



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D. C. 20555-0001

JAN - 7 1994

Docket No. 40-07580  
License No. SMB-911  
EA 93-258

Fansteel, Inc.  
ATTN: Mr. John J. Hunter  
Corporate Manager  
Process Engineering and  
Facilities Construction  
Number Ten Tantalum Place  
Muskogee, Oklahoma 74401

Dear Mr. Hunter:

SUBJECT: DEMAND FOR INFORMATION

On March 1, 1993, the U.S. Nuclear Regulatory Commission sent you a letter (Enclosure 1) summarizing items that are delinquent and unacceptable in processing documentation for Fansteel's financial assurance certification at the Muskogee, Oklahoma, facility under source material license number SMB-911. The letter requested a response from Fansteel by March 30, 1993; that response is now more than 8 months delinquent. All of the items outstanding were previously brought to Fansteel's attention in a letter from NRC to Fansteel, dated February 7, 1992.

In a phone call with you on April 8, 1993, Mr. Harvey Spiro, NRC project manager for your site, reminded you that your response was overdue. Dr. John Austin, Branch Chief for Decommissioning and Regulatory Issues, also phoned the office of Mr. Mike Mocniak, Vice President of Fansteel, late in April, to remind him of the overdue response.

Source materials licensees like Fansteel must submit documents to NRC providing certification of financial assurance for decommissioning,<sup>1</sup> as prescribed in 10 CFR 40.36. Such certification to NRC ensures that certain minimum financial instruments are in place to provide for decommissioning of a site.

This certification of financial assurance is distinct from a site-specific decommissioning funding plan, required by 10 CFR 40.36(d), which Fansteel has committed to submit by June 30, 1994. A complete, acceptable financial assurance certification was required of Fansteel on July 27, 1990, and you must correct your apparent failure to satisfy that requirement immediately.

---

<sup>1</sup> Details about the documentation acceptable to satisfy the Commission's requirements for financial assurance for decommissioning are provided in NRC Regulatory Guide 3.66, "Standard Format and Content of Financial Assurance Mechanisms Required for Decommissioning Under 10 CFR Parts 30, 40, 70 and 72." You were previously sent a copy of this Regulatory Guide.

9401180023 940107  
PDR ADDCK 04007580  
C PDR

NRC FILE CENTER COPY

As set forth in 10 CFR 40.36, a trust is not acceptable to the NRC unless the trust account is outside the Licensee's administrative control. Fansteel has not satisfied this requirement in that:

- Fansteel's documentation permits Fansteel to withdraw up to 30 percent of the standby trust. The NRC, however, accepts a trust account as outside a licensee's administrative control when no more than 10 percent of a trust may be withdrawn.
- Fansteel states, in the standby trust agreement, that "All investments made at Grantor's discretion shall be deemed prudent *per se*." This statement places the trust account within the Licensee's administrative control, which is not in accordance with the regulation.
- The current documentation does not establish that the standby trust will be continuously managed without a lapse in management, if the trust is transferred from one trustee to another. Accordingly, administrative control over the trust could revert to the Licensee.

In addition, Fansteel has not provided documentation to demonstrate that the standby trust agreement is legally binding, in accordance with 10 CFR 40.36, in that:

- Fansteel has not submitted a Schedule A to the standby trust, which would clearly establish the purpose of the trust, and contribute to limiting the use of funds in the trust account to decommissioning purposes.
- NRC needs assurance that Mr. Mocniak, who signed the standby trust agreement, is authorized by Fansteel to do so. Any written documentation that authorizes Mr. Mocniak to sign the standby trust agreement should be provided.
- NRC needs originally signed copies (in duplicate) of all financial assurance documents, to ensure that legally executable documents are available, if needed. With all the changes in the documentation, this is a particularly important need.

Enclosed is a Demand for Information (DFI) (Enclosure 2), which summarizes the attempts made by NRC to obtain full and acceptable documentation from Fansteel for financial assurance certification. The DFI specifies the additional information still needed to determine whether the NRC can expect to receive adequate financial assurance documentation.

The information Fansteel provides in response to the DFI will be used to determine whether enforcement or other regulatory action is necessary, including whether an Order should be issued to modify Fansteel's license. Such an Order could require a third-party evaluation of the cleanup costs of the Fansteel facility; the establishment of additional funding mechanisms pending the submittal of documentation acceptable to the staff; or other actions to satisfy the regulations.

Fansteel, Inc.  
Docket No. 40-07580

Letter dated.

7 1994

Allyn Davis, U.S. Environmental  
Protection Agency, Region VI

Lloyd Kirk, Oklahoma State  
Department of Environmental Quality

H. A. Caves, Oklahoma State  
Department of Environmental Quality

L. Hughes, Native Americans  
for a Clean Environment

John J. Hunter

- 4 -

Failure to comply with the provisions of this Demand for Information may result in civil or criminal sanctions.

Questions concerning this Demand for Information should be addressed to Mr. Dominick Orlando, Project Manager, Office of Nuclear Material Safety and Safeguards, who may be reached at (301) 504-2566, or Ms. Patricia Santiago, Assistant Director, Office of Enforcement, who can be reached at (301) 504-3055.

In accordance with 10 CFR 2.790 of the NRC's Rules of Practice, Part 2, Title 10, U.S. Code of Federal Regulations, a copy of this letter and the enclosed DFI will be placed in the NRC's Public Document Room.

The response directed by the accompanying DFI is not subject to the clearance of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, PL 96-511.

Sincerely,

[Original signed by]  
James Lieberman, Director  
Office of Enforcement

Enclosures:

- 1. NRC letter to Fansteel dated March 1, 1993
  - 2. Demand for Information
- cc: See attached list

DISTRIBUTION: Central File NMSS r/f JHolonich MBell REvans, RIV  
 LLWM r/f CPoland Dir. r/f EDO r/f *m. l. h. c. w. RIV*  
 \*SEE PREVIOUS CONCURRENCE *DE FILES (2)*

OFC	LLDR*	E	LLDR*	E	LLDR*	E	LLDR*	E	RIV*	OGC*	E	LLWM*
NAME	HSPIRO/CV		JCOPELAND		MWEBER		JAUSTIN		WFISHER	SLEWIS		JGREEVES
DATE	10/06/93		10/06/93		10/12/93		10/24/93		11/10/93	12/01/93		12/06/93
OFC	NMSS*		NMSS*		<del>OE</del>	E						
NAME	GARLOTTO		RBERNERO		JLIEBERMAN							
DATE	12/20/93		12/28/93		1/16/94		/ /93	/ /93	/ /93	/ /93		

File path:s:\llwmtpe\cecilia\fanfil.hs - OFFICIAL RECORD COPY

PDR : YES  NO  Category: Proprietary  or CF Only   
 ACNW: YES  NO  Delete file after distribution Yes  No   
 IG: YES  NO

John J. Hunter

- 4 -

In accordance with 10 CFR 2.790 of the NRC's Rules of Practice, Part 2, Title 10, U.S. Code of Federal Regulations, a copy of this letter and the enclosed DFI will be placed in the NRC's Public Document Room.

The response directed by the accompanying DFI is not subject to the clearance of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, PL 96-511.

Sincerely,

~~[Original signed by]  
James Lieberman, Director  
Office of Enforcement~~

Enclosures:

1. NRC letter to Fansteel dated March 1, 1993
2. Demand for Information

cc: See attached list

DISTRIBUTION: Central File NMSS r/f JHolonich MBell REvans, RIV  
LLWM r/f CPoland Dir. r/f EDO r/f

\*SEE PREVIOUS CONCURRENCE

*CP  
12/28/93  
+1*

OFC	LLDR*	E	LLDR*	E	LLDR*	E	LLDR*	E	RIV*	OGC*	LLWM
NAME	HSPIRO/CV		JCOPELAND		MWEBER		JAUSTIN		WFISHER	SLEWIS	JGREEVES
DATE	10/06/93		10/06/93		10/12/93		10/24/93		11/10/93	12/11/93	1/ /93
OFC	NMSS		NMSS		OE						
NAME	CARLOTTO		RBERNERO		JLIEBERMAN						
DATE	12/10/93		12/28/93		1/ /93		1/ /93		1/ /93	1/ /93	

File path:s:\llwmtpe\cecilia\fanfil.hs - OFFICIAL RECORD COPY

PDR : YES \_\_\_ NO \_\_\_ Category: Proprietary \_\_\_ or CF Only \_\_\_  
 ACNW: YES \_\_\_ NO \_\_\_ Delete file after distribution Yes \_\_\_ No \_\_\_  
 IG: YES \_\_\_ NO \_\_\_

In accordance with 10 CFR § 2.790 of the NRC's Rules of Practice, Part 2, Title 10, Code of Federal Regulations, a copy of this letter and the enclosed DFI will be placed in the NRC's Public Document Room.

The response directed by the accompanying DFI is not subject to the clearance of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, PL 96-511.

Sincerely,  
[Original signed by]  
James Lieberman, Director  
Office of Enforcement

Enclosures:

- 1. NRC letter to Fansteel dated March 1, 1993
  - 2. Demand for Information
- cc: See attached list

DISTRIBUTION: Central File NMSS r/f JHolonich MBell REvans, RIV  
 LLWM r/f CPoland Dir. r/f EDO r/f  
 \*SEE PREVIOUS CONCURRENCE

OFC	LLDR*	E	LLDR*	E	LLDR*	E	LLDR*	E	RIV*	OGC*	LLWM
NAME	HSPIRO/CV		JCOPELAND		MWEBER		JAUSTIN		WFISHER	SLEWIS	JGREEVES
DATE	10/06/93		10/06/93		10/12/93		10/24/93		11/10/93	/ /93	12/6/93
OFC	NMSS		NMSS		OE						
NAME	GARLOTTO		RBERNERO		JLIEBERMAN						
DATE	/ /93		/ /93		/ /93		/ /93		/ /93	/ /93	

File path:s:\llwntype\cecilia\fanfil.hs - OFFICIAL RECORD COPY

PDR : YES  NO  Category: Proprietary \_\_\_ or CF Only \_\_\_  
 ACNW: YES \_\_\_ NO  Delete file after distribution Yes \_\_\_ No \_\_\_  
 IG: YES \_\_\_ NO

- Fansteel states in the standby trust agreement that "all investments made at Grantor's discretion shall be deemed prudent *per se*." NRC has no confidence that such a statement is compatible with an effective financial assurance certification.
- The current documentation does not provide confidence to NRC that the standby trust will be continuously managed without a lapse in management if the trust is transferred from one trustee to another.
- Completion of Schedule A helps NRC review financial assurance certifications uniformly.
- NRC needs assurance that Mr. Mocniak, who signed the standby trust agreement, is authorized by Fansteel to do so.
- NRC needs originally-signed copies (in duplicate) of all financial assurance documents, to ensure that legally executable documents are available if needed. With all the changes in the documentation, this is a particularly important need.

Enclosed is a Demand for Information (DFI) (Enclosure 2) which summarizes the attempts made by the NRC to obtain full and acceptable documentation from Fansteel for financial assurance certification. The DFI specifies the additional information still needed to determine whether the NRC can expect to receive adequate financial assurance documentation and, if not, whether an order should be issued to modify Fansteel's license. Such an order could require a third-party evaluation of the cleanup costs of the Fansteel facility and/or the establishment of additional funding mechanisms pending the submittal of documentation acceptable to the staff.

In accordance with 10 CFR §2.790 of the NRC's Rules of Practice, Part 2, Title 10, Code of Federal Regulations, a copy of this letter and the enclosed DFI will be placed in the NRC's Public Document Room.

The response directed by the accompanying Demand for Information is not subject to the clearance of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, PL 96-511.

Sincerely,  
 [Original signed by]  
 Hugh L. Thompson, Jr.  
 Deputy Executive Director for  
 Nuclear Materials Safety, Safeguards,  
 and Operations Support

- cc: See Attached List  
 Enclosures:  
 1. NRC letter to Fansteel dated March 1, 1993  
 2. Demand for Information

DISTRIBUTION: Central File NMSS r/f JHolonich MBell REvans, RIV LLWM r/f

OFC	LLDR	LLDR	E	LLDR	E	LLDR	E	RIV	OE	OGC
NAME	HSPIRO/CV	JCOPELAND		MWEBER		JAUSTIN		WFISHER	JLIEBERMAN	R FONNER
DATE	10/14/93	10/16/93		10/12/93		10/24/93		1/93	1/93	1/93
OFC	OGC	LLWM		LLWM		NMSS		NMSS	DEDS	
NAME	LCHANDLER	PLOHAUS		JGREEVES		GARLOTTO		RBERNERO	HLTHOMPSON	
DATE	/ / 93	/ / 93		/ / 93		/ / 93		/ / 93	/ / 93	

PDR : YES \_\_\_ NO \_\_\_ Category: Proprietary \_\_\_ or CF Only \_\_\_  
 ACNW: YES \_\_\_ NO \_\_\_ Delete file after distribution Yes \_\_\_ No \_\_\_  
 IG: YES \_\_\_ NO \_\_\_

In accordance with 10 CFR § 2.790 of the NRC's Rules of Practice, Part 2, Title 10, Code of Federal Regulations, a copy of this letter and the enclosed DFI will be placed in the NRC's Public Document Room.

The response directed by the accompanying DFI is not subject to the clearance of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, PL 96-511.

If you have any questions, please contact Mr. Harvey Spiro of my staff at 301-504-2559.

Sincerely,  
[Original signed by]  
Hugh L. Thompson, Jr.  
Deputy Executive Director for  
Nuclear Materials Safety, Safeguards  
and Operations Support

Enclosures:

- 1. NRC letter to Fansteel dated March 1, 1993
  - 2. Demand for Information
- cc: See attached list

DISTRIBUTION: Central File NMSS r/f JHolonich MBell REvans, RIV  
 LLWM r/f CPoland Dir. r/f EDO r/f  
 \*SEE PREVIOUS CONCURRENCE

OFC	LLDR*	E	LLDR*	E	LLDR*	E	LLDR*	E	RIV		OE		OGC	
NAME	HSPIRO/CV		JCOPELAND		MWEBER		JAUSTIN		WFISHER		JLIEBERMAN		RFONNER	
DATE	10/06/93		10/06/93		10/12/93		10/24/93		/ / 93		/ / 93		/ / 93	
OFC	OGC	E	LLWM		LLWM		NMSS		NMSS		DEDS			
NAME	LCHANDLER		PLOHAUS		JGREEVES		GARLOTTO		RBERNERO		HLTHOMPSON			
DATE	12/1/93		/ / 93		/ / 93		/ / 93		/ / 93		/ / 93			

File path: s:\llwtype\cecilia\fandfil.hs - OFFICIAL RECORD COPY

PDR: YES \_\_\_ NO \_\_\_ Category: Proprietary \_\_\_ or CF Only \_\_\_  
 ACNW: YES \_\_\_ NO \_\_\_ Delete file after distribution Yes \_\_\_ No \_\_\_  
 IG: YES \_\_\_ NO \_\_\_



Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Director, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, USNRC, Washington, DC 20555.

Should Fansteel submit documentation demonstrating that Fansteel has taken all the specific actions identified in Section III.B. (1) - (6) of this Demand for Information in accordance with Regulatory Guide 3.66, no further response to this Demand for Information is required.

After reviewing Fansteel's response, the NRC will determine whether further action is necessary to ensure compliance with regulatory requirements.

FOR THE NUCLEAR REGULATORY COMMISSION

James Lieberman, Director  
Office of Enforcement

Dated at Rockville, Maryland  
this      day of December 1993

\*SEE PREVIOUS CONCURRENCE

OFC	LLDR*	E	LLDR*	E	LLDR*	E	LLDR*	E	RIV*	OGC*	LLWM
NAME	HSPIRO/CV		JCOPELAND		MWEBER		JAUSTIN		WFISHER	SLEWIS	JGREEVES
DATE	10/06/93		10/06/93		10/12/93		10/24/93		11/10/93	/ /93	12/6/93
OFC	NMSS		NMSS		OE						
NAME	GARLOTTO		RBERNERO		JLIEBERMAN						
DATE	/ /93		/ /93		/ /93		/ /93		/ /93	/ /93	

File path: s:\llwmtype\cecilia\fanf12.hs - OFFICIAL RECORD COPY

DISTRIBUTION: Central File NMSS r/f JHolonich MBell REvans, RIV LLWM r/f  
LBell TCJohnson

PDR: YES  NO   
ACNW: YES  NO   
IG: YES  NO

Category: Proprietary  or CF Only   
Delete file after distribution Yes  No

Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Director, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, USNRC, Washington, DC 20555.

Should Fansteel submit documentation demonstrating that Fansteel has taken the specific actions identified in Section III.B.(1) - (6) of this Demand for Information in accordance with Regulatory Guide 3.66, no further response to this Demand for Information is required.

After reviewing Fansteel's response, the NRC will determine whether further action is necessary to ensure compliance with regulatory requirements.

FOR THE NUCLEAR REGULATORY COMMISSION

Hugh L. Thompson, Jr.  
Deputy Executive Director for  
Nuclear Material Safety, Safeguards,  
and Operations Support

Dated at Rockville, Maryland  
this        day of November 1993

DISTRIBUTION: Central File NMSS r/f JHolonich MBell REvans, RIV LLWM r/f  
                  LBell TCJohnson

OFC	LLDR		LLDR		LLDR		LLDR		RIV		OE		OGC	
NAME	HSPIRO/CV		JCOPELAND		MWEBER		JAUSTIN		WFISHER		JLIEBERMAN		R FONNER	
DATE	/ / 93		/ / 93		/ / 93		/ / 93		/ / 93		/ / 93		/ / 93	
OFC	OGC	E	LLWM		LLWM		NMSS		NMSS		DEDS			
NAME	<del>ECHANDLER</del>		PLOHAUS		JGREEVES		GARLOTTO		RBERNERO		HLTHOMPSON			
DATE	12 / 1 / 93		/ / 93		/ / 93		/ / 93		/ / 93		/ / 93			

PDR : YES \_\_\_ NO \_\_\_      Category: Proprietary \_\_\_ or CF Only \_\_\_  
ACNW: YES \_\_\_ NO \_\_\_      Delete file after distribution Yes \_\_\_ No \_\_\_  
IG:    YES \_\_\_ NO \_\_\_

File path: s:\llwmtype\cecilia\fanfi2.hs

- D. The information identified on Schedule A, as described in NRC Regulatory Guide 3.66, p. 4-26;
- E. A revised set of corporate bylaws, or other documents that clearly define the responsibilities granted to vice presidents, and specifications on the delegation of authority to vice presidents, including, in particular, the authority to sign a standby trust agreement;
- F. Originally signed duplicates of all financial assurance documents; and
- G. A complete explanation of any reasons why the NRC should not take enforcement action for Fansteel's failure to provide financial assurance documentation that would provide NRC with a level of confidence equivalent to that which would result from conformance with NRC Regulatory Guide 3.66, as described in the NRC's letters to Fansteel of February 7, 1992, and March 1, 1993.

Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Director, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, USNRC, Washington, DC 20555.

After reviewing Fansteel's response, the NRC will determine whether further action is necessary to ensure compliance with regulatory requirements.

FOR THE NUCLEAR REGULATORY COMMISSION  
 [Original signed by]  
 Hugh L. Thompson, Jr.  
 Deputy Executive Director for  
 Nuclear Materials Safety, Safeguards,  
 and Operations Support

Dated at Rockville, Maryland  
 this     day of             1993.

DISTRIBUTION: Central File NMSS r/f JHolonich MBell REvans, RIV LLWM r/f  
 LBell TCJohnson

*RSE*

OFC	LLDR	<i>G</i>	LLDR	<i>E</i>	LLDR	<i>E</i>	LLDR		RIV		OE		OGC	
NAME	HSPIRO/ <i>CVS</i>		JCOPELAND	<i>sec</i>	<i>W</i> MWEBER		JAUSTIN		WFISHER		JLIEBERMAN		R FONNER	
DATE	<i>10/12/93</i>		<i>10/16/93</i>		<i>10/12/93</i>		<i>1/93</i>		<i>11/10/93</i>		<i>1/93</i>		<i>1/93</i>	
OFC	OGC		LLWM		LLWM		NMSS		NMSS		DEDS			
NAME	LCHANDLER		PLOHAUS		JGREEVES		GARLOTTO		RBERNERO		HLTHOMPSON			
DATE	<i>/93</i>		<i>/93</i>		<i>/93</i>		<i>/93</i>		<i>/93</i>		<i>/93</i>			

PDR : YES \_\_\_ NO \_\_\_     Category: Proprietary \_\_\_ or CF Only \_\_\_  
 ACNW: YES \_\_\_ NO \_\_\_     Delete file after distribution Yes \_\_\_ No \_\_\_  
 IG: YES \_\_\_ NO \_\_\_

File path: s:\llwmtype\cecilia\fandfi2.hs

- D. The information identified on Schedule A, as described in NRC Regulatory Guide 3.66, p. 4-26;
- E. A revised set of corporate bylaws, or other documents that clearly define the responsibilities granted to vice presidents, and specifications on the delegation of authority to vice presidents, including, in particular, the authority to sign a standby trust agreement;
- F. Originally signed duplicates of all financial assurance documents; and
- G. A complete explanation of any reasons why the NRC should not take enforcement action for Fansteel's failure to provide financial assurance documentation that would provide NRC with a level of confidence equivalent to that which would result from conformance with NRC Regulatory Guide 3.66, as described in the NRC's letters to Fansteel of February 7, 1992, and March 1, 1993.

Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Director, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, USNRC, Washington, DC 20555.

After reviewing Fansteel's response, the NRC will determine whether further action is necessary to ensure compliance with regulatory requirements.

FOR THE NUCLEAR REGULATORY COMMISSION  
 [Original signed by]  
 Hugh L. Thompson, Jr.  
 Deputy Executive Director for  
 Nuclear Materials Safety, Safeguards,  
 and Operations Support

Dated at Rockville, Maryland  
 this     day of             1993.

DISTRIBUTION:    Central File    NMSS r/f    JHolonich    MBell    REvans, RIV    LLWM r/f  
                   LBell            TCJohnson

OFC	LLDR	<i>G</i>	LLDR	<i>E</i>	LLDR	<i>E</i>	LLDR	<i>E</i>	RIV		OE		OGC
NAME	HSPIRO/ <i>CVS</i>		JCOPELAND	<i>SEC</i>	MWEBER		JAUSTIN		WFISHER		JLIEBERMAN		R FONNER
DATE	10/12/93		10/16/93		10/12/93		10/24/93		/ /93		/ /93		/ /93
OFC	OGC		LLWM		LLWM		NMSS		NMSS		DEDS		
NAME	LCHANDLER		PLOHAUS		JGREEVES		GARLOTTO		RBERNERO		HLTHOMPSON		
DATE	/ /93		/ /93		/ /93		/ /93		/ /93		/ /93		

PDR :   YES   \_\_\_   NO   \_\_\_            Category: Proprietary \_\_\_ or CF Only \_\_\_  
 ACNW:   YES   \_\_\_   NO   \_\_\_            Delete file after distribution Yes \_\_\_ No \_\_\_  
 IG:     YES   \_\_\_   NO   \_\_\_

File path: s:\llwmtpe\cecilia\fanf2.hs



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

MAR 01 1993

Docket No. 40-07580  
License No. SMB-911

Fansteel, Inc.  
ATTN: Mr. John J. Hunter  
Corporate Manager  
Process Engineering and  
Facilities Construction  
Number Ten Tantalum Place  
Muskogee, OK 74401

Dear Mr. Hunter:

This letter summarizes items that are delinquent and unacceptable in processing documentation for Fansteel's financial assurance certification at the Muskogee, Oklahoma facility under source material license number SMB-911.

In order for Fansteel to maintain its license for source material, Fansteel must submit to the NRC a complete set of documents providing certification of financial assurance for decommissioning,<sup>1</sup> as prescribed in 10 CFR §40.36. Such certification ensures the NRC that certain minimum financial instruments are in place to provide for decommissioning of a site.

This certification of financial assurance is distinct from a site-specific decommissioning funding plan, mentioned in 10 CFR §40.36(d). The site-specific decommissioning funding plan will be required of Fansteel by June 30, 1994, when Fansteel submits its decommissioning plan in accordance with Amendment No. 1, under license condition 26, dated December 21, 1992. In contrast, the financial assurance certification is required of Fansteel now.

---

<sup>1</sup> Details about the documentation required are provided in NRC Regulatory Guide 3.66, Standard Format and Content of Financial Assurance Mechanisms Required for Decommissioning Under 10 CFR Parts 30, 40, 70 and 72. You were previously sent a copy of this Regulatory Guide.

9303050203 3pp  
Enclosure 1

John J. Hunter

- 2 -

On February 7, 1992, NRC sent a letter to Fansteel (Enclosure A) specifying changes that were required for NRC to accept Fansteel's financial assurance certification. During October and November, 1992, Fansteel submitted documents in response to that letter.

NRC has reviewed Fansteel's submittals and has identified several deficiencies that must be corrected. Please refer to Enclosure A for detailed descriptions of what is required.

- Item 1: We have not received either a certification statement or a cost estimate.
- Item 3: This was noted in your October letter, but not corrected. Fansteel should amend the standby trust agreement to limit withdrawals to 10% of the outstanding balance.
- Item 4: This item was not addressed. No revised standby trust agreement was submitted by Fansteel. Section 6 contains a legally unacceptable sentence: "All investments made at Grantor's discretion shall be deemed prudent per se." If Fansteel's bank insists on such language, another bank must be found.
- Item 5: This was unaddressed, and must be addressed now.
- Item 6: This was unaddressed, and must be addressed now.
- Item 7: Fansteel did submit a set of corporate by-laws. However, the by-laws are ambiguous in terms of the responsibilities granted to vice presidents, and make no mention of the delegation of authority to this particular individual.
- Items 8&9: Need to be addressed now and for future submittals.

Please note that as of May 1, 1992 all correspondence should be addressed to Harvey Spiro, Project Manager, who has the responsibility for this license. Mr. Moczian's October 1992 letter was addressed to Mr. Hickey of another NRC division; this resulted in delays in processing.

MAR 01 1993

John J. Hunter

- 3 -

NRC requests that Fansteel respond to each of these items by March 30, 1993. If there are any questions in proceeding with the requirements, please do not hesitate to call me at 301-504-2559.

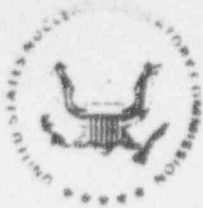
Sincerely,

/s/

Harvey Spiro, Project Manager  
Regulatory Issues Section  
Decommissioning and Regulatory  
Issues Branch  
Division of Low-Level Waste Management  
and Decommissioning  
Office of Nuclear Material Safety  
and Safeguards

Enclosures: As stated

cc:  
Allyn Davis, U.S. Environmental  
Protection Agency, Region VI  
Lloyd Kirk, Oklahoma State  
Department of Health  
Terry Lyhane, Oklahoma Water  
Resources Board  
H. A. Caves, Oklahoma State  
Department of Health



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20545

February 7, 1992

Docket No. 40-7580  
License No. SMB-911

Mr. Michael J. Mocniak  
Vice President, General Counsel  
and Secretary  
Fansteel Inc.  
Number One, Tantalum Place  
North Chicago, Illinois 60064

Dear Mr. Mocniak:

SUBJECT: FINANCIAL ASSURANCE CERTIFICATION FOR DECOMMISSIONING OF THE  
FANSTEEL METALS FACILITY AT MUSKOGEE, OKLAHOMA

We have completed the review of your July 26 and December 11, 1990, financial assurance certification submittals for your Muskogee, Oklahoma, facility (License No. SMB-911). The documents in your submittal, i.e., the Continental Bank's Irrevocable Documentary Letter of Credit Number C7155999, dated July 27, 1990, and the Standby Trust Agreement which were enclosed with your letter dated December 11, 1990, are satisfactory with the exceptions noted in our enclosed comments (Enclosure 1). Almost all of the NRC staff concerns raised in these enclosed comments may be resolved by revising the certification documents to reflect the guidance provided in Regulatory Guide 3.66, "Standard Format and Content of Financial Assurance Mechanisms Required for Decommissioning Under 10 CFR Parts 30, 40, 70," June 1990. Please note the page numbers of the Regulatory Guide listed in each of the staff's comments. A copy of Regulatory Guide 3.66 has been enclosed for your convenience (Enclosure 2).

Please make the appropriate revisions to your financial assurance certification documents to resolve the issues which we have raised in the enclosed comments and resubmit your revised certification by March 20, 1992.

I also want to take this opportunity to direct your attention to another aspect of the regulations requiring financial assurance for decommissioning, 10 CFR Part 40.36. Your financial assurance for \$750,000 for your license satisfies the initial requirement of 10 CFR Part 40.36(c)(2) for the submittal which was due July 27, 1990; however, as set forth in that section, as part of the existing renewal application for your license, you must submit a decommissioning funding plan conforming to 10 CFR Part 40.36(d), with financial assurance for the amount of the estimated total cost of decommissioning. The required cost estimate for decommissioning should be submitted with the level of detail illustrated by Appendix F of Regulatory Guide 3.66.

ENCLOSURE A

42621-00-321

SPP



Mr. Michael J. Mocchiak

- 2 -

February 7, 1992

We appreciate your cooperation in this matter. If you have any questions, please contact Dr. Tim Mo of my staff at (301) 504-2570.

Sincerely,

Original Signed By

John W. N. Hickey, Chief  
Fuel Cycle Safety Branch  
Division of Industrial and  
Medical Nuclear Safety  
Office of Nuclear Material Safety  
and Safeguards

Enclosures:

1. Staff comments
2. Regulatory Guide 3.66

cc: J. J. Hunter, Fansteel, Muskogee, OK  
R. M. McEntee, Fansteel, North Chicago, IL

NRC COMMENTS ON REVIEW OF FINANCIAL  
ASSURANCE CERTIFICATION DATED JULY 27, 1990  
AND DECEMBER 11, 1990  
FANSTEEL, INC.  
MUSKOGEE, OKLAHOMA

1. Submit a Certification Statement

Under 10 CFR Part 40.36, Fansteel is required to submit either a certification statement or a decommissioning cost estimate. Fansteel's submission dated July 27, 1990, does not include either a certification statement or a cost estimate. Based upon the \$750,000 amount of assurance specified in the letter of credit, it appears that a certification statement should have been included. Submit a certification statement certifying compliance with the decommissioning rules, as recommended in the Regulatory Guide 3.66 "Standard Format and Content of Financial Assurance Mechanisms Required for Decommissioning Under 10 CFR Parts 30, 40, 70, and 72," June 1990, page 1-5. The statement of certification, in addition to providing information that would allow NRC to verify the certification amount (e.g., the names and locations of the facilities for which financial assurance is provided, and the amount and types of materials handled), certifies that the licensee is in compliance with the appropriate requirements.

2. Resubmit the Letter of Credit or a New Standby Trust Agreement to Specify the Correct Trustee

Paragraph 4 of the letter of credit states that a withdrawal under the letter of credit will be deposited "into the standby trust fund of Fansteel, Inc. maintained with Harris Trust and Savings Bank, as Trustee." The submitted standby trust agreement, however, establishes Bank of Northern Illinois as trustee. One of the following changes should be made:

- a. If the letter of credit identifies the correct trustee, then Fansteel must submit a new standby trust agreement that is executed by Harris Trust and Savings Bank, as trustee. The wording of the standby trust agreement should closely match the recommended wording of the Regulatory Guide 3.66, pages 4-18 through 4-27; or
- b. If the standby trust agreement identifies the correct trustee, then Fansteel must amend the letter of credit to specify that Bank of Northern Illinois is trustee.

If Fansteel chooses the second option, it should modify its submission as described below.

3. Modify the Standby Trust Agreement to Limit Withdrawals to No More Than 10 Percent of the Outstanding Balance Without Written NRC Approval

As submitted, the standby trust agreement allows withdrawal from the trust fund up to 30 percent of the outstanding balance or \$250,000, whichever is greater, without NRC approval. This withdrawal limit exceeds the 10 percent level specified in NRC guidance. Modify Section 5 of the submitted standby trust agreement to comply with the lower level recommended by NRC.

4. Delete the Added Sentence From Section 6 of the Standby Trust Agreement

Section 6 of the trust, Trust Management, describes the guidelines under which the trustee is to manage the trust. This section of the standby trust agreement submitted by Fansteel closely follows the wording recommended in the NRC's Regulatory Guide 3.66, except that it adds the following sentence: "All investments made at Grantor's direction shall be deemed prudent per se." This added sentence effectively nullifies the protections provided by the rest of the paragraph, so long as the trustee acts at the direction of Fansteel. Delete the sentence from the agreement.

5. Modify Section 13 of the Standby Trust Agreement to Include Condition on Trustee Replacement or Resignation

The submitted standby trust agreement states that "Upon 90 days notice to the NRC, the Trustee may resign; upon 90 days notice to the NRC and the Trustee, the Grantor may replace the Trustee." The recommended wording in Regulatory Guide 3.66, page 4-22, adds the following language to the above wording: ". . . but such resignation or replacement shall not be effective until the Grantor has appointed a successor Trustee and this successor accepts the appointment." This clause is important because it ensures that a trustee is continually managing the fund, without interruption. Modify Section 13 of the standby trust agreement to include the recommended language of the Regulatory Guide 3.66.

In addition, Section 13 as submitted does not require the successor trustee to specify the date on which it assumes administration of the trust in writing to the NRC. As recommended in the Regulatory Guide 3.66, page 4-22, the successor trustee must notify the grantor, the present trustee, and the NRC of this date. NRC must be notified so that it can be certain that a trustee is managing the fund at all times. Include NRC notification, as recommended in the draft Regulatory Guide 3.66.

6. Amend the Standby Trust Agreement to Include a Schedule A

The submitted standby trust agreement does not contain a Schedule A or a reference, in Section 2, to Schedule A. The Regulatory Guide 3.66, page 4-26, requires the licensee to include on Schedule A the NRC license number, the name and address of the licensee, the address of the licensed activities, and the cost estimates applicable to the agreement. This information assists the



trustee in determining whether funds should be distributed for a specific facility. Amend the agreement to reference and include a Schedule A.

7. Submit Evidence Indicating that the Party Signing the Standby Trust Agreement for the Licensee is Authorized to Represent the Company

The submission does not display sufficient evidence indicating that the party signing the mechanism is authorized to enter into a standby trust agreement for the licensee, as recommended in Regulatory Guide 3.66, page 3-14. Submit a copy of the corporate by-laws or other evidence indicating that the party signing the standby trust agreement is authorized to do so in order to ensure that the financial mechanism is valid and enforceable.

8. Preferred NRC Mailing Address for the Letter of Credit

The letter of credit is addressed to the NRC in Rockville, Maryland which is our address for hand-delivered mail only. The Regulatory Guide 3.66, page 4-33, recommends that the letter of credit be addressed to the NRC in Washington, D.C. The letter of credit should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

9. Fansteel should ensure that the financial assurance documents submitted to the NRC are originally signed duplicates.