

LAW OFFICES OF  
**HOLMES WEDDLE & BARCOTT**  
A PROFESSIONAL CORPORATION

FOUNDED IN 1914

OVER A CENTURY OF SERVICE TO OUR CLIENTS

701 WEST EIGHTH AVENUE, SUITE 700 • ANCHORAGE, ALASKA 99501-3408  
TEL (907) 274-0666 • FAX (907) 277-4657

March 8, 2021

Representative Zack Fields  
[Representative.Zack.Fields@akleg.gov](mailto:Representative.Zack.Fields@akleg.gov)

Representative Ivy Spohnholz  
[Representative.Ivy.Spohnholz@akleg.gov](mailto:Representative.Ivy.Spohnholz@akleg.gov)

**RE: March 12 Committee Hearing on Workplace Safety**

Dear Representatives Fields and Spohnholz:

We represent Copper River Seafoods with regard to the investigation that occurred in the summer of 2020 by the Alaska Department of Occupational Safety and Health Enforcement. The purpose of this letter is to reach out to you in your role as co-chair of the State House Labor and Commerce Committee. It has come to our attention that you intend to discuss issues regarding Workplace Safety in the Seafood Industry, and particularly the investigations that occurred into Copper River Seafoods and Glacier Seafoods.

Copper River Seafoods values the health and safety of its employees above all else. The COVID-19 pandemic that began in 2020 presented unique and enormous challenges to the seafood industry. Copper River Seafoods has worked to comply with all government mandates that pertain to the health and safety of its employees and the community as a whole. Copper River Seafoods has been, and remains motivated to keep its employees healthy, working, and its plants operating safely. And it has been and remains committed to working through any concerns with the Alaska Department of Occupational Safety and Health Enforcement.

Recently, given the reported actions by the commissioner to dismiss any penalties and citations, and the subsequent leak of internal confidential investigation documents, Copper River Seafoods was brought under the microscope of the public eye to its detriment. While there may be process issues within the department that require serious scrutiny and review by the legislature, Copper River Seafoods has been unfairly thrust into the public spotlight with accusations of willful bad conduct without notice or ever having an opportunity to respond to such serious allegations. The bottom line is following the closing conference in this matter, Copper River Seafoods was never issued a notice of violation or citation nor were any penalties levied against it, so there was no enforcement action for Copper River Seafood to respond to. As discussed further below, it would be inappropriate for the legislature to “try” Copper River Seafood’s Covid-19 response in a legislative hearing outside the statutory scheme that ensures due process for employers such as Copper River. It is, however, appropriate for the legislature to ensure that the department’s processes generally comply with the law.

It is important to keep in mind the legal framework for agency action in reviewing the internal processes of the department. There are two primary issues in consideration that have been inappropriately consolidated in recent media. The law contemplates the two separate and apart from each other. AS 18.60.091 addresses citations and provides that the department may issue an employer a citation. For example, the department had authority to issue a citation the day the investigation or closing conference took place without consulting the commissioner. AS 18.60.095 addresses penalties and provides that the commissioner may assess a penalty. While citations and penalties go hand in hand, they are two distinct items under the law, and the commissioner is only specifically referenced with regard to penalties (statutes attached).<sup>1</sup>

The AKOSH Field Operations Manual (“FOM”) is a program directive which establishes the policies and procedures for the enforcement of Alaska’s occupational safety and health standards.<sup>2</sup> When considering the issuance of citations, the FOM provides only that citations under the general duty clause must undergo pre-citation review by the Chief of OSH. FOM at pg. 4-23, effectuating the law that it is the department that issues the citations. It is not in the issuance of a citation, but only in the assessment of a penalty where the commissioner must be consulted prior to the issuance of such penalty. This conforms to the authority provided in AS 18.60.095 and is highlighted in the FOM at pg. 6-18.

With regard to the Copper River Seafoods investigation, the record demonstrates that on July 31, 2020 Dale Williamson was assigned to conduct an inspection. The inspection took place on August 7, 2020 and Copper River Seafoods cooperated with the same. A closing conference was held on September 1, 2020. Copper River Seafoods was provided with the standard Closing Conference Worksheet that provides notice that citations may be issued for some or all of the alleged violations and monetary penalties may, or may not, be assessed. This worksheet also provides that if citations are issued, an employer will be provided reasonable time to abate any violation. In addition, the worksheet indicates if a citation issues an employer has multiple avenues to address, discuss or contest the information contained therein. However, following the closing conference on September 1, 2020, Copper River Seafoods was issued no written notice of violation or citation from the department.

During the course of the investigation both in the inspection and closing conference, AKOSH employees and Copper River Seafoods discussed the findings of the inspection and areas of safety improvement. Former AKOSH Chief of Enforcement John Stallone recently was quoted as saying “the entire investigation went out the window. They don’t have to fix one damn thing now.”<sup>3</sup> The idea that without citation there wasn’t corrective action taken by Copper River Seafoods is incorrect. During the investigation Copper River Seafoods was able to gain valuable information and took the investigation seriously. It has utilized that knowledge to improve the workplace and increase the health and safety of its employees. Copper River Seafoods is harmed by these defamatory statements, and we encourage you to be mindful not to solicit false or misleading statements during the course of the upcoming hearing.

---

<sup>1</sup> The entire text of the statutes is attached hereto for reference.

<sup>2</sup> [https://labor.alaska.gov/lss/program\\_directives/PD\\_21-02.pdf](https://labor.alaska.gov/lss/program_directives/PD_21-02.pdf). The FOM was recently revised, however, the pertinent cited directives have not change over the relevant time period.

<sup>3</sup> <https://www.adn.com/alaska-news/2021/03/04/alaska-labor-commissioner-cancels-450000-fine-for-seafood-processor-over-health-and-safety-problems/>.

Copper River Seafoods had no knowledge of any department deliberations regarding its investigation. Its first knowledge of any department action was from the recent press articles. Contrary to inferences in the press that Copper River Seafoods improperly influenced the department or its staff, Copper River Seafoods did not contact any member of the department or administration and did not interfere in the process or influence any decisions. Any statement or inference that Copper River Seafoods had anything to do with the decisions of the commissioner or her staff is false.

Instead of going through the processes provided for in law and regulation where the investigation is confidential, certain (but not all) confidential documents have now been leaked. Copper River Seafoods objects strenuously to having this matter “litigated” in a public committee hearing rather than the administrative process provided by law. Realistically, Copper River Seafoods has been placed in a tenuous position of having to defend itself outside the administrative process that provides for notification, informal negotiation, formal hearing and appeal on confidential matters that directly impact its valued employees.

While there may be issues for the legislature to investigate generally within the department, such as how citations and penalties are reviewed internally and issued, this process issue sits with the department and not with our client. It is concerning that individuals continue to besmirch the good name of an Alaskan business when it was never provided with any written notification, let alone citation or penalty assessment, nor provided an opportunity to respond. The focus of the upcoming hearing should be on the actions of the department as a whole particularly with regard to AKOSH investigations, and not on safety within the seafood industry or on Copper River Seafoods’ COVID-19 response.

Copper River Seafoods supports the committee’s work to ensure a safe and healthy working environment for employees. But we ask that you focus on the work within the department related to investigations as a whole, and not on the Copper River Seafoods’ investigation where you have incomplete knowledge as the investigation is and should remain confidential. The committee can surely work to address process issues, any conflicts among the law, regulations and field operations manual, or any allegations of abuse of discretion, to ensure a fair and thorough process when it comes to investigation, citations and penalties without unfairly using Copper River Seafoods as an example or further besmirching its good name.

Sincerely,

HOLMES WEDDLE & BARCOTT, P.C.

*s/Jahna M. Lindemuth/*  
Jahna M. Lindemuth

*s/Stacey C. Stone/*  
Stacey C. Stone

cc: Rachel Witty, Department of Law, Section Chief for Labor and State Affairs  
Tim Petumenos, Copper River Seafoods

### **AS 18.60.091. Citations.**

(a) If, upon inspection or investigation, the department believes that an employer has violated a provision of [AS 18.60.010](#) — 18.60.105 that is applicable to the employer, the department shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and must describe with particularity the nature of the violation, including reference to the provisions of [AS 18.60.010](#) — 18.60.105 or any order or regulation alleged to have been violated, and must fix a reasonable time for abatement of the violation. The department may prescribe procedures for the issuance of a notice instead of a citation with respect to minor violations that have no direct or immediate relationship to safety or health, or violations that are not serious and that the employer agrees to correct within a reasonable time. If an employer does not, within a reasonable time set out in the notice, correct a violation that is not serious, the department shall issue a citation to the employer.

(b) Upon receipt by the employer, each citation issued under this section, or a copy of the citation, shall be immediately and prominently posted, at or near each place the violation referred to in the citation occurred.

(c) A citation may not be issued for a particular violation under this section after the expiration of 180 days following the discovery of the violation by the department or correction of a violation.

### **AS 18.60.095. Penalties.**

(a) An employer who wilfully or repeatedly violates a provision of AS 18.60.010 — 18.60.105 that is applicable to the employer or a standard or regulation adopted under AS 18.60.010 — 18.60.105 may be assessed by the commissioner a civil penalty of not more than the maximum amount or less than the minimum amount established by regulation under (i) of this section for each violation.

(b) An employer who receives a citation for a serious violation of a provision of AS 18.60.010 — 18.60.105 that is applicable to the employer or of a standard or regulation adopted under AS 18.60.010 — 18.60.105 shall be assessed by the commissioner a civil penalty of not more than the maximum amount established by regulation under (i) of this section. For purposes of this subsection, a serious violation is considered to exist if the violation creates in the place of employment a substantial probability of death or serious physical harm. However, a serious violation is not considered to exist if the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(c) An employer who receives a citation for a violation of a provision of AS 18.60.010 — 18.60.105 that is applicable to the employer or a standard or regulation adopted under AS 18.60.010 — 18.60.105, and the violation is specifically determined not to be of a serious nature, may be assessed by the

commissioner a civil penalty of not more than the maximum amount established by regulation under (i) of this section.

(d) An employer who fails to correct a violation within the period permitted for its correction for which a citation has been issued may be assessed by the commissioner a civil penalty of not more than the maximum amount established by regulation under (i) of this section.

(e) An employer who wilfully or repeatedly violates a provision of AS 18.60.010 — 18.60.105 that is applicable to the employer or a standard or regulation adopted under AS 18.60.010 — 18.60.105, and the violation causes death to an employee, upon conviction, is punishable by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both. However, upon a second conviction after a prior conviction for a violation causing death, an employer is punishable by a fine of not more than \$20,000, or by imprisonment for not more than one year, or by both. This subsection does not preclude prosecution of the employer under AS 11.

(f) A person who knowingly makes a false statement, representation, or certification with the intent to mislead in an application, record, report, plan or other document filed or required to be maintained under AS 18.60.010 — 18.60.105 is guilty of unsworn falsification in the second degree.

(g) An employer who violates the posting requirements of AS 18.60.010 — 18.60.105 shall be assessed by the commissioner a civil penalty of not more than the maximum amount established by regulation under (i) of this section.

(h) In assessing a civil penalty, the commissioner shall give due consideration to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(i) The commissioner shall establish by regulation the maximum civil penalty amounts to be imposed under (a) — (d) and (g) of this section and the minimum civil penalty amount to be imposed for wilful violations under (a) of this section. The maximum amount of the civil penalties may not be greater than the corresponding federal penalty for the specified violations, as provided under 29 U.S.C. 666 (Occupational Safety and Health Act of 1970), and must include any adjustments made to the penalties under 28 U.S.C. 2461 (Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015).