

United States  
Nuclear Regulatory Commission



# Report of Investigation

CRYSTAL RIVER NUCLEAR PLANT:

ALLEGED DISCRIMINATION AGAINST  
OPERATIONS SHIFT SUPERVISOR FOR RAISING  
SAFETY CONCERNS ABOUT AN OPERATING CURVE

Office of Investigations

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Title: CRYSTAL RIVER NUCLEAR PLANT:

ALLEGED DISCRIMINATION AGAINST OPERATIONS STAFF SUPERVISOR FOR RAISING  
SAFETY CONCERNS ABOUT AN OPERATING CURVE

Licensee:

Case No.: 2-95-020

Florida Power Corporation  
P.O. Box 219 NA-21  
Crystal River, Florida 32629

Report Date: February 26, 1997

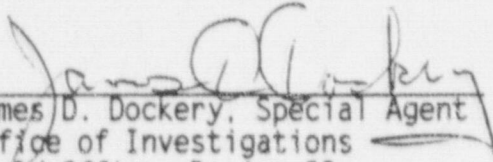
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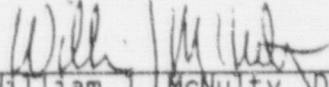
Docket No.: 50-302

Status: CLOSED

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WARNING

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## SYNOPSIS

On August 31, 1995, during a U.S. Nuclear Regulatory Commission Office of Investigations (OI) interview pertaining to Case No. 2-94-036S, the witness, a former operations shift supervisor at the Crystal River Nuclear Plant, alleged he was terminated from employment by the Florida Power Corporation because he raised operational safety concerns about an inaccurate reactor operating curve and cited management deficiencies related to the inaccuracy.

A complaint by the allegor against Florida Power Corporation alleging illegal discriminatory treatment was determined by the U.S. Department of Labor, Wage and Hour Division and an Administrative Law Judge to be unfounded.

The evidence developed during several OI investigations did not substantiate that the allegor was subjected to illegal discrimination or retaliation by the Florida Power Corporation in violation of 10 CFR 50.7.

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LIST OF INTERVIEWEES

EXHIBIT

BEARD, Jr., Percy M., Sr. Vice President, Nuclear Operations.....	6
FIELDS, David A., (Former) Operations Shift Supervisor.....	2
FLEMING, Paul V., CRNP System Engineer.....	10
HALNON, Gregory H., Manager, Nuclear Plant Operations.....	8
HICKLE, Bruce J., Director, Nuclear Power Operations.....	7
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## DETAILS OF INVESTIGATION

### Applicable Regulations

10 CFR § 50.5: Deliberate misconduct

10 CFR § 50.7: Employee protection

### Purpose of Investigation

This investigation was initiated (Exhibit 1) by the U.S. Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region II (RII), on September 20, 1995, to determine whether the Florida Power Corporation (FPC) discriminated against David A. FIELDS by terminating his employment as an operations shift supervisor after he raised operational safety concerns about an inaccurate operating curve at the licensee's Crystal River Nuclear Plant (CRNP).

### Background

FIELDS was considered by OI to be a witness to events under NRC scrutiny in OI investigations 2-94-036, 2-94-036S, and 2-95-016S. OI conducted an official interview of FIELDS relative to those investigations on August 31, 1995 (Exhibit 2). During the OI interview, FIELDS alleged that he believed he was discharged by FPC partially in retaliation for stating his concerns to his employer and the NRC about the adequacy of CRNP reactor coolant system makeup tank (MUT) level/pressure operating procedures and lack of licensee response to his concerns. The concerns expressed by FIELDS and other licensed reactor operations personnel and certain actions they took - unnecessary and unauthorized manipulation of MUT level and pressure - to demonstrate the reason for their concerns were the subject of the three OI investigations cited above (see OI Reports of Investigation 2-94-036, 2-94-036S, and 2-95-016S).

### Interview of Allegor (Exhibit 2)

During the OI interview of FIELDS on August 31, 1995, FIELDS testified that on the night of September 5, 1994, he was "...the senior licensed person [operations supervisor] on the site." FIELDS acknowledged that it was "absolutely" his decision to gather operational data by conducting a drain down evolution of the MUT which he "suspected" would (and in fact did) create a situation wherein the reactor was operated outside the required parameter of what FIELDS believed to be the MUT Operating Procedure (OP) 103B, Curve 8 administrative limit. FIELDS further acknowledged that his operations shift deliberately and intentionally conducted the MUT evolution. However, in mitigation FIELDS testified that he believed that he "...was authorized and empowered to do..." the evolution. Furthermore, FIELDS only subsequently became aware that, rather than being an administrative limit, Curve 8 was actually a design basis curve which he "...absolutely [would] not" have violated had he been aware of the curve's true significance (Exhibit 2, pp. 98-101).

**AGENT'S NOTE:** Based on NRC staff and OI findings related to the MUT evolution conducted by FIELDS' shift on September 5, 1994, the licensee concurred with the NRC finding that FIELDS and members of his shift had conducted an unauthorized (albeit not deliberately irregular) MUT evolution on September 5, 1994. In a letter dated May 5, 1995 (Exhibit 3), the licensee notified the NRC that FIELDS and his direct subordinate (Assistant Shift Supervisor Robert P. WEISS) had been removed from licensed activity at CRNP based on the September 5, 1994, incident.

FIELDS took exception to the licensee's May 5, 1995, letter to the NRC and generated his own letter of rebuttal (Exhibit 4) to the RII Regional Administrator after advising the FPC senior vice president of Nuclear Operations of his intent to do so. FIELDS testified to OI that "...after I sent that letter, I think I became expendable." FIELDS was eventually discharged by the licensee on August 22, 1995.

During the August 31, 1995, OI interview, FIELDS also acknowledged his involvement as the operations shift supervisor in a MUT evolution conducted by his shift on September 4, 1994. According to FIELDS the September 4, evolution was conducted for the same reason and under the same basic circumstances as the September 5 evolution; however, the September 4 evolution did not yield the data FIELDS had anticipated would substantiate his shift's contention that Curve 8 was inaccurate.

In his testimony to OI, FIELDS also explained why the September 4, 1994, evolution was not alluded to when he was initially interviewed by OI in regard to investigation 2-94-036 (Exhibit 2, pp. 4-8). FIELDS did not mention the September 4, 1994, evolution at the first OI interview because the data collected on that date was "erratic" and did not support anything; OI investigators asked only about the September 5, 1994, evolution and never mentioned September 4, and FPC legal counsel advised him to respond fully and completely to OI questions but not "volunteer" additional information.

FIELDS testified that if management had asked him about the September 4 MUT evolution he "absolutely" would have told management about the event (Exhibit 2, pp. 12-13). FIELDS professed his belief that "...the company should have known about September the 4th. You know, I fully agreed with that" (Exhibit 2, p. 14). There was no discussion or "conspiracy" among the members of his shift intended to hide the existence of the September 4 evolution from management and he reiterated that he would have volunteered the information to management if asked (Exhibit 2, pp. 16 & 78). He and members of his shift did discuss the results of the September 4 evolution and reached the consensus that "...it has no significance..." thus, in FIELDS' view, negating any requirement that the event be discussed with management (Exhibit 2, p. 78). Furthermore, FIELDS and his shift "...didn't feel like the events of September 4th were -- were that important..." and he and the other operators did not attempt to discuss the matter with FPC management because "(t)he company didn't investigate it" (Exhibit 2, pp. 16-17).

FIELDS did eventually discuss the September 4 event with CRNP Plant Manager HICKLE during a meeting on July 19, 1995, two days prior to a pre-decisional enforcement conference at RII scheduled to address the September 5 evolution conducted by his shift (Exhibit 2, p. 13).

### Coordination with NRC Staff

Throughout the course of OI investigations 2-94-036, 2-94-036S, and 2-95-016S, RII Division of Reactor Safety (DRS) Inspector Curtis W. RAPP participated with OI in all witness interviews and each interview transcript was made available by OI to appropriate technical staff through the RII Enforcement and Investigation Coordination Staff. At OI request, a special technical inspection was conducted at CRNP during December 11-15, 1995, and is documented in Inspection Report 50-302/95-22. The results of the special inspection and subsequent enforcement action are discussed below.

### Coordination with NRC Legal Counsel

This and related investigations were closely coordinated with Regional and NRC legal counsel.

### U.S. Department of Labor (DOL) Activity

On February 13, 1996, FIELDS filed a complaint (Exhibit 5) with the DOL Wage and Hour Division alleging FPC had illegally retaliated and discriminated against him. A DOL complaint based on the same events and fact pattern was filed jointly with FIELDS' by his former subordinate, WEISS, who was similarly terminated from his position as a CRNP senior reactor operator on FIELDS' shift (see OI Investigation 2-95-021). On April 15, 1996, the DOL Wage and Hour Division issued a finding that the investigation by that office did not verify that discrimination was a factor in the allegations contained in the allegers' complaints. FIELDS' and WEISS' terminations were found by the Wage and Hour Division to be justified. Both FIELDS and WEISS appealed the Wage and Hour Division finding.

On January 10, 1997, subsequent to submission of written briefs and oral arguments on December 16, 1996, a DOL administrative law judge (ALJ) issued a Preliminary Recommended Decision and Order dismissing FIELDS' and WEISS' complaints against FPC. The preliminary order documents the ALJ's finding that the complainants deliberately committed an act that caused a violation of the Energy Reorganization Act and/or the Atomic Energy Act, thereby precluding the application (and remedies) of Section 211 of the Energy Reorganization Act. The ALJ order, based on a motion by FPC for summary dismissal of the complaint, is pending final approval by the Secretary of Labor.

### Review of Documentation

OI Investigation 2-94-036 concluded that:

...(t)he midnight shift operators FIELDS, WEISS, Van SICKLIN, and ST. WART, on September 5, 1994, deliberately violated plant procedures when they exceeded the allowable makeup tank overpressure and failed to take appropriate action to reduce makeup tank overpressure.

OI Investigation 2-94-036S concluded that:

...the shift supervisor (FIELDS), assistant shift supervisor (WEISS), and two chief operators on the midnight shift of

September 4 and 5, 1994, deliberately conducted an evolution, not required by plant conditions, for the specific purpose of gathering data. Furthermore, when the allowable MUT overpressure was exceeded, the operators deliberately delayed taking appropriate action to reduce MUT overpressure while gathering that data.

CI Investigation 2-95-016S concluded that:

...there is no evidence indicating that any FPC manager had prior knowledge of the MUT evolutions conducted by licensed reactor operators at CRNP during September 1994. FPC management did not approve or condone the tests in advance.

That investigation also noted that:

FIELDS and WEISS, the two senior licensed operators involved in the September 1994 MUT evolutions, were discharged by the licensee in August 1995, ostensibly as a result of their failure to make a timely disclosure of the September 4 evolution to licensee management. The fact that the licensee took the ultimate negative employment action against the operators 11 months after discovering the September 5 event makes it highly unlikely that any member of licensee management authorized the prior, September 4, MUT evolution or condoned such a test.

The special inspection conducted by NRC staff from December 11-15, 1995, concluded that the two MUT evolutions (documented in 2-94-036S) deliberately conducted by FIELDS' shift on September 4 and 5, 1995, were in violation of plant procedure because "...operation of the makeup tank (was) outside the acceptable operating region while adding hydrogen." The evolutions conducted by FIELDS et al. were cited separately by DRS as examples of apparent violation 50-302/95-22-02.

On July 10, 1996, in a Notice of Violation and Proposed Imposition of Civil Penalties, NRC RII notified FPC of Violation 50-302/EA 95-126-1.B. which cited the licensee for violation of 10 CFR 50.59, "Changes, Tests, and Experiments," in that "...on September 4 and 5, 1994, [FIELDS et al.] conducted tests not described in the safety analysis report, without written safety evaluations..." Furthermore, "...operators conducted tests in that they performed evolutions involving make-up tank pressure and level, not required by plant conditions, to collect data." This was cited as a Severity Level III violation carrying a \$100,000 civil penalty. On September 9, 1996, FPC accepted the cited violation and paid the \$100,000 civil penalty.

A large volume of documentation generated by both the licensee and the NRC was also reviewed during the course of this investigation and, where appropriate, pertinent documentation is appended as exhibits to this Report of Investigation.

**Allegation:** Alleged Discrimination Against an Operations Shift Supervisor for Voicing Concerns About a Plant Operating Procedure and Dissenting with Florida Power Corporation Management Over the Issue

## Evidence

The following individuals were interviewed regarding FIELDS' allegation that he was discriminated against for engaging in protected activity:

**AGENT'S NOTE:** The following quoted testimony has been excerpted from the original OI interview transcripts. The pertinent transcript pages reflecting the quotations cited are appended to this report as exhibits. The entire transcript of interview for each witness is contained in OI case file for Case No. 2-94-036S.

### Interview of BEARD (Exhibit 6)

BEARD testified to OI that when the September 5, 1994, MUT evolution was first divulged, it was never the intention of FPC management to discharge FIELDS or the operators on his shift solely for that event. In fact the "questioning attitude" of the operators was commended by licensee management and the NRC. Although the shift's "...motives may have been okay...[their] process was wrong... And that was the total issue in the beginning until this second (September 4th) evolution came to light and the issue became an entirely different one. It was: trust and integrity." According to BEARD, despite numerous opportunities over a period of several months to divulge the September 4 evolution to management, licensee lawyers and investigators, and the NRC, the incident was not discussed by any shift personnel until FIELDS alluded to it immediately prior to the July 21, 1995, enforcement conference with the NRC. In BEARD's stated opinion "...that's totally irresponsible, and then it's a matter of integrity. I can't...have shift supervisors that I can't totally trust" (Exhibit 6, pp. 31-33).

In summary, regarding the September 5 MUT evolution, BEARD testified that:

The initial issue with the operators was and is simply that they did not get permission to do what they did, period. And we dealt with that in the management review panel...in what we thought was a fair and equitable way the proper amount of discipline, but don't send a chilling effect (Exhibit 6, p. 91).

However, according to BEARD, after several months had elapsed during which a great deal of managerial and regulatory attention was paid to the September 5 evolution:

...all of a sudden at the last minute to find out that they had done this before (on September 4th), now the issue is no longer...[that they] should have got permission. The issue is, as a shift manager and an assistant shift manager...[FIELDS and WEISS] had an obligation to come forward and tell us...And on that basis we took further action (discharge). And that was the reason. You know, not because they raised safety concerns...that's ridiculous. It was trust and integrity... (Exhibit 6, pp. 92-93).

### Interview of HICKLE (Exhibit 7)

HICKLE testified to OI that after becoming aware of the September 4 event it was his recommendation that FIELDS and WEISS, as well as the two chief operators involved in the MUT evolutions should be discharged by FPC for their failure to divulge the September 4 event. The basis for his recommendation was his position that:

As a plant manager I can correct judgmental errors...(b)ut I can't correct integrity issues. And when I sense that somebody hasn't been straight or honest, which was my feeling in this case, then I felt that they really don't meet our corporate culture and they shouldn't be working there.

And that was...strictly and solely the reason that I recommended termination was I felt they were untrustworthy. I felt...those four individuals had more than enough opportunity...to reveal that they had performed two evolutions right from the start (Exhibit 7, pp. 77-79).

### Interview of HALNON (Exhibit 8)

HALNON testified to OI that two or three days before a FPC management review committee (conducted September 15, 1994, to review the September 5, 1994, MUT evolution event), he asked FIELDS and WEISS to supply him with "...a write-up of what they did..." with respect to conducting the MUT evolution to obtain data pertaining to OP-103B Curve 8. The resulting document entitled "OP-103B CURVE 8 VERIFICATION 9/5/94" was characterized by HALNON as a "...chronology of the event for the management review committee." The document produced by FIELDS and WEISS made no reference to the MUT evolution conducted by their shift on September 4, 1994 (Exhibit 8, pp. 55-56).

According to HALNON the failure of FIELDS and WEISS and members of their shift to divulge the September 4, 1994, MUT evolution caused him to doubt the supervisors' integrity because "...there were some things that I did not know that I should have and that they had opportunities to tell me and knew they should have." HALNON asserted that based on his doubts about FIELDS' and WEISS' integrity, he no longer trusted them to operate a nuclear plant due to potential danger involved in not abiding by rules or procedures (Exhibit 8, pp. 89-90).

### Interview of WEISS (Exhibit 9)

WEISS testified to OI that he thought CRNP "...engineering knew about the data from the [September 4th MUT evolution] right from the start." Because "...when [he] first brought the problem report to licensing [he] told Paul Fleming that we had done it (MUT evolutions) both days." It was also WEISS' "impression" that HALNON knew about the September 4th MUT evolution but did not know "specifically" who advised HALNON of the event (Exhibit 9, pp. 42 & 43).

### Interview of FLEMING (Exhibit 10)

FLEMING testified to OI that when WEISS provided him with data related to the MUT evolution, WEISS "...may have, in fact, discussed that they had either

seen this before or had done a test before." FLEMING was "almost positive" that he received no data from WEISS for the September 4th event; "(b)ut [he] definitely had data for the 5th" (Exhibit 10, pp. 7-8 & 49-50).

### Licensee's Stated Basis for Disciplinary Action (Exhibit 11)

At OI request, FPC legal counsel provided OI with additional information documenting the professed basis for the FPC employment action against FIELDS and WEISS. The licensee contends in Exhibit 11 that between September 7, 1994, and May 23, 1995, FIELDS or WEISS had at least 12 opportunities wherein it was appropriate, logical, and expected that the operators would have divulged the September 4, 1994, evolution, verbally or in writing, to FPC management, corporate lawyers, NRC staff/management and OI investigators.

FPC management did not become aware of the September 4 evolution until July 1995. An internal investigation of the September 4 event was conducted by FPC during July and August 1995. The subsequent decision to terminate FIELDS and WEISS is stated to be based on their lack of integrity over a 10-month period following the September 5, 1994, evolution.

In February 1997, subsequent to the DOL ALJ recommended summary dismissal of FIELDS' and WEISS' complaints, FPC legal counsel provided OI with additional documentation, including deposition transcripts, that bolsters the licensee's defense of its actions toward the alleged. (That documentation, which is voluminous, is available for perusal in the OI case file for Case No. 2-95-020.)

### Agent's Analysis

FIELDS, WEISS, and the other members of operations "A" shift clearly engaged in protected activity by questioning the accuracy of OP-103B Curve 8. Their stated concern to CRNP engineering and management about the accuracy of the curve was both significant and safety related. Whether the conduct of the September 4 and 5, 1994, evolutions constituted protected activity or a "test" prohibited by regulation has been debated but is irrelevant in this instance since the operators' stated concerns predated September 4 and continued well after September 5, 1994.

The concerns of CRNP operations staff, including personnel other than "A" shift, about Curve 8 were voiced to, and known by, a fairly high level of management at CRNP prior to the September 4 and 5 evolutions. The adequacy of CRNP management's response to the concerns - expressed by well qualified operations personnel and eventually proven to be valid - is questionable, but for purposes of this investigation also irrelevant.

FIELDS' professed belief that "...the company should have known about September 4th. You know, I fully agreed with that..." (Exhibit 2, p. 14) is contradicted by his actions, as is the assertion that he would have divulged the event if asked about it. Within one week of the events of September 4 and 5, 1994, FIELDS and WEISS were tasked by HALNON to create a written "chronology" of the events that culminated with the collection of data related to OP-103B Curve 8 on September 5, 1994. The resulting document, "OP-103B CURVE 8 VERIFICATION 9/5/94," includes a chronology (Exhibit 13) that describes only events leading up to and including the September 5 MUT

evolution. The document prepared for HALNON by FIELDS and WEISS describes in detail the procedures utilized to conduct one MUT evolution during which data was plotted. The chronology of events does not allude to any MUT evolution conducted by "A" shift between the last refueling outage and September 5, 1994. If, as he testified to OI, FIELDS "...fully agreed..." that management should have known about the September 4 evolution, he had the clear opportunity to inform management of the event when he complied with a direct request by the CRNP Nuclear Operations manager that he chronicle events related to the September 5, 1994, MUT evolution. FIELDS did not divulge the September 4 event at that time. It is asserted by various licensee managers that the September 4 event was not known to them until the evolution was mentioned to HICKLE by FIELDS, approximately 10 months after the fact and immediately prior to a formal presentation to the NRC on the issue.

WEISS' contention that CRNP engineering "...knew about the data from the [September 4 evolution] right from the start..." because he gave REDAS data to FLEMING is questionable. FLEMING does not recall with certainty that WEISS mentioned the September 4 event and does not believe WEISS provided him with data generated from the September 4 MUT evolution. It is illogical that data from September 4 would be provided to FLEMING (or FPC management) since both FIELDS and WEISS testified that they considered the results of that MUT evolution to be useless in supporting their contentions about the inaccuracies of OP-103B Curve 8. In any event, FLEMING is merely a colleague of WEISS, not a member of CRNP management. There is no evidence, even if he was aware of it, that FLEMING ever mentioned the September 4 MUT evolution to his supervision or CRNP management.

The assertion by FPC management that until July 1995, only FIELDS and the members of his operations shift knew about the September 4, 1994, MUT evolution is credible. The Senior Vice President (BEARD), Director of Nuclear Power Operations (HICKLE) and the Nuclear Operations Manager (HALNON) each testified that FIELDS' and WEISS' failure to divulge the September 4, 1994, evolution for approximately 10 months caused management to conclude that FIELDS and WEISS did not display the requisite integrity they expected of licensed senior nuclear reactor operators. Consequently, FIELDS and WEISS were discharged based on the collective management decision that they were untrustworthy and thus unfit for employment within the nuclear operations "culture."

OI solicited the opinion of RII management regarding the licensee's contention that the denial of plant access and eventual discharge of FIELDS and WEISS was reasonable given their perceived lack of integrity. In a memorandum dated December 24, 1996 (Exhibit 4), Albert F. GIBSON, the RII Director of DRS, advised OI that:

Florida Power Corporation concluded that FIELDS and WEISS lacked integrity based upon their failure to disclose, for an extended period of time, the makeup tank evolution that occurred on September 4. Taking this conclusion at face value, termination would appear to have been within FPC's prerogative as an employer and would not be objectionable to the agency (NRC) or at odds with agency regulations.

Furthermore, according to GIBSON, based on the regulatory requirements articulated in 10 CFR 50.5(a) and 10 CFR 73.56, "...FPC's denial of access to



FIELDS and WEISS on the basis that they were not trustworthy appears to be plausible."

FPC has provided credible evidence that the licensee's actions toward FIELDS and WEISS were reasonable, and although a direct result of the September 4, 1994, MUT evolution, would have occurred in spite of any protected activity they had engaged in before or after September 4, 1994. The evidence does not support the contention by FIELDS and WEISS that FPC's stated reason for disciplinary action against them - lack of professional integrity - was pretextual.

### Conclusion

The evidence developed during several OI investigations, did not substantiate that FIELDS was subjected to illegal discrimination or retaliation by FPC in violation of 10 CFR 50.7.

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## SUPPLEMENTAL INFORMATION

In the documentation provided to OI in February 1997 by FPC legal counsel, Attorney Morris WEINBERG, Jr., noted his opinion that FIELDS' and WEISS' "...deposition testimony raises serious questions whether they deliberately provided incomplete and inaccurate testimony at their OI interviews." The examples of potential material false statements cited by WEINBERG were reviewed by Special Agent James Y. Vorse, Case Agent for OI investigations 2-94-036, 2-94-036S, 2-95-011, and 2-95-012, and James D. Dockery, Case Agent for OI investigations 2-95-016, 2-95-016S, 2-95-020, and 2-95-021. All of the cited investigations were generated by the MUT evolutions of September 4 and 5, 1994. Comparison of the transcripts of FIELDS' and WEISS' OI interviews with their testimony in DOL civil depositions resulted in a consensus by the investigating Special Agents and Field Office Director William J. McNulty that perceived discrepancies in the allegeders' testimony were neither significant nor material enough to justify additional investigation as a potential violation of Title 18, Section 1001 of the U.S. Criminal Code.

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## LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1	Investigation Status Record, dated September 20, 1995.
2	Transcript of Interview of FIELDS, dated August 31, 1995.
3	Letter from FPC Senior Vice President P. M. BEARD to RII Administrator Stewart EBNETER, dated May 5, 1995.
4	Letter from FIELDS to RII Administrator Ebneter, dated May 23, 1995.
5	Complaint by FIELDS against FPC filed with the DOL Wage and Hour Division.
6	Excerpted testimony from OI interview of BEARD on November 28, 1995.
7	Excerpted testimony from OI interview of HICKLE on November 30, 1995.
8	Excerpted testimony from OI interview of HALNON on November 29, 1995.
9	Excerpted testimony from OI interview of WEISS on August 31, 1995.
10	Excerpted testimony from OI interview of FLEMING on November 28, 1995.
11	Letter to OI dated January 24, 1996, from FPC legal counsel WEINBERG.
12	"OP-103B Curve 8 Verification 9/5/94" chronology.
13	Memorandum, dated December 24, 1996, from RII DRS, GIBSON, to OI Field Office Director McNulty.