

Michael J. Mocniak
Vice President, General Counsel
and Secretary

DOCKETED
USNRC

Fansteel

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July 23, 1997

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Attention: Docketing and Service Branch

DOCKET NUMBER
PROPOSED RULE **PR** 30,40,50,70+72
(62FR23394)

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Re: NRC Proposed Rule on Self-Guarantee of Decommissioning
Funding by Non-Profit and Non-Bond Issuing Licensees
62 Fed. Reg. 23394 (April 30, 1997)

Dear Secretary:

I am writing on behalf of Fansteel Inc. in support of the NRC's proposed rule and to offer comments for NRC's consideration in the Final Rule. Fansteel supports the concept that non-profit and non-bond issuing licensees should be allowed to self-guarantee the availability of decommissioning funds. We believe, however, that the proposed financial test for non-bond issuing industrial corporations is unduly restrictive and that the final rule should adopt a less restrictive test similar to that currently used for parent company guarantees.

In the proposed rule, industrial corporations would have to meet the following criteria:

Cash Flow ÷ Total Liabilities > 0.15;

Total Liabilities ÷ Net Worth < 1.5; and

Net Worth > \$10 MM or 10 times the decommissioning costs, whichever is greater.

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These are the same criteria evaluated as Option 4 for non-bond issuing business firms in NUREG/CR-6514 "Analysis of Potential Self-Guarantee Tests for Demonstrating Financial Assurance by Non-Profit Colleges, Universities and Hospitals and by Business Firms That Do Not Issue Bonds." That analysis concluded that only six percent (2 of 36) licensees considered in the study would be able to pass such a rigorous financial test.

NUREG/CR-6514 also analyzed a less restrictive financial test, identified as Option 2, which presented only a moderate assurance risk. The criteria for this test are:

$$\text{Cash Flow} \div \text{Total Liability} > 0.1 \text{ or}$$

$$\text{Total Liability} \div \text{Net Worth} < 1.5.$$

This is the same test being considered by EPA for both parent company guarantees and self-guarantees for hazardous and nonhazardous waste management facilities under RCRA. The analyses for this option concluded that 69% (25 of 36) licensees would be able to qualify for the self-guarantee under this option.

For comparison, NRC currently accepts a parent company guarantee where the parent company satisfies two of the following three ratios:

$$\text{Total Liability} \div \text{Net Worth} < 2.0;$$

$$\text{Cash Flow} \div \text{Total Liability} > 0.1; \text{ and}$$

$$\text{Current Assets} \div \text{Current Liabilities} > 1.5.$$

The parent company must also have net working capital and tangible net worth each at least six times the decommissioning cost estimate; a tangible net worth of at least \$10 MM; and at least 90% of its assets, or assets worth six times the decommissioning cost estimate, located in the United States. This is the same test currently used by EPA for parent guarantees for closure and post-closure costs at RCRA facilities.



The proposed self-guarantee standard appears to be inconsistent with the existing parent guarantee standard used by the NRC, and it appears to favor corporate form over financial substance. For example, a licensee which is not a subsidiary of another company could pass the parent-guarantee test but not the self-guarantee test. This licensee would have to use other means to financially assure its decommissioning cost estimate--all of which entail significant costs. Another licensee with the same decommissioning cost estimate, but which has a parent company, could use a parent company guarantee as long as the parent satisfies the less restrictive financial test for parent companies. Thus, it is possible that a financially weaker parent company can guarantee a given amount, whereas a stronger company which has no parent cannot guarantee the same amount, and will incur significant additional costs to satisfy its financial assurance obligations. The potential for such an outcome should not be countenanced by the NRC.

Fansteel believes that NRC should adopt for the self-guarantee test to be employed by non-bond issuing business firms either the current parent guarantee criteria or the NUREG/CR-6514 Option 2 criteria. Either test would not unfairly discriminate against companies which do not have parent companies (or which did not establish subsidiaries for their licensed activities) and which are otherwise financially sound. Additionally, more licensees would be able to employ these methods, thereby saving the costs that would be incurred when other financial assurance mechanisms are employed.

Fansteel also suggests that the final rule include definitions for the various accounting terms used in the rule. For example, the proposed rule uses the term "cash flow" but does not define it, whereas the current parent guarantee rule (10 CFR 30, Appendix B) uses the term "the sum of net income plus depreciation, depletion and amortization," but does not mention cash flow. NUREG/CR-6514 defines cash flow as "net income plus depreciation, depletion and



amortization." Without the NUREG, one might conclude that the use of different terms in similar rules suggests that different meanings are intended. This confusion can be avoided by defining the terms in the rule, rather than relying on documents merely referenced in the rulemaking notice to provide clarity.

We hope these comments are helpful as the NRC moves to finalize this rule.

Very truly yours,

FANSTEEL INC.

A handwritten signature in cursive script that reads "Michael J. Mocniak". The signature is written in dark ink and is positioned above the printed name.

Michael J. Mocniak

Vice President and General Counsel