

May 14, 2008

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

SUBJECT: FMRI PLANNED SCHEDULE FOR COMPLETING DECOMMISSIONING AT
THE MUSKOGEE SITE

Dear Mr. Jackson:

The U.S. Nuclear Regulatory Commission (NRC) believes that the continuing delays in the remediation of the Muskogee site jeopardize the ultimate decommissioning of the site. By letter dated May 8, 2003, Fansteel, Inc., then the licensee of the Muskogee site, committed to remediate the site in a phased approach on a specified, alternate decommissioning schedule in order to obtain NRC approval of its Decommissioning Plan (DP). That commitment is incorporated in Condition 10 of NRC License SMB-911. That approved alternate schedule stated that the licensee would decommission the site in four phases. It projected completing Phase 1, removal and off-site shipment of the work in progress (WIP) in Ponds 2-3, by the end of March 2006 and completing all other remediation, except ground water, by 2012. Phase 4 of the plan scheduled completion of ground water remediation by about 2023. NRC transferred license SMB-911 from Fansteel to FMRI Inc. (FMRI), a newly formed, special purpose subsidiary, on January 24, 2004, the effective date of Fansteel's bankruptcy reorganization.

In its submittal dated January 13, 2006 (ML060180288), to update the remediation schedule as required by License Condition 42, FMRI stated that it planned to complete Phase 1 by the end of December 2006, 8 months past the schedule approved with the DP. By its update letter of January 12, 2007 (ML070220171), FMRI stated that it planned to complete remediation of Pond 3, but not Pond 2, by the end of December 2007. This is an additional twelve-month postponement. FMRI further stated it planned to cease remedial activities at the site when it excavated all waste material from Pond 3 and shipped it off site. FMRI also stated it would not resume Phase 1 remediation work until it has accumulated sufficient funds to complete excavation and shipping of all material from Pond 2 without interruption. FMRI estimated that it would restart Phase 1 remediation in about mid-2010, with completion by the end of 2011. In its

January 8, 2008, submittal to update the decommissioning schedule (ML080700933), FMRI presents an additional six-month delay to the planned completion of Phase 1, to mid-2012.

In its letter of January 12, 2007, FMRI also states it “. . . has concluded that this course of action is more appropriate for safety and efficiency reasons than having Pond 2 open over several years and remediating and shipping WIP material as available funds allow.” Pond 3, that is approximately twice as large as Pond 2, has been open since its inception in 1978, and neither NRC nor the licensee has identified any undue threat to public health and safety. FMRI has not demonstrated that there is a safety issue related to pond remediation, and it has not provided a basis to suggest that an extended stop work period will have a beneficial effect on site safety.

The NRC's is concerned that further extensions of the estimated schedule for completion of site remediation could result in failure to decommission the site. FMRI did not complete the activities on the schedule to which it committed in the approved alternate decommissioning schedule of May 2003. By its January 2008 schedule, FMRI expects to delay the start the second half of Phase 1 remediation, Pond 2, until about the middle of 2010, with completion about two years after that. This constitutes more than six years of delay from the approved alternate schedule in the DP. Based on the continual delays since the beginning of remediation, it is possible that remediation of Pond 2 may extend beyond the current estimate for beginning Phase 2. Further, this proposed delay will postpone the projected start of Phases 2 and 3 remediation beyond their completion dates in the original plan. FMRI now estimates that Phase 2 will begin in about 2013 and continue for at least 2 years. By this plan, the projected completion dates for Phases 2 and 3 are also beyond the maturity date of Fansteel's unsecured primary promissory notes. This, as noted below, may result in there being insufficient funds to complete decommissioning.

As part of the settlement in its bankruptcy proceedings, Fansteel provided an unsecured promissory note (Primary Note) in the amount of about \$32 million to fund Phases 1 through 3 of the decommissioning¹. In the funding agreement, Fansteel agreed to pay a minimum of \$1.4 million per year for FMRI to use remediating the site. It also agreed to pay portions of certain profits, if available, to FMRI to reduce the note balance. To date, the periodic Trust

¹ Fansteel also provided a second unsecured note for about \$10 million to fund ground water remediation. It pledged another unsecured note of unspecified amount (Tertiary Note) to cover costs of remediating additional site contamination discovered in the previous phases, if needed.

Fund statements reflect Fansteel's timely payments of the minimum amount of \$1.4 million per year. At the time of the bankruptcy settlement, the licensee estimated the cost of Phase 1 at about \$3 million. However, in its March 2008 update to Table 15-11 of the DP, FMRI now estimates the Phase 1 cost at more than \$9 million. NRC does not agree that allowing a 2 year hiatus in remediation during which costs could rapidly escalate is an effective strategy for decommissioning this site. FMRI is completing Pond 3 remediation within the revenue available to FMRI and at a rate acceptable to NRC. NRC believes FMRI could remediate Pond 2 at the same rate it demonstrated at Pond 3 without increasing the potential risk to public health and safety. Therefore, NRC considers continuing site remediation to be the most prudent course of action.

NRC is also concerned about funding for site remediation after the due date of the balloon payment for the Primary Note. The maturity date of the Primary Note is December 31, 2013, at which time Fansteel is obligated to pay the lump sum balance of the value of that note. By projecting the minimum annual payments, plus payments to date, NRC estimates that the face value of the Primary Note at maturity will be about \$15 million. NRC's review of Fansteel's publicly available, annual SEC filings since 2003 show that Fansteel's current liabilities continue to increase and exceed its current assets, and that its short-term borrowing is also increasing. Because of this potential uncertainty in funding after 2013, further delays in remediation may result in insufficient resources being available to complete remediation of the site to unrestricted use conditions.

In conclusion, FMRI has not provided the health and safety basis for "stop work." Further delays in decommissioning activities would undoubtedly result in higher cost to complete decommissioning. FMRI has not provided adequate information to warrant another alternate schedule for completion of decommissioning as defined in 10 CFR 40.42(i). Any action by FMRI that would further delay the Phase 1 decommissioning schedule would not be consistent with the existing alternate schedule in its license. If it desires, FMRI may submit a request to

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amend its approved alternate schedule. To support such a request, FMRI must also submit adequate information to support it, in accordance with 10 CFR 40.42(i), including detailed data on planned expenditures and revenue to support its entire proposed schedule extension.

Sincerely,

/RA/

Larry W. Camper, Director
Division of Waste Management
and Environmental Protection
Office of Federal and State Materials
and Environmental Management Programs

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

cc: FMRI/
Fansteel Service List

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