

ORGANIZATION:

Five Star Products, Incorporated  
Fairfield, Connecticut 06430

REPORT NO.:

99901252/92-01

CORRESPONDENCE  
ADDRESS:

Mr. William M. Babcock, President  
Five Star Products, Incorporated  
425 Stillson Road  
Fairfield, Connecticut 06430

ORGANIZATIONAL  
CONTACT:

Richard Grabowski, Quality Assurance Manager  
(203) 336-7900

NUCLEAR INDUSTRY  
ACTIVITY:

Structural Concrete and Grout Products

INSPECTION  
CONDUCTED:

August 18 and 19, 1992

*Robert L. Pettis Jr*

10/13/92

TEAM LEADER:

Robert L. Pettis, Jr., P.E.  
Vendor Inspection Section

Date

OTHER INSPECTORS:

Stewart L. Magruder  
John S. Ma

APPROVED:

*Gregory C. Cwalina*

Gregory C. Cwalina, Chief  
Vendor Inspection Section

10/13/92

Date

INSPECTION BASES:

INSPECTION SCOPE:

10 CFR Part 21 and Appendix B to 10 CFR Part 50

This unannounced inspection was performed to assess the adequacy of Five Star Products' quality assurance program and the extent to which Five Star Products supplies, tests, and certifies grout and structural concrete products for use in nuclear safety-related applications.

PLANT SITE  
APPLICABILITY:

Numerous

## 1 INSPECTION SUMMARY

### 1.1 Violation 99901232/92-01-01

Contrary to the requirements of Sections 21.41 and 21.51 of Title 10 of the Code of Federal Regulations (10 CFR Part 21), Mr. H. Nash Babcock denied NRC inspectors full and unfettered access necessary to conduct an inspection of Five Star Products' (FSP's) contracted testing laboratory, Construction Products Research (CPR), and of test data associated with basic components sold to commercial nuclear power plants. Mr. Babcock also refused to allow the NRC inspectors further access to FSP's records and personnel and on August 19, 1992, suspended all further inspection activities. Mr. Babcock is Vice President of FSP and President of CPR.

### 1.2 Nonconformances

As a result of the circumstances forming the basis for the above violation, no nonconformances were identified during this limited inspection.

## 2 STATUS OF PREVIOUS INSPECTION FINDINGS

There were no previous NRC inspections of this facility.

## 3 INSPECTION FINDINGS AND OTHER COMMENTS

### 3.1 Background

On Tuesday, August 18, 1992, the NRC conducted an inspection of FSP, formerly known as U.S. Grout Corporation, and its laboratory contractor, CPR, to determine the extent to which FSP supplied material or services to licensees, the adequacy of its quality assurance (QA) and testing programs, and the adequacy of its products. Both FSP and CPR are subsidiaries of Babcock and King, Incorporated, located in Fairfield, Connecticut.

An entrance meeting was held with the FSP quality assurance (QA) manager on August 18, 1992, to inform him of the purpose of the unannounced inspection and the records that would be required to conduct the inspection. Shortly after, Mr. H. Nash Babcock joined the inspection and questioned the NRC's authority to conduct an unannounced inspection. Mr. Babcock was presented with two identical letters from the NRC dated August 13, 1992 (Enclosure 1), each addressed separately to FSP and CPR. The letters outlined the NRC's inspection authority under 10 CFR Part 21, Section 1610 of the Atomic Energy Act of 1954, as amended (AEA), and Section 206(d) of the Energy Reorganization Act of 1974, as amended (ERA). Despite this, Mr. Babcock continued to question the NRC's authority and also denied the inspectors free and unfettered access to inspect CPR's testing laboratory which is located in the basement of FSP's headquarters. Since 1980, FSP has advertised and certified to licensees that its products are manufactured and controlled in accordance with the requirements of Appendix B to 10 CFR Part 50 (Appendix B) and 10 CFR Part 21 (Part 21). The NRC inspection team asked that Mr. Babcock reconsider his decision. Mr. Babcock stated that access was being denied due to FSP's involvement in a joint research agreement with a Japanese concrete company

which would require the inspectors to sign a confidential disclosure agreement. Mr. Babcock also stated that CPR has never allowed anyone access to its laboratory in over 20 years. He later stated that upon signing the agreement, one inspector would be allowed limited access but would not be allowed to interview the laboratory staff. The inspection team refused to sign the confidential disclosure agreement stating that both FSP and CPR have adequate protection under current NRC regulations with respect to disclosure of proprietary information. Furthermore, since FSP supplies basic components to facilities licensed pursuant to the AEA and the ERA, and CPR tests these basic components, both FSP and CPR are subject to Sections 21.1, 21.3 and 21.41 of Part 21. Mr. Babcock still refused to allow NRC access to CPR.

The inspection team asked to review licensee purchase orders (POs) submitted to Five Star in order to determine the scope of FSP's nuclear involvement. The team was provided with POs for the period 1988 to 1992. The review identified that at least seven licensees and one licensee contractor have issued POs to FSP for safety-related grout and concrete mix products and specified compliance to Appendix B and Part 21. The licensees and the plants identified were Tennessee Valley Authority (TVA) (Browns Ferry); Pennsylvania Power and Light (Susquehanna); New York Power Authority (Indian Point 3 and Fitzpatrick); Niagara Mohawk (Nine Mile Point 2); Carolina Power and Light (Brunswick); Nebraska Public Power District (Cooper); and Wolf Creek Nuclear Operating Company (Wolf Creek). The Browns Ferry POs were placed through the Bechtel Power Corporation, Athens, Alabama, which acted as purchasing agent for TVA.

On Wednesday, August 19, 1992, the inspection team resumed its review of the POs and requested additional documents (e.g., FSP and CPR QA manuals, company organizational charts, external licensee audits of both companies, FSP audits of CPR) necessary to continue the inspection. The team's request for such information and its request to interview FSP and CPR personnel was resisted by Mr. Babcock who stated that the inspection was interrupting business and that this was a bad time of the month to conduct such an inspection due to FSP's president, Mr. William N. Babcock (son of Mr. H. Nash Babcock) being on vacation. Mr. Babcock, after consulting with his attorney, stated that the inspectors should end their inspection by day's end and return after Labor Day. However, it was further stated by Mr. Babcock that access to CPR's test laboratory would not be allowed until December when CPR's new laboratory (presently under construction) would be operational. Mr. Babcock stated that separation would then exist between FSP's QA testing and CPR's proprietary research. The inspection team indicated that more time would be required to complete the inspection, however, they would leave by day's end as ordered.

Later that afternoon, Mr. Babcock was presented with a copy of a letter faxed from NRC headquarters dated August 19, 1992 (Enclosure 2) which restated the NRC's authority to conduct the inspection; stated that there is no legal requirement limiting inspections to announced inspections, and that continued refusal to permit inspection of FSP and CPR is a violation of 10 CFR 21.41 and is subject to treatment as a criminal violation and to criminal penalties in accordance with Sections 161 and 223 of the AEA. After he read the letter, Mr. Babcock was again asked to reconsider his decision to end the inspection. Mr. Babcock remained firm and told the inspectors to leave the premises by

5:00 p.m. The inspection team left the site promptly as directed. This violation of NRC requirements is identified as Violation 92-01-01.

### 3.2 QA Manual Review

The inspection team requested copies of QA manuals for both FSP and CPR which would document the historical evolution of their programs and which would provide the basis to support FSP's certifications to licensees that its products are manufactured under an Appendix B QA program. During the NRC's review of licensee POs as discussed previously, the following FSP QA manual references were noted: August 1985, Revision 1; November 20, 1988; January 20, 1989; February 2, 1990; July 2, 1990; July 23, 1991, and June 8, 1992. It was also noted that a June 10, 1992, QA manual existed for CPR.

Copies of these documents were requested by the inspection team but were not furnished due to FSP's request to suspend further inspection efforts. The FSP QA manager stated that the June 8, 1992, FSP QA manual pertained to one of Five Star's contracted packaging plants, the Shamokin Filler Company of Shamokin, Pennsylvania, which just started processing and filling Appendix B orders for Five Star. Prior to Shamokin, Appendix B orders were processed from either the Watta-Crete facility, located in Canaan, Connecticut, or the L.W. Osborne facility located in La Mirada, California. The FSP QA manager stated that the manuals only covered the packaging plants and not FSP's Fairfield, Connecticut headquarters.

Since further inspection activity was suspended, the inspection team was unable to perform an implementation review of licensee POs against a particular QA manual to determine compliance. As a result, the team could not determine the adequacy of the products produced by FSP, and tested by CPR, and therefore did not have reasonable assurance that the products produced were adequate for use in safety-related applications in nuclear power plants.

### 3.3 Review of Licensee Audits of FSP and CPR

The NRC inspection team requested that FSP produce copies of all licensee audit reports of FSP and CPR to determine each licensee's basis for placing safety-related POs with FSP. The Five Star QA manager stated that the following organizations audited FSP's QA program since 1989: Toledo Edison, Niagara Mohawk, Carolina Power and Light, Nebraska Public Power District, Bechtel Power Corporation, and Omaha Public Power District, which conducted a Nuclear Utility Procurement Issues Council member audit. Several audit reports reviewed by the NRC inspection team documented that requests to audit CPR's test laboratory and records were also denied by FSP.

Several audits, including the NUPIC audit, documented that in addition to being denied access to CPR, FSP's QA program was not acceptable and did not meet certain requirements of Appendix B. However, the NRC inspection team also identified that certain licensees have accepted FSP's QA program as meeting all applicable Appendix B requirements. It was also noted that not all licensees purchasing Appendix B items from FSP had performed implementation audits.

### 3.4 FSP Audits of CPR

The NRC inspection team requested FSP to produce external audits of CPR to determine compliance with the provisions of Appendix B and Part 21. The only Appendix B audit conducted of CPR was dated July 15, 1992, and was performed by the FSP QA manager. The July 31, 1992, audit report concluded that CPR's June 10, 1992, QA program was satisfactory.

### 4 PERSONNEL CONTACTED

#### FSP, Incorporated

H. Nash Babcock, Vice President  
R. Grabowski, Quality Assurance Manager  
H. Allen, Technical Service Specialist

#### Construction Products Research

H. Nash Babcock, President