

June 27, 2013

Mr. Robert Compernelle, President
FMRI, Inc.
10 Tantalum Pl
Muskogee, OK 74403-9297

SUBJECT: REPLY TO FANSTEEL AND FMRI RESPONSE TO U.S. NUCLEAR
REGULATORY COMMISSION REQUEST FOR INFORMATION ABOUT
CHANGES TO PERFORMANCE OF DECOMMISSIONING AT THE
MUSKOGEE, OKLAHOMA SITE

Dear Mr. Compernelle:

On June 21, 2011, Fansteel and FMRI, a Fansteel subsidiary, requested a license amendment to extend the maturity date of the primary promissory note stemming from Fansteel's bankruptcy in 2004. Under the primary note, Fansteel must pay FMRI a total of \$30,600,000 by December 31, 2013, with minimum semiannual payments of \$700,000. After subtracting payments already made, the remaining amount Fansteel must pay FMRI in 2013 is approximately \$13,000,000. In the license amendment request, Fansteel sought to extend that payment date to 2023.

The U.S. Nuclear Regulatory Commission (NRC) staff denied the Fansteel/FMRI amendment request by letter dated October 2, 2012. Fansteel and FMRI thereafter filed a "Request for Hearing or Further Discussion." The NRC staff agreed to further discuss the issues raised by Fansteel/FMRI and, as part of these discussions, on December 28, 2012, the NRC staff requested certain information regarding operations at FMRI's Muskogee site.

The staff's December 28, 2012, letter was based on its concerns about FMRI falling further behind on the Decommissioning Plan (DP) that the bankruptcy court approved in 2004. FMRI was supposed to have completed Phase 1 of the four-phase DP by 2006. Phase 1 involves remediation of Ponds 2 and 3 at the Muskogee site, ponds that contain the majority of the site's radioactive contamination. Since 2004, however, the remediation plans for the site have suffered prolific programmatic setbacks, beginning with a 6-month delay in the initiation of remediation activities. Since that time, FMRI has continued to incur further schedule delays and cost overruns. Now, 7 years after the scheduled completion date for Phase 1, radioactive material has been excavated from only one of the areas (Pond 3), and not all of that material has been shipped offsite. Furthermore, despite FMRI reporting that it has spent all money received from Fansteel under the bankruptcy settlement, there has been no effective remediation activity at the Muskogee site since FMRI last shipped material to an offsite waste facility in January 2008. Consequently, Phases 2 and 3 of the approved DP have not commenced, and they are years behind schedule.

In our December 28, 2012, letter, the staff stated that without a comprehensive and adequate response to the NRC's concerns, we will be unable to engage in further discussions regarding Fansteel's request to change its commitments on funding the remediation of the Muskogee site. Fansteel/FMRI responded to the staff by letter dated April 15, 2013.

The staff has reviewed Fansteel/FMRI's April 15, 2013 letter, but we find that it is not responsive to the NRC's concerns. Rather than address the causes of the past delays and demonstrate that it is developing and implementing plans to remediate the site in a timely manner, Fansteel/FMRI proposes, without any justification other than convenience, to significantly extend the remediation schedule for Phases 1–3. This proposed extension would place the remediation schedule 12 years behind the schedule to which FMRI is committed under the bankruptcy settlement agreement and the DP. In addition to this significant delay, FMRI provides no assurance that its future performance will improve over its historic performance. In other words, FMRI provides no more assurance that it will meet this protracted schedule than it has shown the ability to meet any past schedule.

Under Fansteel/FMRI's proposed change, Fansteel would, in lieu of its NRC and court-approved financial commitments, continue making semiannual payments in an amount that, based on a decade of FMRI's history, has proven ineffective at advancing remediation of the site in accordance with the approved DP. Fansteel/FMRI's letter does not demonstrate that, having expended years of funds with no measurable remediation progress, FMRI will now have the necessary resources to complete the remediation of the site with the diminished remaining funds.

In sum, the proposed change in schedule is not consistent with the bankruptcy settlement and the approved DP, and it is not acceptable to the NRC staff. Therefore, the NRC staff's denial of your proposed change to the primary note remains in force.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

If you have any questions concerning the above, please contact me at (301) 415-6673, or James Shepherd of my staff at (301) 415-6712 or via email at James.Shepherd@nrc.gov.

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 Service List

The staff has reviewed Fansteel/FMRI's April 15, 2013 letter, but we find that it is not responsive to the NRC's concerns. Rather than address the causes of the past delays and demonstrate that it is developing and implementing plans to remediate the site in a timely manner, Fansteel/FMRI proposes, without any justification other than convenience, to significantly extend the remediation schedule for Phases 1–3. This proposed extension would place the remediation schedule 12 years behind the schedule to which FMRI is committed under the bankruptcy settlement agreement and the DP. In addition to this significant delay, FMRI provides no assurance that its future performance will improve over its historic performance. In other words, FMRI provides no more assurance that it will meet this protracted schedule than it has shown the ability to meet any past schedule.

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Larry W. Camper, Director
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 and Environmental Protection
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Docket No.: 40-7580
 License: SMB-911

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FMRI/ Fansteel Service List (5JUN12)

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