

CASE No. 1-92-037R

United States
Nuclear Regulatory Commission



Report of Investigation

FIVE STAR PRODUCTS, INCORPORATED:

Potential Violations of 10 CFR Part 21, Denial of Access
and Falsification of Records

Office of Investigations

Reported by OI: **RI**

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Title: FIVE STAR PRODUCTS, INCORPORATED:

POTENTIAL VIOLATIONS OF 10 CFR PART 21, DENIAL OF ACCESS AND
FALSIFICATION OF RECORDS

Vendor:

Five Star Products, Inc.
401-435 Stillson Road
Fairfield, CT 06430

Vendor No.: 99901252

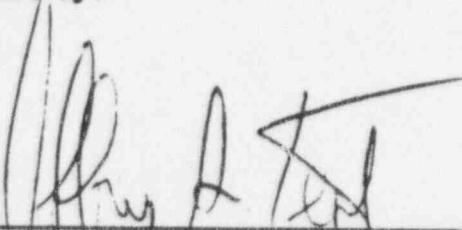
Case Number: 1-92-037R

Report Date: June 20, 1995


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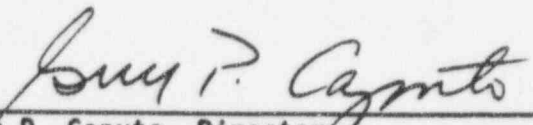
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Title 10 CFR Subsection 2.790(a) exemption nor has any exempt
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SYNOPSIS

On September 30, 1992, an investigation was initiated concerning an allegation that Five Star Products, Inc. (Five Star), improperly tested and falsely certified material that was purchased from them by the nuclear power industry. During an unannounced August 18 and 19, 1992, inspection conducted by the NRC Vendor Inspection Branch (VIB), the NRC inspectors were denied access to Five Star's certification testing laboratory (i.e., Construction Products Research (CPR)). Also, during the course of the inspection, a potentially false audit report was provided to the inspectors for their review. This audit report of CPR was produced by Five Star's Quality Assurance (QA) Manager. On September 1, 1992, as a result of the denial of access, a Federal search warrant was obtained and executed on Five Star, with documents and other physical and testimonial evidence taken.

The OI investigation concludes that Five Star provided three inaccurate product certifications to nuclear power plants, in that Five Star's laboratory (CPR) did not possess the proper equipment to perform a specific test referenced on the certifications. However, from the evidence developed, it has not been substantiated that the creation of the inaccurate certifications was deliberate.

The OI investigation also concludes that the President of CPR willfully denied the NRC inspectors access to the testing laboratory.

The OI investigation further concludes that the Five Star QA Manager deliberately generated an audit report of CPR, without conducting the audit, and provided this report to the inspectors during the inspection.

In addition, during the course of the investigation, the president of CPR caused a letter to be sent the NRC, in which he stated that one of the NRC inspectors had been allowed to inspect the laboratory. That information is refuted by the inspectors. It is therefore concluded that the letter was submitted, knowingly containing false information.

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ACCOUNTABILITY

The following portions of this Report of Investigation (Case No. 1-92-037R) will not be included in the material placed in the PDR. They consist of pages 3 through 42.

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APPLICABLE REGULATIONS

Allegation No. 1: Improper Testing and Falsification of Product Certifications

10 CFR 21.21: Notification of failure to comply or existence of a defect and its evaluation (1991 and 1992 Editions)

Allegation No. 2: Willful Denial of Access to NRC Inspectors to Five Star's Certification Testing Laboratory

10 CFR 21.41: Inspections (1992 Edition)

10 CFR 50.5: Deliberate misconduct (1992 Edition)

Allegation No. 3: Falsification of Audit Report

10 CFR 50.5: Deliberate misconduct (1992 Edition)

10 CFR 50.9: Completeness and accuracy of information (1992 Edition)

Allegation No. 4: Deliberately False Letter

10 CFR 50.5: Deliberate misconduct (1994 Edition)

10 CFR 50.9: Completeness and accuracy of information (1994 Edition)

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LIST OF INTERVIEWEES

EXHIBIT

ALLEN, Henry, Technical Specialist, Five Star Products, Inc.	17 & 34
BABCOCK, H. Nash, President, CPR, Vice President, Five Star Products, Inc.	13, 27, & 28
BABCOCK, William N., President, Five Star Products, Inc. (former)	11 & 12
CAMARA, Robert M., Chemist, CPR	32
CHENEY, Douglas, Chemist, CPR	33
FILEP, John R., Laboratory Technician, Nash Babcock Engineering Co. (NBEC) (deceased)	15
GRABOWSKI, Richard J., QA Manager, Five Star Products, Inc. (former) Production Manager, Five Star Production, Inc.	14 & 21
HOLUB, Edward P., former Director of Research, CPR	4, 9, & 10
ISBEL, Nick, Senior Supply Quality Representative, Bechtel	22
MA, John S., Structural Engineer, Civil Engineering and Geosciences Branch, NRC	25
MAGRUDER, Stewart L., Reactor Engineer, VIB, NRC	24
MARRONE, Diane, Secretary, Five Star Products, Inc.	19
MCCABE, Christopher J., Quality Control Manager, QA Manager, Nuclear Products, NBEC	18
NOWACKI, Stanley A., Technical Director - Research, Organic Department, Five Star Products, Inc.	16
PETTIS, Jr., Robert L., Senior Reactor Engineer, VIB, NRC	23 & 35

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DETAILS OF INVESTIGATION

Purpose of Investigation

On September 30, 1992, an investigation was initiated to determine whether Five Star Products, Inc. (Five Star), had: improperly tested and falsely certified material that was purchased from them by the nuclear power industry; willfully denied access to the laboratory to Nuclear Regulatory Commission (NRC) inspectors; produced a false audit report that was reviewed by NRC inspectors; and produced a deliberately false February 18, 1994, letter that was sent to the NRC (Exhibit 1).

Background

Five Star's "A PROFESSIONAL'S HANDBOOK ON GROUTING CONCRETE REPAIR AND WATERPROOFING" states that, "All FIVE STAR GROUTS are manufactured in accordance with the most rigid quality control procedures. The FIVE STAR GROUT system is tailored around the Quality Assurance Program meeting the requirements of 10 CFR 50 Appendix B, Quality Assurance Criteria for Nuclear Power Plants as required by the NRC. Nuclear power plants have the highest standard of quality control in the United States. FIVE STAR GROUTS are supplied to 91% of the nuclear power plants" (Exhibit 2).

On June 22, 1992, an allegor, Edward P. HOLUB, reported concerns about the adequacy of the testing and subsequent certifications that were being issued by Five Star to its nuclear utility customers, against purchase orders invoking 10 CFR Part 50, Appendix B and Part 21 (Exhibit 3). On July 29, 1992, the reporting investigator and Robert PETTIS of the VIB interviewed the allegor (Exhibit 4). Information from that interview provided the impetus for a VIB inspection at Five Star. On August 18 and 19, 1992, NRC inspectors conducted an inspection of Five Star and attempted to inspect the Construction Products Research (CPR) testing laboratory. H. Nash BABCOCK, the president of CPR, denied the inspectors access to the laboratory, despite being presented letters by the inspectors which delineated their legal authority to conduct such inspections.

Due to the denial of access and the potential for destruction of evidence of wrongdoing, a federal search warrant was obtained. On September 1, 1992, the search warrant was executed on Five Star, with documents and other physical and testimonial evidence taken.

Based on a complete review of the seized documents, the NRC technical staff determined that there was not a significant safety concern for licensees who had used Five Star products in safety related applications.

On January 22, 1993, HOLUB's employment was terminated by Five Star. A separate Office of Investigations, Region I (OI:RI) investigation is being conducted to determine whether the termination was in violation of 10 CFR Part 50.7, Employee protection.

Interview of Allegor

On July 29, 1992, HOLUB was interviewed by PETTIS and the reporting investigator (Exhibit 4). HOLUB was the Director of Research for CPR. HOLUB stated that he was responsible for the development of new products.

HOLUB said he contacted the NRC because he was concerned that nuclear power plant customers of the Babcock family businesses would make an honest mistake in believing that the products that they purchased were tested to meet certain sections of the American Society for Testing and Measurements (ASTM) codes. HOLUB also said he was concerned that nuclear power plant customers would use those products in critical areas based on Five Star's claims that the products met certain standards. HOLUB said that Five Star had provided grout and other material to the nuclear power industry since at least 1979. HOLUB said that Five Star had always advertised that their material is nuclear grade (Exhibit 4, p. 1).

HOLUB stated that all of the company's laboratories were located in the basement of Five Star's building. HOLUB stated that the tests that Five Star claims were performed on their products could not be performed in the laboratory because the lab was not properly equipped. HOLUB claimed that H.N. BABCOCK and William BABCOCK, the president of Five Star Products, Inc., had not allowed any non-employee to audit or enter the laboratory in the last twenty-five years, because it would have been obvious to a person familiar with the ASTM Standards Tests that the tests could not have been run or met by the Five Star lab (Exhibit 4, pp. 1 and 2).

Coordination with NRC Staff

HOLUB's allegations were discussed with the NRC's Brian GRIMES, Director, Division of Reactor Inspection and Safeguards, and Greg CWALINA, Chief, Reactive Inspection Section No. 2, VIB.

Allegation No. 1: Improper Testing and Falsification of Product Certifications

Summary

The following individuals were interviewed regarding Allegation No. 1.

<u>Name</u>	<u>Position</u>	<u>Date of Interview(s)</u>
Edward P. HOLUB	former Director of Research, CPR	July 29, August 23, September 1, & November 4, 1992
Robert L. PETTIS, Jr.	Senior Reactor Engineer, VIB, NRC	February 8, 1993 & March 18, 1994
John S. MA	Structural Engineer, Civil Engineering and Geosciences Branch, NRC	March 18, 1994
Stewart L. MAGRUDER	Reactor Engineer, VIB, NRC	March 18, 1994
William N. BABCOCK	President, Five Star	September 1, 1992 &

	Products, Inc. (former)	March 16, 1995
H. Nash BABCOCK	President, CPR, Vice President, Five Star Products, Inc.	March 16, 1995
Richard J. GRABOWSKI	QA Manager (former), Five Star Products, Inc.; Production Manager, Five Star Production, Inc.	September 1, 1992 & December 13, 1994
John R. FILEP	Laboratory Technician, Nash Babcock Engineering Co. (NBEC) (deceased)	September 1, 1992 & April 8, 1993
Stanley A. NOWACKI	Technical Director - Research, Organic Department, Five Star Products, Inc.	September 1, 1992
Christopher J. McCABE	Quality Control Manager, QA Manager, Nuclear Products, NBEC	September 1, 1992, & April 8, 1993
Diane MARRONE	Secretary, Five Star Products, Inc.	September 1, 1992 & August 10, 1994

Evidence

1. The VIB stated that Five Star's moisture cabinets did not comply with the requirements of ASTM C-511 as far as temperature was concerned, and the laboratory was not capable of conducting tests specified in ASTM C-1107 (Exhibit 5, p. 3).
2. The VIB stated that ASTM C-1107 is not mandated by the NRC, nor is it required by the American Concrete Institute (ACI), but it was specified in several customer's purchase orders (Exhibit 5, p. 3).
3. The VIB stated that in three cases Five Star certified that its grout met ASTM C-1107 (Exhibit 5, p. 9).
4. The certifications are dated July 26, 1991 (Exhibit 6), September 24, 1991 (Exhibit 7), and April 9, 1992 (Exhibit 8).
5. The purchase orders for the July 26, 1991 (Exhibit 6A, pp. 1 and 6), and September 24, 1991 (Exhibit 7A, p. 9), certifications, required Certificates of Conformance (COC's) to ASTM C-1107.
6. The purchase order for the April 9, 1992, certification, did not require certification to ASTM C-1107 (Exhibit 8A).
7. The VIB review revealed that since 1988, eleven different nuclear power plants had placed sixty-seven orders with Five Star for safety related material (Exhibit 5, p. 5).

8. The VIB stated that "based on a complete review of the seized documents, it was determined that there is not a significant safety concern for licensees who have used Five Star products in safety related applications (Exhibit 5, p. 1).
9. The VIB stated that, "It was clear from the review, however, that Five Star products may not meet some of the specifications (e.g., ASTM C-1107 and ASTM C-827) they are certified to, under certain conditions; the Five Star laboratory is not capable of meeting all of the environmental conditions required by the specifications; and Five Star's quality assurance (QA) program has many significant deficiencies" (Exhibit 5, p. 4).
10. The VIB confirmed that Five Star grouts had been tested by another laboratory, and that they passed the ASTM C 1107 test once. However, discussions with HOLUB indicated that the grout tested by the independent laboratory was carefully made in the Five Star/CPR laboratory, and therefore HOLUB did not consider it to be a representative sample (Exhibit 5, p. 3).
11. The VIB stated that based on a limited look at Five Star's QA manuals and procedures it was determined that Five Star did not have an Appendix B quality program (Exhibit 5, p. 5).
12. HOLUB stated that the tests that Five Star claims are performed on their products could not be performed in the laboratory because the lab was not properly equipped (Exhibit 4, p. 1).
13. HOLUB claimed that H.N. BABCOCK and W. BABCOCK had not allowed any non employee to audit or enter the laboratory in the last twenty-five years, because it would have been obvious to a person familiar with the ASTM Standards Tests that the tests could not have been run or met by the Five Star lab (Exhibit 4, pp. 1 and 2).
14. HOLUB said that the BABCOCKs said that no one was allowed in the lab, and that it was clearly understood by W. BABCOCK that there were problems with the lab (Exhibit 4, p. 2).
15. HOLUB said that he was pressured by H.N. BABCOCK to sign test certifications. HOLUB explained that H.N. BABCOCK told him not to spend time worrying about the certifications because it was his (HOLUB's) job to develop new products and that QA was GRABOWSKI's responsibility (Exhibit 9, p. 1).
16. HOLUB recalled that ALLEN came to him sometime in April 1992, with an order placed by Bechtel that required the material to be tested per ASTM C-387. HOLUB said that they had not previously performed this test on their product, and with the approval of W. BABCOCK, he purchased a curing cabinet which would allow the test to be properly performed (Exhibit 9, p. 1).
17. HOLUB said that the tests in the lab were not conducted within the proper temperature and relative humidity requirements because the curing cabinet could not control the temperature or humidity (Exhibit 10, p. 1).

18. HOLUB said that H.N. BABCOCK stated, "We don't have to do it by the book. Field conditions mimic the real world" (Exhibit 10, p. 1).
19. HOLUB said that W. BABCOCK said, "We will go to strict temperature requirements when we get the new building" (Exhibit 10, p. 1).
20. HOLUB said that H.N. BABCOCK sent the new curing cabinet back because he did not want to spend the money (Exhibit 10, p. 1).
21. W. BABCOCK said that in the spring of 1992, HOLUB made a "big deal" to him that they needed a better curing cabinet, so he gave HOLUB verbal authorization to purchase a new curing cabinet for test cubes (Exhibit 11, p. 2).
22. W. BABCOCK said that HOLUB purchased the wrong cabinet. HOLUB had purchased a cabinet for curing cylinders instead of cubes (Exhibit 11, p. 2).
23. W. BABCOCK stated that he directed HOLUB to purchase the correct one, but he (HOLUB) never did. W. BABCOCK said that eventually GRABOWSKI purchased the correct curing cabinet. W. BABCOCK believes that they had the correct cabinet prior to the August 18 and 19, 1992, inspection (Exhibit 11, p. 2).

INVESTIGATOR'S NOTE: The curing cabinet was not found in the lab during the September 1, 1992, search warrant execution.

24. W. BABCOCK said that his father felt that they had been using the old moist box for twenty years with no complaints from customers regarding their product. W. BABCOCK said that he had to "battle" with his father to get the new moist box (Exhibit 11, p. 2).
25. W. BABCOCK said that there was "no question in his mind that they had the proper equipment to perform the ASTM C-1107 in August 1992. He based this belief on the fact that no customers informed them that their products had failed or could not perform (Exhibit 11, p. 3).
26. W. BABCOCK also stated that he was a member of the committee that wrote the ASTM C-1107 test procedures, and that after the procedures were adopted he became chairman of that committee. Participating in that process made him further believe that the lab had the proper equipment to perform that test (Exhibit 11, p. 3).
27. W. BABCOCK stated that he has no knowledge that any of his employees altered, shredded or disposed of any company records between the time of the inspection and the execution of the search warrant on September 1, 1992 (Exhibit 11, p. 3).
28. When asked if any documents had been falsified for grout or cement destined for nuclear use, W. BABCOCK replied, "God no. That is suicide. The nuclear facilities test the product themselves. It would be a stupid thing to do" (Exhibit 12, p. 2).
29. H.N. BABCOCK said that he was positive that they had the equipment to perform the ASTM 1107 test they certified to (Exhibit 13, p. 3).

30. H.N. BABCOCK said that he was positive of this because it was never reported by any of their customers that their product did not meet the ASTM 1107 standards. Also, his son was the chairman of the committee that wrote the test procedure, and he (his son) assisted in writing it (Exhibit 13, p. 3).
31. H.N. BABCOCK said that part of the test procedure required a moist box/curing cabinet. H.N. BABCOCK said that they had that equipment in the lab (Exhibit 13, p. 3).
32. H.N. BABCOCK said that in the spring of 1992 he told HOLUB not to order a new moist cabinet, but HOLUB ordered it anyway. H.N. BABCOCK said that he ordered HOLUB to return the equipment because it was an "inappropriate price" and would not have been useful in performing the ASTM 1107 test (Exhibit 13, p. 3).

INVESTIGATOR'S NOTE: GRABOWSKI provided testimony under a grant of immunity, after being initially interviewed during the execution of the search warrant.

33. GRABOWSKI recalls that he told W. BABCOCK that Five Star's QA program did not meet 10 CFR Part 50, Appendix B requirements based on the audits that had been conducted by utilities, to include Omaha Public Power District (OPPD) and Pennsylvania Power & Light (PP&L). GRABOWSKI stated that W. BABCOCK informed him that they needed to get their program up to the standards of 10 CFR Part 50, Appendix B (Exhibit 14, p. 4).
34. FILEP stated that he performed tests on grout and/or cement intended for use in nuclear power plants and that the tests were done as properly as they could be done (Exhibit 15, p. 1).
35. FILEP thought that the tests were "pretty close" to accurate (Exhibit 15, p. 1).
36. FILEP said that no tests performed by him or others had ever been falsified. GRABOWSKI never asked him to change any test results (Exhibit 15, pp. 1 and 2).
37. FILEP said that he has never had any product fail that he tested, therefore, he has never discarded the results of a failed test. To his knowledge, no one else in the lab had thrown away failed grout test results (Exhibit 15, p. 1).
38. FILEP had never heard of or been trained in 10 CFR Part 50, Appendix B, or Part 21 (Exhibit 15, p. 1).
39. NOWACKI had no knowledge of any inaccurate or falsified tests data (Exhibit 16, p. 1).
40. ALLEN said that neither during nor after the inspection, was he told to destroy or create documents that would satisfy some of the NRC's questions that were raised during the inspection (Exhibit 17, p. 22).
41. McCABE said that he was never told to falsify test results (Exhibit 18, p. 2).

42. McCABE acknowledged that the tests conducted for humidity purposes were lacking. He said that humidity could not be controlled in the lab; however, there were no testing specifications for humidity control (Exhibit 18, p. 1).
43. McCABE did not believe that the company sent out bad grout or cement to nuclear power plants (Exhibit 18, p. 2).
44. HOLUB stated that he was "suspicious" about some of the test result numbers, but did not positively know if any had been falsified (Exhibit 10, p. 2).
45. MARRONE said that she was unaware of any information indicating that test documents for cement, destined for nuclear use, had been falsified (Exhibit 19, p. 1).
46. MARRONE said that she was asked by GRABOWSKI to backdate a test document at least six times in order to meet a customer's deadline. One or two of those documents pertained to grout and/or cement destined for nuclear use. She was never asked to change the test results (Exhibit 19, p. 1).
47. MARRONE recalled that HOLUB told her that the new curing cabinet was returned, either because it was too expensive or it wasn't the right one (Exhibit 20, pp. 39 and 40).
48. GRABOWSKI said that since he had been employed by the company, no documents had been falsified, and that he was not asked by anyone to falsify any test reports (Exhibit 21, p. 2).
49. GRABOWSKI acknowledged that there was no place in the lab to conduct temperature or moisture examinations (Exhibit 21, p. 3).

Conclusion

That Five Star generated three COC's for nuclear power plants indicating that its grout met ASTM C-1107, when the CPR laboratory was not equipped to perform those tests. Two of the three purchase orders required certification to ASTM C-1107. However, based on the evidence developed, it can not be substantiated that the creation of the inaccurate certifications was deliberate.

Allegation No. 2: Willful Denial of Access to NRC Inspectors to Five Star's Certification Testing Laboratory

Summary

The following individuals were interviewed regarding Allegation No. 2.

<u>Name</u>	<u>Position</u>	<u>Date of Interview(s)</u>
Henry ALLEN	Technical Specialist, Five Star Products, Inc.	September 1, 1992 & August 10, 1994
Robert M. CAMARA	Chemist, CPR	April 28, 1993
Nick ISBEL	Senior Supply Quality	April 14, 1993

Representative, Bechtel

HOLUB, PETTIS, MA, MAGRUDER, H.N. BABCOCK, W. BABCOCK, GRABOWSKI, FILEP, and McCABE were also interviewed concerning this allegation.

Evidence

1. HOLUB claimed that H.N. BABCOCK and W. BABCOCK had not allowed any non-employee to audit or enter the laboratory in the last twenty-five years, because it would be obvious to a person familiar with the ASTM Standards Tests that the tests could not have been run or met by the Five Star lab (Exhibit 4, pp. 1 and 2).
2. HOLUB stated that the Bechtel Corporation audited Five Star because they wanted to purchase 25,000 bags of grout for the Tennessee Valley Authority. HOLUB said the Bechtel auditor was told that CPR was performing sensitive research with a Japanese company and would not be allowed to audit the lab (Exhibit 4, p. 2).
3. ISBEL, a Bechtel auditor, said that GRABOWSKI told him that testing was not performed at Five Star's Stillson Road location and that it was performed by a "third party" laboratory (Exhibit 22, p. 1).
4. ISBEL said that GRABOWSKI told him that the Nuclear Utilities Procurement Issues Committee (NUPIC) had visited Five Star to perform an audit. NUPIC was told that they could not have access to the laboratory and NUPIC decided not to perform the audit (Exhibit 22, p. 1).
5. HOLUB said that H.N. and W. BABCOCK said that no one was allowed in the lab and that it was clearly understood by W. BABCOCK that there were problems with the lab (Exhibit 4, p. 2).
6. PETTIS (Exhibit 23), MAGRUDER (Exhibit 24), and MA (Exhibit 25) conducted the August 18 and 19, 1992, inspection of Five Star Products, Inc.
7. HOLUB said that at 9:40 a.m. on August 18, 1992, he was told by GRABOWSKI that the NRC wanted to meet with CPR personnel and to review their records. GRABOWSKI was not happy about that and told HOLUB that he should be sick tomorrow and not come to work (Exhibit 26, p. 1).
8. HOLUB said that H.N. BABCOCK telephoned his attorney, Jerry OPPENHEIM, to ask him to check on the NRC's authority (Exhibit 26, p. 1).
9. HOLUB said that GRABOWSKI and H.N. BABCOCK told him they wanted him to run a ASTM C-1107 test to demonstrate that their laboratory was able to perform the test. HOLUB told them that the lab did not have the proper equipment that would allow the test to be run at the standard required temperature of 73.4 degrees Fahrenheit (Exhibit 26, p. 1).
10. HOLUB said that on August 19, 1992, at 8:30 a.m. GRABOWSKI called a meeting and told HOLUB that W. BABCOCK called him at home to tell him to not let the NRC into the laboratory (Exhibit 26, p. 1).

11. HOLUB said it was obvious that the previous day's conversation, wherein he told GRABOWSKI and H.N. BABCOCK that the test could not be properly run in their lab, caused the decision to not allow the NRC access to the laboratory (Exhibit 26, p. 1).
12. HOLUB said that on August 19, 1992, at 10:30 a.m., H.N. BABCOCK called to tell him that he should be too busy that day to talk to anyone from the NRC (Exhibit 26, p. 1).
13. HOLUB said that on August 19, 1992, at 11:00 a.m. GRABOWSKI told him that the inspection was going badly and that he should go home (Exhibit 26, p. 1).
14. HOLUB said that he had lunch with H.N. BABCOCK and GRABOWSKI on August 19, 1992, and the following was discussed: Jerry OPPENHEIM told H.N. BABCOCK that NRC Inspector Bob PETTIS had overstated his authority; OPPENHEIM said they should get a Senator or Congressman after PETTIS; H.N. BABCOCK said the other two auditors were OK; GRABOWSKI said they needed to get the NRC inspectors out of the building that day, even if they never sell another bag of product to a nuclear customer; H.N. BABCOCK said they had a big order with Bechtel coming up and they should try and save that; HOLUB added that it was understood that Five Star had a problem (Exhibit 26, p. 2).
15. PETTIS and MAGRUDER said that H.N. BABCOCK told him that he had no prior dealings with the NRC and did not know who they were. H.N. BABCOCK questioned their authority to perform the inspection (Exhibit 23, p. 1 and Exhibit 24, p. 1).
16. PETTIS said that in anticipation of H.N. BABCOCK not cooperating with them, the NRC's Office of General Counsel (OGC) provided him with a letter (Exhibit 27) outlining the NRC's authority to perform inspections (Exhibit 23, p. 1).
17. The inspectors said that PETTIS presented H.N. BABCOCK with the letter. After reading the letter, H.N. BABCOCK asked if his competitors had sent the inspectors there (Exhibit 23, p. 1, Exhibit 24, p. 1, Exhibit 25, p. 1).
18. PETTIS opined that H.N. BABCOCK did not really believe that they were NRC inspectors. PETTIS also opined that BABCOCK did not have the "foggiest" idea what nuclear quality assurance was (Exhibit 23, p. 1).
19. The inspectors recall that in the late morning on the first day of their inspection, they informed BABCOCK that they needed to inspect CPR's laboratory. BABCOCK said he would not allow that, and added that no one from outside of the company had ever been allowed to inspect the laboratory (Exhibit 23, p. 1; Exhibit 24, p. 1; and Exhibit 25, p. 1).
20. The inspectors said that H.N. BABCOCK further advised them that he was denying access to the laboratory due to Five Star's involvement in a joint research agreement with a Japanese company (Exhibit 23, p. 2; Exhibit 24, p. 1; and Exhibit 25, p. 1).

INVESTIGATOR'S NOTE: International Construction Products Research, a subsidiary of Five Star Products, Inc., had an agreement with the Nihon Cement Company of Japan, dated January 12, 1990. The confidential disclosure section of this agreement states that: "From the date of our agreement dated 12 January, 1990, until five years after a mutually agreed termination of this agreement, any and all written and/or verbal information and samples submitted by NCC to NOMIX pursuant to Section 1 hereof, and specifically designated by NCC as confidential to NCC, shall be considered confidential and shall be safeguarded by NOMIX in the same manner in which NOMIX safeguards its own proprietary information and samples, and NOMIX shall use reasonable efforts to prevent disclosure of any said information to any person or persons outside of NOMIX" (Exhibit 38, pp. 2-5).

21. PETTIS said that H.N. BABCOCK later said that upon signing a confidential, non-disclosure agreement, he would take one inspector into the laboratory, but that person would not be able to tell anyone what he learned or saw (Exhibit 23, p. 2).
22. PETTIS said that he, MAGRUDER, and MA consulted with their supervisors concerning BABCOCK's request. Their supervisors then contacted OGC. PETTIS said that they were directed by OGC not to sign any such agreement (Exhibit 23, p. 2 and Exhibit 24, p. 1).
23. PETTIS said that during the first day of the inspection they requested ALLEN to provide them with documents to review. Initially, ALLEN provided them with the documents that they asked for, but as they asked for more, BABCOCK became less tolerant of their requests and began to curtail the inspection (Exhibit 23, p. 2).
24. PETTIS and MAGRUDER said that at the end of the first day of the inspection, they informed H.N. BABCOCK that they would have to return the next day to continue the inspection (Exhibit 23, p. 2 and Exhibit 24, p. 2).
25. The inspectors said that on the second day of the inspection they continued their review of licensee purchase orders. PETTIS believes they asked GRABOWSKI if they could review the Five Star and CPR QA Manuals, company organization charts, external licensee audits of Five Star and CPR, and Five Star audits of CPR (Exhibit 23, p. 2; Exhibit 24, p. 2; and Exhibit 25, p. 2).
26. PETTIS said that H.N. BABCOCK did not deny this request, but did state that gathering all of the requested records would disrupt his employees' daily business duties (Exhibit 23, p. 2).
27. The inspectors said that, at some point during the second day, H.N. BABCOCK told them that they should end the inspection by the end of the day and return after Labor Day (Exhibit 23, p. 2; Exhibit 24, p. 2; and Exhibit 25, p. 2).
28. PETTIS and MA said that H.N. BABCOCK told them that he decided this after consulting with his attorney (Exhibit 23, p. 2 and Exhibit 25, p. 2).

29. The inspectors said that H.N. BABCOCK also said that they were too busy to allow the inspection to continue, in part, because his son (W. BABCOCK, President of Five Star) was on vacation and would not return until after Labor Day (Exhibit 23, p. 2; Exhibit 24, p. 2; and Exhibit 25, p. 2).
30. PETTIS said that he then asked H.N. BABCOCK if they would be allowed to inspect the CPR laboratory if they returned after Labor Day. BABCOCK said "no" (Exhibit 23, p. 2).
31. The inspectors said that H.N. BABCOCK said that NRC access to CPR's test laboratory would not be allowed until December (1992), when the new laboratory would be operational. At that point, BABCOCK ordered them to leave the premises by the end of the day (Exhibit 23, p. 2; Exhibit 24, p. 2; and Exhibit 25, p. 2).
32. The inspectors said that, because they had been denied access to the laboratory and the first letter did not have the desired effect on H.N. BABCOCK, PETTIS said that it was felt that another letter was needed, outlining the NRC's authority to conduct inspections (Exhibit 23, p. 2; Exhibit 24, p. 2; and Exhibit 25, p. 2).
33. PETTIS said that the letter (Exhibit 28) was written with stronger language to make H.N. BABCOCK aware of the potential ramifications if he continued to deny the NRC access to the CPR laboratory (Exhibit 23, p. 2).
34. PETTIS said that the letter was faxed from NRC headquarters directly to Five Star. PETTIS believes that H.N. BABCOCK read the letter, although probably not completely (Exhibit 23, p. 2).
35. The inspectors said that after H.N. BABCOCK read the letter, PETTIS asked H.N. BABCOCK to reconsider his decision to end the inspection. PETTIS also told BABCOCK that the NRC was not interested in CPR's proprietary laboratory or information, that they were only interested in CPR's activities with respect to 10 CFR Part 50, Appendix B (Exhibit 23, pp. 2 and 3; Exhibit 24, p. 2; and Exhibit 25, p. 2).
36. The inspectors said that H.N. BABCOCK denied the request and again directed them to conclude their inspection by the end of the day (Exhibit 23, p. 3; Exhibit 24, p. 2; and Exhibit 25, p. 2).
37. MA said that H.N. BABCOCK questioned the NRC's authority to conduct unannounced inspections. H.N. BABCOCK also said that Five Star was a private company that had a lot of business to do, and the NRC should not interfere with their work (Exhibit 25, p. 1).
38. It was MA's impression, at that time, that H.N. BABCOCK didn't understand the concept that, because his company sold products to nuclear power plants, it was subject to governmental inspection (Exhibit 25, p. 1).
39. MA added that during the beginning of their inspection activities, H.N. BABCOCK was very suspicious of why the NRC was at Five Star.

- H.N. BABCOCK told them that he has many competitors who want to get inside information on his products (Exhibit 25, p. 1).
40. MA said that H.N. BABCOCK also told them that he has never allowed anyone from outside of the company to inspect that laboratory (Exhibit 25, pp. 1 and 2).
 41. MA said that he had a one on one conversation with H.N. BABCOCK. MA informed H.N. BABCOCK that he was a civil engineer and concrete specialist. H.N. BABCOCK told him that he was also a civil engineer from an Ivy League school, and informed him of the patents that he had developed for concrete (Exhibit 25, p. 1).
 42. MA said that H.N. BABCOCK told him that he had very competent people working in his laboratory, including a Russian scientist who was performing patent development work. H.N. BABCOCK told him that in twenty years he had not allowed anyone from outside of the company into the laboratory (Exhibit 25, pp. 1 and 2).
 43. MA said that H.N. BABCOCK then offered to take him into the laboratory for a tour, but MA would not be allowed to talk any of the people in the laboratory (Exhibit 25, pp. 1 and 2).
 44. MA said that he told H.N. BABCOCK that he could not make the decision as to whether the offer was satisfactory; he (MA) would have to ask lead inspector PETTIS (Exhibit 25, p. 2).
 45. MA said that H.N. BABCOCK also wanted him to sign a confidentiality agreement if he took the tour of the laboratory. When PETTIS and MAGRUDER returned, MA informed them of BABCOCK's offer (Exhibit 25, p. 2).
 46. MA said that PETTIS contacted NRC headquarters and was directed that they were not to sign any confidentiality agreements. PETTIS then informed H.N. BABCOCK that his offer was unacceptable, and that the inspectors needed complete access to the laboratory (Exhibit 25, p. 2).
 47. MA does not believe that he could have performed his job and satisfied the NRC's concerns by taking a tour of the laboratory and not talking to any of the laboratory technicians. MA said that he would not have been able to determine the capabilities of the laboratory technicians (Exhibit 25, p. 2).
 48. H.N. BABCOCK stated that, to his knowledge, his company had not been previously inspected by an agency of the United States government, to include the NRC (Exhibit 13, p. 1).
 49. H.N. BABCOCK said that his company was visited and inspected by various customers, to include nuclear power plants. None of these entities were allowed access to the CPR laboratory (Exhibit 13, p. 1).
 50. H.N. BABCOCK explained that, to protect his proprietary information, which includes patents and formulas, he required all of his employees to sign a confidential non-disclosure agreement (Exhibit 29) when they were hired. H.N. BABCOCK stated that he was, and still is, afraid that his

competition will find out his trade secrets and patents (Exhibit 13, p. 1).

51. H.N. BABCOCK recalls the August 18-19, 1992, NRC inspection at Five Star Products Inc., Stillson Road, Fairfield, CT (Exhibit 13, p. 1).
52. H.N. BABCOCK recalls meeting the NRC inspectors and taking them into his conference room at approximately 9 a.m. on the morning of August 18th. He had them sign in at the reception desk, as all visitors were required to do (Exhibit 13, p. 1).
53. H.N. BABCOCK said that they told him they were there to conduct an inspection and stated that part of the inspection would be a visit to the laboratory in the building's basement (Exhibit 13, p. 1).
54. H.N. BABCOCK said that he questioned their authority to conduct an inspection of his business, and sometime during the morning of August 18th, he telephoned his attorney, Jerry OPPENHEIM, to seek his counsel on what he should do (Exhibit 13, p. 1).
55. H.N. BABCOCK said that he told OPPENHEIM that the NRC wanted access to his laboratory. OPPENHEIM advised him to not allow the NRC into the laboratory without signing the confidential non-disclosure agreement. OPPENHEIM advised him to treat the NRC inspectors as if they were anyone else who had previously wanted to see the laboratory. H.N. BABCOCK stated that he acted on OPPENHEIM's advice (Exhibit 13, p. 1).
56. H.N. BABCOCK does not recall the NRC inspectors presenting him with a letter, at that time, outlining their authority to conduct inspections. H.N. BABCOCK does recall that PETTIS showed him a "big gray book" which talked about 10 CFR Part 50, Appendix B (Exhibit 13, p. 1).
57. H.N. BABCOCK recalls that he probably asked the NRC inspectors if his competitors had sent them to his business. H.N. BABCOCK commented that he would not put it past his competitors to do that (Exhibit 13, p. 2).
58. H.N. BABCOCK stated that he allowed the inspectors to review the records that they requested to see, but they "kept hounding" him about getting access to the laboratory (Exhibit 13, p. 2).
59. H.N. BABCOCK said that sometime during August 18th he informed the inspectors that he would allow them access to the laboratory if they signed the confidential non-disclosure agreement (Exhibit 13, p. 2).
60. H.N. BABCOCK recalled that he also "most likely" told the inspectors that if they went into the lab, they would not be allowed to talk to anyone (Exhibit 13, p. 2).
61. H.N. BABCOCK recalls that a copy of the confidential non-disclosure agreement was faxed to NRC headquarters, but could not recall who it was sent to (Exhibit 13, p. 2).
62. H.N. BABCOCK stated that the inspectors would not sign the agreement and this "pushed him up against the wall about something that he firmly

believed in" (not allowing access to the lab unless a confidential non-disclosure agreement was signed) (Exhibit 13, p. 2).

63. H.N. BABCOCK also recalls that during the inspection, PETTIS called someone (nfi) at the NRC to discuss the agreement, and that he (BABCOCK) spoke to this individual during the call (Exhibit 13, p. 2).

INVESTIGATOR'S NOTE: On March 27, 1995, PETTIS was telephoned by the reporting investigator. PETTIS said that he does not remember a copy of the confidential non-disclosure agreement being faxed to NRC headquarters during the inspection. PETTIS stated that he and the other two inspectors did talk by telephone with their supervisors and the NRC OGC regarding the agreement. PETTIS said that he is "positive" that BABCOCK did not get on the telephone during this call (Exhibit 13, p. 2).

64. H.N. BABCOCK maintained that he was actively trying to get the confidential non-disclosure agreement issue resolved, adding that he had "never experienced anything like this before" (Exhibit 13, p. 2).
65. H.N. BABCOCK does not recall the inspectors telling him that they were not interested in the proprietary or research work being conducted in the laboratory. He does not recall the inspectors telling him that they were only interested in the work being performed in the lab that supported Five Star's business with nuclear power plants (Exhibit 13, p. 2).
66. H.N. BABCOCK stated that even if the inspectors told him these things, he would not have believed them (Exhibit 13, p. 2).
67. H.N. BABCOCK recalled that during the inspection, HOLUB told the inspectors that he (BABCOCK) would never allow them into the lab (Exhibit 13, p. 2).
68. H.N. BABCOCK stated that at the end of the day on August 18th, the inspectors told him that they would return to Five Star the next day (Exhibit 13, p. 2).
69. H.N. BABCOCK stated that he did not speak to his son, W. BABCOCK, on the night of August 18th, and he did not direct any of his employees to contact his son, although someone from the company may have called him (Exhibit 13, p. 2).

INVESTIGATOR'S NOTE: Attorney PICKERSTEIN stated that someone from the company had spoken to W. BABCOCK sometime during August 18 and 19, 1992, but it is unclear as to who. PICKERSTEIN stated that he was made aware of this information by H.N. BABCOCK's secretary, Susan SETTINO (Exhibit 13, p. 2).

70. H.N. BABCOCK stated that during the second day of the inspection, he did not order the inspectors to leave the premises. H.N. BABCOCK said that he told the inspectors that he was going away on vacation the next day and asked if they would come back after Labor Day when his son (W. BABCOCK) would be back from his vacation (Exhibit 13, pp. 2 and 3).

71. H.N. BABCOCK does not recall the inspectors asking him if they would be allowed to inspect the lab if they returned after Labor Day. H.N. BABCOCK stated that, if he were asked that question, he would have informed the inspectors that they would only be given access to the lab if they signed the confidential non-disclosure agreement (Exhibit 13, p. 3).
72. H.N. BABCOCK recalls telling the inspectors that access to the lab would be allowed (without signing the agreement) when the company's new lab was operational. H.N. BABCOCK added that access would only have been granted to the quality assurance portion of the lab (Exhibit 13, p. 3).
73. H.N. BABCOCK added that the new lab would be large enough to allow for the segregation of work performed in the research and proprietary portions of the lab (Exhibit 13, p. 3).
74. H.N. BABCOCK does not recall being presented with a letter, towards the end of the second day of the inspection, that further outlined NRC authority and the possible ramifications of not allowing the inspectors access to the lab (Exhibit 13, p. 3).
75. H.N. BABCOCK stated that, if he were presented with such a letter, his instinct is that he would have contacted his attorney, OPPENHEIM (Exhibit 13, p. 3).
76. H.N. BABCOCK does not recall being asked by the inspectors to reconsider his decision to not allow them access to the lab, but does recall that the inspectors used an aggressive approach in their demands to inspect the lab (Exhibit 13, p. 3).
77. H.N. BABCOCK asserted that the reason for the denial of access to the lab was not because he knew that they did not have the equipment that they needed to certify certain types of tests (Exhibit 13, p. 3).
78. W. BABCOCK said that he was on vacation during the August 18 and 19, 1992, NRC inspection of Five Star Products, Inc. (Exhibit 11, p. 1).
79. W. BABCOCK said that on August 18th, after returning from a day of mountain climbing, he found a message that his father wanted him to call. W. BABCOCK returned his father's call. His father informed him that the NRC had come to the company location. His father wanted to know if he knew why they were there (Exhibit 11, p. 1).
80. W. BABCOCK said that, during this conversation, his father seemed confused regarding what the NRC wanted. He added that, at that time, his father was not involved in the day to day operation of the business (Exhibit 11, p. 1).
81. W. BABCOCK said that, at that time, he was the Chief Operating Officer and President of the company, and in charge of daily business activities. W. BABCOCK admitted that while he was away, his father was in charge of the business (Exhibit 11, p. 1).
82. W. BABCOCK does not recall NRC access to the lab being discussed during this conversation with his father (Exhibit 11, p. 1).

83. W. BABCOCK does not believe that he had a conversation with GRABOWSKI that night. W. BABCOCK said that, from what he was told by his father, he perceived that everyone at the company was confused as to why the NRC was there, and what they (and the company) were supposed to do (Exhibit 11, p. 1).
84. W. BABCOCK said that the next day (August 19th) he telephoned GRABOWSKI, who, as the Quality Assurance Manager, was used to handling nuclear power plant inspections of the business. W. BABCOCK said that those types of inspections had always been scheduled in advance (Exhibit 11, p. 1).
85. W. BABCOCK's best recollection is that NRC access to the lab may have been discussed during that conversation with GRABOWSKI. W. BABCOCK stated that he is positive that he did not direct GRABOWSKI to not allow the NRC access to the lab (Exhibit 11, p. 1).
86. W. BABCOCK said that, because he was not at work and was physically separated from the issue, he was not directing any of his employees to do anything, but he was asking questions in an attempt to find out what was going on. W. BABCOCK added that it was always his father's call on whether someone was allowed access to the lab (Exhibit 11, p. 1).
87. W. BABCOCK recalls that he told GRABOWSKI to give the NRC inspectors what they normally allowed during other inspections. W. BABCOCK said that he then had GRABOWSKI transfer him to HOLUB (Exhibit 11, pp. 1 and 2).
88. W. BABCOCK asked HOLUB if he knew why the NRC was there and what they wanted. He also asked HOLUB if he knew what the issues were. He recalls HOLUB telling him that they better work with the NRC (Exhibit 11, p. 2).
89. W. BABCOCK said that HOLUB also told him that they should not let the NRC into the lab, because he felt that the lab moist box/curing cabinet would be an issue with the NRC. W. BABCOCK said that he asked HOLUB, "how big could the issue be, we have used the curing cabinet for years" (Exhibit 11, p. 2).
90. W. BABCOCK said that in the spring of 1992 HOLUB made a "big deal" to him that they needed a better curing cabinet, so he gave HOLUB verbal authorization to purchase a new curing cabinet for test cubes (Exhibit 11, p. 2).
91. W. BABCOCK said that HOLUB purchased the wrong cabinet. HOLUB had purchased a cabinet for curing cylinders instead of cubes. That curing cabinet was never operational (Exhibit 11, p. 2).
92. W. BABCOCK stated that he directed HOLUB to purchase the correct one, but he (HOLUB) never did. W. BABCOCK said that eventually GRABOWSKI purchased the correct curing cabinet. W. BABCOCK believes that they had the correct cabinet prior to the August 18 and 19, 1992, inspection (Exhibit 11, p. 2).

93. W. BABCOCK said that his father felt that they had been using the old moist box for twenty years with no complaints from customers regarding their product. BABCOCK said that he had to "battle" with his father to get the new moist box (Exhibit 11, p. 2).
94. W. BABCOCK said that he asked GRABOWSKI about HOLUB's concern with the curing cabinet and letting the NRC into the lab. GRABOWSKI told him that, up to that point, the NRC had not raised the curing cabinet as an issue (Exhibit 11, p. 2).
95. W. BABCOCK said that he asked GRABOWSKI what he felt about allowing the NRC access to the lab, but does not recall GRABOWSKI's response. W. BABCOCK told GRABOWSKI to give the NRC all of the paperwork that they need, "like a regular utility audit," which is what he thought the inspection was at that point (Exhibit 11, p. 2).
96. W. BABCOCK said that after completing his conversation with GRABOWSKI, he had GRABOWSKI transfer him to his father (Exhibit 11, p. 2).
97. W. BABCOCK said that he informed his father of HOLUB's concern with the curing cabinet, and his father said something to the effect of, there are questions with that again (Exhibit 11, p. 2).
98. W. BABCOCK said that his father informed him of his conversations with their attorney, OPPENHEIM, on what the company was required to do regarding the inspection (Exhibit 11, p. 2).
99. W. BABCOCK said that he and his father also discussed the confidential non-disclosure agreement, with his father telling him that if the NRC signed the agreement they would be allowed access to the lab, but that if they didn't sign it they would not get into the lab (Exhibit 11, p. 2).
100. W. BABCOCK said that he tried to persuade his father that, if the NRC had the legal authority, they should be allowed access to the lab. W. BABCOCK said that his father felt "very strongly" about the company's proprietary information and the secrecy of the lab (Exhibit 11, p. 2).
101. W. BABCOCK said that his father felt that, if the NRC were allowed into the lab, the information that they learned would get out through the Freedom of Information Act (Exhibit 11, pp. 2 and 3).
102. W. BABCOCK added that there was a question in their minds concerning whether the NRC had the legal authority to gain access to the lab. W. BABCOCK believes that, if his father was convinced that the NRC had the legal authority, then he would allow them into the lab. It was W. BABCOCK's expectation that the NRC would return after Labor Day (Exhibit 11, p. 3).
103. W. BABCOCK said that no one was ever allowed into the lab. He said that if a nuclear power plant customer asked to see a piece of equipment that was housed in the lab, the equipment would be moved to outside of the lab where it could be inspected (Exhibit 11, p. 3).

104. W. BABCOCK recalls that their company lost a large contract with a French owned company, because his father would not allow a senior executive of that company to see the lab (Exhibit 11, p. 3).
105. W. BABCOCK was asked if any other governmental agency had inspected Five Star. He recalled an unannounced inspection that was conducted by the U.S. Department of Labor (DOL), Occupational Safety & Health Administration (OSHA) (Exhibit 11, p. 3).
106. W. BABCOCK recalled that the OSHA inspection took place one to two years before the NRC inspection. He recalls that the OSHA inspection was predicated on an employee complaint regarding the quality of the air in the lab (Exhibit 11, p. 3).
107. W. BABCOCK believes that the OSHA inspectors were eventually allowed into the lab and it was determined that the air in the lab was "ok." BABCOCK presumes that his father dealt with the OSHA inspection because he did not (Exhibit 11, p. 3).

INVESTIGATOR'S NOTE: The reporting investigator contacted the U.S. DOL, OSHA Hartford and Bridgeport, CT, offices (Exhibit 30), and the State of Connecticut OSHA office (Exhibit 31). Those offices have no records indicating that their agencies had conducted an inspection of any of the BABCOCK family businesses.

108. GRABOWSKI stated that Five Star had not previously been inspected by the NRC, and that H.N. BABCOCK initially believed that the NRC inspectors were his industry competitors attempting to gain product information (Exhibit 14, p. 1).
109. GRABOWSKI acknowledged that Five Star had been inspected by companies that operated or did business with nuclear power plants. He specifically recalls that Omaha Public Power District (OPPD), Pennsylvania Power & Light (PP&L) and the Bechtel Corporation inspected Five Star, but they were not allowed to inspect the laboratory (Exhibit 14, p. 1).
110. GRABOWSKI recalls that PETTIS presented H.N. BABCOCK with some type of official letter and that PETTIS explained to H.N. BABCOCK that the NRC had the authority to conduct inspections. GRABOWSKI did not read the letter (Exhibit 14, p. 1).
111. GRABOWSKI recalls that, early in the inspection, PETTIS informed H.N. BABCOCK that they would need access to the laboratory. H.N. BABCOCK told the inspectors that he would not allow them access unless they signed a confidentiality agreement. GRABOWSKI said that H.N. BABCOCK was just not going to allow them into the laboratory (Exhibit 14, p. 1).
112. GRABOWSKI stated that H.N. BABCOCK "did not know what was going on with the nuclear program," and that prior to the NRC inspection, the nuclear program was "taken very lightly by Five Star" (Exhibit 14, p. 1).
113. GRABOWSKI recalls that HOLUB told H.N. BABCOCK not to let the inspectors into the laboratory (Exhibit 14, p. 1).

114. GRABOWSKI said that, at some point, H.N. BABCOCK asked HOLUB to have the lab technicians perform some tests on their product to show the NRC that they were able to perform them correctly (Exhibit 14, p. 1).
115. GRABOWSKI recalls that HOLUB said that he did not want the tests to be performed (Exhibit 14, pp. 1 and 2).
116. GRABOWSKI stated that the lab was physically equipped to perform the ASTM 109 test. He does not recall the laboratory technicians being asked to perform an ASTM 1107 test (Exhibit 14, p. 2).
117. GRABOWSKI recalls stating to HOLUB, at that time, that it would be better that they not show the NRC the laboratory. He said that he made that statement because HOLUB was "making a big deal about the laboratory not having a curing cabinet" (Exhibit 14, p. 2).
118. GRABOWSKI said that W. BABCOCK called him at home on the night of August 18, 1992 (first day of the inspection), wanting to know "what the hell was going on?" and if he should return from vacation (Exhibit 14, p. 2).
119. GRABOWSKI said that W. BABCOCK probably said that, "we could not allow the NRC into the laboratory" (Exhibit 14, p. 2).
120. GRABOWSKI disclosed that he and H.N. BABCOCK took HOLUB to lunch on the first day of the inspection. GRABOWSKI believes that the main topic at that lunch was whether they should let the NRC into the laboratory (Exhibit 14, p. 2).
121. GRABOWSKI said that, at the end of the lunch, H.N. BABCOCK said that he would allow the NRC access to the laboratory if they signed a confidentiality agreement (Exhibit 14, p. 2).
122. GRABOWSKI stated that after he took a QA course in June of 1992, he informed W. BABCOCK that, if Five Star wanted to meet all of the requirements for a nuclear program, the QA position would have to be devoted full time to that responsibility (Exhibit 14, p. 2).
123. GRABOWSKI said that W. BABCOCK told him that once the nuclear program "got off of the ground," Five Star would hire someone new to run the program (Exhibit 14, p. 2).
124. GRABOWSKI was asked if the NRC inspectors were not allowed into the laboratory because it was not physically equipped to perform some of the tests that they were certifying to. GRABOWSKI said that was not the reason (Exhibit 14, p. 2).
125. GRABOWSKI added that H.N. BABCOCK wouldn't let anyone into the laboratory who did not work in the laboratory. GRABOWSKI described the Five Star building as being "like Fort Knox" (Exhibit 14, p. 2).
126. GRABOWSKI added that H.N. BABCOCK had a fit if anyone went into the laboratory, and that H.N. BABCOCK's business is very secretive by nature (Exhibit 14, p. 2).

127. GRABOWSKI said that H.N. BABCOCK designed the company like that, and that new employees were "brought up in the company to not talk about it" (the business) or what other employees' jobs or responsibilities were (Exhibit 14, p. 2).
128. CAMARA said that he witnessed HOLUB tell H.N. BABCOCK that he could not run the tests, because according to ASTM 109, the curing cabinet temperature was higher than the specified range by 1.6 degrees fahrenheit (Exhibit 32, p. 2).
129. CAMARA recalled that HOLUB called down to CHENEY in the lab to verify the temperature and relative humidity of the curing cabinet. He said that, at that point, he (CAMARA) went down to the lab to see if CHENEY had the requested information. He recalled that he or CHENEY relayed this information to HOLUB and the outcome was that he was not asked to run the tests for the NRC inspector (Exhibit 32, p. 2).
130. CAMARA believed that HOLUB made this decision because HOLUB had earlier informed H.N. BABCOCK (in his presence) that the tests could not be properly run (Exhibit 32, p. 2).
131. CAMARA was informed by HOLUB that H.N. BABCOCK had denied the NRC inspectors access to the lab. He had no direct discussions with BABCOCK about that (Exhibit 32, p. 2).
132. CHENEY said that after the NRC inspectors left Five Star in August 1992, HOLUB informed him that H.N. BABCOCK denied them access to the lab and asked them to leave the building (Exhibit 33, p. 2).
133. ALLEN stated that, to the best of his recollection, he had never been in the laboratory. When he was hired, he was told that the lab information was none of his business because it was proprietary (Exhibit 34, p. 1).
134. ALLEN said that he was not told by H.N. BABCOCK, or GRABOWSKI, or any other Five Star supervisor or manager there that he should provide inaccurate information or be uncooperative with the NRC inspectors during the inspection (Exhibit 17, p. 13).
135. ALLEN said that H.N. BABCOCK told the inspectors that he couldn't allow them to go in the laboratory at this time, but if they would come back and make an appointment, he would set up something (Exhibit 17, p. 14).
136. ALLEN said that H.N. BABCOCK said that since the NRC visit was unannounced, he had to make sure that there was wasn't anything going on that would violate the joint agreement between Five Star and the international concern (Exhibit 17, pp. 14 and 15).
137. ALLEN said that H.N. BABCOCK had a company policy that those who were not in the research development area were not allowed in the laboratory to see whatever kind of research was going on, because there were a lot of trade secrets, and he (H.N. BABCOCK) didn't want anything getting out (Exhibit 17, p. 24).

Conclusion

That H.N. BABCOCK willfully denied the NRC inspectors access to the CPR laboratory.

Allegation No. 3: Alleged Falsification of Audit Report

Summary

H.N. BABCOCK, W. BABCOCK, GRABOWSKI, HOLUB, PETTIS, and MAGRUDER were interviewed concerning Allegation No. 3.

Evidence

1. PETTIS and MAGRUDER recall that, during the inspection, PETTIS asked GRABOWSKI to produce external audits of CPR to help determine compliance with the provisions of 10 CFR Part 50, Appendix B, and 10 CFR Part 21 (Exhibit 23, p. 3, Exhibit 24, p. 2).
2. PETTIS stated that asking for audit reports is within the normal purview of performing inspections. He asked GRABOWSKI if he could review the QA manuals, and any audit reports for Five Star and CPR. He said GRABOWSKI provided him with the CPR audit report (Exhibit 14, pp. 5-12) that was conducted by Five Star and dated July 31, 1992 (Exhibit 35, p. 1).
3. PETTIS said that they were not allowed to make copies of any of those documents. He said he "thumbed" through the CPR audit report. He was told by GRABOWSKI that he performed the audit (Exhibit 35, p. 1).
4. PETTIS said that he asked GRABOWSKI about the address listed for CPR (750 Commerce Drive; Fairfield, CT) because it was not the same address as Five Star. PETTIS was aware that Five Star and CPR were located in the same building. GRABOWSKI informed him that they used the 750 Commerce Drive address for CPR because that was the address they would be moving to when the new lab was completed (Exhibit 35, p. 1).
5. At the time, PETTIS felt the report was acceptable, but kept it in the back of his mind (Exhibit 35, p. 2).
6. PETTIS said that GRABOWSKI tried to make them believe that CPR was not located in the same building as Five Star Products (Exhibit 23, p. 3).
7. After reviewing the documents that were seized during the execution of a federal search warrant on Five Star Products, PETTIS believed that the audit report provided to him by GRABOWSKI was a false document (Exhibit 23, p. 3).
8. PETTIS said that after the search warrant was executed, NRC-VIB personnel reviewed the seized documents. MAGRUDER brought the audit report to his attention (Exhibit 35, p. 2).
9. PETTIS said that he compared it to an audit report issued by Toledo Edison and the format was identical. He said that, in their later review of seized documents, he became aware of the Toledo Edison audit report which had writing and cross outs on it (Exhibit 14, pp. 13-19).

It appeared to him that GRABOWSKI had used the Toledo Edison report as a basis for his audit report on CPR (Exhibit 35, p. 2).

10. PETTIS said that GRABOWSKI did audit CPR on a commercial basis, but what the NRC was looking for was an audit performed according to 10 CFR Part 50, Appendix B criteria. PETTIS said that Five Star was not capable of performing that type of audit (Exhibit 23, p. 2).
11. MAGRUDER recalls that GRABOWSKI and PETTIS had a discussion about the report. MAGRUDER also recalls that several times during the inspection GRABOWSKI informed them that he had been telling H.N. BABCOCK that they should not claim that their program meets 10 CFR Part 50, Appendix B requirements, but BABCOCK thought it was important for marketing purposes for them to make those claims (Exhibit 24, p. 2).
12. HOLUB later said that, to his knowledge, there was no audit conducted by GRABOWSKI on CPR in July 1992 or any other time. He recalled GRABOWSKI telling him during the initial NRC inspection that, if asked, he was to tell the NRC that an audit of CPR was conducted in June or July of 1992 (Exhibit 9, p. 1 and Exhibit 26, p. 2).
13. GRABOWSKI was shown the July 31, 1992, Five Star audit report of CPR (Exhibit 14, pp. 5-12) and the February 14, 1991, Toledo Edison audit report (Exhibit 14, pp. 13-18). GRABOWSKI admitted that the handwriting on the Toledo Edison report was his (Exhibit 14, p. 3).
14. GRABOWSKI admitted that he did not conduct the audit of CPR (Exhibit 14, p. 3).
15. GRABOWSKI admitted that he did not meet with HOLUB as stated in the audit report. GRABOWSKI admitted that he used the Toledo Edison report as a template or form by which he constructed the Five Star audit report (Exhibit 14, p. 3).
16. GRABOWSKI stated that sometime before July 31, 1992, W. BABCOCK told him (GRABOWSKI) that he needed to write an audit of CPR soon (Exhibit 14, p. 3).

INVESTIGATOR'S NOTE: GRABOWSKI stated that, at the time, neither H.N. or W. BABCOCK asked him if he could perform an audit as described in the report. GRABOWSKI also stated that he did not tell the BABCOCKS that he did not know how to perform such an audit (Exhibit 14, p. 3).

17. GRABOWSKI stated that sometime after that conversation he was put under pressure by ALLEN and the Five Star regional sales people, including Joe RIZZO, to write the audit report (Exhibit 14, p. 3).
18. GRABOWSKI said that they told him that they needed an audit report on CPR because the Carolina Power & Light Company needed to review it before considering a purchase of Five Star materials (Exhibit 14, p. 3).
19. GRABOWSKI stated that he faxed a draft of the audit report to his secretary, Diane MARRONE, while he was on a business trip. MARRONE put the report together for him and faxed it back to him (Exhibit 14, p. 3).

20. GRABOWSKI said that he signed the audit report and then sent it back to MARRONE. GRABOWSKI stated that he knows now that he did not do the audit correctly and that what he did was wrong. GRABOWSKI maintained that, at the time he wrote the audit, he believed that the things discussed in the audit report were actually being done in the lab (Exhibit 14, p. 3).
21. GRABOWSKI stated that sometime before the August 18 and 19, 1992, NRC inspection, he informed HOLUB that he had audited CPR on June 15 or 16, 1992. GRABOWSKI does not recall telling HOLUB this during the inspection (Exhibit 14, p. 3).
22. GRABOWSKI recalls that, during the inspection, PETTIS asked to review the audit report. GRABOWSKI stated that he gave the report to PETTIS, and that PETTIS may have questioned him about the 750 Commerce Drive, Fairfield, CT, address listed on the report for CPR. GRABOWSKI stated that he listed that as CPR's address because that was where the lab was going to be located (Exhibit 14, p. 3).
23. GRABOWSKI recalls that he told W. BABCOCK that Five Star's QA program did not meet 10 CFR Part 50, Appendix B requirements based on the audits that had been conducted by utilities, to include OPPD and PP&L. GRABOWSKI stated that W. BABCOCK informed him that they needed to get their program up to the standards of 10 CFR Part 50, Appendix B (Exhibit 14, p. 4).
24. GRABOWSKI stated that after he took a QA course in June of 1992, he informed W. BABCOCK that if Five Star wanted to meet all of the requirements for a nuclear program, the QA position would have to be devoted full time to that responsibility. GRABOWSKI said that W. BABCOCK told him that once the nuclear program "got off of the ground," Five Star would hire someone new to run the program (Exhibit 14, p. 2).
25. W. BABCOCK said that he believes that they were "chasing" a very big order at the Tennessee Valley Authority (TVA), and TVA was looking for an audit report of CPR (Exhibit 11, p. 3).
26. W. BABCOCK was allowed to review the CPR audit report and recalled that he previously reviewed it, because that was the only audit report of CPR with that type of format (Exhibit 11, p. 3).
27. W. BABCOCK believes that he was told by GRABOWSKI that the audit report was needed for the twenty-five thousand bag order worth six hundred and twenty-five thousand dollars with TVA (Exhibit 11, p. 3).
28. W. BABCOCK said that GRABOWSKI did not tell him then that he (GRABOWSKI) did not know how to conduct the audit, as described in the report. W. BABCOCK assumed that GRABOWSKI knew how to conduct it based on GRABOWSKI's dealings with nuclear power plants and other customer audits of Five Star Products, Inc. W. BABCOCK also stated that he sent GRABOWSKI to a quality assurance course prior to this audit being needed (Exhibit 11, p. 3).

29. W. BABCOCK said that, at the time, he presumed that GRABOWSKI properly performed the audit and had no knowledge that the audit was not conducted (Exhibit 11, p. 3).
30. W. BABCOCK stated that he has since learned that the audit was not performed, and that GRABOWSKI told him that he did not do it because he did not have the time (Exhibit 11, p. 3).
31. W. BABCOCK stated that he doubts that his father had any knowledge of the audit report. W. BABCOCK was allowed to review the marked up version of the Toledo Edison audit report, and stated that he had not previously seen it (Exhibit 11, p. 4).
32. H.N. BABCOCK does not recall ever seeing the Five Star audit report of CPR produced by GRABOWSKI, or the Toledo Edison audit report of Five Star (Exhibit 13, p. 4).
33. H.N. BABCOCK said that he does not know how GRABOWSKI's audit report was produced. H.N. BABCOCK added that, normally, he would not have reviewed such reports (Exhibit 13, p. 4).
34. H.N. BABCOCK stated that he did not direct GRABOWSKI to produce the audit report (Exhibit 13, p. 4).

Conclusion

That GRABOWSKI did not conduct the audit as described in the July 31, 1992, audit report, which was provided to the NRC during the inspection. That GRABOWSKI deliberately produced the false audit report and provided it to the NRC.

Allegation No. 4: Deliberate False Letter

Summary

PETTIS, MA, MAGRUDER, and H.N. BABCOCK were interviewed concerning Allegation No. 4.

Evidence

1. During the course of this investigation, H.N. BABCOCK instructed his attorney to forward a letter (Exhibit 13, pp. 1 and 2), dated February 18, 1994, to the NRC that he (H.N. BABCOCK) had written (Exhibit 13, pp. 3 and 4).
2. In the letter, H.N. BABCOCK stated that, "We did not deny the NRC inspectors access to the laboratory in August 1992. Mr. John S. Ma, a civil engineer on the NRC inspection team, was escorted into the lab where he conducted an inspection of the test laboratory." "Upon completion of Mr. Ma's investigation, he returned to the conference room where I was meeting with Mr. Pettis, and stated that there certainly was a lot of equipment, also commenting that we do a lot of work down in the lab" (Exhibit 13, p. 3).

3. On October 21, 1993, in "MEMORANDUM AND ORDER" CLI-93-23, the NRC stated that the NRC inspectors were denied access to the lab by H.N. BABCOCK (Exhibit 39, p. 4).
4. On October 28, 1993, the attorney for Five Star and CPR, in response to the Commission's Order, stated that, "... the consulting engineer that accompanied the inspectors, John Suma, was escorted into the laboratory facilities ..." (Exhibit 40, p. 5)
5. The inspectors stated that MA was not allowed to inspect the laboratory during the inspection (Exhibit 23, p. 1; Exhibit 24, pp. 1 and 2; and Exhibit 25, p. 2).
6. MA advised OI that the statement attributed to him by H.N. BABCOCK is also not a true statement (Exhibit 25, p. 2).
7. MA made the point that, if H.N. BABCOCK allowed him to inspect the laboratory, why was the second letter needed from NRC headquarters outlining their authority (Exhibit 25, p. 2).
8. Regarding his assertion that MA was allowed to inspect the laboratory, H.N. BABCOCK said that he believed that to be true when he wrote the letter (Exhibit 13, p. 3).
9. H.N. BABCOCK stated that during the inspection he had a discussion with MA who was a structural engineer. During this discussion he developed a rapport with MA and felt that he could trust MA to be escorted into the lab to check on equipment certifications (Exhibit 13, p. 3).
10. H.N. BABCOCK recalled that, at some point during the inspection, the inspectors questioned the certifications of the lab equipment. H.N. BABCOCK believes that he instructed one of his employees to escort MA into the lab (Exhibit 13, p. 3).
11. H.N. BABCOCK recalls that later that day, he saw MA, and MA commented to him that, "you certainly have a lot of equipment there," and, "you do a lot of work." H.N. BABCOCK inferred that MA had been escorted into the lab (Exhibit 13, pp. 3 and 4).
12. H.N. BABCOCK said that he later learned from MA's affidavit, regarding MA's activities during the inspection, that MA stated that he was not allowed into the lab (Exhibit 13, p. 4).
13. H.N. BABCOCK commented that MA's affidavit is dated after the February 18, 1994, letter that he wrote. BABCOCK stated that he always believed that MA went into the lab (Exhibit 13, p. 4).

INVESTIGATOR'S NOTE: MA's affidavit is dated January 13, 1993, but was not presented in U.S. District Court until January 18, 1995.

14. H.N. BABCOCK said that, after becoming aware of the information in MA's affidavit, he checked with everyone of his employees, except HOLUB (who was fired in January 1993), to see if one of them had escorted MA into the lab (Exhibit 13, p. 4).

15. H.N. BABCOCK stated that none of the employees told him that they had escorted MA into the lab. BABCOCK offered this information as an explanation for his statement in the February 18th letter that MA had been escorted into the lab (Exhibit 13, p. 4).
16. MA said that he had a one on one conversation with H.N. BABCOCK. MA informed H.N. BABCOCK that he was a civil engineer and concrete specialist. H.N. BABCOCK told him that he was also a civil engineer from an Ivy League school and informed him of the patents that he had developed for concrete (Exhibit 25, p. 1).
17. MA said that H.N. BABCOCK then offered to take him into the laboratory for a tour, but MA would not be allowed to talk any of the people in the laboratory (Exhibit 25, pp. 1 and 2).
18. MA said that he told H.N. BABCOCK that he could not make the decision as to whether the offer was satisfactory, he (MA) would have to ask lead inspector PETTIS (Exhibit 25, p. 2).
19. MA said that H.N. BABCOCK also wanted him to sign a confidentiality agreement if he took the tour of the laboratory. When PETTIS and MAGRUDER returned, MA informed them of BABCOCK's offer (Exhibit 25, p. 2).
20. MA said that PETTIS contacted NRC headquarters and was directed that they were not to sign any confidentiality agreements. PETTIS then informed H.N. BABCOCK that his offer was unacceptable, and that the inspectors needed complete access to the laboratory (Exhibit 25, p. 2).
21. H.N. BABCOCK stated that the inspectors would not sign the agreement and this "pushed him up against the wall about something that he firmly believed in" (not allowing access to the lab unless a confidential non-disclosure agreement was signed) (Exhibit 13, p. 2).
22. H.N. BABCOCK does not recall the inspectors asking him if they would be allowed to inspect the lab if they returned after Labor Day. H.N. BABCOCK stated that, if he were asked that question, he would have informed the inspectors that they would only be given access to the lab if they signed the confidential non-disclosure agreement (Exhibit 13, p. 3).
23. H.N. BABCOCK asserted that the reason for the denial of access to the lab was not because he knew that they did not have the equipment that they needed to certify certain types of tests (Exhibit 13, p. 3).
24. W. BABCOCK said that he and his father also discussed the confidential non-disclosure agreement, with his father telling him that if the NRC signed the agreement they would be allowed access to the lab, but that if they didn't sign it they would not get into the lab (Exhibit 11, p. 2).
25. W. BABCOCK said that he tried to persuade his father that, if the NRC had the legal authority, they should be allowed access to the lab. W. BABCOCK said that his father felt "very strongly" about the company's proprietary information and the secrecy of the lab (Exhibit 11, p. 2).

26. GRABOWSKI recalls that, early in the inspection, PETTIS informed H.N. BABCOCK that they would need access to the laboratory. H.N. BABCOCK told the inspectors that he would not allow them access unless they signed a confidentiality agreement. GRABOWSKI said that H.N. BABCOCK was just not going to allow them into the laboratory (Exhibit 14, p. 1).
27. GRABOWSKI disclosed that he and H.N. BABCOCK took HOLUB to lunch on the first day of the inspection. GRABOWSKI believes that the main topic at that lunch was whether they should let the NRC into the laboratory (Exhibit 14, p. 2).
28. GRABOWSKI said that, at the end of the lunch, H.N. BABCOCK said that he would allow the NRC access to the laboratory if they signed a confidentiality agreement (Exhibit 14, p. 2).
29. ALLEN said that H.N. BABCOCK told the inspectors that he couldn't allow them to go in the laboratory at this time, but if they would come back and make an appointment, he would set up something (Exhibit 17, p. 14).

Conclusion

H.N. BABCOCK's position that he first learned that MA said he was not allowed access to the lab, until after he wrote his February 18, 1994, letter, is not plausible. Therefore, it is concluded that BABCOCK deliberately provided a letter to the NRC that contained false information.

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SUPPLEMENTAL INFORMATION

On April 1, 1994, W. BABCOCK resigned from his position as president of Babcock & King and all other positions he held in the Babcock companies. He resigned because of a difference of opinion with his father, H. Nash BABCOCK, over how the business should grow. He stated that his resignation was unrelated to the OI:RI investigations being conducted on the family companies. He is currently unemployed (Exhibit 11, p. 1).

On January 20, 1995, the United States Attorney's Office, District of Connecticut declined criminal prosecution of this matter (Exhibit 36).

Peter CLARKE, Assistant United States Attorney, District of Connecticut, advised that the immunity agreement that was executed between the U.S. Department of Justice and GRABOWSKI does not allow for GRABOWSKI's testimony to be used against him in a criminal or administrative proceeding. CLARKE advised that GRABOWSKI's testimony can be used against Five Star in an NRC civil enforcement action (Exhibit 37).

The following OI personnel participated in this investigation:

Barry R. Letts, RI
Richard J. Walsh, RI
Richard A. Matakas, RI
Ernest P. Wilson, RI
Kristin L. Monroe, RI
Marcella J. Holmes, RI
Craig T. Tate, RII
Arthur J. Gallow, HQ

The following technical staff also participated in this investigation:

Robert PETTIS, NRR
Stewart MAGRUDER, NRR
John MA, NRR
Goutham BAGCHI, NRR
Gregory CWALINA, NRR

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LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1	Notification of Investigation, dated September 30, 1992.
2	Five Star's, "A PROFESSIONAL'S HANDBOOK ON GROUTING CONCRETE REPAIR AND WATERPROOFING," Excerpt.
3	Allegation Receipt Report, dated June 22, 1992.
4	Report of Interview with HOLUB, dated July 29, 1992.
5	VIB report, dated January 29, 1993.
6	Five Star Certification, dated July 26, 1991.
6A	Purchase Order No. 6J4333CL, dated July 17, 1991.
7	Five Star Certification, dated September 24, 1991.
7A	Purchase Order No. 338153, dated July 31, 1991.
8	Five Star Certification, dated April 9, 1992.
8A	Purchase Order No. 350451, dated March 31, 1992.
9	Report of Interview with HOLUB, dated November 4, 1992.
10	Report of Interview with HOLUB, dated September 1, 1992.
11	Report of Interview with W. BABCOCK, dated March 16, 1995.
12	Report of Interview with W. BABCOCK, dated September 1, 1992.
13	Report of Interview with H.N. BABCOCK, dated March 16, 1995.
14	Report of Interview with GRABOWSKI, dated December 13, 1994.
15	Report of Interview with FILEP, dated September 1, 1992.
16	Report of Interview with NOWACKI, dated September 1, 1992.
17	Transcript of Interview with ALIEN, dated August 10, 1994.
18	Report of Interview with McCABE, dated September 1, 1992.
19	Report of Interview with MARRONE, dated September 1, 1992.
20	Transcript of Interview with MARRONE, dated August 10, 1994.
21	Report of Interview with GRABOWSKI, dated September 1, 1992.

- 22 Report of Interview with ISBEL, dated April 14, 1993.
- 23 Report of Interview with PETTIS, dated March 18, 1994.
- 24 Report of Interview with MAGRUDER, dated March 18, 1994.
- 25 Report of Interview with MA, dated March 18, 1994.
- 26 Report of Interview with HOLUB, dated August 23, 1992.
- 27 NRC Letter to H.N. BABCOCK, dated August 13, 1992.
- 28 NRC Letter to H.N. BABCOCK, dated August 19, 1992.
- 29 Five Star "CONFIDENTIAL DISCLOSURE AGREEMENT."
- 30 Record of Conversation with U.S. DOL, OSHA, dated April 26, 1995.
- 31 Record of Conversation with State of Connecticut, OSHA, dated April 7, 1995.
- 32 Report of Interview with, CAMARA, dated April 28, 1993.
- 33 Report of Interview with CHENEY, dated April 28, 1993.
- 34 Report of Interview with ALLEN, dated September 1, 1992.
- 35 Memorandum of Interview of PETTIS, dated February 8, 1993.
- 36 U.S. DOJ Declination Letter, dated January 20, 1995.
- 37 Record of Conversation with CLARKE, dated December 14, 1994.
- 38 Agreement Between ICPR and the Nihon Cement Company, dated January 12, 1990.
- 39 NRC "MEMORANDUM AND ORDER" CLI-93-23, dated October 21, 1993.
- 40 McBRIDE Letter to NRC, dated October 28, 1993.