



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 22, 2019

Ms. Jeanette Amstutz
c/o TNB Financial Services, Inc.
a Division of Thomasville Bank
5101 Washington St., Suite 1101
Gurnee, IL 60031

Mr. Robert Compennolle, President
FMRI, Inc.
10 Tantalum Place
Muskogee, OK 74403

SUBJECT: DECOMMISSIONING TRUST AGREEMENT AMENDMENT 2

Dear Ms. Amstutz and Mr. Compennolle:

On October 17, 2019, the U.S. Nuclear Regulatory Commission (NRC) received a letter from Jeffrey Goetz, General Reorganization Counsel for Fansteel, Inc. In that letter (Agencywide Document Access and Management System [ADAMS] Accession No. ML19294A085), Mr. Goetz indicated that, based on a lack of sufficient funds in the Fansteel bankruptcy estate, Fansteel will no longer be able to continue making the \$13,500 semi-monthly "health & safety" payments to the FMRI account.

Because FMRI has exhausted its sources of significant funding to maintain health and safety at the Muskogee site, the NRC consents to amend the Decommissioning Trust Agreement (Agreement) (ADAMS Accession No. ML033380547) so that the NRC may direct disbursement of Trust funds to provide for maintenance of public health and safety at the Muskogee site. The Agreement was previously amended (Amendment No. 1) (ADAMS Accession No. ML051090478) on April 13, 2005. The proposed Amendment No. 2 to the Agreement is enclosed (ADAMS Accession No. ML17202G662) and time is of the essence in your review of this proposed amendment.

Amendment No. 2 would add a new provision to Section 5.3 of the Agreement that would permit the NRC to direct that the Trustee make payments, not to exceed \$27,000.00 per month from the Trust, for the costs of activities necessary to (1) prevent the unauthorized release of radiological contamination into the Arkansas River; (2) collect and treat groundwater and surface water in accordance with all regulatory requirements; (3) secure the Muskogee site to prevent any unintended public exposure to radiation in excess of NRC regulatory requirements; and (4) take any additional actions to ensure the public health and safety. The purpose of this amendment is to address the exigent situation wherein FMRI's funds are insufficient to support such activities.

It should be noted that the Agreement "...pertains to the costs of decommissioning the materials and activities" at the site and currently only authorizes the use of funds for "...required activities as specified in the Decommissioning Plan." The basis of these provisions of the Agreement is

the NRC regulation at Title 10 of the *Code of Federal Regulations* (10 CFR) Section 40.36(g) that requires licensees to only use decommissioning funds for “decommissioning activities.” “Decommission” is defined at 10 CFR 40.4 to be “...to remove a facility or site safely from service and reduce residual radioactivity to a level that permits...release of the property.” The NRC recognizes that activities necessary to maintain public health and safety and security at the site are not required activities as specified in the 2003 Decommissioning Plan or as defined in the NRC’s regulations. Therefore, an amendment is necessary to permit the use of Trust funds for such non-decommissioning activities.

The NRC requests that the pertinent parties sign, scan, and return Amendment No. 2 by email. The NRC proposes that FMRI sign first, then forward the document to TNB Financial Services, Inc. a Division of Thomasville Bank (TNB Financial) and to the NRC; TNB Financial sign second and forward the document to the NRC and FMRI; and, finally, the NRC sign third and return copies of the document to FMRI and TNB Financial so that all parties have a fully executed copy of Amendment No. 2. If either FMRI or TNB Financial proposes any changes to proposed Amendment No. 2, please respond as soon as possible so that Amendment No. 2 may be effective prior to its anticipated need.

In accordance with 10 CFR 2.390 of the NRC’s “Agency Rules of Practice and Procedure,” 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 ADAMS. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Please contact Mr. Greg Chapman if you have any questions concerning the above. He can be reached at (301) 415-8718 or via e-mail at Gregory.Chapman@nrc.gov.

Sincerely,

A handwritten signature in black ink, appearing to be 'PK' followed by a long horizontal stroke. Below the signature is the word 'for' in a small, lowercase font.

Patricia K. Holahan, Director
Division of Decommissioning, Uranium Recovery
and Waste Programs
Office of Nuclear Materials Safety
and Safeguards

Docket No. 040-7580
License No. SMB-911

Enclosure: Amendment No. 2 to the
Decommissioning Trust Agreement

cc: James Burgess, FMRI
Richard Gladstein,
U.S. Department of Justice

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DATE: October 22, 2019

DISTRIBUTION:

ADAMS Package Accession No.: ML17202T686

***via e-mail**

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