



7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040-7580; EA-17-102; NRC-2017-0165]

License Modification Order: Fansteel, Inc. and FMRI (a Subsidiary of Reorganized Fansteel)

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an Immediately Effective Order to Fansteel, Inc. and FMRI (a subsidiary of Reorganized Fansteel). The Order modifies License No. SMB-911 to include “Fansteel, Inc.” as a co-Licensee with “FMRI (a subsidiary of Fansteel)” for the complex decommissioning site in Muskogee, Oklahoma. The Order also requires amendment of the Decommissioning Plan to reflect “Fansteel” as a co-licensee and requires Fansteel and FMRI to take any and all actions necessary at the Muskogee site to ensure adequate protection of public health and safety. The NRC issued the Order in response to the imminent risk that FMRI will abandon the Muskogee site.

DATES: The Order was issued on July 14, 2017.

ADDRESSES: Please refer to Docket ID **NRC-2017-0165** when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2017-0165**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For questions about this Order, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**

You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "[Begin Web-based ADAMS Search.](#)" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Greg Chapman, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-8718; e-mail: Gregory.Chapman@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland, this July 17, 2017.

For the Nuclear Regulatory Commission.

John R. Tappert, Director,
*Division of Decommissioning, Uranium Recovery,
and Waste Programs*
Office of Nuclear Material Safety and Safeguards.

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

**In the Matter of FMRI (a subsidiary of Reorganized Fansteel) and Fansteel, Inc.
Muskogee, Oklahoma
Docket No. 040-7580
License No. SMB-911
EA-17-102**

**ORDER MODIFYING LICENSE
(IMMEDIATELY EFFECTIVE)**

I

FMRI, a subsidiary of Reorganized Fansteel, Inc. ("Fansteel") ("Licensee") is the current holder of Byproduct/Source/Special Nuclear Material License No. SMB-911 ("License") issued by the Nuclear Regulatory Commission ("NRC") pursuant to 10 CFR part 40, "Domestic Licensing of Source Material." The License authorizes possession of source material consisting of up to 400 tons of natural uranium and thorium in any form at the Muskogee, Oklahoma site, where Fansteel operated a rare metal extraction facility until December 1989. The License further authorizes activities related to decommissioning and characterization of contaminated facilities, equipment, and land, and maintenance of control over licensed materials in accordance with statements, representations, and conditions contained in the application submitted by letter dated January 14, 2003 (ML030280438), and supplemented by letters dated May 8, 2003 (ML031340606), July 24, 2003 (ML032100533, re: Decommissioning Plan), July 24, 2003 (ML032100585, re: license transfer); and by letter dated July 6, 2006 (ML061930111), and supplemented by letters dated August 31, 2006 (ML070740112) and May 24, 2007 (ML071560249). The License, originally issued in 1967, expired on September 30, 2002 although it has continued, in effect, in accordance with 10 CFR 40.42(c).

II

The Muskogee site currently contains contaminated material in the form of uranium, thorium, and their decay-chain progeny. This contamination is located in process equipment and buildings, soil, sludge, and groundwater. As the holder of License No. SMB-911, FMRI is responsible for decontaminating the Muskogee site by conducting characterization, remediation, and other decommissioning activities in accordance with both the NRC-approved 2003 Decommissioning Plan (“Decommissioning Plan”) and supplemental correspondence with the NRC staff relating to the Decommissioning Plan. Fansteel is the current record owner of approximately 80 acres of the Muskogee site, including the contaminated portion of the site. Currently, the only Director and the President, Secretary, and Treasurer of FMRI is Mr. Robert Compernelle, the Vice President and Corporate Controller of Fansteel.

In a letter dated July 6, 2017 from Mr. Robert Compernelle (FMRI) to the NRC (“Compernelle Letter”) (ML17193A341), FMRI stated that it has not received compliance funding¹ from Fansteel in three months. The letter states that “FMRI has no money to pay for the continued monthly health and safety costs for the site . . .” FMRI also stated that in the near future “ground water and surface water will no longer be collected and treated in accordance with the NRC License . . .” FMRI further indicated that “surface water will likely overflow from the ponds and untreated ground water will contaminate the Arkansas River.” The Compernelle Letter states that there will be no site security “which may result in . . . potential exposure to radiation in excess of acceptable standards.” The abandonment of the Muskogee site creates

¹ Previously Fansteel was providing compliance funding (funding necessary to comply with applicable regulatory requirements) pursuant to certain financial instruments. When Fansteel experienced financial challenges in 2013, it entered into a series of agreements with the NRC for reduced compliance funding while still maintaining the health and safety of the site. Fansteel is no longer providing compliance funding.

an exigency that would likely include unacceptable health and safety risks to the public and therefore requires immediate regulatory action by the NRC.

Reasonable assurance of adequate protection of the public health and safety and common defense and security are the NRC's fundamental regulatory mandates under the Atomic Energy Act of 1954, as amended. Compliance with NRC requirements plays a critical role in giving the NRC confidence that licensees are maintaining an adequate level of public health and safety and common defense and security. In situations where licensees cannot demonstrate adequate compliance with NRC regulations, the Commission may act in accordance with its statutory authority under Section 161 of the Atomic Energy Act of 1954, as amended, to require licensees to take action in order to protect health and safety and common defense and security. In addition, the Commission may institute a proceeding to modify, suspend, or revoke a license or to take such action as may be proper by serving on the licensee or other person subject to the jurisdiction of the Commission an immediately effective order pursuant to 10 CFR 2.202(a).

FMRI's sampling data indicates that the Muskogee site has groundwater contamination that exceeds the effluent concentration limits in Appendix B of 10 CFR part 20, "Standards for Protection Against Radiation." The 2016 sampling data showed concentrations in some wells being almost double the Appendix B limits, which are based on a 50 mrem/y estimated dose. This contamination is currently collected, treated, and monitored by a water treatment system operated by FMRI staff. The water is then released to the Arkansas River in accordance with Oklahoma Pollutant Discharge Elimination System (OPDES) Permit No. OK0001643. As indicated by the Compennolle Letter, if the site is abandoned, any contaminated groundwater, or surface water runoff, will flow unimpeded, untreated, and unmonitored into the Arkansas River,

which is immediately adjacent to the site. The nearest surface water intake from the river is approximately 15 miles downstream of the site.

The site also contains several process impoundments (ponds), which contain treated water and radiologically contaminated calcium fluoride (CaF_2) material. These ponds need to be maintained because potential liner tears or other occurrences may lead to impoundment failures resulting in a release of radiologically contaminated materials to the environment. Further, the site has radiological contamination in open excavations, equipment, and buildings for which access control is needed to ensure that the public does not inadvertently receive exposures in excess of regulatory limits for the public due to being in close proximity or contact with the materials. Continued staffing at the Muskogee site is needed by personnel who can operate and maintain the water treatment system, maintain the surface impoundments, and otherwise provide site monitoring, maintenance, and security as needed to meet statutory, regulatory, and license requirements.

III

Fansteel was the original holder of the License. In January 2002, Fansteel filed a petition for bankruptcy in the U.S. Bankruptcy Court for the District of Delaware pursuant to Chapter 11 of the U.S. Bankruptcy Code (ML020290385). By application to the NRC (ML032100585), Fansteel requested a transfer of the License for the Muskogee site to a subsidiary, FMRI. As part of its Reorganization Plan under Chapter 11, Fansteel proposed to create FMRI to assume the License and complete decommissioning. In its application, Fansteel committed to provide compliance funding mechanisms for FMRI to ensure that FMRI would be qualified to hold the License and be capable of complying with all NRC requirements. The NRC conducted a safety evaluation of Fansteel's application. The NRC verified that Fansteel had

established all necessary compliance funding mechanisms and established FMRI as a separate entity capable of fulfilling the license requirements. The NRC concluded that, based on Fansteel's commitments, FMRI "is qualified to be the license holder" and that "transfer of the license to FMRI is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission" (ML033080188). Based on this finding, as well as confirmation of Fansteel's Reorganization Plan, the NRC consented to the license transfer and modified the License to replace Fansteel with FMRI (a subsidiary of Reorganized Fansteel) as the licensee on December 4, 2003 (ML033240133). Pursuant to the Reorganization Plan confirmed by the Bankruptcy Court on December 23, 2003, Fansteel reorganized and created FMRI to fulfill all obligations of the License and the Decommissioning Plan for the Muskogee site.

Subsequent to the NRC's approval of the license transfer and the effective date of the Reorganization Plan, Fansteel has exercised *de facto* control over radiological substances and thus is subject to the requirements of the Atomic Energy Act. Fansteel has maintained—and currently maintains—*de facto* control over the day-to-day business of FMRI. As noted above, Fansteel is the current record owner of the contaminated portion of the Muskogee site. Additionally, FMRI had no Board of Directors from 2009 to 2014, and currently Mr. Robert Compernelle, the Vice President and Corporate Controller of Fansteel, is the only director and the President, Secretary, and Treasurer of FMRI. Mr. Compernelle receives compensation from Fansteel, not FMRI. Mr. Compernelle and his predecessor, Mr. E. Jonathan Jackson, have directly controlled and been involved with environmental and regulatory matters with the NRC at the Muskogee site. Further, Fansteel has failed to deposit all insurance proceeds for use in decommissioning as required by the Reorganization Plan. Specifically, in 2010 Fansteel failed to deposit into the Decommissioning Trust an approximately \$1.25 million insurance settlement

related to the Muskogee site. Instead, Fansteel used this insurance settlement to fund its independent operations. In addition, Fansteel siphoned compliance funding from FMRI as numerous payments made by Fansteel to FMRI were rapidly returned by FMRI to Fansteel instead of being used for site remediation activities. In numerous reports submitted to the NRC, FMRI reported that Fansteel had made compliance funding to it when, in fact, Fansteel had not. For all these reasons, Fansteel's actions following confirmation of the Reorganization Plan ("post confirmation actions") have created obligations for Fansteel under the Atomic Energy Act.

Fansteel has also failed to fulfill the commitments it made in support of the license transfer. As previously noted, Fansteel failed to deposit all insurance proceeds into the Decommissioning Trust, failed to provide minimum required compliance funding to FMRI, and siphoned compliance funding from FMRI. In 2006 and again in 2007, FMRI applied for withdrawal of funds from the Decommissioning Trust and certified that all funds due to FMRI from Fansteel had been paid when in fact they had not. FMRI was required to replenish the Decommissioning Trust within 30 days of making such withdrawals, yet FMRI did not replenish the Decommissioning Trust. In 2011, 2012, and 2013, Fansteel failed to provide minimum required compliance funding to FMRI, yet in annual reports submitted to the NRC in 2012, 2013, and 2014, FMRI inaccurately stated that such funding had been provided.

Fansteel's post-confirmation conduct has rendered FMRI incapable of compliance with NRC requirements, made FMRI unqualified to be sole Licensee, has put the Muskogee site at imminent risk of abandonment, and requires modification of the License. NRC staff has determined that the protection of public health and safety requires the issuance of this Order adding Fansteel as a co-Licensee of the License. Accordingly, the NRC hereby modifies

SMB-911 via this Order to add Fansteel as a co-Licensee for SMB-911. In addition, pursuant to 10 CFR 2.202, “Orders,” the NRC finds that—in light of the likelihood of imminent site abandonment and the associated risks of further radiological contamination—the public health, safety, and interest require that this Order be made immediately effective subject to the conditions provided below.

IV

Fansteel again filed for bankruptcy pursuant to Chapter 11 of the U.S. Bankruptcy Code in September 2016, this time in the U.S. Bankruptcy Court for the Southern District of Iowa. In re Fansteel, Inc., No. 16-01823-ALS (Bankr. S.D. Iowa) (“Second Bankruptcy”). Nothing in this Order should be construed to seek collection of any claim or debt or monetary judgment. Rather, the actions required by the NRC under this Order are solely to enforce the NRC’s police or regulatory power as permitted by the police or regulatory exception to the automatic stay, 11 U.S.C. section 362(b)(4), and are designed to provide reasonable assurance of adequate protection of public health and safety.

The United States on behalf of the NRC has filed a motion in the Second Bankruptcy that is pending and which seeks continued compliance funding by Fansteel of FMRI. If granted and complied with, such compliance funding would allow Fansteel and FMRI to address the most immediate health and safety exigencies at the Muskogee site. This would likely alter the situation reported to the NRC in the Compennolle Letter as described above. However, according to the Compennolle Letter, FMRI’s compliance activities will expire imminently. Therefore, the NRC has lost reasonable assurance of adequate protection of public health and safety with respect to the Muskogee site and finds issuance of this Order necessary.

The NRC recognizes that an order of the Second Bankruptcy Court, either on the United States' pending motion or another motion, may be necessary for Fansteel to use cash collateral to comply with this Order. The NRC further recognizes that additional modifications of this Order may be appropriate in light of any future orders of the Court.

V

Accordingly, pursuant to Sections 61, 62, 161, 184, 186, and 187 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 40, IT IS HEREBY ORDERED, EFFECTIVE UPON ISSUANCE, AS FOLLOWS:

- A. License No. SMB-911 is modified to add Fansteel, Inc. as a co-Licensee.
- B. All relevant references to "FMRI" in License No. SMB-911 shall be changed to "Fansteel and FMRI."
- C. Fansteel and FMRI shall:
 - 1. Take any and all actions necessary at the Muskogee site 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. Fansteel's obligation under this subparagraph during the pendency of the Second Bankruptcy will not become effective if the Second Bankruptcy Court grants the United States' outstanding motion to comply with environmental health and safety laws and regulations on or before July 18, 2017. In such circumstance, during the pendency of the Second Bankruptcy, Fansteel's obligations will be governed by the Court's order.

2. Within 5 days of the issuance of this Order, submit a written report to the NRC describing all steps taken by Fansteel and FMRI to comply with this Order and how they have protected public health and safety.

3. Within 45 days of the issuance of this Order, submit to the NRC an amended Decommissioning Plan that reflects Fansteel as co-Licensee.

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensees of good cause.

VI

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within 30 days of issuance. In addition, the licensee and any other person adversely affected by this Order may request a hearing on this Order within 30 days of issuance. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-001, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene (hereinafter "petition"), and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and

serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC's Web site at <http://www.nrc.gov/site-help/esubmittals.html>. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's Public Web site at <http://www.nrc.gov/site-help/e-submittals/getting-started.html>. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's Public Web site at <http://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time

on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's Public Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail to MSHD.Resource@nrc.gov, or by a toll-free call to 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible

for serving the documents on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is available to the public at <https://adams.nrc.gov/ehd/>, unless excluded pursuant to an Order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click "Cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which their interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f). If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order

designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. Pursuant to 10 CFR 2.202(c)(2)(i), the licensee or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 30 days from the date this Order is issued without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

Dated this July 14, 2017.

Marc L. Dapas,

Director, Office of Nuclear Material

Safety and Safeguards.

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