



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

**Department of Labor and  
Workforce Development**

**LABOR STANDARDS AND SAFETY  
Occupational Safety and Health  
Enforcement**

1251 Muldoon Road, Suite 109  
Anchorage, Alaska 99504  
Main: 907 269 4940  
1 800 770 4940  
Fax: 907 269-4950

**TO: Joseph A. Knowles  
Director, LSS**

**DATE: November 12, 2020**

**THRU: Ronald Larsen  
Chief of Enforcement**

**PHONE: (907) 269-4952**

**FROM: Brandon Field  
Lead CSHO**

**PHONE: (907) 754-3528**

**SUBJECT: Permission to Issue Willful General Duty Clause Citation**

Alaska Occupational Safety and Health (AKOSH) requests authorization to issue a willful violation of the General Duty Clause A.S. 18.60.075(a)(4) to Copper River Seafoods, Inc. (Inspection # 1486177).

Copper River Seafoods, Inc. (CRS) failed to furnish a place of employment that was free from recognized hazards by:

Failing to effectively screen workers for known symptoms of COVID-19.

Failing to effectively implement social distancing.

Failing to effectively prevent sick and symptomatic workers from entering the facility.

Failing to provide physical barriers for employees when they could not socially distance.

The following is a timeline of events which demonstrates that CRS exhibited "plain indifference" regarding their efforts to protect their employees from COVID-19, caused by the SARS-CoV-2 virus (Novel Coronavirus):

1. In December 2019, COVID-19 was first identified in China. On January 31, 2020, the United States Department of Health and Human Services declared a public health emergency regarding COVID-19. On March 11, 2020 the State of Alaska declared a Public Health Disaster regarding COVID-19. On March 12, 2020, the State of Alaska recorded its first known case of COVID-19 and community transmission was first identified within the State of Alaska on March 22, 2020.
2. On March 25, 2020, the State of Alaska issued Health Mandate 10. On May 15<sup>th</sup>, the State of Alaska added Appendix 1, which classified seafood processors as critical infrastructure and required the development of plans which outlined procedures to be put in place for avoiding

the spread of COVID-19. Guidance documents were also published within this Appendix, which specifically discussed Workplace Protective Measures to include "Use and cleaning of Personal Protective Equipment (PPE), to include face masks, Protective measures for Galleys/Cafeterias/Dining rooms and other food areas, and Protective measures for those areas and actions where social distancing protocols cannot be maintained".

3. On March 27, 2020, CRS prepared their first COVID-19 Action Plan and Infectious Disease Program in accordance with the State of Alaska Health Mandates. CRS's COVID-19 Action Plan and Infectious Disease Program states under an exemption listed in Section IV.c.ii: "Copper River Seafoods is considered a Critical Infrastructure Company. All employees of the company and all contracted workers who have been employed by the company to conduct Critical Infrastructure work are considered exempt from federal, state, and local restrictions such as social distancing. The company will make every attempt to put social distancing protocols into place, however, due to equipment, workspace, and other constraints, this may not be feasible in many situations". This stated exemption does not exist in any Federal Agency guidelines, State of Alaska or Municipal Health Mandate.
4. On July 6, 2020, CRS received their initial approval for their COVID-19 Action Plan from the State of Alaska. The State of Alaska Medical Plan Review Task Force conducted an additional medical and epidemiological review of the plan and issued two findings regarding the work protection plan, stating: "Integrating findings from the medical and epidemiological review will strengthen protective measures already enacted while improving processes for reporting, transporting, protecting the workforce, and testing and treating workers with COVID-19. Protective measures and procedures are critical to safeguarding your employees and the citizens of the communities in which you operate, both this season and in future years". The two findings identified were: "Need to address the use of PCR testing" and "What happens if a positive case happens". Copper River Seafoods did not submit further plans to the State of Alaska Unified Command for review.
5. On July 17, 2020, CRS recorded its first case of COVID-19 in an employee. On July 20, CRS recorded its second case of COVID-19. CRS contracted Capstone Family Medicine (Capstone) to perform on-site COVID-19 testing at the 1400 E 1<sup>st</sup> Avenue plant. Capstone performed on-site testing on July 21<sup>st</sup> and July 22<sup>nd</sup> with additional employee testing conducted off site at later dates. While performing on-site testing, Capstone employees observed CRS employees to be visibly ill, even noting that one employee had been removed from quarantine to come to the facility and be tested. While Capstone was on site performing the testing, CRS employees had to be reminded to practice social distancing as they were crowding together into the area where the tests were being performed. On July 21, an additional eight employees tested positive. On July 22, forty-seven employees tested positive. On July 23, thirteen employees tested positive. On July 24, twenty more employees tested positive. Two other CRS employees who were not tested during the onsite testing which occurred at the plant on the 21<sup>st</sup> or 22<sup>nd</sup> required hospitalization. According to records obtained, CRS had 123 employees who had worked between July 15<sup>th</sup>,

2020 and August 7<sup>th</sup>, 2020. DHSS reported to AKOSH that as of August 13, 95 CRS employees had tested positive for COVID-19 (77%).

6. On July 31, 2020 AKOSH received an interagency referral from the State of Alaska, Department of Health and Social Services (DHSS) regarding their investigation into the high levels of COVID-19 at Copper River Seafoods citing concerns surrounding employee safety. During contact tracing interviews performed by DHSS, nineteen employees reported health and safety concerns to DHSS which included: personally working or having observed other employees while exhibiting symptoms of COVID-19 for one or more days, experiencing crowded working conditions, being required to purchase their own masks, and having reported these concerns to members of management with no corrective action taking place.
7. The CRS COVID-19 Action Plan and Infectious Disease Program was amended on August 5, 2020, seventeen days after CRS had experienced a significant outbreak of COVID-19 at the East plant. The amendment made no changes to social distancing requirements or the installation of physical barriers where distancing was impractical or infeasible.
8. On August 7, 2020, AKOSH conducted an onsite inspection at the CRS East Plant as a result of the interagency referral from DHSS. CRS had recently reopened the East plant after having ceased operations for a period of two weeks to perform touch surface disinfecting. During this inspection, employees were documented to be working closer than 6 feet together on the fish processing line. No barriers were installed. The CRS COVID-19 management plan states in Section X: "Workers in critical infrastructure sectors may be permitted to work if asymptomatic after potential exposure to a confirmed case of coronavirus disease 2019 (COVID-19), provided that worker infection prevention recommendations and controls are implemented". At the time of the inspection, CRS had instituted no additional safety precautions for employees despite having experienced a wide spread outbreak in its work force.
9. Review of DHSS and CRS records revealed that five employees who had tested positive for COVID-19 were present and working at the plant at the time on the on-site inspection, despite being required to quarantine for a minimum period of ten days.

The AKOSH Field Operations Manual (FOM) sets forth four elements required for a general duty clause violation: The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed; The hazard was recognized; The hazard was causing or was likely to cause death or serious physical harm; and There was a feasible and useful method to correct the hazard.

The facts of this case meet these requirements as follows:

**The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed-** Sometime before July 21, the employees at the CRS east plant were exposed to COVID-19. The failure of CRS to institute feasible protections for employees resulted in the outbreak which eventually infected 92 CRS employees and resulted in the hospitalization of two.

**The hazard was recognized-** The SARS-COV-2 virus caused a global pandemic and a public health emergency was declared nationally within the United States on January 31, 2020. The State of Alaska issued a public health emergency declaration on March 11, 2020. Throughout the beginning of the year, COVID-19 was intensely discussed throughout media, government and the public. Before beginning processing operations for the season, CRS was required to submit a COVID-19 protection plan to the State of Alaska unified command for review, which ensured that CRS management was very well aware of the specific hazard that COVID-19 presented to its employees.

**The hazard was causing or was likely to cause death or serious physical harm-** While the specific death rates and long term health effects are still debated and studied, it is conclusive that COVID-19 is a dangerous illness, which increases exponentially in lethality with age and underlying health conditions. Of the 92 CRS employees whom tested positive for COVID-19, two were hospitalized in critical condition.

**There was a feasible and useful method to correct the hazard-** Public health guidance for reducing exposure to COVID-19 has been widely available to the public since a national public health emergency was declared. The Centers for Disease Control (CDC) has published numerous documents in conjunction with OSHA which relate specifically to controlling COVID-19 in workplaces and additional guidance which targets high-hazard industries where it is likely to spread such as meat packing and seafood processing facilities. Of these recommendations, many of them are low cost and most of them do not require extensive modifications to an employer's place of business. These options include symptom screening before entering the workplace, use of masks and other face coverings, social distancing of at least 6 feet between employees and physical barriers between employees when social distancing is not feasible.

A willful violation exists under Alaska's occupational safety and health laws where an employer has demonstrated either an intentional disregard for the requirements of Alaska's occupational safety and health laws or a plain indifference to employee safety and health.

The FOM defines plain indifference as follows:

c. An employer was not aware of any legal requirement, but knows that a condition or practice in the workplace is a serious hazard to the safety or health of employees and makes little or no effort to determine the extent of the problem or to take the corrective action. Knowledge of a hazard may be gained from such means as insurance company reports, safety committee or other internal reports, the occurrence of illnesses or injuries, or complaints of employees or their representatives (FOM p. 4-24).

CRS has repeatedly displayed a plain indifference for the health and safety of its own employees:

Management officials were aware of health and safety precautions that were required to protect employees from COVID-19, as they were required by the State of Alaska to develop and implement a plan intended to address protective measures to be taken. This plan was not adequately implemented. While employees were provided with surgical masks to wear, there was little to no hand sanitizer available for use within the facility. Employees were not required to socially distance either on the processing line or during breaks. CRS did not provide any physical barriers between employees whom could not socially distance while working. This is despite the fact that the Director of Compliance was specifically aware of the need for barriers between employees and even forwarded examples of such barriers from other processors in Alaska to other CRS management.

CRS Management was aware that employees were ill, but dismissed this as being "a normal type of sickness" at the time of the outbreak within the plant. Despite experiencing a substantial outbreak of COVID-19, which caused them to cease operations for approximately two weeks, CRS took only minimal actions to protect their employees upon reopening the facility, stating that social distancing and/or the installation of physical barriers was not practical due to the size or equipment configuration of their plant. During this time, CRS was actively engaged with public health officials from the State of Alaska and the Municipality of Anchorage, who described their initial meetings with CRS ownership and management as "hostile".

Additionally, it is important to point out that the FOM specifies an important distinction about willful violations and employer intent:

"It is not necessary that the violation be committed with a bad purpose or malicious intent to be deemed "willful." It is sufficient that the violation was deliberate, voluntary or intentional as distinguished from inadvertent, accidental or ordinarily negligent." (FOM p. 4-25)

AKOSH has examined thirty seven other COVID-19 related citations already issued across the country from both Federal OSHA and other State plans, including two general duty violations issued to meat processors whom also experienced significant COVID-19 outbreaks (See attachments). This case is substantially similar in facts and evidence to those two cases. The primary difference being that those employers corrected the hazardous conditions once inspected and prior to citations being issued. Both other general duty violations were issued to meat packing plants, whose operations are substantially similar to seafood processing. For example, both meat packing and seafood processing utilize large labor forces to work on production lines in close proximity to each other as they perform individual tasks in order to process meat from a whole animal into a product for sale. As such, this violation has very firm ground as a General Duty clause violation, both in fact and in precedent.

The willful nature of the violation stems primarily from the fact that, after managing an outbreak of 95 or more employees, the only step CRS took to ensure employee health in the plant was to clean surfaces. Once employees went back to work, AKOSH documented with photographs, the same deficient workplace protections that contributed to the initial outbreak. This demonstrates a plain indifference to employee safety and health by showing that CRS did not care to evaluate what led to the outbreak in their facility and make attempts to correct it, despite established industry best-practices, which were implemented and in use by other seafood processors across the State.

If approved, the penalty for this Willful-General Duty Clause citation will be \$134,937 in accordance with penalty assessment procedures outlined in the AKOSH FOM. In addition to this citation, AKOSH is alleging the following violations: Repeat: Failure to Report the inpatient hospitalization of an employee due to a workplace accident or illness, Serious citations: Eyewash stations, Respiratory Protection, Hazard Communication Training, Other Than Serious: Failure to record an illnesses on the OSHA 300.

Total penalties for all citations will be \$241,610.

General Duty:    Approved             Denied

Willful:            Approved             Denied

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(Name)

\_\_\_\_\_  
(Signature)

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(Date)

