

June 11, 2012

Mr. Robert Compernelle, President
FMRI
10 Tantalum Place
Muskogee, OK 74403

SUBJECT: STATUS OF APPROVED DECOMMISSIONING PLAN ACTIVITIES

Dear Mr. Compernelle:

During the site inspection on May 16 – 18, the U. S. Nuclear Regulatory Commission (NRC) identified three concerns: the status of the Oklahoma pollutant discharge elimination system (OPDES) permit, disparities in accounting, and remediation of Pond 2. The Oklahoma Department of Environmental Quality (ODEQ) also identified similar concerns: unresolved issue related to the discharge permit, and expenditures for activities related to the Secondary Note to which ODEQ is a third party beneficiary.

Regarding the first concern, on December 4, 2003 NRC approved a four-phase decommissioning plan (DP) for the Muskogee site. Phase 4 of that approved DP is monitoring and remediation of the ground water underlying the site. In order for FMRI to implement this phase, it is necessary to have an approved Oklahoma discharge permit. ODEQ states that the current permit for the FMRI site expired in 2004, ODEQ has not reached agreement with FMRI on actions necessary to renew the permit, and ODEQ issued a notice of violation (NOV) to FMRI in 2010. If ODEQ were to terminate the discharge permit, an action within its regulatory authority, that would negatively impact FMRI's ability to implement the NRC-approved DP. Therefore, it is imperative that FMRI promptly meet with ODEQ and define a course of action to resolve ODEQ's issues related to the discharge permit in order to prevent any interruption of site remediation in accordance with the approved DP. If the actions to resolve ODEQ's issues require any modification to the current ground water remediation activities, FMRI should update the Phase 4 work plan within 30 days of reaching agreement with ODEQ.

Regarding the second concern, during the inspection NRC identified a number of discrepancies in accounting records. FMRI acknowledged these problems and stated it would make corrections. As discussed during the inspection, as part of corrective actions, FMRI should show more detail in its financial transaction reporting. Related, as part of the resolution of the Fansteel bankruptcy in 2004, by letter dated December 24, 2003, Fansteel notified NRC that the Secondary Note, Pledge Agreement, and Second Amended Joint Reorganization Plan designate one half of the value of the Secondary Note for addressing ODEQ issues. Fansteel commenced timely payments on this note in 2009. FMRI's current financial reporting, provided in the annual updates to Table 15-11 of the DP, shows the annual expenditure for "Ground Water Treatment" is \$282,000 per year from 2004 through 2010, with varying amounts thereafter. The fixed amount is the same as the annual payment on the Secondary Note, though the reporting begins five years prior to the effective date of the note. ODEQ expressed concern about how it could be assured that resolution of its ground water contamination issues is appropriately funded. Therefore, as part of FMRI's refinements to financial reporting, and in negotiations with ODEQ to resolve the OPDES permit, FMRI must clearly document the

expenditures of the proceeds of the Secondary Note in sufficient detail to demonstrate compliance with the conditions of that note and related documents. This documentation should be available for inspection at the site.

Regarding the third item, NRC identified six full time equivalent employees at the Muskogee site. The only activities FMRI was performing were routine monitoring in accordance with license requirements. However, by letter dated July 9, 2008, FMRI stated "...FMRI's schedule would be revised to show Pond 2 Phase 1 decommissioning continuing after the completion of Pond 3 decommissioning in 2009 through 2012 (i.e., dependent on the uncertainties)." The uncertainties identified included disposal costs in Utah and actions related to Pond 6 and 7. Since that time, FMRI has taken no actions on Ponds 6 and 7 hence incurred no costs. Further, FMRI has identified sufficient on-site storage, indoors and outdoors, to contain the Pond 2 material, thereby incurring no disposal or transportation costs. In addition, during the summer of 2011, FMRI conducted some excavation and bagging of Pond 2 WIP within available resources. Staff notes that FMRI stated it intends to restart excavation and bagging of Pond 2 about July 9.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

If you have any questions on this matter, please contact me at (301) 415-6712 or at james.shepherd@nrc.gov.

Sincerely,

/RA/

J. C. Shepherd, Project Engineer
Decommissioning and Uranium Recovery
Licensing Directorate
Division of Waste Management
and Environmental Protection
Office of Federal and State Materials
and Environmental Management Programs

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

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