



March 25, 2009

U.S. Nuclear Regulatory Commission  
ATTN: Mr. James C. Shepherd, Project Manager  
Decommissioning Branch  
Division of Waste Management  
11545 Rockville Pike  
Two White Flint North  
Rockville, Maryland 20852

*SENT VIA OVERNIGHT CARRIER*

Reference: License SMB-911; Docket No. 40-7580  
License Conditions 43, 44, and 45 – Annual Update

Dear Mr. Shepherd:

Pursuant to License SMB-911 Conditions 43, 44, and 45, the licensee, FMRI, Inc. ("FMRI"), submits the following information:

License Condition 43 (accounting of expenses)

This letter and the enclosed "Table 1 – Accounting of Expenses for Year 2008" (Attachment 1) provide the information required by License Condition 43 regarding FMRI expenses in 2008, including the following:

- a) Expenses incurred by FMRI in 2008, using the same line items as provided in Table 15-11 of the Decommissioning Plan ("DP").
- b) The amount spent on each line item during 2008.
- c) Cumulative expenses (i.e., spent in 2004, 2005, 2006, 2007, and 2008).
- d) Identification of variances, both positive and negative, between the planned expense projected by FMRI for 2008 in the most recent previous annual update submitted to the NRC on March 28, 2008 and the actual expense for each line item during 2008.
- e) An explanation of the reasons for variances that exceed 5% of the planned expense for a line item during 2008 (provided as a footnote to Table 1).

Subparagraph (f) of License Condition 43 requests a comparison of the cost of work remaining to the funding remaining under the assurances provided to NRC. The cost of work remaining is to be determined by estimating the amount and cost of labor, materials, services, etc., required to

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complete the work. If the cost of remaining activities exceeds the remaining amounts assured to the NRC, a detailed plan to adjust the work plan to the available funding is to be provided.

Enclosed is "Revised Table 15-11, Revised Closure Cost Estimate by Year" (Attachment 2) that provides the revised estimated cost of \$31,509,610 for the decommissioning work remaining to be incurred in 2009 and out years. This correlates to an increase in total decommissioning cost estimate (i.e., including previous years expenses) to a total of \$46,996,576 which is about \$5,392,000 more than the original estimate of \$41,605,000 on which the financial assurance mechanism was based.

Similar to what was discussed in last year's submittal, this increase in the current total decommissioning cost estimate from the original estimate provided in the 2003 DP is due to several factors, including:

- Phase 1 - Additional materials in Pond 3 (from both an increase in the total amount excavated from Pond 3 from that estimated in the DP and an increase in the average dried moisture content from the original 20 percent by weight estimate).
- Phase 1 – Construction costs greater than originally expected, including: the re-starting of Pond 3 activities, additional drying and re-bagging of a large amount of WIP material that was bagged improperly by the original contractor at too high of a moisture content; additional completion costs of Pond 3 related to the termination for cause of the original Phase 1 contractor; and the increased projection of Pond 2 costs based on the WIP unit costs from Pond 3 work to date.
- Phase 1 – Additional costs for construction and maintenance of staging areas for the initial bagged WIP pending the reclaimer's receipt of regulatory approval to receive the WIP material in order that off-site shipments of the bagged WIP could commence.
- Phase 1 – WIP transportation costs (i.e., to the reclaimer) consisting of a higher unit cost and more WIP material being shipped than originally estimated (again due to higher moisture content and an increase in the total estimated amount of WIP).
- Phase 1 – Increased legal costs from originally anticipated related to lawsuit with former Phase 1 construction vendor, unsubstantiated former contractor employee allegations, and compliance-related activities.
- Phase 1 to 3 – Extension of decommissioning period and related facility operations expenses for an additional 2 years.

These cost increases were off-set somewhat by decreases in the estimated CaF and contaminated soil transportation and disposal costs to be completed during Phases 2 and 3 based on a lower vendor quote for these activities that was received after the preparation of the original DP.

The total decommissioning cost estimate increased about \$92,000 from last year's estimate (i.e., from what FMRI submitted to the NRC by letter dated March 28, 2008). This was due to an increase in legal costs for the ongoing lawsuit with the former Phase 1 construction vendor, for additional consulting services related to responding to the Oklahoma Department of Environmental Quality regarding their requested additional Ponds Nos. 6 and 7 work, and for

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slightly higher than expected facility oversight expenses. These increases were largely offset by decreases in facility insurance costs, property taxes, and projected Phase 1 Pond 2 and 3 completion costs based on costs incurred to date.

As discussed in previous submittals, FMRI plans to pursue the reclamation of the calcium fluoride in Ponds 8 and 9 in lieu of disposal as currently contemplated in the DP. These materials, when addressed in 2013 to 2015 as part of Phase 2, could be reclaimed for use in cement kilns (i.e., the fluoride acts as a catalyst reducing the energy needs of the kilns), incorporated into road base or similar road construction material, or in other possible applications.

As currently shown in Table 15-11, the transportation and disposal cost for the calcium fluoride materials in Ponds 8 and 9 total \$7,447,330. However, reclaiming the CaF (i.e., instead of disposal) at nearby cement kilns (i.e., as opposed to transporting the CaF to another state for disposal) could reduce total unit transportation and reclamation costs by as much as half or more (i.e., from \$110 per ton to about \$55 per ton for transportation and disposition). This would reduce the total CaF transportation and disposition costs by \$3,700,000 and similarly lower the total estimated decommissioning estimate by \$3,700,000.

In addition, the Muskogee property is a valuable asset especially considering its location in the Port of Muskogee and for its additional use as a railway corridor linking the nearby main railway corridor to the Port of Muskogee (i.e., thereby avoiding the transport of rail cars for several miles through the City of Muskogee). The value of this property (and adjoining FMRI parcel that is not part of the license) and buildings may be in excess of \$2,000,000. The reduction in CaF costs and proceeds from the eventual sale of the property could be sufficient to cover the estimated increase in the decommissioning cost to allow completion of the decommissioning with the available funding.

Finally, paragraph (g) of License Condition 43 requests an explanation of the reason for all expenses not covered by the line items of Table 15-11. There were no other expenses that are not covered by the line items of Table 15-11 in 2008.

#### License Condition 44 (accounting of income)

The accounting of income in 2008 from Reorganized Fansteel (i.e., Fansteel Inc. or "Fansteel") showing amounts paid to FMRI following the format used in License Condition 44 is provided below:

- a) \$ 0.00 - annual mandatory prepayments
- b) \$ 1,400,000.00 - minimum semi-annual payments
- c) \$ 49,745.11 - additional annual prepayment (1) insurance proceeds, and  
(2) reorganized debtor asset sale proceeds [Note: The \$49,745.11 was for insurance proceeds received from Fansteel that was deposited by FMRI into Subaccount No. 2 of the Decommissioning Trust.]

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- d) \$ 0.00 - payments under the secondary promissory note
- e) \$ 0.00 - payments under the contingent promissory note

Subparagraph (f) of License Condition 44 also requests information on any other payments received. Other payments received by FMRI in 2008 are as follows:

- \$ 1,773,017.13 – withdrawn from the Decommissioning Trust
- \$ 8,870.00 - from the sale of surplus equipment
- \$ 54,595.11 - from rental income

License Condition 45

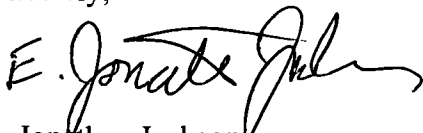
As required in License Condition 45, and as discussed above, enclosed is an updated version of Table 15-11 (i.e., "Revised Table 15-11 – Revised Closure Cost Estimate by Year").

License Condition 45 also requests an updated version of Table 15-12 (Reorganized Fansteel Cash Flow by Year) showing actual figures for previous periods, and updated projections using current information. FMRI encloses an updated version of Table 15-12 (i.e., "Revised Table 15-12 –Reorganized Fansteel Cash Flow by Year") showing actual figures for previous periods, and updated projections using current information (Attachment 3). This table is based upon information recently supplied by Fansteel Inc. ("Fansteel") and reflects actuals for 2008 with some changes of projections for out-years. As the footnote in the attached table indicates, forecasts of future financial results over an extended period of time are extremely difficult.

Pursuant to 10 C.F.R. § 2.390, FMRI requests that the NRC withhold the March 25, 2009 Table 15-12 update from public disclosure in accordance with 10 C.F.R. § 2.390. This information is essentially identical to the information already determined by the NRC in its January 9, 2007 letter to contain proprietary commercial information that should be withheld from public disclosure pursuant to 10 CFR 2.390(b)(5) and Section 103(b) of the Atomic Energy Act of 1954, as amended. In support of this request, FMRI submits the affidavit of E. Jonathan Jackson dated March 25, 2009 (Attachment 4).

If you have any questions, please call me at (918) 687-6303.

Sincerely,



E. Jonathan Jackson  
President, FMRI

Enclosures

Copy to: Jack E. Whitten (Region IV NRC)

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## ATTACHMENT 1

**Table 1 - FMRI - Accounting of Expenses for Year 2008 (License Condition 43; Submitted March 25, 2009)**

Line Item No.	Year 2008:				Years 2004, 2005, 2006, 2007 & 2008:
	Projected in revised Table 15-11 on 3/28/08	Actual	Better (Worse)	Percent Variance	Cumulative Actual
<b>Site maintenance activities</b>					
1	-	-	-		-
2	\$ 254,945	\$ 384,577	\$ (129,632)	51	\$ 2,078,279
	\$ 254,945	\$ 384,577	\$ (129,632)		2,078,279
<b>Site plans &amp; maintenance</b>					
3	\$ -	\$ -	\$ -		\$ 648,988
4	\$ 420,000	\$ 440,672	\$ (20,672)	5	\$ 2,345,605
5	\$ -	\$ -	\$ -		\$ -
6	\$ -	\$ -	\$ -		\$ 236,799
7	\$ 211,209	\$ 189,771	\$ 21,438	(10)	\$ 947,148
8	\$ -	\$ 31,322	\$ (31,322)	more than 5	\$ 237,907
9	\$ -	\$ -	\$ -		\$ -
10	\$ -	\$ -	\$ -		\$ -
11	\$ -	\$ -	\$ -		\$ -
12	\$ -	\$ -	\$ -		\$ -
	\$ 631,209	\$ 661,765	\$ (30,556)		\$ 4,416,447
<b>WIP disposition</b>					
13	\$ 210,012	\$ 349,288	\$ (139,276)	66	\$ 1,672,310
14	\$ 1,181,494	\$ 1,060,893	\$ 120,601	(10)	\$ 2,450,340
15	\$ 875,757	\$ 514,876	\$ 360,881	(41)	\$ 1,249,489
16	\$ -	\$ -	\$ -		\$ -
	\$ 2,267,263	\$ 1,925,057	\$ 342,206		\$ 5,372,138
<b>CaF2 disposal</b>					
17	\$ -	\$ -	\$ -		\$ -
18	\$ -	\$ -	\$ -		\$ -
19	\$ -	\$ -	\$ -		\$ -
20	\$ -	\$ -	\$ -		\$ -
	\$ -	\$ -	\$ -		\$ -
<b>Soil disposal</b>					
21	\$ -	\$ -	\$ -		\$ -
22	\$ -	\$ -	\$ -		\$ -
23	\$ -	\$ -	\$ -		\$ -
24	\$ -	\$ -	\$ -		\$ -
	\$ -	\$ -	\$ -		\$ -
<b>Groundwater treatment</b>					
25	\$ 282,000	\$ 282,000	\$ -	-	\$ 1,410,000
26	\$ -	\$ -	\$ -		\$ -
	\$ 282,000	\$ 282,000	\$ -		\$ 1,410,000
<b>Total Decommissioning Expenses</b>	<b>\$ 3,435,417</b>	<b>\$ 3,253,399</b>	<b>\$ 182,018</b>		<b>\$ 13,276,866</b>

**Explanation of Variances that Exceed 5% of the Planned Expenses by Line Item:**

Line Item 2 (Miscellaneous costs, legal & other consulting services) - Additional legal and consulting costs related to license compliance, issues, former Phase 1 construction contractor litigation, and ODEQ Pond 6 and 7 issues.

Line Item 7 (NRC oversight & misc.) - Lower than expected insurance and property tax expenses.

Line item 8 (Health Physicist Support) - Additional Phase 1 survey costs related to change in Phase 1 Construction Contractor.

Line Item 13 (WIP Excavation, on-site hauling, and drying) - Higher than expected costs completing Pond 3 Phase 1 construction activities after terminating initial contractor.

Line Item 14 (WIP Transportation) - Lower transportation activity for Pond 3 WIP material than previously estimated for 2008.

Line Item 15 (WIP Disposition) - Less reclamation of Pond 3 WIP material in 2008 than expected resulting in lower expenditures than previously estimated.

## ATTACHMENT 2

**Revised Table 15-11**  
**FMRI Revised Closure Cost Estimate by Year (License Condition 45; Submitted March 25, 2009)**

	Pre Approval			Year 1 2004 (Actual)	Year 2 2005 (Actual)	Year 3 2006 (Actual)	Year 4 2007 (Actual)	Year 5 2008 (Actual)	Year 6 2009	Year 7 2010	Year 8 2011	Year 9 2012	Year 10 2013	Subtotal (2004 - 2013)	On going later years 2014 to 2015	Total
	2002* (Actual)	2003 (Actual)	Subtotal (2002 - 2003)													
<b>Site maintenance activities (line item number)</b>																
(1) Site maintenance costs in preparation for decommissioning	154,000	1,446,000	1,600,000	424,038	200,658	\$ 209,889	859,118	384,577	325,000	30,000	30,000	30,000	30,000	2,523,280	1,010,000	1,600,000
(2) Miscellaneous costs, legal & other consulting services	160,000	250,000	410,000													3,943,280
	314,000	1,696,000	2,010,000	424,038	200,658	209,889	859,118	384,577	325,000	30,000	30,000	30,000	30,000	2,523,280	1,010,000	5,543,280
<b>Site plans &amp; maintenance</b>																
(3) Prepare decommissioning plans and reports				90,302	211,002	\$ 347,684								648,988		648,988
(4) Facility oversight through facility closure in about 10 years				570,785	430,986	\$ 457,568	445,593	440,672	445,000	440,000	440,000	440,000	440,000	4,550,604	880,000	5,430,604
(5) Preparation of Environmental Report		200,000	200,000													200,000
(6) NRC review of decommissioning plans and reports				102,649	86,250	\$ 48,000								236,899		236,899
(7) NRC oversight & misc. through facility closure over 10 years				160,408	198,827	\$ 175,238	222,904	189,771	145,000	145,000	145,000	145,000	145,000	1,672,149	290,000	1,962,149
(8) Health Physics support through facility closure over 10 years					45,000	\$ 102,500	59,086	31,322	110,000	110,000	110,000	110,000	110,000	677,908	221,000	898,908
(9) NRC oversight of groundwater treatment															100,000	100,000
(10) Survey activities									138,000	138,000	138,000		138,000	552,000	278,000	830,000
(11) Decontaminate all buildings													266,000	266,000	532,000	798,000
(12) Decontaminate equipment													294,000	294,000	588,000	880,000
	-	200,000	200,000	924,144	972,065	1,130,990	727,583	661,765	590,000	833,000	833,000	833,000	1,393,000	8,898,547	2,887,000	11,985,547
<b>WIP disposition</b>																
(13) Ponds 2&3 Residues (WIP), Excavation, on-site hauling, and drying					425,672	699,929	197,420	349,288	25,000	286,932	286,932	286,932		2,558,105		2,558,105
(14) Ponds 2&3 Residues transportation						8,625	1,380,822	1,060,893	169,523	652,768	553,533	553,533		4,379,697		4,379,697
(15) Ponds 2&3 Residues disposition							734,613	514,876	52,032	324,295	274,955	274,955		2,175,726		2,175,726
(16) Backfill where removed Ponds 2 & 3 Residues (WIP residues)															221,000	221,000
	-	-	-	-	425,672	708,554	2,312,855	1,925,057	246,555	1,263,995	1,115,420	1,115,420	-	9,113,529	221,000	9,334,529
<b>CaF2 disposal</b>																
(17) Ponds 5,6,7,8, & 9 Residues – Excavation, on-site hauling, and drying															3,787,000	3,787,000
(18) Ponds 5,6,7,8, & 9 Residues transportation															3,723,665	3,723,665
(19) Ponds 5,6,7,8, & 9 Residues disposal															3,723,665	3,723,665
(20) Backfill where removed Ponds 5,6,7,8, & 9 Residues															1,506,000	1,506,000
	-	-	-	-	-	-	-	-	-	-	-	-	-	-	12,740,330	12,740,330
<b>Soil disposal</b>																
(21) Radiologically contaminated soils, Excavation & on-site hauling															150,000	150,000
(22) Radiologically contaminated soils transportation															753,445	753,445
(23) Radiologically contaminated soils disposal															753,445	753,445
(24) Backfill where removed radiologically contaminated soils															96,000	96,000
	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,752,890	1,752,890
<b>Groundwater treatment</b>																
(25) Groundwater treatment for 3 years during decommissioning of WIP				282,000	282,000	282,000	282,000	282,000						1,410,000		1,410,000
(26) Groundwater treatment for 17 years after decommissioning of WIP									282,000	282,000	282,000	282,000	282,000	1,410,000	2,820,000	4,230,000
	-	-	-	282,000	282,000	282,000	282,000	282,000	282,000	282,000	282,000	282,000	282,000	2,820,000	2,820,000	5,640,000
<b>Total Revised Decommissioning Cost Estimate</b>	<b>314,000</b>	<b>1,896,000</b>	<b>2,210,000</b>	<b>1,630,182</b>	<b>1,880,396</b>	<b>2,331,433</b>	<b>4,181,556</b>	<b>3,253,399</b>	<b>1,443,555</b>	<b>2,408,995</b>	<b>2,260,420</b>	<b>2,260,420</b>	<b>1,705,000</b>	<b>23,355,356</b>	<b>21,431,220</b>	<b>46,996,576</b>
<b>Total Estimated Remaining Decommissioning Cost Estimate for 2008 and Out-Years:</b>									<b>1,443,555</b>	<b>2,408,995</b>	<b>2,260,420</b>	<b>2,260,420</b>	<b>1,705,000</b>		<b>21,431,220</b>	<b>31,509,610</b>

**ATTACHMENT 4**

**Affidavit of E. Jonathan Jackson**

I, E. Jonathan Jackson, being first duly sworn according to law, under oath, depose and state:

1. I am the President of FMRI, Inc. ("FMRI"), a wholly owned subsidiary of Fansteel Inc. Fansteel has certain prescribed, bankruptcy court-approved, financial obligations to its subsidiary FMRI, the Nuclear Regulatory Commission ("NRC") licensee, including the payments on notes issued by Fansteel, related to the remediation of FMRI's Muskogee, Oklahoma site. Payments under the notes are partially dependent on Fansteel operating cash flows and cash on hand. To permit FMRI to fulfill its regulatory responsibilities for its Muskogee, Oklahoma site, namely the updating of information contained in Table 15-12 of the Muskogee Decommissioning Plan which is required by Condition 45 of License Number SMB-911, Fansteel has made certain financial projections for the years 2009 through 2013 and supplied them to FMRI with a stipulation that release to a third party (including the NRC) be made only after assurance that such information would be held in confidence, used for appropriate regulatory purposes and not further disclosed without prior consent. As President of FMRI, my duties include the review of the information which is to be submitted to the NRC in conjunction with the proposed revision of Table 15-12 to the FMRI Decommissioning Plan. I am authorized by Fansteel to execute this affidavit in support of the request to withhold such information from public disclosure.
2. The information consists of commercial financial information related to the operation of Fansteel. This information constitutes confidential and proprietary commercial

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information that should be held in confidence by the NRC, pursuant to 10 C.F.R. § 9.17(a)(4) and 10 C.F.R. § 2.390, for the following reasons:

- (i) Based upon my position as President of FMRI, I understand that this information is of a type that is customarily held in confidence by Fansteel and other public companies, and these materials, which are internal business projections not normally made public, could reveal Fansteel's financial projections, which could adversely affect Fansteel in financial negotiations and other dealings with its customers, and assist Fansteel's competitors. I further understand that the information contained therein has not been and will not be released to the general public and was intended to remain confidential in order to preserve its value and usefulness and protect Fansteel from a potential violation of the securities laws.
- (ii) Since its emergence from bankruptcy, this information is and has been held in confidence by Fansteel. Based on Fansteel's actions in this matter, the disclosure of the subject information outside the company is strictly limited and controlled.
- (iii) This information is being transmitted to the NRC in confidence.
- (iv) To the best of my knowledge, this information is not available through public sources, and could not be gathered readily from other publicly available information.
- (v) I understand that public disclosure of this information would create substantial harm to the competitive interests of Fansteel by disclosing sensitive financial




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information to competitors and other parties whose interests may be adverse to those of Fansteel.

- (vi) The entire document contains commercial financial information which cannot meaningfully be segregated from non-confidential material.
  - (vii) This information is essentially identical to the information already determined by the NRC in its January 9, 2007 letter to contain proprietary commercial information and should be withheld from public disclosure pursuant to 10 CFR 2.390(b)(5) and Section 103(b) of the Atomic Energy Act of 1954, as amended.
3. Accordingly, it is requested that the designated information be withheld from public disclosure pursuant to 10 C.F.R. §§ 2.390(a)(4) and 9.17(a)(4).

In accordance with 28 USC 1746:

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed on March 25, 2009.

  
\_\_\_\_\_  
E. Jonathan Jackson  
President of FMRI, Inc.