

August 2, 2004

Mr. A. Fred Dohmann
President and CEO
FMRI, Inc.
Ten Tantalum Place
Muskogee, OK 74403

Dear Mr. Dohmann:

I am responding to your June 9, 2004, letter requesting a fee waiver under 10 CFR 170.11(b)(1) for fees owed to the Nuclear Regulatory Commission (NRC) for licensing services for the Muskogee, Oklahoma site. For the reasons stated below, I am denying your fee waiver request.

In your letter, you stated that, "Based on the circumstances precipitating Fansteel's financial plight and its resulting request for bankruptcy relief, and the critical need to ensure timely decommissioning of the Muskogee facility, it is plainly within the public interest to grant FMRI a fee exemption."

Section 170.11 (b)(1) of Title 10 of the Code of Federal Regulations provides the Commission with the authority to grant an exemption from fees if it makes the determination that the exemption would be authorized by law and would be "in the public interest." The Commission's practice has been to grant such a fee waiver in very limited circumstances; bankruptcy however, has not been one of those circumstances.

In your request, you state that FMRI, Inc. ("FMRI") is experiencing severe financial hardship; however, you have not provided information which substantiates this assertion. Although FMRI withdrew \$525,000 from the Decommissioning Trust in support of activities related to decommissioning (see FMRI letter from E. J. Jackson to NRC's J. C. Shepherd, dated March 4, 2004), this does not indicate that FMRI lacks funds to comply with its license requirements. In fact, such withdrawals were contemplated in Fansteel's Plan of Reorganization and Disclosure Statement.

As to the burden of paying its fees, the staff notes that Fansteel, Inc., (FMRI's Parent Company) submitted to the Bankruptcy Court its Disclosure Statement and Plan of Reorganization, which incorporated FMRI's Decommissioning Plan by reference, and provided documentation to the Bankruptcy Court asserting its ability to pay the costs of the plan. The NRC staff's approval of FMRI's Decommissioning Plan was contingent upon Table 15-11, "Closure Cost Estimate by Year, Muskogee, OK, Facility," of the plan, which earmarked \$222,500/year for NRC oversight and related miscellaneous expenses. In addition, \$100,000 was earmarked in the Decommissioning Plan for the very fees for which FMRI requests a waiver, i.e., the fees accrued during the September 21-December 27, 2003 billing period, and a portion of the December 28, 2003-March 20, 2004 billing period. The NRC's fees are within the planned expenditures, and therefore within FMRI's documented ability to pay.

FMRI's request also cites the fee exemption granted to the Moab Mill Reclamation Trust (Moab Trust), (see NRC internal memorandum dated January 6, 2000, "Fee Exemption for Trustee/Licensee of the Moab Mill Site in Grand County Utah," from J. Turdici to J. L. Funches) as a precedent for granting this exemption to fees. After further review, the NRC staff has concluded that a comparison is not applicable because the specifics of the Moab Mill site were uniquely different.

Title X of the Energy Policy Act of 1992 (Pub.L.102-486, Title X, Section 1001, Oct. 24, 1992, 106 Stat. 2946, codified at 42 U.S.C. 2296(a)), provided funds to the Moab Trust, as the successor of the Atlas Corporation, to reimburse moneys expended for completed remedial activities at the Moab Mill site. This legislation was enacted to compensate uranium recovery facilities which had provided uranium to the U.S. government for various federal projects. Because FMRI is a materials site and not a uranium or thorium milling site, actions taken in the Moab Trust case are not applicable to this case.

Because Fansteel's settlement agreement continues to be subject to the jurisdiction of the Bankruptcy Court and a fee waiver represents a change in the division of assets contemplated by the court under Fansteel's Reorganization Plan, such a change would also require the approval of the court, which FMRI has not sought. However, even if the Bankruptcy Court did not object, for the reasons provided above, the NRC would not grant a fee waiver in the circumstances presented by FMRI.

Please make payment in the amount of \$101,080.33 (\$7,939.69 for FS0042-04, \$84,987.64 for FL0115-04 and \$8,153 for FL0214-04) within 20 days from the date of this letter.

If you have any questions regarding this matter, please contact Mr. Quynh Nguyen of my staff at 301-415-3373.

Sincerely,

/RA/

Jesse L. Funches
Chief Financial Officer

Enclosures: FS0042-04
FL0115-04
FL0214-04

FMRI's request also cites the fee exemption granted to the Moab Mill Reclamation Trust (Moab Trust), (see NRC internal memorandum dated January 6, 2000, "Fee Exemption for Trustee/Licensee of the Moab Mill Site in Grand County Utah," from J. Turdici to J. L. Funches) as a precedent for granting this exemption to fees. After further review, the NRC staff has concluded that a comparison is not applicable because the specifics of the Moab Mill site were uniquely different.

Title X of the Energy Policy Act of 1992 (Pub.L.102-486, Title X, Section 1001, Oct. 24, 1992, 106 Stat. 2946, codified at 42 U.S.C. 2296(a)), provided funds to the Moab Trust, as the successor of the Atlas Corporation, to reimburse moneys expended for completed remedial activities at the Moab Mill site. This legislation was enacted to compensate uranium recovery facilities which had provided uranium to the U.S. government for various federal projects. Because FMRI is a materials site and not a uranium or thorium milling site, actions taken in the Moab Trust case are not applicable to this case.

Because Fansteel's settlement agreement continues to be subject to the jurisdiction of the Bankruptcy Court and a fee waiver represents a change in the division of assets contemplated by the court under Fansteel's Reorganization Plan, such a change would also require the approval of the court, which FMRI has not sought. However, even if the Bankruptcy Court did not object, for the reasons provided above, the NRC would not grant a fee waiver in the circumstances presented by FMRI.

Please make payment in the amount of \$101,080.33 (\$7,939.69 for FS0042-04, \$84,987.64 for FL0115-04 and \$8,153 for FL0214-04) within 20 days from the date of this letter.

If you have any questions regarding this matter, please contact Mr. Quynh Nguyen of my staff at 301-415-3373.

Sincerely,
/RA/
 Jesse L. Funches
 Chief Financial Officer

Enclosures: FS0042-04
 FL0115-04
 FL0214-04

Distribution:

L. Tremper T. Croote T. Fredrichs M. Schwartz OCFO\DFM\LFT RF
 OCFO\DFM\RF OCFO RF OCFO 2004-189 (closes) OCFO/DFM/LFT SF 3.2.8
 DFM-4-071 (closes) S. Crutchfield E. Poteat Q. Nguyen

DOCUMENT NAME: C:\ORPCheckout\FileNET\ML042170007.wpd *See Previous Concurrence
 ADAMS Yes No Initials qtn Publicly Available Non-Publicly Available Sensitive Non-Sensitive

To receive a copy of this document, indicate in the box: "**C**" = Copy **w/o** att/enc "**E**" = Copy **w/** att/enc "**N**" = No copy.

OFFICE	OCFO/DFM/LFT		NMSS/DWM/DCB		OGC		OCFO/DFM/LFT	
NAME	QNguyen*		JShepherd (e-mail)*		TRothschild (e-mail)*		RDCarlson*	
DATE	07/12/04		07/12/04		07/12/04		07/13/04	
OFFICE	OCFO/DFM		OCFO/DFM		OCFO/DFM		OCFO/DFM	
NAME	CFDolinka*		ACRossi*		PJRabideau*		JLFunches	
DATE	07/14/04		07/15/04		07/19/04		08/02/04	

OFFICIAL RECORD COPY