

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:
Thomas S. Moore, Presiding Officer
Thomas D. Murphy, Special Assistant

OFFICE OF GENERAL COUNSEL
RULING AND ADJUDICATION STAFF

In the Matter of

FANSTEEL, Inc.

(Muskogee, Oklahoma Facility)

Docket No. 40-7580-MLA

ASLBP No. 00-772-01-MLA

January 13, 2000

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MEMORANDUM AND ORDER

On January 12, 2000, the Presiding Officer held a scheduling conference by telephone with counsel for the parties to this Subpart L proceeding on the license amendment application of Fansteel, Inc. The Applicant seeks to amend its source material license to permit the construction of a permanent, on-site, above-grade, radioactive waste disposal cell at its facility located near Muskogee, Oklahoma and restricted release decommissioning of the disposal site pursuant to 10 C.F.R § 20.1403.

In response to the Presiding Officer's questions concerning the Staff's timetable for reviewing the license amendment application, counsel for the NRC Staff, L. Michael Rafky, first indicated that responses from the Applicant to the Staff's requests for additional information and the Applicant's environmental report were currently due in March 2000. Mr. Rafky stated that the Staff was not yet in a

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position to know when the Staff review would be completed or when the Staff would issue its safety evaluation report. He also indicated that the Staff had yet to determine whether it would issue an environmental assessment or an environmental impact statement and that the Staff did not know when that decision would be made or when an environmental document would be issued. Further, Mr. Rafky indicated he was not in a position to state at this time that the Staff review would be completed by the fourth quarter of calendar year 2000. In response to the Presiding Officer's request for the Staff's recommendation with respect to a schedule for the proceeding, Mr. Rafky recommended that the proceeding not go forward until the Staff had conducted and completed its review and prepared its reports.

Counsel for the Applicant, John P. Englert, concurred in the Staff's recommendation that the proceeding should not go forward until the Staff had completed its review and prepared its reports. Similarly, counsel for the State of Oklahoma, Stephen L. Jantzen, agreed that the proceeding should be held in abeyance until the Staff review and Staff reports were completed. Mr. Jansen requested, however, that the hearing file as it now exists should be filed so that the State could begin its review.

The Presiding Officer agrees with the unanimous recommendation of the Staff, the Applicant, and the State of Oklahoma that the most efficacious manner of conducting this case is to await the completion of the Staff review and the issuance of its safety and environmental

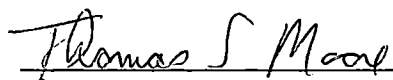
reports before proceeding. From Staff counsel's responses, it appears that proceeding with the informal hearing process at this time before the Staff has conducted its safety and environmental review would detract from the Staff's ability to conduct and complete its review. Moreover, proceeding with the informal hearing at this time would force the Staff to take preliminary positions on issues thereby increasing the risk that the Staff's preliminary views may be inconsistent with its final position on certain issues. This would appear to be especially true here, where the Staff is applying for one of the first times the Commission's new restricted release regulations. Accordingly, the proceeding will be held in abeyance while the Staff conducts and completes its safety and environmental review of the Fansteel license amendment application.

The Staff shall file, however, a quarterly status report (i.e. March 31, 2000, June 30, 2000 etc.) on its schedule milestones for conducting and completing its review in order to keep the Presiding Officer apprised of its progress. Further, the Staff shall file the hearing file containing all appropriate materials by February 29, 2000. The previous date set for filing the hearing file contained in the Presiding Officer's December 29, 1999 order shall be disregarded. Additionally, the Staff shall supplement the hearing file each

time it files its quarterly status report with the Presiding Officer.

It is so ORDERED.

By the Presiding Officer



Thomas S. Moore
ADMINISTRATIVE JUDGE

This memorandum and order is issued pursuant to the authority of the Presiding Officer designated for this proceeding.

Rockville, Maryland

January 13, 2000

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Docket No.(s) 40-7580-MLA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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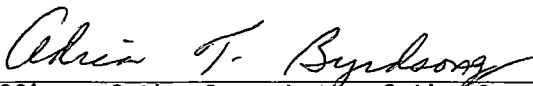
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Dated at Rockville, Md. this
13 day of January 2000


Office of the Secretary of the Commission