

February 27, 2006

Mr. E. Jonathan Jackson, President  
FMRI  
10 Tantalum Place  
Muskogee, OK 74403

SUBJECT: REPORT OF FEBRUARY 15, 2006, MEETING WITH FMRI TO DISCUSS  
RESOLUTION OF NOTICE OF VIOLATION OF LICENSE CONDITION 45

Dear Mr. Jackson:

Enclosed is a report of the November 4, 2004, meeting between staff of the U.S. Nuclear Regulatory Commission and representatives of FMRI. The open meeting was held at the request of FMRI to discuss the resolution of notice of violation of License Condition 45.

If you have any questions on this matter, and to schedule the meeting, please contact me at (301) 415 6712 or [jcs2@nrc.gov](mailto:jcs2@nrc.gov).

Sincerely,

**/RA/**

J. C. Shepherd, Project Engineer  
Decommissioning Directorate  
Division of Waste Management  
and Environmental Protection  
Office of Nuclear Materials Safety  
and Safeguards

Docket No.: 40-7580  
License: SMB-911

Enclosure:  
February 15, 2006 Meeting Report

cc: Service List

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## MEETING REPORT

DATE: February 15, 2006  
TIME: 8:00 a.m. - 10:00 a.m.  
PLACE: OWFN O14-B10  
PURPOSE: DISCUSS RESOLUTION OF NOTICE OF VIOLATION OF LICENSE  
CONDITION 45

ATTENDEES: Attachment

### **Background**

The U.S. Nuclear Regulatory Commission (NRC) issued a Notice of Violation (NOV) to FMRI on May 25, 2005, because FMRI failed to provide an update to the financial data in Table 15-12 of the decommissioning plan (DP), as required by license condition 45. On February 15, 2006, a Category I public meeting (open to public observation) was held to discuss FMRI's plans to achieve compliance with its license conditions. NRC, FMRI, an NRC licensee, and FMRI's parent company, Fansteel, were in attendance. The State of Oklahoma and a member of the public attended via telephone.

In 2003, Fansteel, the former site licensee, filed for protection under Chapter 11 of the U.S. Bankruptcy Code (reorganization). As part of the negotiations addressing Fansteel's reorganization plan, NRC agreed to allow transfer of its license to a newly formed subsidiary, FMRI, which would be responsible for remediating Fansteel's Muskogee site. Approval of transfer of the license was based, among other conditions, on Fansteel's commitment to provide certain financial projections annually during the period of remediation of the Muskogee site. This agreement was documented as license condition 45 of the site license, that was subsequently transferred to FMRI.

In March 2005, FMRI did not provide the information to update Table 15-12, and Region IV issued NOV EA-04-188(ML051020512). In two responses to the NOV, FMRI stated it could not provide the information because Fansteel had not provided this information to FMRI, despite its several requests. NRC responded to each FMRI letter that its stated reason for not providing the required information was not adequate (ML053490318). By letter dated January 13, 2006, (ML060270160), FMRI requested a meeting to discuss the issue.

### **Discussion**

Following introductions and the statement that FMRI had requested the meeting, a representative from the Office of Enforcement (OE) described the NRC's NOV process. The description included the fact that a licensee must either comply with its license or request a change to the license, and information regarding "willfulness" and explained the conditions under which the NRC may consider a violation as willful.

FMRI then summarized its decommissioning activities since becoming the licensee. It concluded by stating that it is now waiting for the State of Utah's approval of an application from International Uranium Corporation (IUC) to receive the FMRI material referred to as "Work in

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Progress" (WIP) material to use as alternate feed to the IUC mill. The WIP contains approximately 85% of the residual radioactivity on the site. FMRI also stated that while all of Ponds 2 and 3 would be excavated, dried, and bagged, it is not, at this time, in a position to ship about one quarter of the waste because of financial limitations. In addition to other cost increases between the DP submittal and contract execution, shipping costs increased about one million dollars over the DP estimate due to the WIP moisture content that was increased from 20 weight percent to 32 w/o to help control dust.

FMRI reiterated its position that it could not comply with LC 45 because Fansteel has not provided the data. A representative from Fansteel then stated that because of the current business environment, Fansteel no longer generates financial projections, and has no intention of doing so in the future. The two principal conditions cited by Fansteel for this action are: (1) large uncertainties in the business beyond the immediate future; and (2) the prospect of stockholder lawsuits for failure to meet its projections. Fansteel also stated that about one third of large companies are no longer making projections based on these concerns.

NRC stated that this information is necessary in order for the NRC to make decisions on potential actions to protect public health and safety in the event FMRI is unable to complete site decommissioning. FMRI argued that there were sufficient safeguards for finances in the existing financial instruments and NRC did not need the additional information. Staff responded that all the available information, either through the conditions cited or in other license requirements was, in fact, retrospective, and that prospective information identified in LC 45 was necessary for staff evaluation and planning.

### **Conclusion**

As a result of the discussions at the meeting, FMRI stated it would provide alternate information that was available and arrange for Fansteel to meet with NRC to discuss its annual 10-K submittal to the Securities and Exchange Commission, including a qualitative discussion of business unit prospects. FMRI stated that within 30 days, it would submit a letter outlining its plan to respond to the NOV, including a date by which it would submit a license amendment request to provide this information in lieu of the current information required by LC 45.

A member of the public asked about mixed waste. The licensee responded that WIP is not mixed waste, it is process material.

The Oklahoma Department of Environmental Quality asked if the NRC should not consider higher payments under the notes to account for the increased risk it perceived from the limited information FMRI has, and will provide.

NRC Docket No.: 40-7580  
NRC License No.: SUB-911

Fermi Power Plant Service List

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