

In view of the grave implications of this report, we urge the immediate convening of an independent commission, composed entirely of persons outside the Department of Labor, to investigate this disaster. Just as OSHA should not allow employers to inspect themselves, OSHA should not be permitted to investigate itself.

In addition to the investigating commission, we urge you to take the following actions:

- (1) Institute procedures to assure that OSHA will inspect every workplace where the agency knows or has reason to know that unsafe or unhealthful conditions exist. If additional inspectors are needed to achieve this goal, OSHA should take whatever steps are necessary to persuade Congress to appropriate the necessary funds.
 - (2) Institute procedures to assure that all OSHA offices working on the same case will know what each other is doing.
 - (3) Institute procedures in OSHA's Office of Variance Determination to assure that employers will not use variance regulations to avoid complying with federal health and safety laws.
 - (4) Revise OSHA regulations to allow the agency to issue citations for unsafe or unhealthful conditions discovered during a variance inspection.
 - (5) Make available to the public all OSHA documents pertaining to Research-Cottrell and the Pleasant Power Station. The agency should cooperate fully with persons wishing to bring legal actions as a consequence of the accident.
- As Assistant Secretary of Labor, you are responsible for administration and enforcement of the Occupational Safety and Health Act of 1970, which was passed "to assure so far as possible every working man and woman in the Nation safe and healthful conditions." This tragic accident has exposed grave organizational problems endemic to OSHA. Accordingly, we urge you to exercise your statutory duty to remedy those problems and assure, so far as possible, that disasters like Willow Island will never happen again.

As one Willow Island worker said after the accident: "There was no need for this slaughter. I say when a man can't go to work and be safe, it's a terrible thing."

The disclosures in this report are serious. They deserve your personal attention and rapid reply.

Sincerely,

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A CITIZENS INVESTIGATION

OF

THE WILLOW ISLAND SCAFFOLD DISASTER

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May 10, 1978

PREFACE

This investigation of the Willow Island scaffold disaster was conducted by Public Citizen's Health Research Group from April 28, 1978, to May 8, 1978. The findings are based upon documents on file at the Occupational Safety and Health Administration of the U.S. Department of Labor (OSHA), conversations with OSHA employees, union representatives and company spokesmen and, in several instances, newspaper and magazine reports. Every fact in the investigation is documented in footnotes to this report.

SUMMARY

On the morning of April 27, 1978, fifty-one construction workers died when a scaffold on which they were standing collapsed and fell 170 feet.¹ The workers had been pouring a ring of concrete on the second of two cooling towers at the Pleasants Power Station in Willow Island, West Virginia. They had been employed by Research-Cottrell, Inc., a Bound Brook, New Jersey firm which was building the towers for the Monongahela Power Company, owner of the power plant.²

The disaster was among the worst industrial accidents in American history and the worst accident ever to occur at a workplace regulated by the Occupational Safety and Health Administration of the U.S. Department of Labor (OSHA).³ It was also among the most puzzling of work-related accidents. To date, its cause remains unknown.⁴

Within hours after the accident occurred, OSHA spokesman James Foster announced that the agency had no forewarning of hazards at the construction site, since Research-Cottrell's work at Willow Island had never been inspected.⁵ Our investigation revealed that this statement was false and that OSHA had substantial evidence, as early as March 1977, that the scaffold which collapsed at Willow Island posed serious hazards to workers. Among the evidence OSHA had was the following:

(1) On March 3, 1977--thirteen months before the scaffold collapsed--a top-ranking OSHA official concluded there was a "lack of evidence" that the scaffold, then in use on the first of the two cooling towers, met OSHA regulations requiring that scaffolds "be capable of supporting without failure at least 4 times the maximum intended load."⁶

(2) On March 3, 1977, the same OSHA official concluded that lack of adequate "means of egress" from the scaffold could constitute a violation of a federal law requiring employers to furnish "a place of employment which [is] free from recognized hazards that are causing or are likely to cause death or serious physical harm."⁷

(3) On March 21, 1977, OSHA officials learned that an inspection of the same scaffold that month revealed it "was badly in need of repairs when received at site," that "these repairs were made without knowledge of engineering department" and that prompt and definite "procedures are necessary for inspecting and repairing of scaffold under direction of company engineering personnel."⁸

(4) On March 21, 1977, OSHA officials learned that an inspection of scaffolding at another unnamed site of Research-Cottrell revealed that necessary precautions were not being taken to protect employees from "serious injury or death."¹⁰

(5) From July 1972 to January 1978, OSHA inspectors found 71 violations of federal law at Research-Cottrell's construction sites other than Willow Island. Those violations included six citations for "serious" matters, three of which involved hazardous scaffolding.¹¹

(6) From July 1972 to January 1978, OSHA inspectors found 13 violations of federal law by companies other than Research-Cottrell operating at Willow Island. Those violations included six citations for "serious" matters, three of which involved hazardous scaffolding.¹²

Despite these forewarnings, OSHA failed to inspect Research-Cottrell's hazardous scaffold at Willow Island after March 1977, or otherwise compel Research-Cottrell to correct unsafe conditions associated with the scaffold.¹³ When we asked OSHA officials who issued or received the warnings to explain their inaction, they all disclaimed responsibility for inspecting Research-Cottrell's workplace or notifying Research-Cottrell of the hazards.¹⁴ None of the officials with whom we spoke admitted error or misjudgment in the case.

In addition to the fact that OSHA failed to heed warnings that Research-Cottrell's scaffold was unsafe, our investigation uncovered other shortcomings at the agency. The record revealed a shocking lack of intra-agency coordination and communication. Frequently, offices working on the same case had no idea what each other was doing.¹⁵ The record also revealed questionable practices at OSHA's Washington, D.C. Office of Variance Determination which enabled Research-Cottrell and other employers accused of violating federal safety laws to delay abating hazards for years.¹⁶

Beside OSHA, Research-Cottrell must bear major responsibility for this event. An OSHA inspection revealed in March 1977 that the company had failed to properly maintain its scaffold.¹⁷ Moreover, Research-Cottrell, for years, displayed a lack of concern for its workers' safety. In 23 inspections of the company's sites from 1972 to 1978, OSHA found 71 violations of federal law--an average of three violations a visit.¹⁸ It should also be noted that Research-Cottrell was cited, on June 24, 1976, for serious violations of federal scaffolding regulations.¹⁹ The company used an array of tactics to delay complying with federal law and, in fact, is still not abiding by scaffolding regulations.²⁰

Our investigation does not provide a technical explanation for the disaster. An explanation for the scaffold's collapse may never be found. Our report suggests, however, that the disaster may have been averted if OSHA had enforced federal safety laws and Research-Cottrell had obeyed them. In the absence of evidence that either OSHA or Research-Cottrell protected the workers, the haunting question remains: Could vigorous enforcement and observance of the Occupational Safety and Health Act have prevented the death of 51 workers?

NARRATIVE

The story of the Willow Island scaffold disaster begins in May 1975, when Research-Cottrell, Inc. initiated construction of the first of two cooling towers at Pleasants Power Station in Willow Island, West Virginia.¹ The cooling towers were to be about 430 feet high and about 360 feet in diameter.² They were designed to cool water from the power station before it was returned to the Ohio River.³

To raise each concrete structure, the company used a four-tiered scaffold which was secured to the tower's inside and outside surfaces.⁴ A hydraulic system lifted the scaffold as work on the tower progressed.⁵ The scaffold in use on the first cooling tower would later be used on the second.⁶ On April 27, 1978, the same scaffold would collapse.⁷

Work on the scaffold was extremely dangerous--so much so that Research-Cottrell paid its employees extra for the task.⁸ The Occupational Safety and Health Administration (OSHA) also regarded the work as hazardous: seventeen pages of OSHA regulations were devoted to scaffolding requirements.⁹

During the first year of construction, OSHA inspectors were a familiar sight at Willow Island. Between May 1975 and May 1976, OSHA issued five citations for "serious violations" to contractors other than Research-Cottrell.¹⁰ Three of those citations were issued for hazardous scaffolding.¹¹ OSHA inspectors were also familiar with Research-Cottrell. Between December 1972 and October 1976, OSHA issued five citations for "serious violations" at Research-Cottrell's sites other than Willow Island.¹² Three of those citations involved hazardous scaffolding.¹³

The Variance Request

Research-Cottrell did not always agree with OSHA's assessment of its scaffolding system. On June 24, 1976, OSHA issued two citations to Research-Cottrell for "serious" scaffolding violations at a site in Masontown, Pa.¹⁴ The citations alleged that the company failed to provide screens and toeboards (foot-level planks) on its scaffold.¹⁵ OSHA

*The Occupational Safety and Health Act of 1970 defines "serious violation" as a condition from which "there is a substantial probability that death or serious physical harm could result" and about which the employer knows or, "with the exercise of reasonable diligence," could have known. See 29 U.S.C. §666(j).

required these items to prevent objects from falling on workers below.¹⁶

On July 19, 1976, Research-Cottrell contested the citations,¹⁷ which carried a \$1200 penalty.¹⁸ One week later, Research-Cottrell's safety director, K.F. Weber, wrote OSHA Regional Administrator David H. Rhone about the citations. He said the company was "most concerned" about the "alleged serious violations," but had been "unable to develop a satisfactory toeboard system." Weber asked Rhone for technical assistance in abating the scaffold violations or, as an alternative, technical data to support a request for a variance from OSHA's scaffold requirements.¹⁹

Under federal law, any employer may apply to the Secretary of Labor for a temporary or permanent variance from any OSHA standard.²⁰ The Secretary may grant the variance if the employer demonstrates "that the conditions, practices, means, methods, operations or processes used or proposed... will provide employment and places or employment... which are as safe and healthful as those which would prevail if he complied with the standard."²¹ The law authorizes the Secretary to conduct "an inspection where appropriate" to evaluate a request for a variance from a standard.²² Unlike a compliance inspection, which is designed to find violations of health and safety laws, a variance inspection is designed to see if the variance should be granted.²³

While Rhone and OSHA Regional Solicitor Marsball Harris considered Weber's letter,²⁴ OSHA conducted a second compliance inspection of Research-Cottrell's Masonstown, Pa. site.²⁵ After the October 8, 1976, inspection, OSHA issued another citation for serious scaffold violations. This time OSHA proposed a \$600 penalty.²⁶ On November 16, 1976, five months after OSHA issued the first two scaffold citations, Research-Cottrell submitted a 12-page request for a permanent variance from OSHA's scaffolding regulations.²⁷ Specifically, the company sought a variance from regulations requiring toeboards and guardrails on all scaffold planking.²⁸ The variance request and thickness of scaffold planking, including proposed a list of alternative safety measures, including "a temporary stairtower" on the outside face of the tower to provide access between the ground and the scaffold.²⁹ The application asserted that the alternative measures would provide employees with a workplace "as safe and healthful as would have been obtained by erecting the scaffolds" in accordance with OSHA regulations.³⁰

In addition to the variance, Research-Cottrell asked for an "interim order" permitting the company to use its alternative measures pending a decision on the variance request.³¹ The company sought the variance and interim

order for five construction sites, including Masonstown, Pa. and Willow Island, W.Va.³² Although the interim order had not yet been granted, the company's alternative safety measures were already in effect at all five sites.³³ In essence, Research-Cottrell was seeking approval for its unilateral decision to use scaffolding which did not comply with federal regulations.

The Barto Memo

For two months, OSHA did not act on Research-Cottrell's variance request. On January 6, 1977, Richard P. Wilson, acting director of OSHA's Office of Federal Compliance and State Programs, wrote Weber that the request had been referred to OSHA's Office of Variance Determination.³⁴ Three weeks later, Wilson sent a memo concerning the variance to Rhone, since four of the five construction sites affected were in his region. In his memo, Wilson asked Rhone to have a member of his Technical Support Staff make a variance inspection of "one or more of the worksites to provide a first-hand opinion of the operation." Wilson specifically asked for an evaluation of the temporary stairtower on the outside face of the cooling tower to see if it provided "adequate access and egress to the scaffold."³⁵

On March 3, 1977, four months after the variance request was filed, John K. Barto, chief of OSHA's Division of Safety Programming, expressed the first serious reservations about the request. In a memo to James J. Concannon, Director of the Office of Variance Determination, Barto said he had reviewed the variance request and had two "adverse comments."³⁶ First, he warned "there is a lack of evidence" that the company's alternative safety measures--which were then in effect at Willow Island and the other construction sites--met an OSHA regulation requiring that scaffolds "be capable of supporting without failure at least 4 times the intended load."³⁷

Second, he warned that the company's use of only one temporary stairtower could constitute a violation of a federal statute requiring employers to furnish "a place of employment which [is] free from recognized hazards that are causing or are likely to cause death or serious physical harm." "Where there is only one means of egress, and the employee may have to climb 3 levels of scaffolding, travel 500 ft. and over the veil, before climbing down or descending the stairtower this could constitute a violation of Section 5(a)(1) of the Act," he wrote. At the end of his memo, Barto suggested that "field trip evaluations" may eliminate his objections.³⁸

The Rhone Memo

Sometime between March 3 and March 21, 1977, a "field trip evaluation" was made. During that interval, Walter Wilson, a member of the Technical Support Staff in Rhone's region, made a variance inspection of Research-Cottrell's Willow Island scaffold.³⁹ In an interview with us May 2, 1978, Wilson, now director of OSHA's Philadelphia office, recounted what he saw:

I remember seeing some things that I was not too happy with. There were certain things about the scaffolding that I didn't like. I remember I was concerned about maintenance and modifications of the scaffold.

I talked with some field mechanics at the site. I asked them why modifications had been made in the scaffold. One of the mechanics said the scaffold had arrived at the site with certain things broken, missing, bent. He said mechanics made the repairs and there was no engineering approval when it was repaired.

This was a variance visit, but I wasn't going to let something like this go by. There's no way anything like that [the scaffold] should be cut and welded without full engineering knowledge. The design of the scaffold was based on an engineering understanding of how it could be used. A field mechanic does not have the knowledge and should not be allowed to make modifications of a structure like that. That's what happened.

Procedures should have been immediately instituted for any repairs whatsoever to the scaffold. All repairs should have been made under the direction of the engineers. I felt there should've been an immediate inspection of the scaffold. The company's engineers should have reviewed the whole situation.⁴⁰

When Wilson returned from the site, he wrote a report which he says communicated these views.⁴¹ He also wrote a memo, over Rhone's signature, to Federal Compliance Director Wilson.⁴² The memo, dated March 21, 1977, said "one of our Technical Support Safety Engineers" made "a detailed inspection of the scaffolding" at Willow Island. Although "no work

was being performed at this time due to cold weather," the memo said, "an adequate evaluation was made."⁴³

In a section entitled, "General Comments on Veil Scaffold," the memo expressed the author's concerns:

Discussions with employee representatives revealed that scaffolding was badly in need of repairs when received at site. Further, these repairs were made without knowledge of engineering department. This situation should be promptly rectified; definite procedures are necessary for inspecting and repairing of scaffold under direction of company engineering personnel.⁴⁴

In another section entitled "Conclusions," the memo added this grave warning:

This special scaffolding is engineered to perform a specific function in a given manner utilizing specified parts; unauthorized substitutions could result in disastrous consequences. (emphasis added)⁴⁵

The memo did not say whether "unauthorized substitutions" had been made to the scaffold. It strongly implied, however, that ail was not right with the structure. Beside these warnings, the memo noted that an inspection of "another site of this employer" revealed that necessary precautions were not being taken to protect employees from "serious injury or death."⁴⁶ The memo did not include the location or date of the earlier inspection.

As for the variance request, the memo concluded that the variance should be granted if the company agreed to take all the precautions listed in its application.⁴⁷ In addition, the memo said:

The variance, if granted should include provisions requiring engineering approval prior to performing maintenance and repairs, substitution of parts and use of scaffold or scaffold components in a manner not originally intended....

Variance also should include provisions for regular inspection of scaffold structure and all components with written records maintained; replacement of damaged and worn hardware must be done

on a regular basis as set forth in [29 C.F.R.] 1926.451(a)(8). In all instances the intent of [29 C.F.R.] 1926.451 [OSHA's scaffolding regulations] should be met.⁴⁸

The memo noted that the temporary stairtower, criticized in Barto's March 3, 1977 memo, would provide "adequate access and egress from scaffold if properly maintained."⁴⁹ The memo made no mention of Barto's concern about the scaffold's strength.

The Official Excuses

The March 21, 1977 memo raised grave doubts about the integrity of the Willow Island scaffold. It warned that procedures were needed to promptly inspect and repair the structure. Despite this unambiguous warning, OSHA did not return to inspect the scaffold until April 28, 1978--after the scaffold collapsed.⁵⁰ It will never be known if a subsequent inspection would have uncovered the cause of the disaster.

On May 1, 1978, we asked Richard P. Wilson (recipient of the memo), why he did not arrange a second inspection of the scaffold. He said he was not responsible for variance cases when he received the memo, so he turned it over to Concannon in the Office of Variance Determination.⁵¹

On May 1, 1978, we asked Concannon why he did not arrange a second inspection of the scaffold. He said he received the memo, but "if the scaffold was found to be faulty, Rhone would have had the responsibility of going out again. If they missed something on the first visit, they should have gone out and checked it."⁵²

On May 2, 1978, we asked Walter Wilson why he did not arrange a second inspection of the scaffold. He said: "I sent the memo out over Rhone's signature and was out of the picture after that."⁵³

On May 2, 1978, we asked Rhone why he did not arrange a second inspection of the scaffold. He said he was not aware that a variance inspection had ever been made of Research-Cottrell's Willow Island site. "I don't recall anything coming to my attention that would constitute a threat to the employees and indicate a need for a compliance inspection," he said.⁵⁴

On April 28, 1978, one day after the scaffold collapsed, Research-Cottrell's president, Dennis Carlton-Jones, issued a statement. He said "an OSHA inspection took place in

March of 1977, as a result of which we received an unfavorable comments."⁵⁵ Unfortunately, Carlton-Jones' statement appears to be true.

Intra-Agency Chaos

In April 1977, one year before the scaffold disaster, OSHA made its last inspection of construction at Willow Island. Despite the fact that four officials had seen the warnings in the March 21, 1977 memo, Research-Cottrell was not inspected. No citations were issued.⁵⁶

On July 15, 1977, one year after OSHA issued citations to Research-Cottrell for scaffolding violations in Mazon town, Pa., Harris sent Concannon a copy of photographs taken during the Region's inspection of the Mazon town site.⁵⁷ Apparently, the Office of Variance Determination had not seen the photos before.

On August 1, 1977, five months after the variance inspection of Research-Cottrell's Willow Island scaffold, Concannon sent a memo to Rhone concerning the inspection. "The initial variance inspection made by Mr. Wilson, of your staff, was excellent," the memo said. "He stated quite clearly that the employer must strictly enforce the recommendations in his report to insure safety on the job. We are in total agreement with his report." Concannon wrote that he was pleased that a follow-up variance inspection was planned. He asked Rhone to have his staff investigate hazards caused by lack of toeboards. He did not recommend that inspection be made of Research-Cottrell's scaffold at Willow Island. He did not mention the concerns expressed in Barto's March 3, 1977 memo or Rhone's March 21, 1977 memo.⁵⁸

On August 18, Rhone sent Concannon a memo, signed "Kenneth Gerecke for David H. Rhone," which described a variance inspection of an unnamed Research-Cottrell site. The memo said "tools and building materials, both large and small, are continually dropping as the work progresses." The memo did not discuss any of the problems with the company's scaffold mentioned in Barto's March 3, 1977 memo or Rhone's March 21, 1977 memo.⁵⁹

In September 1977, Research-Cottrell began construction of the second of two cooling towers at Willow Island.⁶⁰ The company moved the scaffold from the first tower to the second.⁶¹ The same scaffold would remain in use on the second tower until the accident April 27, 1978.⁶² It is not known whether the scaffold was ever inspected and repaired under direction of company engineers. When we

asked a spokesman for Research-Cottrell if the scaffold was repaired after March 1977, he said he could not answer the question while investigations were pending.⁶³

The Variance Decision

On September 29, 1977, 15 months after OSHA issued two citations to Research-Cottrell for "serious" hazardous scaffolding at Masontown, Pa., the case was settled. David H. Harris, a judge for the Occupational Safety and Health Review Commission (OSHR), the agency that adjudicates contested OSHA citations, approved the settlement.⁶⁴ It provided: (1) if Research-Cottrell's variance request is granted, the two citations will be dropped and (2) if the variance request is denied, the company will pay the \$1200 penalty and abate the violations.⁶⁵ In effect, the settlement allowed Research-Cottrell to continue violating OSHA's scaffolding regulations until the variance request was resolved. In an interview with us May 2, 1978, Regina Kossek, the OSHA attorney who handled the case, explained why the case was settled in this manner:

Technically, if somebody is in violation of the [Occupational Safety and Health] Act, they can't use a variance request to defend against the violations or to stay the proceedings against them--unless they submitted their variance application prior to the inspection that revealed the violations. But that's not how it always works. The Review Commission judges don't like ruling on a matter which is also before the variance office. They feel that the variance office has the expertise, so they sometimes defer the case to the variance office.⁶⁶

Although Judge Harris had approved a settlement which deferred Research-Cottrell's case to OSHA's variance "experts," officials in OSHA's Office of Variance Determination were confused about the case. On November 1, 1977, one month after Judge Harris approved the settlement of the June 24, 1976 citations, Concannon wrote Weber that the variance office could not "entertain" the variance request, since the citations for hazardous scaffolding issued June 24, 1976, were still pending before the Review Commission.⁶⁷ On November 3, 1977, Weber informed Concannon that those citations had been settled one month earlier.⁶⁸ On November 14, 1977, Concannon wrote Weber that the variance office had retracted its "initial decision" and a "new decision" will be made "within the next few weeks."⁶⁹ On November 22, 1977, Concannon wrote "we will

continue processing your application" if "additional physical evidence" is submitted "within 15 days of receipt of this letter."⁷⁰ On December 9, 1977, Weber wrote Concannon seeking a further delay in the variance decision until a meeting could be arranged with union representatives.⁷¹

Finally, on January 30, 1978, fifteen months after the variance request was filed, the Office of Variance Determination arrived at a decision. Concannon wrote Weber that the variance request, "in its present form," does not offer "a feasible means of protecting employees in an equivalent manner to that required by the [OSHA] standard." "Therefore," said Concannon, "your request... is denied without prejudice to the filing of another application."⁷²

Research-Cottrell's variance request had been denied and, under the terms of the September 29, 1977 settlement, the company was now bound to abate its scaffolding violations and pay the \$1200 penalty. However, Research-Cottrell did not respect the agreement. Instead, it continued to use its alternative safety measures which had been deemed insufficient by the Office of Variance Determination.⁷³

On February 3, 1978, Research-Cottrell filed "amendments" to its variance request and asked OSHA to "reconsider our original application" in light of the amendments.⁷⁴ The amendments consisted of a plan to erect a fence around each cooling tower to protect workers on the ground from objects falling from the scaffold.⁷⁵ Although copies of the amendments were sent to Bingham, Rhone,⁷⁷ and Regional Solicitor Harris,⁷⁸ it appears that none of these officials protested that Research-Cottrell was violating the terms of the settlement. At the Office of Variance Determination, the "amendments" were treated as a routine application. On March 13, 1978, Concannon wrote Weber that he had received the amended variance request and "you will be advised when a decision is made."⁷⁹

On April 17, 1978, three officials from OSHA's Washington, D.C. headquarters made a variance inspection of Research-Cottrell's construction site in Berwick, Pa. They inspected a fence near the cooling tower, but did not file an inspection report.⁸⁰ The amended variance application is still pending.⁸¹

The Disaster

At about 10:00 a.m. on April 27, 1978, Research-Cottrell's Willow Island scaffold collapsed. All 51 workers on the structure died.⁸² Ten members of one family perished in the accident.⁸³ Eyewitnesses later recalled "it was all over in 20 or 30 seconds."⁸⁴

Within hours after the accident, OSHA spokesman James Foster told the press that the agency had made 13 inspections of Willow Island construction sites since 1973. However, none of those inspections had been made of Research-Cottrell's Willow Island site, he said. Foster did not mention the March 1977 variance inspection conducted by Walter Wilson.⁸⁵

The Aftermath

The day after the accident, OSHA Assistant Secretary Eula Bingham arrived at Willow Island. She termed the disaster the worst accident ever to occur at a workplace regulated by OSHA.⁸⁶ The same day, a seven-man team of OSHA officials began investigating the accident. The team was headed by Rhone.⁸⁷

In Washington, D.C., OSHA officials defended the agency. Foster repeated that OSHA had made "no inspection of this contractor at that construction site."⁸⁸ Jeanne Werner, assistant to Bingham, noted that 24.5 percent of OSHA's inspections from October 1977 to February 1978 were made of construction sites.⁸⁹ Don McKenzie, a field coordinator who was overseeing the investigation, complained that reporters "are asking questions like they want to accuse us of something."⁹⁰

Construction workers at Willow Island had no kind words for the agency. "Let me tell you about OSHA," said Roger Miller, a relative of several victims. "Those damned inspectors come around and ask about handrails and that's about all. They don't know a thing."⁹¹ Roger Buskirk, a pipefitter from Parkersburg, W.Va., agreed: "There was no need for this slaughter. I say when a man can't go to work and be safe, it's a terrible thing. This had to be a safety violation. It's just not supposed to happen."⁹²

On May 1, 1978, when we visited OSHA to research this report, we found items missing from Research-Cottrell's files at the Office of Variance Determination. A note said the items were "deleted from this file based upon Exemption 5 of the P.O.I.A. {Freedom of Information Act}.⁹³ That exemption protects certain "Inter-agency or intra-agency memorandums or letters."⁹⁴

CHRONOLOGY

- May 1975 Research-Cottrell begins construction of first of two cooling towers at Pleasants Power Station in Willow Island, W.Va.¹ Scaffold in use at first tower will later be used at second tower.²
- August 5, 1975 OSHA inspects Research-Cottrell's construction site in Belle Mead, N.J., and issues one citation for serious violation involving electrical hazard. \$600 penalty is proposed.³
- August 26, 1975 OSHA inspects Schneider Inc.'s construction site at Willow Island, W.Va. and issues one citation for serious violation involving hazardous scaffolding. \$600 penalty is proposed.⁴
- May 21, 1976 OSHA inspects Kelly Steel Fabricator's Willow Island site and issues citation for serious violation involving hazardous scaffolding. \$1000 penalty is proposed.⁵
- May 24, 1976 OSHA returns to Kelly Steel Fabricator's Willow Island site and issues one citation for repeated serious violation involving hazardous scaffolding. \$1800 penalty is proposed.⁶
- June 6, 1976 OSHA inspects Research-Cottrell's construction site at Hatfield Power Station in Masontown, Pa. and, on June 24, 1976, issues two citations for serious violations involving hazardous scaffolding. Citations allege company failed to provide toeboards and screens on scaffold to prevent objects from falling on workers below. \$1200 penalty is proposed.⁷
- July 19, 1976 Research-Cottrell contests citations issued by OSHA June 24, 1976 concerning hazardous scaffolding at Masontown, Pa. site.⁸
- July 26, 1976 Research-Cottrell Safety Director K.P. Weber writes OSHA Regional Administrator David H. Rhone seeking "assistance in abating alleged violations" in June 24, 1976 citations. Weber also seeks technical data to support possible application

for variance, from OSHA scaffolding regulations.⁹

Rhone forwards Weber's letter to Regional Solicitor Marshall Harris, #10 since it "involves a legal decision."¹⁰

OSHA inspects Research-Cottrell's construction site at Hatfield Power Station in Masontown, Pa. second time. Agency issues another citation for serious scaffolding violations. \$600 penalty is proposed.¹¹

Research-Cottrell submits 12-page request for permanent variance from OSHA regulations requiring toeboards and guardrails on all scaffolds and specifying grade, length and thickness of scaffold planking. Company proposes alternative safety measures and requests interim order permitting company to use alternative measures pending OSHA decision on variance application. Variance and interim order are sought for five construction sites, including Willow Island, W.Va.¹² Although interim order has not been granted, company's alternative measures are already in effect at all five sites.¹³

Richard P. Wilson, acting director of OSHA Office of Federal Compliance and State Programs, writes Weber that variance application has been referred to OSHA Office of Variance Determination.¹⁴

Wilson sends memo concerning variance application to Rhone, since four of five construction sites are in his region. Wilson asks Rhone to have member of his staff make a "variance inspection" of "one or more of the worksites to provide a first-hand opinion of the operation." Wilson specifically asks for an evaluation of a temporary stairtower on cooling tower to see if it provides "adequate access and egress to the scaffold."¹⁵

Unnamed OSHA compliance officer sends memo to unnamed OSHA Regional Solicitor. Document unavailable to us, since OSHA

March 3, 1977

removed it from files, citing Freedom of Information Act.¹⁶

John K. Barto, chief of OSHA Division of Occupational Safety Programming, expresses reservation about variance application in memo to James J. Concannon, director of Office of Variance Determination. Barto says "there is a lack of evidence" that company's alternative measures meet OSHA regulation requiring that scaffolds "be capable of supporting without failure at least 4 times the maximum intended load." Barto also warns that company's use of only one temporary stairtower could constitute violation of a federal statute requiring employers to furnish "a place of employment which [is] free from recognized hazards that are causing or are likely to cause death or serious physical harm." Barto says "field trip evaluations may eliminate these adverse comments."¹⁷

March 21, 1977

Rhone sends memo to Wilson describing "variance inspection" conducted that month at Research-Cottrell's scaffold at Willow Island, W.Va. Memo says Walter Wilson, an OSHA Regional Technical Support Safety Engineer, made "a detailed inspection of the scaffolding" which revealed that it was "badly in need of repairs when received at site" and that "repairs were made without knowledge of engineering department." Memo says "this situation should be promptly rectified; definite procedures are necessary for inspecting and repairing of scaffold under direction of company engineering personnel." Memo notes that inspection at another unnamed site of Research-Cottrell revealed that necessary precautions were not being taken to protect employees from "serious injury or death." Memo concludes that variance application should be granted, but only if company agrees to take long list of safety precautions.¹⁸

On May 1, 1978, Director Wilson says he was not responsible for variance requests when he received memo from

Rhone, so he turned memo over to Concannon in OSHA Office of Variance Determination.¹⁹

On May 1, 1978, Concannon says he received memo from Wilson, but "if the scaffold was found to be faulty, Rhone would have had the responsibility of going out again."²⁰

On May 2, 1978, Inspector Wilson recalls he was concerned about "maintenance and modifications" of scaffold and "felt there should've been an immediate inspection. Company engineers should've reviewed the entire situation." He says he wrote the memo over Rhone's signature and "was out of the picture after that."²¹

On May 2, 1978, Rhone says he was not aware that inspection was ever made of Research-Cottrell's scaffold at Willow Island, W.Va. He says: "I don't recall anything coming to my attention that would constitute a threat to the employees and indicate a need for a compliance inspection."²²

April 1977

OSHA inspects a contractor at Willow Island, W.Va. site other than Research-Cottrell. No citations are issued. Inspection is last OSHA visit to site before scaffolding accident April 27, 1978.²³

July 15, 1977

Regional Solicitor Harris sends Concannon photos taken during OSHA inspection of Research-Cottrell's scaffold at Mason-towa, Pa., June 6, 1976.²⁴

August 1, 1977

Concannon sends memo to Rhone stating "variance inspection made by Mr. Wilson, of your staff, was excellent....We are in total agreement with his report." Memo does not discuss any problems with scaffold noted in Barto's March 3, 1977 memo or Rhone's March 21, 1977 memo.²⁵

August 18, 1977

Rhone sends memo to Concannon describing variance inspection of unnamed Research-Cottrell site. Memo, signed "Kenneth Derecke for David H. Rhone," says "tools

and building materials, both large and small, are continually dropping as the work progresses." Memo does not discuss any problems with scaffold noted in Barto's March 3, 1977 memo or Rhone's March 21, 1977 memo.²⁶

September 1977

Research-Cottrell begins construction of second of two cooling towers at Willow Island, W.Va.²⁷ Company moves scaffold from first tower to second tower.²⁸ Same scaffold remains on second tower until accident April 27, 1978.²⁹

September 29, 1977

Occupational Safety and Health Review Commission Judge David H. Harris approves settlement of citations for hazardous scaffolding violations issued to Research-Cottrell June 24, 1976.³⁰ Settlement provides: (a) if variance request is granted, citations for serious scaffolding violations will be dropped, (b) if variance request is denied, company will pay \$1200 penalty and abate hazardous scaffolding conditions.³¹ Company's alternative safety measures, proposed in variance application and criticized in Barto's March 3, 1977 memo, remain in effect at Willow Island and four other sites.³²

November 1, 1977

Concannon writes Weber that OSHA Office of Variance Determination has decided not to "entertain" variance application, since June 24, 1976 citations concerning scaffold are still pending before OSH Review Commission.³³

November 3, 1977

Weber phones Concannon to inform him that June 24, 1976 citations were settled September 29, 1977.³⁴

November 14, 1977

Concannon writes Weber that OSHA Office of Variance Determination has retracted its "initial decision" on variance request. Concannon says "new decision" will be made "within the next few weeks."³⁵

November 22, 1977

Concannon writes Weber that variance request will be denied. But he says "we will continue processing your

application" if company submits "additional physical evidence" within 15 days of receipt of letter.³⁶

December 9, 1977

Weber writes Concannon that Research-Cottrell wants OSHA to delay action on variance request until company meets with union representatives.³⁷

December 30, 1977

Concannon writes Weber asking for date of meeting with union representatives.³⁸

January 30, 1978

Concannon writes Weber that variance request, in its present form, does not offer "a feasible means of protecting the employees in an equivalent manner to that required by the standard. Therefore, your request...is denied without prejudice to the filing of another application."³⁹ Contrary to terms of September 29, 1977 settlement of hazard-sous scaffolding citations, Research-Cottrell does not abate scaffolding violations or pay \$1200 penalty. Instead, company continues to use same alternative safety measures which were deemed insufficient by Office of Variance Determination and criticized in Barto's March 3, 1977 memo.⁴⁰

February 3, 1978

Research-Cottrell files amendments to application for permanent variance and interim order. Amendments propose that fence be erected around base of cooling tower to protect workers from falling objects.⁴¹ Copies are sent to Rhone and Harris.⁴²

March 13, 1978

Concannon writes Weber that amended variance request has been received and "you will be advised when a decision is made."⁴³ Decision is still pending.⁴⁴

April 17, 1978

Three OSHA officials make variance inspection of Research-Cottrell construction site at Susquehanna Power Station in Berwick, Pa. No findings are issued.⁴⁵

April 27, 1978

Scaffold collapses at Research-Cottrell's Willow Island, W.Va. construction site. 51 men die, including 10 from one family.⁴⁶

OSHA spokesman James Foster tells press that agency made 13 inspections of Willow Island construction sites since 1973, but none of Research-Cottrell's Willow Island site. Foster does not mention March 1977 variance inspection of Research-Cottrell's Willow Island scaffold. Mor does he discuss March 21, 1977 memo warning that scaffold needs to be inspected and repaired.⁴⁷

April 28, 1978

OSHA spokesman Foster repeats that OSHA made "no inspection of this contractor at that construction site."⁴⁸ Jeanne Werner, assistant to OSHA Assistant Secretary Eula Bingham, defends agency, noting that 24.5 percent of OSHA inspections from October 1977 to February 1978 were done at construction sites.⁴⁹ OSHA Field Coordinator Don McKenzie complains that reporters are "asking questions like they want to accuse us of something."⁵⁰ OSHA names Rhone to head seven-man investigatory team at disaster site.⁵¹

Research-Cottrell President Dennis Carlton-Jones issues statement saying an OSHA inspection of the fallen scaffold "took place in March of 1977, as a result of which we received no unfavorable comments." He adds "in no case did we receive unfavorable comments with respect to [the scaffold's] overall safety and integrity." Company declines further comment until its investigation is completed.⁵²

May 1, 1978

Items are found to be missing from Research-Cottrell's file at OSHA Office of Variance Determination. Note in file says items were "deleted" based on Freedom of Information Act.⁵³