be protected by the statutes governing the proceeding (e.g., the Atomic Energy Act, 42 U.S.C. § 2011 et seq.). Atlas

Corporation (Moab, Utah Facility), LBP-97-9, 45 N.R.C. 414, 423 (1997). A request for hearing must allege injury-in-fact; the injury must be fairly traceable to the challenged action; and the injury must be redressable by the Commission. Id.; Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992).

While the person requesting a hearing has the burden of establishing standing, the Presiding Officer must construe the petition in favor of the person requesting the hearing. Georgia Institute of Technology (Georgia Tech Research Reactor), CLI-95-12, 42 N.R.C. 111, 115 (1995); Atlas Corporation (Moab, Utah Facility), LBP-97-9, 45 N.R.C. 414, 416 (1997). In order to demonstrate standing at this stage, Oklahoma does not have to prove the merits of its case. Warth v. Seldin, 422 U.S. 490, 500 (1975). Rather, in determining standing, it is incumbent upon the Presiding Officer to accept as true Oklahoma's material allegations. In the Matter of Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 N.R.C. 281, 286 (1995).

Lastly, the Presiding Officer must determine that the areas of concern specified by the requestor are germane to the subject matter of the proceeding. 10 C.F.R. § 2.1205(h) (1999). An area of concern is germane if it is relevant to whether the license amendment should be denied or conditioned. In the Matter of Hydro Resources, Inc., LBP-98-9, 47 N.R.C. 261, 280 (1998). Areas of concern must fall "generally" within the range of matters that are properly subject to challenge in the proceeding, 54 Fed. Reg. 8269, 8272 (Feb. 28, 1989), and must be rational. Babcock and Wilcox Company (Pennsylvania Nuclear Services Operations, Parks Township, Pennsylvania), LBP-94-12, 39 N.R.C. 215, 217 (1994). The

Subpart L direction to define areas of concern is only intended to ensure that the matters the requestor wishes to discuss in his or her written presentation are “generally” within the scope of the proceeding. Atlas Corporation (Moab, Utah Facility), LBP-97-9, 45 N.R.C. 414, 423 (1997).

B. OKLAHOMA’S RIGHT UNDER THE ATOMIC ENERGY ACT TO BE MADE A PARTY TO THE PROCEEDING

Pursuant to 42 U.S.C. § 2239(a)(1)(A), in any proceeding under Title 42, Chapter 23 of the United States Code for the granting, suspending, revoking, or amending of any license, NRC shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. Oklahoma is a “person” under the Atomic Energy Act, the definition of which includes any state or any political subdivision of, or any political entity within a state. 42 U.S.C. § 2014(s). As described in detail below, Oklahoma has numerous property, financial, and other interests that will be affected by the results of the Proceeding and the license amendment sought by Fansteel for the decommissioning of the Fansteel Facility as proposed in the Decommissioning Plan.

C. OKLAHOMA’S INTERESTS IN THE PROCEEDING

Oklahoma has significant property, financial, and other interests, such as the air, land, waters, environment, natural resources, wildlife, and citizens of Oklahoma, that will be affected by the results of the Proceeding. Oklahoma seeks to protect these interests through the above-captioned adjudication. Oklahoma has a right to participate in the Proceeding to

protect all of its interests.

Oklahoma has a duty to protect the general welfare of its citizens, and therefore an interest in protecting the health, safety, and welfare of its citizens, many of whom live, work, travel, or recreate at or near the Fansteel Facility. As sovereign, Oklahoma is parens patriae, i.e., guardian and trustee for all of its citizens, and may act to prevent or repair harm to its quasi-sovereign interests. Hawaii v. Standard Oil Co. of California, 405 U.S. 251, 258 (1972). Further, Oklahoma has a quasi-sovereign interest in the physical and economic health and well-being of its citizens. Alfred L. Snapp & Son v. Puerto Rico, 458 U.S. 592, 600-607 (1982). Indeed, it is well-established that states may appear before NRC to protect the interests of their citizens and their air, lands, waters, wildlife, and other natural resources. In the Matter of International Uranium (USA) Corporation (Receipt of Material from Tonawanda, New York), LBP-98-21, 48 N.R.C. 137, 145 (1998); In the Matter of Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 N.R.C. 142, 169 (1998). This includes protecting the integrity of both groundwater and surface water, at, near, and downstream of the Fansteel Facility, used by residents for irrigation and consumption by livestock and wildlife. The implementation of the inadequate and underfunded DP may result in injury to the health, safety, and welfare of Oklahoma's citizens who rely upon waters in the Arkansas River for drinking, irrigation, and livestock uses, and will injure Oklahoma's natural resources, including its air, land, waters, and wildlife.

In addition to health, safety, and welfare, the interests protected by Oklahoma include

the economic welfare of its citizens. It also includes protecting the area's tax base and Oklahoma's tax revenues, which may be adversely affected by decreased tourism and property values and loss of economic development caused by the continued contamination of the air, land, waters, wildlife, and natural resources of Oklahoma which will be a direct result of the inadequate and underfunded DP.

Oklahoma also has a proprietary interest in its air, lands, waters, wildlife, and other natural resources, which it has the right to protect. Oklahoma owns the waters in the Arkansas River. OKLA. STAT. tit. 60, § 60, Oklahoma Water Resources Board v. Central Oklahoma Master Conservancy District, 464 P.2d 748 (Okla. 1968), which borders the eastern boundary of the Fansteel Facility, and which are both hydrologically and geologically connected to groundwater beneath the Fansteel Facility. Moreover, all wildlife in the State of Oklahoma is property of the State. OKLA. STAT. tit. 29, § 7-204. Oklahoma also operates and manages the Webbers Falls Unit of the McClellan-Kerr Wildlife Refuge, as well as the Cherokee Gruber Wildlife Refuge, each of which is located in close proximity to the Fansteel Facility, and leases certain agricultural rights and privileges in the of each wildlife refuge to third parties. Lastly, Oklahoma owns, operates, and maintains certain roads and thoroughfares in close proximity to the Fansteel Facility, namely State Highway 165, which runs adjacent to the Fansteel Facility. Oklahoma, and its political subdivisions, derive revenue from income taxes, sales taxes, and ad valorem (*i.e.*, property) taxes, which revenues will be harmed in the event the NRC approves the DP. As described in more detail below, the DP will negatively impact tourism in the area by allowing continued contamination of

the soil and groundwater around the Fansteel Facility, which will reduce tax revenue to Oklahoma. The DP can not assure with any degree of confidence that the Fansteel Facility will be properly remediated to the appropriate levels required by 10 C.F.R. §20.1402. Further, Fansteel's request for exemption from the financial assurance mechanisms as required by 10 C.F.R. § 40.36 further places in jeopardy in guarantee that the site will be properly remediated. Ultimately this will render the Fansteel Facility of no market value, and will lower market values of real property in the area surrounding the Fansteel Facility, thereby lowering ad valorem tax revenues for Oklahoma and its political subdivisions.

In addition to administering its own environmental programs, Oklahoma regulates environmental matters in the State through federal delegations from the U.S. Environmental Protection Agency. For example, Oklahoma administers the National Pollution Discharge Elimination System under the Clean Water Act 33 U.S.C. §1342 (b), and exercises authority under the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. as well. Issues surrounding the DP implicate and involve Oklahoma's state environmental regulatory jurisdiction pursuant to 27A OS§ 1-1-201(20) and its federal environmental regulatory jurisdiction pursuant to 33 U.S.C. §1342 (b) by failing to address the non-radiological contaminants in the groundwater. Insert

Oklahoma is owner and trustee for natural resources in Oklahoma and is responsible for protecting the air, land, waters, environment, wildlife, and natural resources of Oklahoma. Oklahoma, therefore, has an interest in protecting the integrity of its wildlife and natural resources, including air, land, ground, and surface water, from continued

contamination of the soil and groundwater and other adverse environmental consequences that will certainly be caused as a result of the DP. In addition, Oklahoma is recognized as the trustee for natural resources, including surface and groundwater resources, for damage recovery actions under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607(f).

Lastly, Oklahoma has an interest in the correct application and enforcement of the laws, rules, and regulations governing NRC-licensed facilities in Oklahoma. In Oklahoma, there are several facilities other than the Fansteel Facility under NRC's regulatory jurisdiction. Oklahoma is justifiably concerned that the misapplication of 10 C.F.R. § 20.1402, to the Fansteel Facility will serve as precedent for the misapplication of 10 C.F.R. § 20.1402 other facilities in Oklahoma attempting decommissioning for unrestricted release.

D. JUDICIAL STANDARDS OF STANDING

Oklahoma will suffer injury-in-fact if NRC amends Source Material License No. SMB-911 by approving the Decommissioning Plan. Under NRC precedent, Oklahoma is presumed to have standing in this matter. Notwithstanding this presumption, however, Oklahoma has standing because the Decommissioning Plan threatens to cause "distinct and palpable" injuries to Oklahoma, its citizens, and its air, land, waters, wildlife, and natural resources, Kelley v. Selin, 42 F.3d 1501, 1508 (6th cir. 1995), cert. denied, 115 S.Ct. 2611 (1995), quoting Warth v. Seldin, 422 U.S. 490, 501 (1975), all of which are within the zone of interests of the Atomic Energy Act. A causal connection exists between these injuries and the Decommissioning Plan and any approval thereof by the NRC. Each of these injuries is

redressable in the above-captioned matter.

1. PRESUMPTION OF STANDING

To establish standing in proceedings involving materials licenses, petitioners must outline how the particular radiological or other cognizable impacts from the material involved in the licensing action at issue can reasonably be assumed to accrue to the petitioner. Atlas Corp. (Moab, Utah Facility), LBP-97-9, 45 N.R.C. 414, 426 (1997). In non-power reactor cases, a presumption of standing based upon geographic proximity may be applied where the proposed licensing action involves a significant source of radioactivity producing an obvious potential for offsite consequences. Sequoyah Fuels Corp. (Gore, Oklahoma Site), CLI-94-12, 40 N.R.C. 64, 75 n.22 (1994); In the Matter Georgia Institute of Technology (Georgia Tech Research Reactor), CLI-95-12, 42 N.R.C. 111, 116 (1995); Armed Forces Radiobiology Research Institutes (Cobalt-60 Storage Facility), ALAB-682, 16 N.R.C. 150, 153-54 (1982).

The Decommissioning Plan does involve a significant source of continued radioactivity by failing to identify all radiological contaminants and properly remediating the contaminants on site, producing an obvious potential for offsite consequences as describe above, including direct effects upon Oklahoma's sovereign and proprietary interests. Thus, the presumption of standing in the above-captioned matter must be applied to Oklahoma due to its ownership of waters in the Arkansas River, OKLA. STAT. tit. 60, § 60, Oklahoma Water Resources Board v. Central Oklahoma Master Conservancy District, 464 P.2d 748 (Okla. 1968), which borders the Fansteel Facility. The presumption of standing in the above-

captioned matter must be also applied to Oklahoma due to its operation and management of the Webbers Falls Unit of the McClellan-Kerr Wildlife Refuge, and the Cherokee Gruber Wildlife Refuge, each which is located in close proximity to the Fansteel Facility, Exhibit 4, and Oklahoma's ownership, operation, and management of certain roads and thoroughfares in close proximity to the Fansteel Facility, namely State Highway 165, which runs immediately adjacent to the Fansteel Facility.

2. APPROVAL OF THE DECOMMISSIONING PLAN WILL CAUSE OKLAHOMA INJURY-IN-FACT

Even without the benefit of the presumption of standing discussed above, Oklahoma has standing as it will suffer injury-in-fact in the event Source Material License No. SMB-911 is amended by NRC's approval of the Decommissioning Plan.

First, the clean-up level proposed by Fansteel in the Decommissioning Plan will harm the citizens, air, land, waters, wildlife, and natural resources of Oklahoma, as well as the health, safety, and welfare of Oklahoma's citizens who rely on the Arkansas River, and the groundwater surrounding the Fansteel Facility for consumption, irrigation, or livestock uses. Although the purpose is to have Fansteel Facility designated for unrestricted release, the Decommissioning Plan does not guarantee that scenario. 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 and considering the location of the Fansteel Facility it is likely that sportsmen and outdoor

enthusiasts will take fish, game or natural plants from the area for food use. In addition, wildlife will be unaware of the institutional controls imposed by the industrial use scenario, (a maximum exposure of 8 hours per day, with a maximum of 2 hours outside, no more than 5 days per week) and will become contaminated and thereby contaminate those who take them for food use. The Decommissioning Plan fails to properly remediate the Fansteel Facility and thereby causes injury-in-fact to Oklahoma by continuing to contaminate existing wildlife. EARTH SCIENCES CONSULTANTS, INC., DECOMMISSIONING PLAN, FANSTEEL, INC.-MUSKOGEE OKLAHOMA (2003).

Secondly, 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. *Id.* at Appendix 15-1. 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 Oklahoma¹ whose citizens rely upon the Arkansas Rivers for

¹ It is important to note that a licensee's claim that "regulatory limits" are not exceeded by offsite radiological releases from a facility is not sufficient to show that a petitioner lacks standing. Atlas Corporation (Moab, Utah Facility), LBP-97-9, 45 N.R.C. 414, 425 (1997). Relative to a threshold standing determination, even minor radiological exposures resulting from a proposed licensee activity can be enough to create the requisite injury-in-fact. Id.; General Public Utilities Nuclear Corp. (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 N.R.C. 143, 158 (1996).

recreational purposes, and as a source of water for consumption, irrigation, and livestock.

Thirdly, 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. Consequently, tourism in this area generates important tax revenues for Oklahoma and its political subdivisions, as well as revenues for Oklahoma's citizens that make their living from the tourism industry. The failure of the Decommissioning Plan to properly remediate the Fansteel Facility to the appropriate standards, thereby allowing the continued placement of dangerous radioactive wastes in such close proximity to the Arkansas River, will lessen the recreational value of the Arkansas River. As a direct consequence, tourism in this area will necessarily decrease, and Oklahoma will thereby suffer injury-in-fact due to the corresponding decrease in revenues and lose an important and viable recreational resource.

3. ZONE OF INTERESTS

Oklahoma's interests in the Proceeding, as well as the injuries suffered by Oklahoma in the event Source Material License No. SMB-911 is amended through approval of the Decommissioning Plan, fall within the zone of interests protected by the Atomic Energy Act,

which include, but are not necessarily limited to: (a) widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with the public defense and security and with the health and safety of the public, Citizens for an Orderly Energy Policy, Inc. v. County of Suffolk, 604 F.Supp. 1084, 1093, (E.D.N.Y. 1985); (b) environmental and economic interests, id.; (c) protection of public health and safety, Drake v. Detroit Edison Co., 443 F.Supp. 833, 838-39 (W.D. Mich. 1978); Reyblatt v. U.S. Nuclear Regulatory Comm'n, 105 F.3d 715, 722 (D.C. Cir. 1997); and (d) public participation in the administrative process. Reyblatt v. U.S. Nuclear Regulatory Comm'n, 105 F.3d 715, 722 (D.C. Cir. 1997).²

4. INJURIES FAIRLY TRACEABLE TO FANSTEEL'S (ASSUMED) REQUEST FOR LICENSE AMENDMENT

As previously discussed, the determination as to whether a Request for Hearing's asserted injury is fairly traceable to the proposed licensing action is not dependent on whether the cause of the injury flows directly from the licensing action, but whether the chain of causation is plausible. In the Matter of Northeast Nuclear Energy Company (Millstone Nuclear Power Station, Unit 3), LBP-98-22, 48 N.R.C. 149, 155 (1998). As applied, the

² Oklahoma interests and injuries relating to its ownership of waters, operation and management of the Webbers Falls Unit of the McClellan-Kerr Wildlife Refuge and the Cherokee Gruber Wildlife Refuge, ownership of State Highway 165, and representation of citizens living, working, traveling, and recreating in the environs of the Fansteel Facility are all within the zone of interests of the Atomic Energy Act. All injuries alleged by Oklahoma, even those financial or economic in nature, relate directly to the proposed presence/disposal of radioactive contaminants at the SFC Site, and are therefore within the zone of interests of the Atomic Energy Act.

injuries that will be suffered by Oklahoma are all fairly traceable to the Decommissioning Plan and any approval thereof by the NRC. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). All injuries-in-fact discussed above are directly related to the failure to identify and thereby the failure to remediate all contaminants at the Fansteel Facility as proposed by Fansteel in the Decommissioning Plan. The injuries that will be suffered by Oklahoma are not the result of the independent action of some third party not involved in the Proceeding. Id.

5. REDRESSABILITY

Each of the injuries-in-fact that will be suffered by Oklahoma in the event that Source Material License No. SMB-911 is amended by NRC's approval of the Decommissioning Plan will be redressed in the Proceeding by a decision holding that the Decommissioning Plan is not in compliance with statutes rules and guidance. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). As described in detail in section II.F., below, Oklahoma's areas of concern directly relate to whether the Decommissioning Plan complies with The Atomic Energy Act 42 USC 2011 et seq., National Environmental Policy Act 4331 et seq., 10 C.F.R. Parts 5140, 10 C.F.R. § 40.42, 10 C.F.R. § 40.36 10 C.F.R. Pt. 20 Subpart E, NUREG 1727, NUREG 1748 and NUREG 1757 and referenced Guidance, and therefore whether the amendment to Source Material License No. SMB-911 requested by Fansteel should be granted, denied, or conditioned. Each area of concern is material to the grant or denial of the amendment to Source Material License No. SMB-911, and makes a difference in the outcome of the Proceeding, thereby entitling Oklahoma to cognizable relief. Each area of

concern is significant relative to NRC's authority to protect the public health and safety and the environment. In sum, each injury suffered by Oklahoma will be avoided if the Decommissioning Plan is rejected.

E. THE PROCEEDING'S EFFECT ON OKLAHOMA'S INTERESTS

As described in sections II.C. and II.D., above, and in section II.F. below, any order that may be entered in the Proceeding will have an effect upon the property, financial, and other interests of Oklahoma.

F. OKLAHOMA'S AREAS OF CONCERN

Where a request for hearing is filed by any person other than the applicant in connection with a materials licensing action under 10 C.F.R Part 2, Subpart L, the request for hearing must describe in detail the requestor's area of concern about the licensing activity that is the subject matter of the proceeding. 10 C.F.R. § 2.1205(e)(3) (1999). In ruling on any request for hearing, the Presiding Officer must determine whether the specified areas of concern are germane to the subject matter of the proceeding. 10 C.F.R. § 2.1205(h) (1999). An area of concern is germane if it is relevant to whether the license should be denied or conditioned. In the Matter of Hydro Resources, Inc., LBP-98-9, 47 N.R.C. 261, 280 (1998). Areas of concern must fall "generally" within the range of matters that are properly subject to challenge in the proceeding, 54 Fed. Reg. 8269, 8272 (Feb. 28, 1989), and must be rational. Babcock and Wilcox Company (Pennsylvania Nuclear Services Operations, Parks Township, Pennsylvania), LBP-94-12, 39 N.R.C. 215, 217 (1994).

At this early stage of the above-captioned matter, Oklahoma is not required to put

forth an exhaustive exposition in support of the issues it wishes to litigate. Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-92-24, 36 N.R.C. 149, 154 (1992). A comprehensive statement of issues (resembling the merits of Oklahoma's contentions) must only be provided at a later date. 10 C.F.R. § 2.1233(c) (1999); Combustion Engineering, Inc. (Hematite Fuel Fabrication Facility, Special Nuclear Materials License No. SNM-33), LBP-89-23, 30 N.R.C. 140, 147 (1989). At this stage, Oklahoma's statement of areas of concern need only "identify" its areas of concern by providing "minimal" information to ensure that the areas of concern are germane to the proceeding. Babcock and Wilcox Company (Pennsylvania Nuclear Services Operations, Parks Township, Pennsylvania, LBP-94-12, 39 N.R.C. 215, 217 (1994). Of course, identification of an area of concern must be specific enough to allow the Presiding Officer to ascertain whether or not the matter sought to be litigated is relevant to the subject matter of the Proceeding. Sequoyah Fuels Corporation, LBP-94-39, 40 N.R.C. 314, 316 (1994). It is against this legal background that the Presiding Officer must analyze and consider whether Oklahoma's areas of concern are germane to the Proceeding.

Oklahoma's areas of concern, set forth below, relate directly to Fansteel's request for an amendment to Source Material License No. SMB-911 authorizing the decommissioning of the Fansteel Facility for unrestricted release, which is the licensing activity that is the subject matter of the Proceeding. It is Fansteel's burden to demonstrate that decommissioning of the Fansteel Facility is appropriate, 62 Fed. Reg. 39058, 39069 (July 21, 1997), and for the reasons set forth below, Fansteel, through the Decommissioning

Plan, has failed to meet this burden.

Oklahoma's areas of concern therefore relate to the most fundamental issue in the Proceeding, namely whether the Decommissioning Plan meets the requirements of The Atomic Energy Act 42 USC 2011 et seq., National Environmental Policy Act 4331 et seq., 10 C.F.R. Parts 5140, 10 C.F.R. § 40.42, 10 C.F.R. § 40.36 10 C.F.R. Pt. 20 Subpart E, NUREG 1727, NUREG 1748 and NUREG 1757 and referenced Guidance thereby allowing the Fansteel Facility to be decommissioned for restricted release under 10 C.F.R. § 20.1402. Each area of concern is rational and directly relevant to the amendment to Source Material License No. SMB-911 requested by Fansteel, and whether such amendment may be granted to Fansteel.

1. The Site Characterization is Incomplete and Fails to Address Current Conditions

The site characterization provided by Fansteel does not meet the requirements of 10 C.F.R. 40.42(g). The Decommissioning Plan relies heavily on old data, much from 1993 and earlier. Significant changes have occurred since that time, including the construction of the French drain system, a substantial pilot project to reprocess waste that may have incurred additional releases and, a major hydrofluoric acid release that resulted in the hospitalization of two workers.

In addition to those changes, a tornado struck the site in 1999 damaging buildings Chemical "A", Chemical "C", R&D, Sintering, and Sodium Reduction as well as tearing the liners of Pond Nos. 3, 8 and 9 and ripping a stored soils cover. The damage to the Sodium

Reduction Building allowed bagged Pond No. 5 material to fall out of the building and tear open. The bags were filled with moist, LLR material that contained an average of 21pCi/g uranium 235 and 6 pCi/g thorium-232 in 1993. Approximately 500 pounds of material were released to the ground surface allegedly within only a 10 foot diameter area. Without further analysis, it cannot be assumed that the release caused by this tornado was confined to a 10 foot diameter. To suggest that winds of 73-112 miles per hour would merely blow radioactive material 10 feet, pushing automobiles off the road³ defies common sense.

The site characterization also does not account for the probable movement of soluble isotopes and their impact on the groundwater, possible groundwater changes caused by the placement of a mound of soil under an impermeable plastic tarp nor does it address the radiological contamination of the northwest property which the licensee originally believed to be uncontaminated .EARTH SCIENCES CONSULTANTS, IN., DECOMMISSIONING PLAN, FANSTEEL, INC.- MUSKOGEE, OKLAHOMA 2.1) Plus potential sources of elevated subsurface contamination, e.g. B-36 and MW-71S Id at 2.2) are not discussed nor are Ponds 1/1s-1N and 4. Id. at 2.3).

The 1993 characterization of buildings and equipment does not include effects of “reprocessing” activities that occurred through November 2001 nor does the 1993 characterization between the ponds and the process buildings include effects of

³ The Fujita Scale describes an F1 tornado as being able to peel surfaces off roofs; mobile homes pushed off foundations or overturned; moving autos, pushing autos off the roads, attached garages may be destroyed. <http://www.tornadaproject.com/fscale/fscale.htm>. June 16, 2003

“reprocessing” activities.

None of these changes were addressed and therefore render the site characterization ineffectual in determining the actual extent of contamination on the Fansteel Facility site. Although Section 15.1.1 states “No additional large-scale characterization...is planned...”, the NRC staff concluded that significant additional characterization is necessary. Therefore, because of the site characterization deficiency and its ramifications on the extent of necessary remediation the NRC can not evaluate whether the Decommissioning Plan will properly remediate the property for unrestricted release under 10 C.F.R. Part 40, Part 20 and NUREG 1757 and Oklahoma can not be assured of the safety of its natural resources for its citizens.

2. The Decommissioning Plan Fails to Adequately Address the Remediation of Groundwater for Radiological and Non-Radiological Contaminants.

In the Decommissioning Plan, Fansteel does not propose to remove contamination of radiation. The assurance of remediation of the groundwater is contained within the letter of May 8th which states “it is the intent of MRI not to seek termination of the licence until groundwater is satisfactorily remediated .” (Exhibit 4) This does not comply with Part 40 or Part 20 of the NRC rules and regulations. A plan must be submitted as part of the Decommissioning Plan that demonstrates compliance with the radiological criteria in Part 20 and cleanup groundwater to a level necessary to protect public health and safety from radiological dose and chemical toxicity. This is especially important considering the fact that the groundwater is hydrologically connected to the Arkansas River.

In addition to the radiological contamination, metals such as arsenic, cadmium, chromium and fluoride have been found in the groundwater monitoring wells that exceed EPA's maximum allowed contaminate levels. The Decommissioning Plan does not address chemicals of concern, including ammonia, arsenic, cadmium, chromium, columbium-tantalum, fluoride and MIBK, in the outfalls and surface waters. Plus, the Remediation Assessment identified materials in Ponds 2 & 3 which characteristically exhibit hazardous concentrations of chromium yet the Decommissioning Plan discusses excavating the Ponds by screening only for gamma particles to determine what material is to be sent off site.

The applicant has failed to address the remediation of the groundwater with the Oklahoma Department of Environmental Quality who pursuant to 27A O.S. §1342(b) has jurisdiction over the waters of the state. No commitment has been made to Oklahoma to assure that its waters will be remediated to allow for the consumption, irrigation or recreational uses which are reasonable uses in this area considering the natural resources and topography as well as agricultural efforts in this vicinity. EARTH SCIENCES CONSULTANTS, INC., DECOMMISSIONING PLAN, FANSTEEL INC., -MUSKOGEE, OKLAHOMA 3.1.

Fansteel also proposes to improperly extend the time period for the groundwater remediation in violation of Regulatory Issue Summary 2000-09, "Standard Review Plan for Licensee Requests to Extend the Time Period Established for Initiation of Decommissioning Activities." NRC: Washington, DC. June 26, 2000.

Oklahoma has experienced several periods of drought since statehood, some lasting

several years. Major droughts in Oklahoma have occurred in 1929-1941, 1951-1957, 1961-1967 and 1975-1982. EARTH SCIENCES CONSULTANTS, IN., DECOMMISSIONING PLAN, FANSTEEL, INC.- MUSKOGEE, OKLAHOMA 3-20. Oklahoma can not afford to have its groundwater contaminated by radiation and other unacceptable metals in light of the pattern of extreme droughts.

The proposed deed restriction in the Decommissioning Plan is not capable of containing migration of radioactive and non-radioactive contamination within the groundwater and preventing its ultimate destination of the Arkansas River which is a fatal flaw. The Decommissioning Plan does not provide sufficient justification for not considering ground water pathways. By failing to address the contaminated groundwater, the Decommissioning Plan will continue to injure the land, waters, wildlife, and natural resources of Oklahoma.

3. The Cost Estimates Are Not Sufficient Nor Supported by the Decommissioning Plan

The initial estimate to remediate the Fansteel Facility was 57 million dollars in 2002. (Exhibit 1) The revised estimate is less than half that amount, 26.4 million yet the site has not been improved and in fact additional activities have occurred which lead one to the conclusion that more not less contamination is on site. Plus the suspected additional contamination, there is the matter of the contamination that has remained unchanged. For example Table 1.1 lists the DCGL for the Th-232 chain as 10p/Ci/g which is the same as Condition 27 of the SMB 911 and is in the previous Decommissioning Plan submitted by

Fansteel, yet despite the unchanged conditions the cost estimate is cut in half. Therefore conceptual Decommissioning Plan does not appear to support the calculated reduction in the cost of decommissioning.

Also section 15.1 states that cost estimates are based on the planned activities presented in the DP, however, as section 8 states this is a conceptual plan and the actual plan may differ therefore the cost estimates can hardly be accurate. Although Section 15.1.1 states “No additional large-scale characterization...is planned...”, the NRC staff concluded that significant additional characterization is necessary. A revised cost estimate to remediate the site should include the cost for additional characterization activities and the cost for remediation of all contamination, including groundwater and any additional contamination identified during the complete site characterization.

Finally, the terms and conditions of a confirmed plan of reorganization will cause a wholly-owned subsidiary (“MRI”) of Reorganized Fansteel to undertake a four-phased approach to decommissioning the Muskogee site by MRI. This is unacceptable. First, it assumes that the reorganization plan will be approved and at this time it has not yet even been submitted. Second, the estimates are not supported by the Decommissioning Plan and fansteel has not complied with the financial assurances of 10 C.F.R.§40.36.

4. The Industrial Use Scenario is Not Appropriate for this Site

Fansteel has failed to demonstrate that they will meet the criteria for unrestricted release in 10 C.F.R. 20.1402. Fansteel failed to consider all the sources, exposure routes and pathways in conducting its does modeling contrary to NUREG 1549. Fansteel has tried to

avoid demonstrating compliance by utilizing the industrial use scenario. This scenario is not appropriate for the Fansteel site and fails to demonstrate that radiation dose from soil, groundwater, lagoons and surface water will meet the standards in 10 C.F.R. part 20 and will be as low as reasonably achievable.

The industrial use scenario is not appropriate for the Fansteel Facility because it condemns the site to an industrial use only. Although the Port of Muskogee may acquire portions of the property for industrial use, it is not inconceivable and is in fact reasonable to expect some recreational use of the property considering the location and topography of the site. This is a recreational area, across the river is a boat launching areas which is being discussed as use a marina and in the area there are numerous recreational lakes, including Fort Gibson and Lake Eufala. The area around the Fansteel Facility is home to a wide variety of flora, fauna and aquatic life. EARTH SCIENCES CONSULTANTS, INC. DECOMMISSIONING PLAN, FANSTEEL INC. -MUSKOGEE, OKLAHOMA3-21, 3-22. It is therefore not possible to preclude the potential use by sportsmen and outdoor enthusiasts who will take fish, game or natural plants from the area for food.

Agricultural use of the land occurs outside the City of Muskogee and is an important component of the economy of area. Soybeans, hay, corn and sorghum are the primary crops grown. Muskogee County is among the state's top six soybean-producing counties. Dairy cattle, beef cattle, hogs and chickens are all raised in the area around the site. Most farms in the area are classified as livestock farms and dairy farms. Id.

Fansteel must therefore provide additional information regarding the dose effects of

the alternate reasonable land use scenarios because the industrial land use scenario is not appropriate for the Fansteel Facility.

5. Insufficient and Inconsistent Data Does Not Allow for a Proper Evaluation of the Decommissioning Plan

A Preliminary Review of Fansteel's Decommissioning Plan dated January 2003 was performed and submitted in the form of a letter dated April 28, 2003 to Mr. Gary L. Tessitore (Tessitore), Chief Executive Officer, Fansteel Inc. from Mr. David Gillen (Gillen) Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards. (Exhibit 3). The letter states "the staff has concluded that the DP does not contain sufficient information to conduct a detailed review at this time. In particular, Section 8 of the DP states it is a *conceptual plan and specific decommissioning activities may differ from what is presented.* (Italics Added).

The following is the insufficient and inconsistent data that does not comply with 10 C.F.R. §40.42 and does not contain the detail required by NUREG 1757 and NUREG 1727: In Chapter 3:

- 3.1 The values for the hydrological parameters are stated but there is no mention of the numerical techniques used to obtain those parameters. According to NRC staff, a discussion of the numerical techniques should be provided.

- 3.2 The potential for the vertical migration of radiological material to the bedrock aquifer is not discussed. According to NRC staff, Fansteel should provide the additional information or explain why it is not necessary.
- 3.3 There is not sufficient data to support the potentiometric contours of the bedrock aquifer in Figure 3-8. A detailed description of vertical migration should be provided in order to demonstrate that migration of isotopes of interest are not reasonably expected to reach this aquifer.
- 3.4 The values for distribution coefficients are given in the RESRAD output provided in Chapter 5, however no basis is given for the chosen values. These parameters may be important if the groundwater pathway is applicable.
- 4.3 There are insufficient data surrounding the ponds to characterize possible leakage. These areas should be characterized in order to properly assess the necessary amount of remediation to the site.
- 4.4 There are no data for process equipment or piping, either above or below grade. These areas and components should be characterized in order to properly assess the necessary amount of remediation to the site.
- 4.5 There are no data under the building floors or around the footings. This is important and should be characterized because contamination was found in these types of areas in other parts of the facility, e.g. NW property and must be done in order to properly assess the necessary amount of remediation to the site.
- 4.6 The depth of penetration of contamination into structures is not defined. The depth

of penetration affects the method of removal and total radioactive waste volume therefore must be determined in order to properly assess the necessary amount of remediation to the site.

- 4.7 The historic site assessment does not support the classification of areas, especially those identified as non impacted. Additional information, including characterization, as more completely described in proposition 1, should be provided to support the classification.
- 4.8 In section 2.1 of the November 1993 report states that “radiological analyses were secured from [three] depth intervals...0'-6" [at the saturation] zone and an intermediate interval...” However, **less than 10 percent** of the data in the DP have samples at more than one depth in a location, and **only one** has all three analyses. The distribution of contamination at depth throughout the site must be well defined in order to properly assess the necessary amount of remediation to the site.
- 4.9 The number of borings is not consistent in the report. Section 3.5.2 states there are 96 borings and section 4.3.2 states there are 92 while Table 4.1 has only 81 locations. The exact number of sampling locations should be ascertained and provided if a proper assessment of the necessary remediation is to be performed.
- 4.10 The basis for converting cpm to p/Ci/g is not presented and should be if a proper analysis is to be conducted.
- 4.11 Data from only two ground water sampling events is presented. This is insufficient to determine the extent of the contamination. Also, in the 1993 Remediation

Assessment Report other contaminants such as chromium, arsenic and fluoride are shown to be present yet the Decommissioning Plan only addresses radiological contamination. Remediation for these contaminants needs to be addressed as well.

- 4.12 The elevation and location data for bore holes reported on Figure 4-11 is different from the data on Drawing OMF-GRNDS-011(11/25/02). One discrepancy is that the reported low points on the OMF are higher than the surface topography shown, e.g. Pond 3 low point is listed as 531.3', and the topographic isopleth for the berm is 530'. Additionally, the elevations of the wells are approximately six feet higher on the OMF than that reported in the bore logs. Also, the locations of wells and topography is somewhat different between the two drawings. For example, on Figure 4-11, MW71S is on the 534' isopleth, and south of the south berm of Pond 3; on the OMF, the well is inside (less than) the 530' isopleth and north of the Pond 3 south berm. This raises questions on what values were used to calculate waste volume. These differences must be resolved and a consistent data set provided in order for an accurate assessment of the Decommissioning Plan.

Chapter 8

- 8.2 The remediation techniques for the several types of contamination are not specified: "Specific remediation techniques **will be developed**... (§8.1.2, 8.2.2, etc.) indicating that the Decommissioning Plan is incomplete and more information must be submitted in order to conduct a proper review.
- 8.3 The depth of excavation in Ponds 2 and 3 as stated in §8.3.2.2 is different from that

shown in Figure 8.1 by about 10 feet. This difference affects the volume calculations and thereby the amount of contamination to be remediated.

- 8.4 It is not clear whether the soils volumes include that under Ponds 2 and 3, or just adjacent to them. Again, this must be determined because it affects the total amount of property to be remediated.
- 8.5 The method and configuration for gamma scanning material to determine compliance with the release criteria are not specified. This should be defined in order to make a proper assessment of the site contamination.
- 8.6 The information submitted in Chapter 8 and Chapter 4 are not sufficient to verify the volume that will be disposed of at other licensed sites. This lack of information affects the ability to assess the extent of contamination as well as the costs of the Decommissioning Plan.

Chapter 9

- 9.1 Section 7.2 states that remediation work may not be performed by contractors, but §9.2.4 list tasks and activities to be performed by contractors. This just one more example of the inconsistencies contained within the Decommissioning Plan.
- 9.2 If indeed there are to be contractors, then information on specific contractors or work division between Fansteel and its contractors should be provided.

Chapter 10

- 10.1 Section 10.0 states “The current site RHASP... **will be revised**...to include decommissioning activities...” Again, information that is to be revised is inaccurate

and insufficient to begin with and should not be utilized to make an accurate assessment of the extent of the site's contamination.

- 10.2 The selection and use of surrogates should be discussed in detail rather than in the Decommissioning Plan's cursory fashion.
- 10.3 Section 10.7 states ' The instrumentation program **will include..**' Yet again the information provided is incomplete and does not allow for a proper review of the Decommissioning Plan.

Chapter 11

- 11.1 Section 11.0 states "the current site EMP **...will be revised to include** decommissioning activities..." If information provided is to be revised, it can not be be accurate as submitted.
- 11.2 There is no basis presented for using "recent sampling events", that are not defined, as a baseline for effluent releases. The justifications for the baselines should be included in the information provided. Also, any changes to a re-issued NPDES permit should be identified in order to determine the proper levels of contaminants.

Chapter 12

- 12..1 The radioactive "...solid waste management plan **will include** the following...." This plan has not yet been developed because of the status of the site characterization, presumably its incomplete status, and both must be done in order to properly review the Decommissioning Plan.

Chapter 13

- 13.1 This chapter states the existing plan **will be revised** to address a variety of Quality Assurance issues related to decommissioning. These revisions should be made and a revised plan submitted because without Quality Assurance in the sampling methods the entire remediation effort must be called into question.

Chapter 14

- 14.1 Another reference to the incomplete site characterization surveys and its affect on the classification of areas on the site is made by the NRC staff.
- 14.2 Section 14.4 states “ an FSSP **will be prepared** ...” The balance of Chapter 14 reiterates the MARSSIM theory, but provided no specific information. According to NRC staff, a comprehensive, site-specific plan should be submitted.

Chapter 15

- 15.3 The equation in Section 15.1.2(P15-3) does not properly compute the volume of the truncated pyramid used to approximate the ponds. This of course, does not allow for an accurate review of the DP.
- 15.4 There is no information on the shape of Ponds 1,2 or 4. The drawings(e.g.) Figure 4.1) show an irregular shape for Pond 2. There is no contingency in the volume calculations to account for the potential changes in the estimated volume of Pond 2. Page 15-4 states the slope for ponds 5-9 is between 1.5-2. The correct volumes of all ponds, with contingencies should be provided.
- 15.5 Fansteel must demonstrate that IUC is authorized to accept the proposed shipments. As this voluminous list demonstrates, the Decommissioning Plan is fraught with

inconsistent, inaccurate and insufficient data. It is inconceivable that a site of this size can be accurately assessed using such gross misinformation. If the Decommissioning Plan is approved then Oklahoma's land, water, wildlife and citizenry are jeopardized because there will be no certainty that the standards of 10C.F.R. §20. Part 40 NUREG 1727 and NUREG 1757 will be met.

6. Key Components of the Decommissioning Plan Have Not Been Submitted

In addition to the insufficient and inconsistent data, several key components of the Decommissioning Plan have not been submitted and must be in order to comply with the rules for license termination with the rules and guidance.

The first and most basic requirement is a request for a license amendment for SMB 9-11. Fansteel must submit a request in order for its decommissioning plan to be reviewed. To Oklahoma's knowledge, at this time no request has been made and according to NRC's letter of April 28, 2003, a request should be submitted. (Exhibit 3)

The second is there is no request for an alternate decommissioning schedule under 10C.F.R. part 40 and in accordance with Regulatory Issue Summary 2000-09. The transmittal letter accompanying the Decommissioning Plan states an application for an alternative schedule for decommissioning the Muskogee facility will be filed in accordance with 10 CFR §40.42(h)(2)(i) by February 17, 2003. (Exhibit 2)

It is inappropriate for the NRC staff to agree to not conduct an Environmental Impact

Statement as understood by Fansteel in its May 8th letter (Exhibit 4) when in NRC's April 28th letter (Exhibit 3) NRC stated that an EIS will likely be necessary. The NRC should follow the process in 10 C.F.R. Pt.51 and the Guidance in NUREG 1748 to conduct an EA and, based on that, determine whether an EIS is required. The not just an Environmental Assessment must be submitted because there is radiological groundwater contamination at the site. In order to properly understand the extent of contamination information should be provided commensurate with that level of environmental analysis.

An integral part of the license termination rule requirements is the submission of an ALARA analyses. 10 C.F.R. pt 20. Yet section 7.0 of the Decommissioning Plan states that "...Fansteel **will perform** remediation ALARA analyses indicating that the analyses has still not been performed. According to NRC staff, this is a necessary part of the submittal because it affects the remediation criteria and activities. Finally, Fansteel is required to demonstrate that the radiation does is As Low As Reasonably Achievable yet completely failed to do so in the DP.

Finally, Section 8.0 of the Decommissioning Plan states that the DP is "A conceptual engineering plan...detailed plans...may differ..."; this is **NOT** a final DP. (Emphasis added). The NRC staff stated in its letter dated April 28, 2003 to the CEO of Fansteel that a final plan must be submitted before it can be reviewed and approved by the staff. Oklahoma can only echo this statement. Unless a final plan is submitted, it is impossible to review the Decommissioning Plan and understand the full impact on our state and our interests. However, despite the incomplete submittal and the long list of deficiencies, Fansteel's

Decommissioning Plan was accepted for a detailed technical review within ten (10) days of the detailed, seven (7) page rejection letter. Exhibit MAY(letter) In order to accomplish this task, Fansteel apparently met with NRC staff and pursuant to those discussions and a six paragraph letter (exhibit), all issues were seemingly resolved.

TIMELINESS OF REQUEST FOR HEARING

Where a request for hearing is filed by any person other than the applicant in connection with a materials licensing action under 10 C.F.R Part 2, Subpart L, the request for hearing must describe in detail the circumstances establishing that the request for hearing is timely. 10 C.F.R. § 2.1205(e)(4) (1999). Oklahoma received a letter dated May 9, 2003 on May 15, 2003(Exhibit 5) indicating that the NRC had accepted Fansteel's Decommissioning Plan for detailed technical review.(Exhibit 5). Pursuant to 10 C.F.R. § 2.1205(a), (d)(1) (1999), any person whose interest may be affected by the Proceeding for the amendment of Source Materials License SMB-911 may file a request for a hearing within thirty (30) days of receiving actual notice of an agency action. Pursuant to 10 C.F.R. §2. 710, thirty (30) days has been calculated as June 16, 2003. As set forth in the Certificate of Service below, this Request for Hearing was deposited in the United States mail, on June 16, 2003, and was therefore filed on June 16, 2003. Pursuant to 10 C.F.R. § 2.1203(b)(2) (1999), filing by mail is complete as of the time of deposit in the mail. In addition to the mailed copies, a copy has been sent by facsimile transmission to the office of the secretary and by e-mail to hearingdocket@nrc.gov to all the parties as set forth in the certificate of service. requested.

G. DESIGNATION FOR PURPOSES OF SERVICE

Pursuant to 10 C.F.R. § 2.1203(c) (1999), service of all pleadings, documents, and correspondence relating to the Proceeding may be served upon Sarah E. Penn, Assistant Attorney General, Office of the Attorney General, 4545 North Lincoln Boulevard, Suite 260, Oklahoma City, Oklahoma, 73105.

III. CONCLUSION

The Attorney General of Oklahoma, W.A. Drew Edmondson, by and through the undersigned, Sarah E. Penn, Assistant Attorney General, on behalf of the State of Oklahoma, hereby prays that its Request for Hearing be granted, and that the State of Oklahoma be granted a hearing relating to Fansteel's request for an amendment to Source Materials License No. SMB-911 authorizing the decommissioning of the Fansteel Facility for unrestricted release pursuant to 10 C.F.R. § 20.1402 (1999). NRC staff has assured Oklahoma that it will publish a Notice in the Federal Register providing an opportunity for Public Hearing, Oklahoma specifically reserves the right to amend this Request for Hearing based on any information contained in any such notice.

Respectfully Submitted,

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



SARAH E. PENN

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 10th day of September, 2003, a true and correct copy of the foregoing, State of Oklahoma's Request for Hearing, was served upon the persons listed below by U.S. mail, first class, postage prepaid, and by electronic mail where indicated with a single asterisk. A copy was also sent by facsimile transmission to the Office of the Secretary.

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