



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005**

April 12, 2005

EA-04-188

Mr. E. Jonathan Jackson, President/CEO
FMRI (a subsidiary of reorganized Fansteel, Inc.)
Number Ten Tantalum Place
Muskogee, Oklahoma 74403

SUBJECT: NOTICE OF VIOLATION (INSPECTION REPORT 040-7580/04-001)

Dear Mr. Jackson:

NRC Inspection Report 040-7580/04-001, issued November 12, 2004, identified an apparent violation of NRC requirements related to the decommissioning of FMRI's rare earth recovery facility in Muskogee, Oklahoma. As described in the inspection report transmittal letter, enforcement action for the apparent violation was deferred pending the outcome of discussions between various NRC offices and FMRI concerning the issuance of a Confirmatory Order to confirm FMRI's commitment to correct the violation. However, these discussions were unsuccessful in arriving at a mutually satisfactory set of corrective actions, including a schedule for commencement of site remediation activities. Therefore, NRC has decided to issue enforcement action in this matter to achieve corrective action. Our decision to issue enforcement action was discussed in a telephonic re-exit meeting with Keyton Payne, Manager of Regulatory Compliance/Radiation Safety Officer, on April 12, 2005.

The violation involves the failure of FMRI to initiate site remediation and decommissioning activities by the start date required by the license. Specifically, License Condition 26 requires, in part, that FMRI perform remediation and decommissioning activities in accordance with the decommissioning plan and correspondence referenced in the license condition. Both the May 8 and July 24, 2003, referenced correspondence stated that FMRI was prepared to take steps to accelerate the schedule for Phase 1 decommissioning with actual remediation to begin by September 1, 2004, and to be completed by March 31, 2006, taking into account considerations for preparation, scheduling, cost and weather. The violation concerns the finding that as of the date of the NRC's inspection, no site remediation activities had been initiated as required.

Based on the results of the inspection, and our consideration of all of the information available to us at this time, the NRC has determined that the violation occurred and that it is most appropriately characterized at Severity Level IV, in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. The current Enforcement Policy is available on the NRC's Web site at <http://www.nrc.gov>; select "What We Do, Enforcement," then "Enforcement Policy." The violation is described in the enclosed Notice of Violation and the details surrounding it were described in NRC Inspection Report 040-7580/04-001.

FMRI is required to respond to this letter and should follow the instructions specified in the enclosed Notice of Violation in preparing your response. For your consideration and convenience, an excerpt from NRC Information Notice 96-28, "SUGGESTED GUIDANCE RELATING TO DEVELOPMENT AND IMPLEMENTATION OF CORRECTIVE ACTION," is enclosed." The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, Enclosure 1, and your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/Adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction.

Sincerely,

/RA/

D. Blair Spitzberg, Ph.D. Chief
Fuel Cycle and Decommissioning Branch

Docket No.: 040-07580
License No.: SMB-911

Enclosures:

1. Notice of Violation
2. NRC Information Notice 96-28

cc w/o Enclosure 2:

Mr. Walter Beckham, City Manager
City of Muskogee
229 West Okmulgee
Muskogee, Oklahoma 74401

Mr. George Brozowski, Regional Health
Physicist
U.S. Environmental Protection Agency,
Region VI
1445 Ross Avenue
Mail Stop-6PDT
Dallas, Texas 75202

Timothy Hartsfield
District Environmental Manager
Tulsa District
U.S. Army Corps of Engineers
1645 South 101st East Avenue
Tulsa, Oklahoma 74128

Ms. Kelly Hunter Burch
Assistant Attorney General
Office of Attorney General
4545 North Lincoln Blvd., Suite 260
Oklahoma City, OK 73105

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

Mr. Mike Broderick, Administrator
Oklahoma Department of Environmental
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Waste Management Division
Radiation Management Section
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Oklahoma City, Oklahoma 73101-1677

Mr. Richard Gladstein, Esq.
Environmental Enforcement Section
Environment and Natural
Resources Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

bcc w/o Enclosure 2 (via ADAMS distrib):

PKHolahahn

GFSanborn

JCShepherd, NMSS/DWMEP/DCB

CMCraig, NMSS/DWMEP/DCB

MCNolan, OE

MSchwartz, OE

OEMAIL

DBSpitzberg

RRMuñoz

BASchlapper

RJEvans

KFuller-Smith

FCDB File

RIV Nuclear Materials File - 5th Floor

SISP Review Completed: Bas

ADAMS: X Yes No Initials: BAS

X Publicly Available ____ Non-Publicly Available ____ Sensitive X Non-Sensitive

DOCUMENT NAME:E:\Filenet\ML051020512.wpd final r:_dnms

RIV:DNMS:FCDB	RIV:DNMS:FCDB	C:FCDB	D: ACES	RC
BASchlapper	RRMuñoz	DBSpitzberg	GFSanborn	Fuller
<u>/RA/</u>	<u>/RA/</u>	<u>/RA/</u>	<u>/RA/</u>	<u>/RA/</u>
04/8 /05	04/8/05	04/8/05	04/11/05	04/11/05

OFFICIAL RECORD

T=Telephone

E=E-mail

F=Fax

ENCLOSURE 1

NOTICE OF VIOLATION

FMRI (a subsidiary of reorganized Fansteel, Inc.)
Muskogee, Oklahoma

Docket No. 040-07580
License No. SMB-911
EA-04-188

During an NRC inspection conducted on September 20-23, 2004, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

License No. SMB-911, Condition 26, states that "Remediation and decommissioning activities at the Muskogee facility shall be performed in accordance with the decommissioning plan and supplemental correspondence submitted by letter dated January 24, 2003, and supplemented by letters dated May 8 and July 24, 2003 (re: DP)."

The May 8, 2003, letter states, in part, "The first phase will involve the remediation and offsite disposal of the residue of WIP in Ponds 2 and 3, which contains the highest concentration of radioactive material. At NRC's request, Fansteel is prepared to take steps to accelerate the schedule for this phase, with actual remediation to begin by September 1, 2004, and to be completed by March 31, 2006, taking into account considerations of preparation, scheduling, cost and weather. It is FMRI's intent to advance this schedule to the extent practicable."

The July 24, 2003, letter states, in part, "Phase 1 will involve the remediation and offsite disposal of residue material in Ponds 2 and 3 (the 'WIP material'). Remediation is scheduled to begin by September 1, 2004, and to be completed by March 31, 2006, taking into account considerations of preparation, scheduling, cost and weather."

Contrary to the above, FMRI did not begin actual remediation by September 1, 2004. As of the final date of NRC's onsite inspection, September 23, 2004, no actual remediation had been initiated. Specifically, FMRI failed to begin the remediation and offsite disposal of the residue of WIP in Ponds 2 and 3 in accordance with the schedule committed to in its letters.

This is a Severity Level IV violation (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, FMRI is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region IV, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; EA-04-188" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a

Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>, to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Dated this 12th day of April 2005