

SAFETY EVALUATION BY THE OFFICE OF FEDERAL AND STATE MATERIALS
AND ENVIRONMENTAL MANAGEMENT PROGRAMS
RELATED TO INDIRECT TRANSFER OF FACILITY OPERATING LICENSE
NO. SMB-911
FOR THE MUSKOGEE, OKLAHOMA FACILITY
FROM FANSTEEL, INC. TO GREEN LANTERN ACQUISITIONS 1
DOCKET NO. 40-7580

1. INTRODUCTION

The purpose of this report is to evaluate the application for indirect transfer of control of FMRI, Inc. (FMRI), licensee for the Muskogee, Oklahoma site and a subsidiary of Fansteel, Inc. (Fansteel), from Fansteel to Green Lantern Acquisition 1 (GLA 1). By application dated June 21, 2011, FMRI, Fansteel, and GLA 1 (applicants) requested that the U. S. Nuclear Regulatory Commission (NRC) consent to an indirect transfer of control of FMRI, holder of Facility Operating License No. SMB-911 (ML11174A044). By a second letter, also dated June 21, 2012, the applicants requested modifications to SMB-911 to reflect changes related to the indirect change of control (ML11174A045). Staff is assessing both applications in this safety evaluation report (SER).

2. BACKGROUND

Fansteel operated the Muskogee site from 1958 through 1989 to extract tantalum and other rare earth materials from a variety of ores. After it ceased operation, Fansteel submitted a series of decommissioning plans for the site. In 1997, it proposed reprocessing the material in Ponds 2 and 3 and constructing an on-site disposal cell for the residue of the new process, then terminate the license under restricted release conditions (Legacy ADAMS 9708060245). Fansteel provided approximately \$4 million in financial assurance for the proposed decommissioning effort. In 2000, Fansteel notified NRC it should stop its review of the proposed actions (ML003716641). In November 2001, Fansteel announced it had permanently ceased operations at the site (ML040510027) and that it "... intends to decommission the Muskogee site by off-site disposal of contaminated materials and soils." On January 15, 2002, Fansteel notified NRC that it filed a petition for relief under Chapter 11 of the United States Bankruptcy Code (ML020290385). As stated by Fansteel, the goal of the bankruptcy was to halt the deterioration of Fansteel's financial position, restore the company to financial health, and continue in the normal course of business. On July 24, 2003, Fansteel filed with the Bankruptcy Court a comprehensive Plan of Reorganization (Plan) for Fansteel (ML032230033). Under the Plan, Fansteel would transfer operating authority for, and ownership of, the Muskogee site to a new limited liability company named FMRI. Fansteel would provide additional financial assurance for this decommissioning by three unsecured promissory notes, described below, with a combined face value of \$34.8 million. The U.S. Bankruptcy Court for the District of Delaware subsequently approved the Plan and its amendments (ML040160325). Since the effective date of the Fansteel reorganization in January 2004 (ML040370310), FMRI has operated the Muskogee site as the NRC licensee.

On December 4, 2003, NRC approved a four-phase decommissioning plan (DP) for the site (ML033240157). Phase 1 of the DP is to remove the radioactive residue -- called work in progress (WIP) -- from Ponds 2 and 3, and was scheduled for 2004 thru 2006. The DP Phase 2 is remediation of Ponds 5 – 9 and related areas, and was scheduled for 2006 thru mid-2011. Phase 3 is remediation of buildings and soils, and was scheduled for completion by the end of 2011, with a final site status survey in 2012. Phase 4 of the DP is ground water remediation that comprises capture through the interceptor trench followed by treatment and release to the Arkansas River, and was scheduled to continue until about 2023. To date, FMRI has implemented only part of Phase 1 by removing the WIP from Pond 3; some WIP removal from Pond 2 occurred in 2011.

3. PROPOSED ACTION

As described in the application, in August 2010, Fansteel and GLA 1 entered into a Stock Purchase Agreement (the "Transaction"), whereby GLA 1, subject to the terms and conditions therein and the satisfaction of certain pre-closing conditions, agreed to purchase one hundred percent (100%) of the equity securities of FMRI from Fansteel. The application states that after completion of the Transaction, FMRI will remain the holder of NRC License No. SMB-911 and GLA 1 will own one hundred percent (100%) of the equity securities of FMRI, and will become the parent company of FMRI. The application also states that the only anticipated change in FMRI personnel is a new president, and FMRI remains technically and financially qualified as the licensee and will continue to fulfill all responsibilities as licensee. The application further states the additional economic and technical resources of GLA 1 will enhance FMRI's ability to meet all of its obligations under the license and it anticipates that timelier site remediation will occur.

GLA 1 was incorporated under the laws of the State of Delaware as a limited liability company on or about March 2010. The equity securities of GLA 1 are 100% owned by Premium Environmental Services, LLC (PES) and its officers. All owners are U.S. citizens. The principal place of business of GLA 1 is located at 190 Highland Drive, Medina, Ohio. At this time, the only business expected to be conducted by GLA 1 will be the ownership and direction of FMRI, pursuant to the Transaction. GLA 1 has entered into contracts with both the Environmental Quality Company (EQ) of Wayne, Michigan and Integrated Environmental Management, Inc. (IEM) of Gaithersburg, Maryland to provide performance and technical support. EQ shall perform as the general contractor and IEM shall act as technical advisor on all radiation matters. Statements of experience and qualifications were included for both EQ and IEM.

PES is a limited liability company incorporated under the laws of the State of Delaware on or about November 2009. PES is entirely owned by a U.S. citizen. The principal business of PES includes advising clients as to remedial activity, and acquiring contaminated sites for purposes of completing remedial activities within available funding. The employees of PES have approximately twenty-five (25) years of remedial construction and operation experience, including projects from small scale to large scale efforts. In addition, PES draws on well over a decade of hands-on liability management experience, and the people active in PES have undertaken projects bearing in excess of One Hundred Fifty Million and 00/100 Dollars (\$150,000,000) in related insurance coverage. PES has retained the services of both Miles Tolbert, Esquire, of Crowe & Dunlevy of Oklahoma City, Oklahoma and David Bell, Esquire, of Cleveland, Ohio to advise it on all regulatory matters. Staff has reviewed the qualifications and

experience of key PES personal and its advisors and concluded that they are technically qualified to perform the work at the Muskogee site.

4. FINANCIAL ANALYSES

FMRI will continue to receive the funding as defined by the Fansteel bankruptcy settlement agreement. As part of the Fansteel bankruptcy settlement agreement in 2003, NRC accepted three unsecured promissory notes from Fansteel to FMRI in lieu of the decommissioning financial assurance specified in 10 CFR 40.36. As stated in the request for indirect transfer, these notes remain the primary decommissioning financial assurance instruments for the Muskogee site. GLA 1 will provide the additional financial resources described below.

4.1 GLA 1 Financial Assurance

To enhance its ability to implement the site DP, GLA 1 has acquired three financial instruments: (i) performance bonds in the aggregate amount of Fifteen Million (\$15,000,000); (ii) Pollution Legal Liability Insurance from the ACE Insurance Companies for Ten Million Dollars (\$10,000,000); and (iii) modified Pollution Legal Liability Insurance from the Navigators Insurance Companies for Fifteen Million Dollars (\$15,000,000). The Pollution Legal Liability Insurance includes, but is not limited to, costs resulting from changed regulation, changed conditions, and off-site migration of contamination.

4.2 Fansteel Notes

As part of its 2003 bankruptcy settlement agreement, Fansteel provided three unsecured promissory notes as financial assurance for decommissioning the Muskogee site:

- The Primary Note with a face value of \$30.6 million, with a minimum semi-annual payment of \$700,000 and a maturity date of December 31, 2013 (ML051090487);
- The Secondary Note with a face value of \$4.2 million, with a minimum semi-annual payment of \$282,000 commencing January 1, 2009 and a maturity date of December 31, 2023 (ML040070555);
- The Contingent Note, with no stated face value or maturity date, both of which are to be determined following additional site characterization after completion of DP Phases 1 and 2 (ML033350053).

By conditions of the notes and the Decommissioning Trust Agreement (ML033380547), the periodic payments on the notes are made to the decommissioning trust fund that limits use of the funds to activities directly related to decommissioning activities. The notes will remain in effect after the proposed transfer. Therefore, the proposed transfer has no adverse impact on the existing, accepted decommissioning financial assurance for the site.

4.3 Proposed Change to the Primary Note

As part of the application, Fansteel requested to extend the maturity date of the Primary Note by ten years, from December 31, 2013 to December 31, 2023. To evaluate this part of the application, staff reviewed the finances and activities at the site. By letter of January 12, 2007 (ML070220171), FMRI stated that after completion of Pond 3 activities in 2007, it planned to

limit activities to "... maintenance and safety controls until sufficient funds are in place to completely address Pond 2 Phase 1 activities" By letter dated May 14, 2008 (ML081200922), NRC expressed dissatisfaction with the progress in remediating the site and expressed the opinion the FMRI should not interrupt work as it previously planned. In its response of July 9, 2008 (ML081960237), FMRI stated it would proceed with Pond 2 remediation subject to "inherent uncertainties" that include "available funding." Since that time, there has been minimal activity on Pond 2. In fact, there has been little active remediation at the site since FMRI made its final withdrawal from the Decommission Trust Fund in 2008, essentially exhausting the fund.

During the inspection on May 16 – 18, 2012, staff noted that the only activities at the site were routine maintenance and monitoring. Based on review of the information submitted by FMRI in accordance with License Conditions 42 – 47, FMRI has expended all monies it received performing routine activities and paying overhead costs such as salaries, taxes and utilities, and there are no funds available for additional remediation work. From this, the staff deduces that FMRI's activities are cash flow limited. Timely payment of the balance of the Primary Note would resolve this situation. Therefore, the staff concludes that, in order to complete remediation of the site, the payment of the note balance should not be delayed, but made on the existing schedule.

4.4 Staff Conclusions on Financial Qualifications

Nothing in the application for transfer of control of the license, nor in the NRC approval of the application, serves to alter the court-approved settlement agreement, the Contingent Note, nor the associated pledge agreement (ML040070565) by Fansteel.

Following the proposed license transfer, the financing and financial reporting for the FMRI business will occur at the FMRI level of the organization. Fansteel will continue to provide its consolidated financial information per the settlement agreement.

Based on the information provided in the application, with Fansteel and FMRI continuing to satisfy the requirements of the Fansteel bankruptcy settlement agreement in addition to the terms and conditions proposed in the application, the NRC staff finds that FMRI will continue to meet the accepted financial qualifications to possess, use, and operate the Muskogee site as proposed.

Based on available financial information, the staff concludes that any delay in payment of the balance of the Primary Note will adversely affect FMRI's ability to complete remediation of the site.

5. TECHNICAL QUALIFICATIONS

5.1 Purpose of the Evaluation

The purpose of this evaluation is to ensure that:

- (a) the corporate management of the proposed organization is involved with, informed of, and dedicated to the safe remediation of the Muskogee site;

(b) that sufficient qualified technical resources will be provided to support safe plant decommissioning and maintenance; and

(c) to evaluate proposed changes to the operating organization that may occur because of the indirect change of control.

FMRI will remain the operator of the Muskogee site; therefore, the NRC staff has evaluated FMRI's technical qualifications, supplemented by those of GLA 1, as described below.

The NRC staff used the following regulations and guidance to complete its evaluation:

- * 10 CFR 40.32 (b) - The applicant is qualified by reason of training and experience to use the source material for the purpose requested in such manner as to protect health and minimize danger to life or property;

- * NUREG-1757, Vol. 1 "Decommissioning Process for Materials Licensees," Sec 17.2

The indirect change of control does not affect FMRI's surveillance or decommissioning records. All licensed activities of FMRI, including all required surveillance, have been performed, documented, and reviewed (including the results, as appropriate), and will continue on an ongoing basis without interruption. The applicants anticipate that the pace of remediation will increase, facilitated by the enhancements to financial and technical resources represented by the proposed indirect change in control.

Based on the June 21, 2011, submittal, the NRC staff concludes that the application has described FMRI's organization for managing and its means of providing technical support to the plant staff for decommissioning of the units after the license transfers. The NRC staff concludes that FMRI will have an acceptable management organization and adequate resources to provide off-site technical support for the decommissioning of the Muskogee site.

5.2 Operating Organization

Using the regulations and guidance stated above, the NRC staff reviewed the application to determine the acceptability of FMRI's operating organization, evaluating changes to the current operating organization proposed because of the license transfer. The initial operating organization was determined to be acceptable by the initial licensing review. NRC required subsequent safety-related changes to the operating organization to be evaluated with an appropriate methodology, and the NRC staff is not aware of any deficiencies with the current operating organization. Consequently, the NRC staff review focused on evaluating any changes to the operating organization proposed because of the transfer.

NRC staff reviewed the application to determine the acceptability of the corporate management and technical support organization for FMRI. The application states the composition of the Board of Directors and corporate Officers will change as a result of the Transaction. At close of the proposed transaction, it is expected that Robert R. Compennolle will resign from the Board of Directors and as an officer of FMRI. Prior to resigning, Robert R. Compennolle will appoint, as directed by GLA 1, new Director(s) and new Officer(s). FMRI expects that Greg Marshall, a U.S. citizen, will be appointed as a Director and the sole corporate Officer, President, of FMRI. Additionally Todd Packard, a U.S. citizen, will also be appointed as a Director.

Robert R. Compornolle will remain on the Board of Directors and as an Officer of FMRI until the NRC approves the change of indirect control request. The June 21, 2011, submittal states that after the transfer of control, there will be no change to the Radiation Safety Officer or other persons responsible for radiation safety or authorized to use licensed material.

Based on the above, the proposed operating organization that FMRI will have for the Muskogee site and the qualifications of the FMRI operating personnel in that organization will be essentially equivalent to the current organization and qualifications. Accordingly, the NRC staff concludes that following the proposed license transfer, FMRI's organization for operating and maintaining the Muskogee site will be acceptable and in accordance with regulations.

5.3 Technical Qualifications

The application states "... there will be no change to FMRI's operations, corporate structure, key operating personnel or licensed activities as a result of the Transaction." FMRI will continue to be the holder of NRC License No. SMB-911. FMRI remains technically and financially qualified; it will continue to fulfill all its responsibilities as the site licensee. There will be no changes in the licensed place of use, in the facilities where licensed material is stored, or in the equipment used in the licensed program. Similarly, there will be no changes to existing procedures as a result of the proposed change.

5.4 Conclusions With Respect to Technical Qualifications

The application has described FMRI's corporate level management and technical support organization and the on-site operating organization responsible for the decommissioning and maintenance of the Muskogee site after the license transfer. The NRC staff concludes that FMRI will have an acceptable corporate organization, on-site organization, and adequate resources to provide technical support for the safe decommissioning and maintenance of the Muskogee site after the license transfer. The application adequately addresses the relevant requirements of 10 CFR 40.32(b).

Based on this evaluation, the NRC staff concludes that FMRI will remain technically qualified to hold the operating authority under the Muskogee site license, and its abilities will be enhanced by the expertise from GLA 1.

6. STATE CONSULTATION

In accordance with the NRC's regulations, NRC staff notified the State of Oklahoma of the proposed issuance of the amendment. During a site inspection on May 16 – 18, 2012, NRC discussed the proposed transfer of control with representatives from the Oklahoma Department of Environmental Quality. The State does not object to the proposed transfer.

7. ASSOCIATED CHANGES TO THE LICENSE

In order to effectuate the indirect transfer of control, the following administrative changes to SMB-911 are required to reflect the change in the activities at the FMRI site:

- Change name to delete reference to Fansteel in Condition 2.

- Add references to the submittals requesting this license amendment to Conditions 10 and 26.
- Delete completed actions in the following Conditions:
 - LC 29 requiring descriptions of Ponds by ML041830429;
 - LC 40 requiring ground water remediation plans by ML040580238; and
 - LC 50 requiring qualifications for certain positions, and LC 51 defining allowable changes to the final status survey plans, by ML042260335.
- Changes to the following license conditions to reflect revised activities:
 - LC 31 to clarify that the results of the required surveys are incorporated in calculating the face value of the contingent note;
 - LC 37 to recognize that the schedule in the 2003 is outdated and specify current work schedules, and that FMRI submitted the Phase 1 plan by ML042260335; and
 - LC 54 to recognize that the schedule in the 2003 is outdated and specify current work schedules.

8. ENVIRONMENTAL CONSIDERATION

The subject application is for approval of the transfer of license issued by the NRC and associated amendments to the license, including a request to modify the existing decommissioning funding mechanisms. The actions involved fall within those category of actions that the NRC has determined are excluded from the requirements of 10 CFR Part 51. Specifically, 10 CFR 51.22(c)(21) categorically excludes from the requirements of environmental review approvals of indirect transfers of NRC-issued licenses and any associated amendments to the license required to reflect the approval of the license transfer. Likewise, 10 CFR 51.22(c)(10)(i), categorically excludes from environmental review licensing actions regarding surety, insurance and/or indemnity requirements. Accordingly, pursuant to 10 CFR 51.22(b), an environmental impact statement or environmental assessment is not required for approval of the application.

9. CONCLUSIONS AND RECOMMENDATIONS

Based on all of the foregoing, the NRC staff has concluded that, with the appropriate conditions discussed above, FMRI is qualified to be the license holder for the Muskogee, and the indirect transfer of control of the licensee to GLA 1 is consistent with the applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The staff concludes that the request for extension of payment on the Primary Note is not consistent with timely remediation of the site.

The staff recommends that the request for indirect transfer of control be approved, and that the request for change of maturity date for the Primary Note be denied.

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