

**REQUEST FOR ADDITIONAL INFORMATION REGARDING  
APPLICATION FOR CONSENT TO INDIRECT CHANGE OF CONTROL OF FMRI, INC.,  
AND REQUEST FOR LICENSE MODIFICATION [OF] NRC LICENSE NO. SMB-911,  
DATED JUNE 21, 2011.**

**1. QUESTIONS AND COMMENTS RELATED TO EXISTING PROMISSORY NOTES**

In part, 10 CFR 40.36 requires licensees to provide adequate financial assurance for decommissioning using specified methods. As part of the 2003 Fansteel bankruptcy settlement agreement, NRC accepted promissory notes in lieu of the specified financial assurance instruments.

1.1. Fansteel, FMRI, and GLA-1 (jointly referred to as "the applicants") requested, as part of its "Request for License Modification," a revision to the Primary Note. Specifically, the applicants state that the Primary Note currently has a maturity date of December 31, 2013, at which time Fansteel would be required to provide a balloon payment of approximately \$16,286,206. The applicants indicate that Fansteel does not anticipate that it will have sufficient funds available to satisfy the upcoming balloon payment, nor will it have the ability to finance the payment. The applicants request that the Primary Note be revised to extend the maturity date until December 31, 2023, and that in the interim Fansteel be permitted to continue the current semi-annual payment schedule.

1.1.1. Fansteel states it is unlikely to have the funds to pay the balloon payment as scheduled in the Primary Promissory Note. Please provide supporting financial information to substantiate this circumstance.

1.1.2. Cash flow has historically controlled FMRI's rate of remediation of the Muskogee site. What effect will the proposed modification of the conditions of the note have on FMRI's ability to promptly complete decommissioning of the site?

1.2. Please verify that none of the provisions of the Secondary Note, provided as part of site financial assurance, will change, and that the applicants will continue to meet their obligations under that note.

1.3. In the "Application for Consent" there is no mention of the Contingent Note (ML033350053) or the associated Escrow Agreement (ML040070535). The Contingent Note, which had no face value when it was executed, is designed to provide funds to remediate radiological contamination identified in the additional site characterization to be performed during Phase 3 of the Amended Decommissioning Plan (DP). Based on experience in decommissioning nearly 100 sites, staff believes it is very likely there will be additional contamination on the site, e.g. under the buildings, that will require remediation to meet unrestricted release conditions. There may also be some radiological contamination beneath the south ponds, especially Pond 5, which will require remediation. If that is the case, how do FMRI, Fansteel, and GLA-1, individually or collectively, propose to address any such additional costs in the context of the Contingent Note and associated Escrow Agreement? A resolution is to revise the FMRI license. Does FMRI agree to the NRC proposed revision to Condition 31 of SMB-911?

1.4. In its request, the applicants identified performance bonds and other financial instruments that are available to enhance decommissioning financial assurance. Please indicate if these bonds and financial instruments will provide any funds directly

Enclosure

to FMRI for decommissioning activities at the site, and if so, the anticipated timeframe for the provision of such funds.

- 1.5. Under the proposed transfer, Fansteel would no longer be within the FMRI corporate chain. In order to retain transparent financial accounting for decommission funding, Fansteel should make all payments specified in the settlement agreement and promissory notes directly to the Decommissioning Trust Fund, effective with approval of the license transfer. To institute this, NRC proposes modifying a provision of the Primary Note shown below. Does FMRI agree with the proposed change?

Principal is payable in lawful money of the United States and in immediately available funds ~~at the offices of FMRI, Number Ten Tantalum Place, Muskogee, Oklahoma 74403, Attention: A. Fred Dohmann, Chief Executive Officer & President, or at such other place as FMRI shall designate in writing to Fansteel~~ **to Trust Fund No. 2740 of the Bank of Waukegan, Waukegan, Illinois, or successor.**

## 2. QUESTIONS AND COMMENTS RELATED TO GENERAL FINANCIAL ASSURANCE

- 2.1. In Section 3.5.2 of the “Application for Consent,” FMRI identifies several financial instruments – performance bonds and insurance policies – that it states will enhance decommissioning financial assurance. Please explain how these instruments support compliance with the requirements of 10 CFR 40.36(e), and how they will provide additional assurance to NRC.
- 2.2. Please explain how, under this proposed transfer of control, FMRI would meet the financial assurance requirements of 10 CFR 40.36(c).
- 2.3. Conditions 43 – 49 of SMB-911 specify that FMRI must submit certain financial information from Fansteel to NRC.
  - 2.3.1. Does FMRI intend to continue providing this information about Fansteel’s finances after its sale to GLA-1? Please describe how FMRI intends to fulfill this requirement?
  - 2.3.2. What comparable financial information from GLA-1 does FMRI propose to submit to meet the intent of these license conditions?
- 2.4. The NRC staff reviews requests for license transfers using, in part, the guidance provided in Regulatory Issue Summary (RIS) -2008-19, “Lessons-Learned From Recent 10 CFR Part 70 License-Transfer Application Reviews.” [A link to the RIS is <http://pbadupws.nrc.gov/docs/ML0817/ML081760011.pdf>.] In order for the NRC to determine whether the future licensee, under the proposed transaction, would continue to meet the regulatory requirements necessary to establish adequate financial assurance for decommissioning as required by 10 CFR Part 40, please provide the following financial statements for FMRI and GLA 1, as appropriate:
  - a five-(5)-year pro-forma balance sheet and

- a five-(5)-year pro-forma cash flow statement that includes a baseline of the last 2 years of operations (these statements are to show a seven-(7)-year period - - the last two (2) years of operations, and projections for each of the next five (5) years.

2.5. Please provide a certification of financial assurance, the form of which is in Section A.2.4 of NUREG-1757, Vol. 3, "Consolidated NMSS Decommissioning Guidance – Financial Assurance, Recordkeeping, and Timeliness."

### 3. QUESTIONS AND COMMENTS RELATED TO SCHEDULE AND ACTIVITIES

As part of the Fansteel bankruptcy settlement, NRC approved the Decommissioning Plan submitted by Fansteel on January 14, 2003, under 10 CFR 40.42(d). As part of that approval, several additional conditions were also incorporated into the license.

3.1. Condition 26 of SMB-911 states "[r]emediation and decommissioning activities at the Muskogee facility shall be performed in accordance with the decommissioning plan and supplemental correspondence submitted by letter dated January 14, 2003 ..." Please explain how the activities proposed in Exhibit A of the "Application for Consent" are consistent with the activities described in the approved DP.

3.2. Lines 11 – 13 of Exhibit A indicate intent to submit an exemption request to NRC and to dispose of material through the (former) Michigan Department of Natural Resources and Environment (MDNRE). Please provide additional background information on this concept.

3.2.1. What material does FMRI plan to dispose in this manner?

3.2.2. When will FMRI submit such a request to NRC?

3.2.3. What is the basis to believe MDNRE will approve such a request?

3.2.4. Does FMRI have alternate plans if MDNRE does not approve the request?

3.3. Exhibit A of the submittal shows an approximate 10 year reduction in the time to remediate the ground water compared to the original approved DP and subsequent updates to Figure 8-3. What is the basis for this change?

3.4. Historically, FMRI's decommissioning activities have been cash flow limited. Proposed changes to the Primary Promissory Note appear to maintain the cash flow limitation on these activities. What financial resources will be available to meet the proposed accelerated schedule of decommissioning activities at FMRI?

3.5. Line 31 of Exhibit A introduces a new task, Oklahoma Voluntary Action Submission, which is not present in the approved DP.

3.5.1. When does FMRI plan to submit a revision to the approved DP to add this task?

3.5.2. Please provide the documentation supporting the intent of the State of Oklahoma to accept regulatory responsibility for this activity.

3.6. Please explain how the radiological surveys proposed in Exhibit A are consistent with the requirements of Condition 53 of SMB-911.

3.7. The applicants requested some minor changes to conditions of SMB-911 in its "Request for License Modification." However, there are several additional changes NRC has identified, which are primarily administrative in nature, that are necessary to implement the application effectively. Attachment 1 to this letter shows these proposed changes. Does FMRI agree with these proposed changes? If not, please provide alternate license conditions to meet the intent of the proposed changes.

#### 4. QUESTIONS AND COMMENTS RELATED TO ORGANIZATION

4.1. Page 2 of the "Application for Consent" states the Environmental Quality Company is licensed. What licenses and permits does the Environmental Quality Company hold? Please identify the issuer, the license/permit number, and any associated docket number(s).

4.2. Attachment 1 to the "Application for Consent" provides a brief outline of the current and proposed organizations. Please provide the complete organization of the corporate structure of GLA-1 and associated companies before and after the proposed acquisition of FMRI.

## ATTACHMENT 1

NRC PROPOSED CHANGES TO SMB-911