



March 22, 2010

Shellie Chard-McClary, Director of Water Quality Division
State of Oklahoma/Department of Environmental Quality
707 N. Robinson

Oklahoma City, OK 73101-1677 *SENT VIA OVERNIGHT CARRIER (phone 405/702-8100)*

Reference: FMRI
 OPDES Permit No. OK0001643
 Facility ID: I-51000040
 NOV No. I-51000040-10-1

Dear Ms. Chard-McClary:

This is in response to the Notice of Violation (NOV) No. I-51000040-10-1 that FMRI, Inc. (FMRI) received on March 8, 2010. As indicated in the NOV letter, FMRI is to submit to the Oklahoma Department of Environmental Quality (DEQ) a written report detailing the specific actions taken and why such actions are sufficient to prevent recurrence of the cited violations regarding a compliance schedule placed in permit No. OK0001643 concerning lining impoundments F01 and F02 and a Closure Plan and Pre-Closure Sampling and Analysis Plan for impoundments T02 and T03. The letter further states in the event the Respondent believes that correction of the cited violations is not possible within the prescribed time period, the Respondent shall submit a comprehensive plan for the expeditious elimination and prevention of such violation within fifteen (15) days of the effective date of this Notice. Please consider this FMRI's comprehensive plan.

To demonstrate that DEQ's concerns are being addressed under existing mechanisms for closure of the site, Attachment A provides further background information and discussions on the following subjects:

- The Fansteel Inc. (Fansteel) Chapter 11 Bankruptcy proceedings including the Second Amended Joint Reorganization Plan (the "POR") under which FMRI was created with the responsibility of remediating the Muskogee site.
- The US Nuclear Regulatory Commission (NRC) approval of the December 14, 2003, Amended Decommissioning Plan (DP) for the closure of the property and termination of the Materials License, as amended by supplemental letters dated May 8 and July 24, 2003, respectively. Please note, NRC approval of the DP became effective January 23, 2004, concurrent with the emergence of Fansteel from the Chapter 11 Bankruptcy proceedings and the creation of FMRI.

- The NRC-approved DP prescribes a phased approach, using a “worst-first” source removal sequence for the ponds followed by additional characterization, including characterization for non-radiological constituents per previous FMRI commitments to the State of Oklahoma (the “State”). FMRI’s Materials License also contains requirements for FMRI to conduct additional site characterization after completion of the pond source removal activities.
- The NRC-approved DP also provides a through discussion of funding required for closure activities and the protections in place for the DEQ and the OPDES permit.
- The transfer of the OPDES Permit No. OK00001643 to FMRI on December 2, 2004, with the Pond 6 and 7 liner schedule was much later in time than the conclusion of the Bankruptcy proceedings and implementation of the Federally-mandated DP for closure of the site.
- Previous technical information provided to the DEQ and to the NRC on Ponds 6 and 7 and the effectiveness of site pollution prevention measures and controls.
- Corrections noted by FMRI to the March 2, 2010, DEQ NOV letter.

The enclosures to this letter, as referenced in Attachment A, provide the comprehensive plans covering closure of the ponds (e.g., the DP, POR, the Materials License) and the specific actions to be taken as well as pollution prevention measures in place for the interim period. FMRI is constrained under the requirements of the Bankruptcy, DP, and NRC Materials License to conduct pond source removal activities before conducting additional site characterization of these areas. After the completion of the additional site characterization activities, DEQ will then have ample recourse per the terms of the POR and the DP to address any remaining concerns DEQ may have regarding further closure of the ponds in question, if necessary.

We would be interested in discussing this further with you should you have any questions. However, further direction from the Federal Bankruptcy Court and the NRC is necessary before FMRI would be able to deviate from the scope, timing, and/or sequence of these planned and federally approved closure activities (including the lining of Ponds 6 and 7 prior to their planned closure which is not included in the approved POR or DP).

If you have any questions or if you would like to discuss this matter further, please do not hesitate to contact me.

Regards,



E. Jonathan Jackson, President

Enclosures

cc/with out enclosures: James Shepherd (NRC)
Richard Gladstein (U.S. Department of Justice)

ATTACHMENT A – BACKGROUND AND FURTHER DISCUSSION

Bankruptcy Proceedings. Fansteel filed voluntary petitions on January 15, 2002, for reorganization under Chapter 11 of the U.S. Bankruptcy Code in Federal Court in Delaware. The POR for Fansteel was confirmed by order of the Honorable Joseph J. Farnan, Jr., United States District Court Judge on December 23, 2003. Per the approved POR, FMRI was created and the Muskogee site and its Materials License were transferred to FMRI, and FMRI became the entity responsible for remediation of the Muskogee site. The Effective Date of the emergence of Fansteel from Chapter 11 Bankruptcy (i.e. and the creation of FMRI and transfer of the Materials License) was January 23, 2004. Please refer to the enclosed copy of the POR describing in further detail the organization of FMRI, transfers to FMRI, financing of FMRI, and the “winding up” of FMRI.

In addition, the State of Oklahoma (and the DEQ) participated in Fansteel’s Bankruptcy proceedings, the creation of FMRI and its remediation plan, and the treatment of the DEQ and the OPDES permit under this Bankruptcy reorganization (please see the enclosed copy of the December 23, 2003 Letter Agreement for Modifications to Joint Reorganization Plan of Fansteel Inc., et al., signed by the Office of the Oklahoma Attorney General).

NRC Approval of the Amended Decommissioning Plan Requiring a Phased/Worst-First Decommissioning Approach followed by Additional Characterization. Enclosed is a copy of the January 14, 2003 Amended Decommissioning Plan (including supplemental letters dated May 8 and July 24, 2003, respectively). As described in this NRC-approved DP and in accordance with the Chapter 11 Bankruptcy proceedings, FMRI is to undertake a four-phased approach to decommissioning the Muskogee site as follows:

- The first phase involves the remediation and off-site disposition of WIP in Ponds 2 and 3, which contains the highest concentration of radioactive material (i.e. the “worst-first” approach).
- The second phase involves remediation, and off-site disposal of the CaF materials in the remaining wastewater treatment ponds.
- The third phase involves completion of remediation, including buildings, equipment, and soils. Any additional needed characterization will be accomplished during this phase.
- The fourth and final phase involves groundwater monitoring and remediation.

The DP provides a comprehensive plan for closure and the eventual termination of its NRC issued Materials License. The NRC approved the DP on December 4, 2003, and it became effective January 23, 2004, concurrent with the emergence of Fansteel from its Chapter 11 Bankruptcy proceedings and concurrent with the creation of FMRI and transfer of the NRC issued Materials License to FMRI.

Enclosed is a letter dated June 10, 2004, from FMRI to the Attorney General of the State of Oklahoma that confirms discussions between that office and counsel for FMRI to the effect that FMRI will characterize the non-radiological contamination at the Muskogee site at the same time that it undertakes the additional radiological characterization contemplated during Phase 3, including its early submittal to the DEQ. It is during these additional characterization activities, after Phase 1 and Phase 2 pond source removal activities that FMRI will be able to provide to DEQ any necessary Pre-Closure Sampling and Analysis and Closure Plans for the permitted ponds. This letter also confirms the understanding reached by and between FMRI and the State whereby further appeals by the State of the May 28, 2004 Initial Decision of the NRC's Presiding Officer would cease.

FMRI Radioactive Materials License. License Condition 31 of the enclosed FMRI License (Amendment 13) also requires FMRI to conduct additional characterization activities, and prepare detailed work plans if required, for any additional work identified from the results of these additional site characterization activities.

Financial Assurance for the Decommissioning Activities and Treatment of the OKDEQ and the OPDES Permit. Section 15.3 of the DP (contained in the July 24, 2003, supplemental letter) provides a thorough discussion on the funding of the closure activities including the terms of the Notes and discusses the treatment of ODEQ and the OPDES permit in relation to these Notes. Again, it is during these additional characterization activities, after completion of Phase 1 and Phase 2 pond source removal activities that FMRI will be able to provide to DEQ any necessary Pre-Closure Sampling and Analysis and Closure Plans for the permitted ponds.

OPDES Permit Chronology and the Pond 6 & 7 Liner Requirement. As previously described, the current OPDES Permit No. OK0001643 was issued to Fansteel on December 12, 2003, before its Bankruptcy proceedings were confirmed. The permit was then transferred to FMRI on December 2, 2004, well after the completion of the Bankruptcy proceedings, the effective date of the DP, and the creation of FMRI. In addition, FMRI made a request to DEQ dated August 25, 2004 (enclosed), for an exemption from the Ponds 6 and 7 liner requirements to ensure compliance with the federally approved DP and POR. The letter also states the liners were not a prudent use of decommissioning financing given that removal of these ponds under the DP would achieve DEQ's objective. DEQ, however, subsequently transferred the permit to FMRI without removing the inconsistent requirement for lining Ponds 6 and 7, contrary to the Federally-mandated and approved POR and DP.

Summary of Correspondence with the DEQ and NRC on DEQ Pond Closure Issues and Pollution Prevent. The enclosed July 24, 2008, letter to the NRC provides a complete summary and copies of correspondence between FMRI and the DEQ regarding the liner issue for Pond 6 and 7 liner through July 24, 2008. As discussed in this letter, FMRI made repeated attempts to obtain variance exemption from the liner requirements to be consistent with the Federally-mandated and approved POR and DP decommissioning requirements as described above.

In response to the February 2, 2007, FMRI pond closure extension request, the DEQ requested by letter dated March 12, 2007, (1) additional testing of Ponds 3 and Outfall 1 of the wastewater treatment process (please note, FMRI submitted the additional Pond 3 and Outfall 1 testing results to the agency in April of 2007); and (2) a "Pre-Closure Sampling and Analysis Plan (PCSAP)" for Pond 6 and 7 (please note, FMRI timely submitted the proposed PCSAP for Pond Nos. 6 and 7 to the DEQ on April 27, 2007). By letter dated June 27, 2007, the DEQ accepted the FMRI proposed Pond 6 and Pond 7 PCSAP. Per the letter from DEQ, "...Consideration of the request to not require installation of the more protective liners for pond nos. 6 and 7 and to extend the submittal date of the closure plan for pond Nos. 6 and 7 shall be based on a review of the requested sampling data...."

The Pond 6 and 7 sediment and nearby groundwater sampling activities were conducted on September 11 and 12, 2007, and FMRI reported results of these sampling efforts to DEQ on November 19, 2007. This report also provided FMRI's conclusion that the existing clay liner for Pond Nos. 6 and 7 is protective of groundwater and that no liner modifications were necessary until the closure of these ponds under the ongoing DP. FMRI also provided additional information on the clay liners constructed for Pond Nos. 6 and 7 in the transmittal letter of the June 23, 2008, permit renewal submittal that further supported FMRI's conclusion. This conclusion also was based on FMRI's knowledge that; (1) the site groundwater interceptor trench is operating as designed and is collecting all impacted groundwater for treatment with no off-site migration; and (2) any residual contamination that may exist would be identified during the planned additional site characterization activities during Phase 3 of the DP and would be dealt with at that time.

By letter dated July 2, 2008, DEQ provided to FMRI its conclusion that the Pond 6 and 7 clay liners did not meet Class I wastewater requirements, and provided three options for "action required for regulatory compliance," and requested that FMRI let it know which option FMRI selected for Pond Nos. 6 and 7 no later than July 31, 2008. The three options included:

- Closure of Pond Nos. 6 and 7,
- Modification/installation of engineered liners, or
- Installation of six additional groundwater monitoring wells between the interceptor trench and the Arkansas River in the shallow and deeper aquifers and increased site-wide groundwater monitoring in addition to the existing groundwater management plan.

FMRI immediately sought input from the NRC (please see the enclosed July 24, 2008, FMRI letter to the NRC) as to whether any of these additional Pond 6 and 7 actions requested under the DEQ are consistent with and allowed by the DP and, if so, whether NRC's prior approval is necessary for the additional Pond 6 and 7 actions requested by the State (i.e. for the expenditure of funds for this additional work). Again, please understand that the NRC-approved DP already has provisions for closure of Ponds 6 and 7 during Phase 2 activities and requires additional characterization in conjunction with Phase 3 activities rather than in 2009 and 2010 as requested by the State. Conducting these activities now affects and delays the schedule for completing Phase 1 decommissioning activities (i.e. the "worst-first" approach mandated under the DP).

Thereafter, FMRI provided a written response to the DEQ on July 29, 2008, that these ponds are to be closed in accordance with the DP approved by the NRC, and that the NRC has and continues to have primary and overall authority for the remediation of the site until termination of the Materials License. FMRI's response concluded that to avoid conflict with the NRC-approved DP and NRC-issued Materials License, FMRI is not able to provide the DEQ with an informed response or a selection from the options for additional Pond Nos. 6 and 7 actions described in the July 2, 2008, DEQ letter until the further input is received from the NRC.

The DEQ responded to FMRI by letter dated January 14, 2009, that based on their October 2008 conversation with the NRC, the requested additional Pond Nos. 6 and 7 work options "are consistent with the NRC decommissioning schedule," with the one exception being the installation of deep monitoring wells east of site groundwater interceptor trench. The DEQ then concluded this letter with a request for FMRI to select by February 2, 2009, one of the three options for Pond Nos. 6 and 7 (i.e. closing the ponds in 2010, lining the ponds in 2010, or, implementing a site-wide groundwater monitoring plan in 2009, including the installation of additional monitoring wells east of the site groundwater interceptor trench). In subsequent discussions with DEQ, and as requested by FMRI to allow further discussions on this issue with the NRC during their scheduled February 2 – 4, 2009, annual facility inspection, the DEQ extended the deadline for a response to February 13, 2009.

FMRI then met with representatives from DEQ and the NRC on February 4, 2009, regarding Pond Nos. 6 and 7 issues during the annual NRC inspection at the Muskogee site. The NRC recommended during the meeting that FMRI send to the DEQ the reports related to the construction and operation of the site groundwater interceptor trench to support FMRI's position that the trench is operating as designed, is collecting all impacted groundwater for treatment with no off-site migration, and that no additional work for Pond Nos. 6 or 7 is necessary. Such references also support FMRI's conclusion that no additional site monitoring is required. In addition, the NRC stated its preference during the February 4 meeting that FMRI use its funds to continue the Phase 1 decommissioning of Pond 2 (i.e. removal for off-site reclamation the WIP material in Pond 2) instead of installing a synthetic liner in Pond Nos. 6 and 7. The NRC also indicated during the meeting that lining Ponds Nos. 6 and 7 may require a Materials License amendment and/or additional environmental review, and that they would provide further feedback to FMRI after considering this matter further.

By letter dated February 13, 2009, FMRI provided the additional technical information to DEQ on the construction, operation, and effectiveness of the site groundwater interceptor trench in protecting off-site areas and requested the DEQ to consider the technical information enclosed with that letter and its sufficiency, along with previously submitted information, to allow a waiver from the liner requirement since Ponds Nos. 6 and 7 are already being closed under a Federally-mandated and approved DP in accordance with the FMRI Materials License. As discussed by the NRC at our February 4, 2009, meeting, this will allow the most prudent use of funding and will not delay Pond 2 Phase 1 decommissioning efforts by diverting funds when not necessary to assure the protection of off-site areas.

FMRI continued in the February 13 letter to the DEQ, that given the expense for the additional monitoring requested and its limited value (especially since additional characterization is already scheduled in accordance with the NRC-approved DP during Phase 3 activities after source removal has been completed), the only possible option FMRI could select from DEQ's January 14, 2009, letter would be to line Pond Nos. 6 and 7, subject to availability of funding while maintaining environmental and safety controls and NRC approval, even though those these liners would be removed during the planned closure of the ponds in the future. FMRI then reiterated in its response that it is unable to make a definitive selection until the NRC provides further input on this deviation from the approved DP.

Continued Phase 1 and Phase 2 Source Removal Activities and Maintenance of Environmental and Safety Controls. While FMRI to date has removed over half of the radioactivity from the site during the ongoing Phase 1 WIP source removal and Fansteel is and remains current under the Notes, the pace of continued closure activities is dependent on sufficient funding levels. Deviation from the approved work scope (i.e. installation of liners in Ponds 6 and 7 which would then be removed during their required closure) will divert funding from the required Phase 1 source removal activities and does not allow the planned completion of the "worst-first" approach and causes the expenditure of funds twice for the same activity. As previously discussed, this was the point of the FMRI July 24, 2008, letter to the NRC requesting guidance.

Corrections to the ODEQ NOV March 2, 2010 Letter. In addition, FMRI also noticed some inaccuracies in the NOV letter. The letter states that the OPDES OK0001643 was issued to the "Respondent" on December 12, 2003. In fact, this permit was issued to Fansteel on December 12, 2003 (i.e. prior to the emergence of Fansteel from the Bankruptcy proceedings and the January 23, 2004 effective date of the DP and the creation of FMRI) and not FMRI, the "Respondent." The permit was transferred to FMRI on December 2, 2004, i.e. after the completion of Fansteel's Bankruptcy proceedings, the effective date of the DP, and the creation of FMRI. The letter also references Closure Plans and Pre-Closure Sampling and Analysis Plans for impoundments T02 and T03. As noted in DEQ's March 16, 2007, letter to FMRI, there is no impoundment T02. Furthermore, source removal and pond stabilization prior to the pending closure of impoundment T03 was conducted nearly 20 years ago.

APPENDIX A: Impoundment Well Information

DESCRIPTIONS OF WASTEWATER TREATMENT/DISPOSAL SURFACE IMPOUNDMENTS

Classification OAC 252:615-5-31		Type of Liner OAC 252:615-5-34	Holding Capacity OAC 252:615-5-32(8)	Wastewater Destination
S.I.	Wastewater			
F01	Temporary storage of intermediate product material, storm water, effluent from the wastewater treatment plant, and effluent from F02 Pond 6 Class I	Clay Soil	1.01 X 10 ⁶ gallons	Outfall 001
F02	Temporary storage of intermediate product material, storm water, effluent from the wastewater treatment plant, and effluent from F03 and F04 Pond 7 Class I	Clay Soil	1.61 X 10 ⁶ gallons	F01
F03	Temporary storage of intermediate product material, storm water, effluent from the wastewater treatment plant. Pond 8 Class I	HDPE	17.7 X 10 ⁶ gallons	F02 or F04
F04	Temporary storage of intermediate product material, storm water, effluent from the wastewater treatment plant, and effluent from F03 Pond 9 Class I	HDPE	17.2 X 10 ⁶ gallons	F02
F05	Temporary storage of WIP residues Pond 3 Class I	HDPE	8.7 X 10 ⁶ gallons	Wastewater Treatment Plant then to Outfall 001
T01	Temporary storage of WIP residues Pond 2 Class I	Clay	2.1 X 10 ⁹ gallons	Total Retention
T03	Not currently used but received residues in the past Pond 5 Class I	Clay Soil	1.01 X 10 ⁶ gallons	Total Retention

LOCATIONS OF SURFACE IMPOUNDMENTS

Impoundment	Legal Description	Relative Location
F01 Pond 6	NW¼, SW¼, SW¼, Section 16, Township 15N, Range 19EIM, Muskogee County	Approximately 325 feet south of the Chem "A" building
F02 Pond 7	NW¼, SW¼, SW¼, Section 16, Township 15N, Range 19EIM, Muskogee County	Immediately south of impoundment F01
F03 Pond 8	NW¼, SW¼, SW¼, Section 16, Township 15N, Range 19EIM, Muskogee County	Immediately west of impoundments F01 and F02
F04 Pond 9	NW¼, SW¼, SW¼, Section 16, Township 15N, Range 19EIM, Muskogee County	Southernmost impoundment approximately 700 feet south of the Chem "A" building
F05 Pond 3	NW¼, NW¼, SW¼, Section 16, Township 15N, Range 19EIM, Muskogee County	Approximately 250 feet northwest of the Chem "A" building
T01 Pond 2	NE¼, NW¼, SW¼, Section 16, Township 15N, Range 19EIM, Muskogee County	Approximately 200 feet southeast of the Chem "A" building
T03 Pond 5	NW¼, SW¼, SW¼, Section 16, Township 15N, Range 19EIM, Muskogee County	East of Impoundment F01