

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
Fansteel, Incorporated)
Muskogee, Oklahoma) Docket No. 40-07580
License No. SMB-911

DEMAND FOR INFORMATION

I.

Fansteel, Incorporated (Licensee) holds Source Material License No. SMB-911, issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 40. The license was initially issued on January 27, 1967, by the U.S. Atomic Energy Commission, whose regulatory authority and responsibility is now vested in the NRC, and was last revised in its entirety on February 1, 1990. The license authorizes the Licensee to receive, acquire possess, and transfer 30,000 kgs of natural uranium and 67,000 kgs of natural thorium, in the form of tin slags, ores, ore concentrates, and process residues. The Licensee is authorized to process the slags, ores, and ore residues, to separate out metals for industrial applications. The Licensee's process does not separate source material from feed materials. The license is due to expire on July 31, 1994.

II.

NRC's regulations in 10 CFR § 40.36 require each holder of a specific license issued before July 27, 1990, and authorizing the possession and use of more than one hundred (100) millicuries (mCi) of source material to submit, on or

Enclosure 2

before July 27, 1990, a decommissioning funding plan or certification of financial assurance for decommissioning in an amount at least equal to \$750,000. Fansteel's license authorizes it to possess more than 20.3 Ci* of natural uranium, which is source material.

Section 40.36 also requires that if the Licensee submits the certification of financial assurance rather than a decommissioning funding plan on or before July 27, 1990, the Licensee shall include a decommissioning funding plan in any application for license renewal. Such certification ensures that certain minimum financial instruments are in place to provide for decommissioning of a site. (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," which was provided to the Licensee on February 7, 1992, provides examples of format and content for this documentation that are acceptable to the NRC staff.)

The certification of financial assurance is distinct from a site-specific decommissioning funding plan, as described in 10 CFR § 40.36(d). License Amendment No. 1, Condition 26, dated December 21, 1992, requires Fansteel to submit a site-specific decommissioning funding plan by June 30, 1994, together with a decommissioning plan.

* The activity of the uranium isotopes in natural uranium is 6.77×10^{-7} Ci/g. Calculation of the activity of the natural uranium authorized under Fansteel's license gives: 6.77×10^{-7} Ci/g \times 30,000 kg \times 1,000 g/kg = 20.3 Ci. Consideration of the additional activity of the daughter products would make the total authorized activity even greater.

In July and December 1990, Fansteel submitted documents in partial fulfillment of the financial assurance certification requirements, in which it proposed to use a surety method payable to a standby trust in order to fulfill those requirements. As set forth in 10 CFR § 40.36(e), where a licensee chooses to satisfy the regulation through a surety method payable to a standby trust, the trust must be acceptable to NRC. Such a trust is not acceptable to NRC unless the trust account is outside the licensee's administrative control. Fansteel has failed to demonstrate that the proposed trust account is outside its administrative control in three respects:

(1) NRC deems a trust account outside a licensee's administrative control if the licensee may withdraw no more than 10 percent of the funds in the trust account. Fansteel's proposed trust, however, authorizes it to withdraw up to 30 percent of the trust account;

(2) The proposed trust agreement vests administrative control over the trust account in Fansteel by stating that "All investments made at Grantor's discretion shall be deemed prudent *per se*;" and

(3) There is no description of how the standby trust will be continuously managed by a trustee if the trust is transferred from one trustee to another; accordingly, trust management may revert to the Grantor, Fansteel.

In addition, Fansteel has not submitted documentation to establish the legal sufficiency of the standby trust, including information indicated as

acceptable in Regulatory Guide 3.66, to show: (1) the limited purpose of the standby trust (recommended Schedule A); and (2) the legal authority of the Fansteel officer signing the trust agreement to execute the agreement (corporate bylaws or other evidence) and including original signed duplicates of all financial assurance documents.

In a letter to Mr. Michael J. Mocniak (Vice President, General Counsel and Secretary, Fansteel) dated February 7, 1992, NRC outlined its concerns with those documents. Fansteel submitted a response to the February 7, 1992, NRC letter on October 23, 1992, and a revision to one of the documents on November 3, 1992. On March 1, 1993, NRC sent a letter to John J. Hunter (Corporate Manager, Fansteel) summarizing items that remained delinquent or unacceptable in Fansteel's financial assurance certification. In that letter, NRC requested that Fansteel respond to each of the items by March 30, 1993. In two phone calls during April 1993 (April 8 and April 28), NRC reminded Fansteel that a response to NRC's March 1 letter was overdue.

Fansteel is now more than 8 months overdue in responding to NRC's last letter, in spite of the aforementioned telephone reminders. Furthermore, many of the concerns still pending were first conveyed to Fansteel in the February 1992 letter. In view of the above, further information is needed to determine whether NRC can have reasonable assurance that the Licensee will satisfy the requirements of 10 CFR § 40.36 and otherwise conduct its activities in accordance with NRC's requirements.

III.

Accordingly, pursuant to sections 62, 63, 161c, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and 10 CFR §§ 2.204 and 40.31(b), in order for NRC to determine whether the license should be modified, suspended or revoked, or other enforcement action taken to ensure compliance with NRC regulatory requirements, the Licensee is required to submit to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, within 30 days of the date of this Demand for Information, the following information, in writing and under oath or affirmation:

- A. A description of how the standby trust account will be outside of Fansteel's administrative control, including:
1. Justification of allowing the Licensee to withdraw up to 30 percent of the funds in the standby trust account;
 2. An explanation of how the standby trust account would be outside the Licensee's control, in view of the sentence in the standby trust agreement stating that: "All investments made at Grantor's discretion shall be deemed prudent *per se*"; and
 3. A description of how the standby trust will be continuously managed without a lapse in management if the trust is transferred from one trustee to another.

- B. A complete explanation of any reasons why NRC should not take enforcement action for Fansteel's failure to provide financial assurance documentation that would satisfy 10 CFR § 40.36, including any reasons why the NRC should not issue an Order requiring Fansteel to:
1. Modify the standby trust agreement to limit Fansteel's authority to withdraw funds from the trust account to 10 percent of the account;
 2. Remove the statement from the standby trust agreement that "All investments made at Grantor's discretion shall be deemed prudent *per se*";
 3. Modify the standby trust agreement to provide for continuous management of the trust by a trustee if the trust is transferred from one trustee to another;
 4. Include Schedule A, as described in NRC Regulatory Guide 3.66, p. 4-26, with the standby trust agreement, and submit it to NRC;
 5. Submit to NRC 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; and

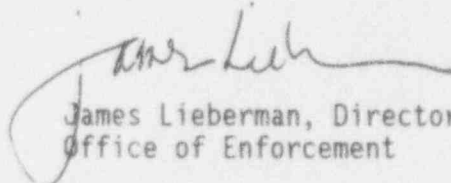
6. Submit to NRC originally signed duplicates of all financial assurance documents.

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 7th day of January 1994