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# STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

## LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

*House Judiciary:*

*2/11/87*

*2/12/87*

*2/20/87*

*2/23/87*

Alaska State Legislature  
Representative Niilo Koponen

Pouch V  
Juneau, Alaska 99811  
(907) 465-4992

142 4th Avenue, Suite C  
Fairbanks, Alaska 99701  
(907) 456-8161

MEMORANDUM

TO: Honorable John Sund

FROM: Representative Niilo Koponen

RE: HB 53 "An Act Relating to Penalties for Violations to Work-Place Safety Laws."

DATE: January 30, 1987

I would appreciate it if you would schedule CSHB 53 at your earliest convenience.

The purpose of this bill is to reinforce the legislative intent in AS 18.60.010, which states that the legislature finds that "...personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, the people of the state in terms of loss of production, wage loss, medical expenses and disability compensation payments."

CSHB 53. would increase the maximum penalty for serious and for failure to abate violations to \$10,000 (HB 53 read \$25,000). A penalty of \$5,000 (HB 53 read \$10,000) fine for non serious violations. This bill is a deterrent intended to encourage businesses to conform to work-place safety laws and regulations. In Washington, an equivalent violation now carries a maximum fine of \$50,000.

This bill does carries a fiscal note though it is the sponsor's earnest hope that greater compliance will result in a decrease in the number of fines levied. Collected fines levied will be deposited into the general fund which can be used to offset the temporary administrative costs that the Department of Labor will have until the new fines are promulgated.

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(d) The OSHA Review Board shall notify the authorized representa-  
tive of the affected employees that an employer is contesting a citation  
or notification issued under (a) or (b) of this section and afford the  
representative an opportunity to participate in the hearing on the  
matter.

(e) An employer, an affected employee or a representative of  
affected employees has 15 working days from the receipt of a citation  
within which to notify the commissioner and the OSHA Review Board  
that the period of time fixed in the citation for the abatement of a  
violation is unreasonable. The OSHA Review Board shall afford an  
opportunity for a hearing and thereafter issue an order, based on  
findings of fact, affirming or modifying the original period for abate-  
ment, and the order is final 30 days after its issuance. If the contest is  
initiated by the employer, the OSHA Review Board shall notify the  
employees in the same manner as provided by (d) of this section. If the  
contest is initiated by the employees, the OSHA Review Board shall  
notify the employer and afford the employer an opportunity to partici-  
pate in the hearing on the matter. (§ 7 ch 72 SLA 1973: am § 2 ch 26  
SLA 1983)

Effect of amendments. — The 1983  
amendment, in subsection (a), inserted "or  
after an employer's failure to correct a vi-  
olation for which the employer has been  
issued a notice" and "or expiration of the  
time period set out in the notice" in the  
first sentence, substituted "after receipt of  
the penalty notice" for "from the receipt of  
the notice" in the second sentence, re-  
moved personal pronouns from the first  
and second sentences, and made a minor  
word change in the second sentence.

Opinions of attorney general. —  
Agencies assessed penalties under this

section and AS 18.60.095 must, as a gen-  
eral rule, pay those penalties, within the  
limits of available appropriations, from  
their operating budgets. In the event an  
agency wishes to contest a citation, the  
agency may be represented by its assigned  
counsel in the Attorney General's Office  
before the Occupational Safety and  
Health Act Review Board; if the agency  
chooses to contest an adverse determina-  
tion by the review board, outside counsel,  
funded by the agency, will have to be  
employed. March 27, 1980 Op. Att'y Gen.

NOTES TO DECISIONS

The 1973 amendments to this title  
made mandatory the enforcement of  
safety regulations in most instances.  
Wallace v. State, Sup. Ct. Op. No. 1352  
File No. 2683, 557 P.2d 1120 (1976).

Sec. 18.60.095. Penalties. (a) An employer who willfully or repeat-  
edly violates a provision of AS 18.60.010 — 18.60.105 that is applica-  
ble 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 \$10,000 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 em-  
ployer 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 an

to \$1,000 for each violation. 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 of 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 up to \$1,000 for each violation.

(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 \$1,000 for each day during which the failure to correct the violation continues.

(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.

(f) A person who knowingly makes a false statement, representation, or certification in an application, record, report, plan or other document filed or required to be maintained under AS 18.60.010 — 18.60.105, 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.

(g) An employer who violates the posting requirements of this chapter shall be assessed by the commissioner a civil penalty of up to \$1,000 for each violation.

(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. (§ 7 ch 72 SLA 1973)

Opinions of attorney general. — Agencies assessed penalties under AS 18.60.093 and this section must, as a general rule, pay those penalties, within the limits of available appropriation from their operating budgets. In the event an agency wishes to contest a citation, the

agency may be represented by its assigned counsel in the Attorney General's Office before the Occupational Safety and Health Act Review Board; if the agency chooses to contest an adverse determination by the review board, outside counsel, funded by the agency, will have to be employed. March 27, 1960 Op. Att'y Gen.

The state may enforce the alties set out in subsections

Section and former A compared. — See Krall v. Am., Inc., 374 F. Supp. 14 1973

Whereas former AS 18.60 "fines" and "imprisonment" this section, which replace section, now specifies "civil most violations, saving "imprisonment" for serious v. Krall v. Royal Inns of Am. Supp. 146 (D. Alaska 1973

Neither mention tort: nonavailability of contrib- gence. — See Krall v. Roya inc., 374 F. Supp. 146 (D. s

Defense of contributor; not abolished. — See Krall of Am., Inc., 374 F. Supp. 1 1973)

From indicia concernin 18.60.090 the federal distr not persuaded the legislatu abolish the defense of contr gence for a violation of the eral Safety Code or in any w depart from the normal pra ing the defense. Krall v. Am., Inc., 374 F. Supp. 14 1973)

The Alaska legislature di deny the defense of contr gence to negligence per se r tions of the Alaska Genera Krall v. Royal Inns of Am. Supp. 146 (D. Alaska 197

Sec. 18.60.096. Im- designated agent as at restraining a particul ment that constitutes immediately cause de order issued under thi sary to avoid, correct, hibit the employers under conditions wh order may allow the rect, or remove the b) When and as s cludes that condition-

§ 18.60.095

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72 SLA 1979)

represented by its assigned  
Attorney General's office  
Prothonotary Public and  
Law Board of the Agency  
of the State of Alaska  
and its employees.

§ 18.60.096

The state may enforce the criminal pen-  
alties set out in subsections (e) and (f) on

HEALTH AND SAFETY

§ 18.60.096

the Annette Islands Reserve, May 3, 1983  
Op. Att'y Gen.

NOTES TO DECISIONS

Section and former AS 18.60.090  
compared. — See Krall v. Royal Inns of  
Am., Inc., 374 F. Supp. 146 (D. Alaska  
1973).

Whereas former AS 18.60.090 set forth  
"fines" and "imprisonment" as penalties,  
this section, which replaced the former  
section, now specifies "civil penalties" for  
most violations, saving "fines" and "im-  
prisonment" for serious violations only.  
Krall v. Royal Inns of Am., Inc., 374 F.  
Supp. 146 (D. Alaska 1973).

Neither mention tort remedies or  
nonavailability of contributory negli-  
gence. — See Krall v. Royal Inns of Am.,  
Inc., 374 F. Supp. 146 (D. Alaska 1973).

Defense of contributory negligence  
not abolished. — See Krall v. Royal Inns  
of Am., Inc., 374 F. Supp. 146 (D. Alaska  
1973).

From indicia concerning former AS  
18.60.090 the federal district court was  
not persuaded the legislature intended to  
abolish the defense of contributory negli-  
gence for a violation of the Alaska Gener-  
al Safety Code or in any way intended to  
depart from the normal practice of allow-  
ing the defense. Krall v. Royal Inns of  
Am., Inc., 374 F. Supp. 146 (D. Alaska  
1973).

The Alaska legislature did not intend to  
deny the defense of contributory negli-  
gence to negligence per se based on viola-  
tions of the Alaska General Safety Code.  
Krall v. Royal Inns of Am., Inc., 374 F.  
Supp. 146 (D. Alaska 1973).

Sec. 18.60.096. Imminent dangers. (a) The commissioner, or a  
designated agent as authorized by the commissioner, may issue orders  
restraining a particular condition or practice in any place of employ-  
ment that constitutes a danger that could reasonably be expected to  
immediately cause death or serious physical harm. The terms of an  
order issued under this section may require steps to be taken as neces-  
sary to avoid, correct, or remove the imminent danger and may pro-  
hibit the employment or presence of a particular individual in  
locations or under conditions where imminent danger exists. The terms of the  
order may allow the presence of individuals necessary to avoid, cor-  
rect, or remove the imminent danger.

When this section is a proposed rule of the Department of  
Health and Community Services, section 18.60.096 of the Alaska Statute

The effect of the Alaska General  
Safety Code and the enabling legisla-  
tion is not to place the entire responsi-  
bility for the harm on the defendant em-  
ployer. Krail v. Royal Inns of Am., Inc.,  
374 F. Supp. 146 (D. Alaska 1973).

Action by injured workman for  
damages not authorized. — Nowhere in  
either AS 18.60.010 — 18.60.105 or regu-  
lations can there be found authorization  
for a claim for relief and award of civil  
damages to an injured workman for harm  
resulting from the breach of AS 18.60.010  
— 18.60.105 or the General Safety Code.  
Morris v. City of Seldotna, Sup. Ct. Op.  
No. 1296 (File No. 2286), 553 P.2d 474  
(1976).

The worker's limited ability to exer-  
cise self-protective care because of  
economic duress did not persuade the  
federal district court to construe this arti-  
cle to eliminate the defense of contrib-  
utory negligence. Krail v. Royal Inns of  
Am., Inc., 374 F. Supp. 146 (D. Alaska  
1973).

Fact finder to sift through facts of  
each case. — By retaining the defense of  
contributory negligence, it remains to the  
finder of fact to sift through the facts and  
circumstances of each case and determine  
whether the employee met that duty.  
Krail v. Royal Inns of Am., Inc., 374 F.  
Supp. 146 (D. Alaska 1973).

Applied in Woods & Rohde, Inc. v.  
State, Dept. of Labor, Sup. Ct. Op. No.  
1433 (File No. 2903), 565 P.2d 138 (1977).

**LABOR REGULATIONS**

**49.17.190**

is alleged to have occurred, or the department may utilize the procedures for collection of civil penalties as set forth in RCW 51.48.120 through 51.48.150.

Enacted by Laws 1973, ch. 80, § 18. Amended by Laws 1986, ch. 20, § 2.

**Law Review Commentaries**  
 Citations and penalties under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 571.

Constitutional challenges to suggested procedural deficiencies of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 361.

Defending employer against alleged violation of general duty clause of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 399.

Legal process for enforcement of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 349.

Sanctions against violation of Washington Industrial Safety and Health Act. 9 Gonzaga L.Rev. 457.

**Library References**  
 Labor Relations @10.  
 C.J.S. Labor Relations § 12.

**Notes of Decisions**

Where farm tractor driver, who had been assigned to drive tractor by employer, permitted plaintiff to ride on metal frame holding onto cross-bar while tractor was being driven from one area of hop field to another, where such conduct violated regulation pertaining to farm employees, and where driver's negligence in failing to determine whether plaintiff was off tractor before engaging mechanism was proximate cause of plaintiff's injury, tractor driver's employer was liable for plaintiff's injury. *Garcia v. Brulotte* (1980) 25 Wash.App. 818, 809 P.2d 976, reversed on other grounds 94 Wash.2d 794, 620 P.2d 99.

Under principle that in any conflict between statutory provisions which

treats subject in general way and another which treats subject in specific way, specific statute will prevail, notice and review procedures of State Industrial Safety and Health Act of 1973 (§ 49.17.010 et seq.) prevail, and there is no conflict, and no violation of due process, in labor and industries department's taking advantage of warrant procedures available to department as alternate means of collection. *Department of Labor and Industries v. City of Kennewick* (1982) 31 Wash.App. 777, 644 P.2d 1196, reversed on other grounds 99 Wash.2d 225, 661 P.2d 133.

Where there was only one action to determine issues, i.e., propriety of citations and assessments by department of labor and industries under State Industrial Safety and Health Act of 1973, § 49.17.010 et seq., department's warrant, which respondent characterized as new cause of action because it was given cause number as required by § 51.48.140, merely established department's right to payment and acted as lien, same as judgment in civil case duly docketed in office of county clerk, and assignment of cause number did not alone split department's cause of action, as against contention that statutory procedures in essence allowed department to split its cause of action. *Department of Labor and Industries v. City of Kennewick* (1982) 31 Wash.App. 777, 644 P.2d 1196, reversed on other grounds 99 Wash.2d 225, 661 P.2d 133.

It was not prejudicial error to refuse instruction on safety regulation where employee of subcontractor, who had been injured at construction site, failed to show general contractor's actual negligence. *Hyatt v. Sellen Const. Co., Inc.* (1985) 40 Wash.App. 893, 700 P.2d 1164.

**49.17.190. Violations—Criminal penalties**

(1) Any person who gives advance notice of any inspection to be conducted under the authority of this chapter, without the consent of the director or his authorized representative, shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or by both.

(2) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction

out this chapter, or when relevant in any proceeding under this chapter. In any such proceeding the director, the board of industrial insurance appeals, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

Enacted by Laws 1973, ch. 80, § 20.

**Cross References**

Uniform trade secret act, see ch. 19.10E

**Library References**

Witnesses § 216.  
C.J.S. Witnesses § 264.

**49.17.210. Research, experiments, and demonstrations for safety purposes—Variances**

The director is authorized to conduct, either directly or by grant or contract, research, experiments, and demonstrations as may be of aid and assistance in the furtherance of the objects and purposes of this chapter. The director, in his discretion, is authorized to grant a variance from any rule or regulation or portion thereof, whenever he determines that such variance is necessary to permit an employer to participate in an experiment approved by the director, which experiment is designed to demonstrate or validate new and improved techniques to safeguard the health or safety of employees. Any such variance shall require that all due regard be given to the health and safety of all employees participating in any experiment.

Enacted by Laws 1973, ch. 80, § 21.

**Library References**

Labor Relations § 10.  
C.J.S. Labor Relations § 12.

**49.17.220. Records—Reports—Notice to employee exposed to harmful materials**

(1) Each employer shall make, keep, and preserve, and make available to the director such records regarding his activities relating to this chapter as the director may prescribe by regulation as necessary or appropriate for the enforcement of this chapter or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this section such regulations may include provisions requiring employers to conduct periodic inspections. The director shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this chapter, including the provisions of applicable safety and health standards.

(2) The director shall prescribe regulations requiring employers to maintain accurate records, and to make periodic reports of work-related deaths, and of injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The director shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who

has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by any applicable safety and health standard promulgated under this chapter and shall inform any employee who is being thus exposed of the corrective action being taken.

Enacted by Laws 1973, ch. 80, § 22.

**Administrative Code References**

In general, see WAC 296-27-010 et seq.

**Law Review Commentaries**

Washington plan constituting alternative to preemption under Federal Occu-

pational Safety and Health Act of 1970; record keeping. 9 Gonzaga L.Rev. 626.

**Library References**

Labor Relations 10.  
C.J.S. Labor Relations § 12.

**49.17.230. Compliance with federal act—Agreements and acceptance of grants authorized**

The director is authorized to adopt by rule any provision reasonably necessary to enable this state to qualify a state plan under section 18 of the Occupational Safety and Health Act of 1970 (Public Law 91-596, 84 Stat. 1590)<sup>1</sup> to enable this state to assume the responsibility for the development and enforcement of occupational safety and health standards in all work places within this state subject to the legislative jurisdiction of the state of Washington. The director is authorized to enter into agreement with the United States and to accept on behalf of the state of Washington grants of funds to implement the development and enforcement of this chapter and the Occupational Safety and Health Act of 1970.

Enacted by Laws 1973, ch. 80, § 23.

<sup>1</sup> 29 U.S.C.A. § 667.

**Administrative Code References**

Record keeping and reporting, see WAC 296-27-010 et seq.

**Law Review Commentaries**

Alternative to preemption under Federal Occupational Safety and Health Act of 1970: The Washington plan. 9 Gonzaga L.Rev. 615.

Constitutional challenges to suggested procedural deficiencies of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 361.

Defending employer against alleged violation of general duty clause of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 399.

Demonstrated need for agricultural standards under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 439.

Employee's rights and duties under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 543.

Employer's rights and duties under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 519.

Grants and loans to employers, under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 605.

Legal process for enforcement of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 349.

Legislative history of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 327.

Overview of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 477.

Standards under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 493.

Variations under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 509.

**Library References**

Labor Relations 10.  
C.J.S. Labor Relations § 12.

**49.17.240. Safety and health standards**

(1) The director in the promulgation of rules under the authority of this chapter shall establish safety and health standards for conditions of em-



safety and health standards to the conditions, structures, machines, equipment, apparatus, devices, materials, methods, means, and practices in the employer's work place. The director in granting any requests for consultative or advisory service may provide for an alternative means of affording consultation and advice other than on-site consultation.

(2) The director, or his authorized representative, may make recommendations regarding the elimination of any hazards disclosed within the scope of the on-site consultation. No visit to an employer's work place shall be regarded as an inspection or investigation under the authority of this chapter, and no notices or citations shall be issued, nor, shall any civil penalties be assessed upon such visit, nor shall any authorized representative of the director designated to render advice and consult with employers under the voluntary compliance program have any enforcement authority: *Provided*, That in the event an on-site visit discloses a serious violation of a health and safety standard as defined in RCW 49.17.180(6), and the hazard of such violation is either not abated by the cooperative action of the employer, or, is not subject to being satisfactorily abated by the cooperative action of the employer, the director shall either invoke the administrative restraining authority provided in RCW 49.17.130 or seek the issuance of injunctive process under the authority of RCW 49.17.170 or invoke both such remedies.

(3) Nothing in this section shall be construed as providing immunity to any employer who has made application for consultative services during the pendency of the granting of such application from inspections or investigations conducted under RCW 49.17.070 or any inspection conducted as a result of a complaint, nor immunity from inspections under RCW 49.17.070 or inspections resulting from a complaint subsequent to the conclusion of the consultative period. This section shall not be construed as requiring an inspection under RCW 49.17.070 of any work place which has been visited for consultative purposes. However, in the event of a subsequent inspection, the director, or his authorized representative, may in his discretion take into consideration any information obtained during the consultation visit of that work place in determining the nature of an alleged violation and the amount of penalties to be assessed, if any. Such rules and regulations to be promulgated pursuant to this section shall provide that in all instances of serious violations as defined in RCW 49.17.180(6) which are disclosed in any consultative period, shall be corrected within a specified period of time at the expiration of which an inspection will be conducted under the authority of RCW 49.17.070. All employers requesting consultative services shall be advised of the provisions of this section and the rules adopted by the director relating to the voluntary compliance program. The director may provide by rule for the frequency, manner, and method of the rendering of consultative services to employers, and for the scheduling and priorities in granting applications consistent with the availability of personnel, and in such a manner as not to jeopardize the enforcement requirements of this chapter.

Enacted by Laws 1973, ch. 80, § 25.

#### Law Review Commentaries

Washington plan constituting alternative to preemption under Federal Occupational Safety and Health Act of 1970; consultation inspection. 9 Gonzaga L.Rev. 627.

#### Library References

Labor Relations § 10.  
C.J.S. Labor Relations § 12.

**49.17.260. Statistics—Investigations—Reports**

In furtherance of the objects and purposes of this chapter, the director shall develop and maintain an effective program of collection, compilation, and analysis of industrial safety and health statistics. The director, or his authorized representative, shall investigate and analyze industrial catastrophes, serious injuries, and fatalities occurring in any work place subject to this chapter, in an effort to ascertain whether such injury or fatality occurred as the result of a violation of this chapter, or any safety and health standard, rule, or order promulgated pursuant to this chapter, or if not, whether a safety and health standard or rule should be promulgated for application to such circumstances. The director shall adopt rules relating to the conducting and reporting of such investigations. Such investigative report shall be deemed confidential and only available upon order of the superior court after notice to the director and an opportunity for hearing: *Provided*, That such investigative reports shall be made available without the necessity of obtaining a court order, to employees of governmental agencies in the performance of their official duties, to the injured workman or his legal representative or his labor organization representative, or to the legal representative or labor organization representative of a deceased workman who was the subject of an investigation, or to the employer of the injured or deceased workman or any other employer or person whose actions or business operation is the subject of the report of investigation, or any attorney representing a party in any pending legal action in which an investigative report constitutes relevant and material evidence in such legal action.

Enacted by Laws 1973, ch. 80, § 26.

**Administrative Code References**

Record keeping and reporting, see WAC 296-27-010 et seq.

**Law Review Commentaries**

Records and reports under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 589.

**Library References**

Labor Relations §10.  
C.J.S. Labor Relations § 12.

**49.17.270. Administration of chapter**

The department shall be the sole and paramount administrative agency responsible for the administration of the provisions of this chapter, and any other agency of the state or any municipal corporation or political subdivision of the state having administrative authority over the inspection, survey, investigation, or any regulatory or enforcement authority of safety and health standards related to the health and safety of employees in any work place subject to this chapter, shall be required, notwithstanding any statute to the contrary, to exercise such authority as provided in this chapter and subject to interagency agreement or agreements with the department made under the authority of the interlocal cooperation act (chapter 39.34 RCW) relative to the procedures to be followed in the enforcement of this chapter: *Provided*, That in relation to employers using or possessing sources of ionizing radiation the department of labor and industries and the department of social and health services shall agree upon mutual policies, rules, and regulations compatible with policies, rules, and regulations adopted pursuant to chapter 70.09 RCW insofar as such policies, rules, and regulations are not inconsistent with the provisions of this chapter.

Enacted by Laws 1973, ch. 80, § 27.



# Alaska Laborers Training School

13500 OLD SEWARD HIGHWAY • (907) 345-3853  
ANCHORAGE, ALASKA 99515

ADMINISTERED BY  
LABOR TRUST SERVICES

January 21, 1987

## EMPLOYER TRUSTEES

DERALD SCHOON  
SECRETARY

P. D. KOON  
RETIREMENT

WILLIAM REEVES  
LEGAL

HARVEY W. MARLIN  
TRAINING

## EMPLOYEE TRUSTEES

RAY LEE  
CHAIRMAN

MANO FREY  
TRAINING

JIM SAMPSON  
LEGAL

JOE THOMAS  
RETIREMENT

TRAINING DIRECTOR  
LESLIE N. LAUINGER

## AFFILIATED WITH:

LABORERS-AGC  
EDUCATION & TRAINING  
FUND

Nilo Koponen  
Representative  
PO Box V  
Juneau, Alaska 99811

Dear Represtative Koponen:

I am writing in regards to a proposal being made for increased fines for contractors and companies who violate health and safety regulations.

The current situation gives OSHA the authority to levy fines for violation of health and safety standards, however, this can be minimal in effect. Some contractors would rather pay a minimal fine than get the proper equipment to safely perform the job. It simply boils down to dollars and cents. Proper equipment, adequate work crews, good personal protective equipment all cost money. Fines are often the cheaper alternative if your caught.

Most contractors are concerned about health and safety and enforce it on their projects. However, there are always those few who cut corners at the expense of health and safety and as a result we have injuries or, at the least, increasing risks.

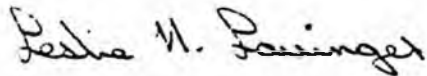
Workmans Compensation rates are soaring. The construction industry is fiercely competitive and some positive steps should be taken to ensure that minimum safety and health standards are adhered to. This proposal would show that the state is serious about safety and health requirements on the job.

Representative Koponen  
January 21, 1987  
Page 2

Some would probably say to increase fines would adversely affect business. But why would this be the case if they are following the rules that the state has already set forth. Furthermore, if there is a question about what is right or wrong, safe or unsafe, being in compliance or not, than a contractor or company can call OSHA's voluntary compliance division and get a "free" inspection to help clear up any questions and ensure a safe and healthy workplace.

I believe it is time to look at the area of safety and health compliance. Too many people are hurt on jobsites. Training is important but enforcement is crucial. Enforcement with some teeth. It would be a positive reinforcement for good companies and a strong signal to those cutting corners. The state can say that they mean business when it comes to health and safety. We all gain in the long run as well. The owner gets a safer job, the contractor may see insurance rates go lower, the state sees fewer workers comp. cases, and fewer workers are hurt. Safety really does pay. Stiffer penalties for violations would help convince the disbelievers.

Sincerely,



Leslie N. Lauinger  
Training Director

LNL/cz

Bill No. House Bill No. 53

Date January 27, 1987

Title "An Act relating to penalties for violation of workplace safety laws."

Contact: Eileen Plate  
465-2700

Richard Arab  
465-4856

Under House Bill 53, the penalties assessed by the Department of Labor for violations of Alaska's Occupational Safety and Health law and regulations would be increased.

Specifically, the provisions of this bill:

- (1) increase the maximum penalty for a willful or repeat violation from \$10,000 to \$25,000;
- (2) establish a \$1000 minimum penalty for a serious violation; and increase the maximum penalty for a serious or failure to abate violation from \$1,000 to \$25,000;
- (3) increase the maximum penalty for a non-serious violation from \$1,000 to \$10,000;
- (4) increase the maximum penalty for a willful or repeat violation which results in the death of a worker from \$10,000 to \$150,000; and increase from \$20,000 to \$500,000 the maximum penalty for a second conviction of a willful or repeat violation causing death;
- (5) increase from \$10,000 to \$25,000 the maximum penalty for falsifying or otherwise misrepresenting occupational safety and health records or documents; and
- (6) increase the maximum penalty for a violation of occupational safety and health posting requirements from \$1,000 to \$5,000.

The penalties in effect have not been increased since Alaska's occupational safety and health law was initially enacted in 1973.

More important than providing for an overdue inflationary increase in the penalty system, however, the increased penalties would serve as an effective deterrent to workplace safety and health violations. This, of course, will translate into safer workplaces, and a reduced risk of injury and illness to Alaska's workers.

An increased emphasis on worker safety and health is particularly important in times of economic decline, such as are presently being experienced. When cost-saving measures are implemented by employers during recessionary periods, equipment maintenance and replacement are diminished, and the need to increase worker productivity often results in unsafe "shortcuts" that would not be taken or even considered in more prosperous times. The deterrent effect of increased penalties would, therefore, assure that implementation of cost-saving measures by Alaska business is not at the expense of or to the detriment of the safety and health of Alaska's workers.


**POSITION PAPER/Department of Labor**

The Department of Labor supports the concept of increasing penalties for violations of Alaska's occupational safety and health law and regulations as provided in House Bill 53. However, the Department would recommend that the \$25,000 maximum penalty proposed for serious and for failure to abate violations each be reduced to \$10,000; and that the \$10,000 maximum proposed for non-serious violations be reduced to \$5,000. The Department feels that these lesser maximum penalties will still produce the desired deterrent effect.

The following specific amendments to House Bill 53 would be required to achieve this:

1. change line 20 on page 1 to read:  
less than [UP TO] \$1,000 and not more than \$10,000 for each violation.
2. change line 4 on page 2 to read:  
up to \$5,000 [\$1,000] for each violation.
3. change line 9 on page 2 to read:  
than \$10,000 [\$1,000] for each day during which the failure to correct

APPROVED:

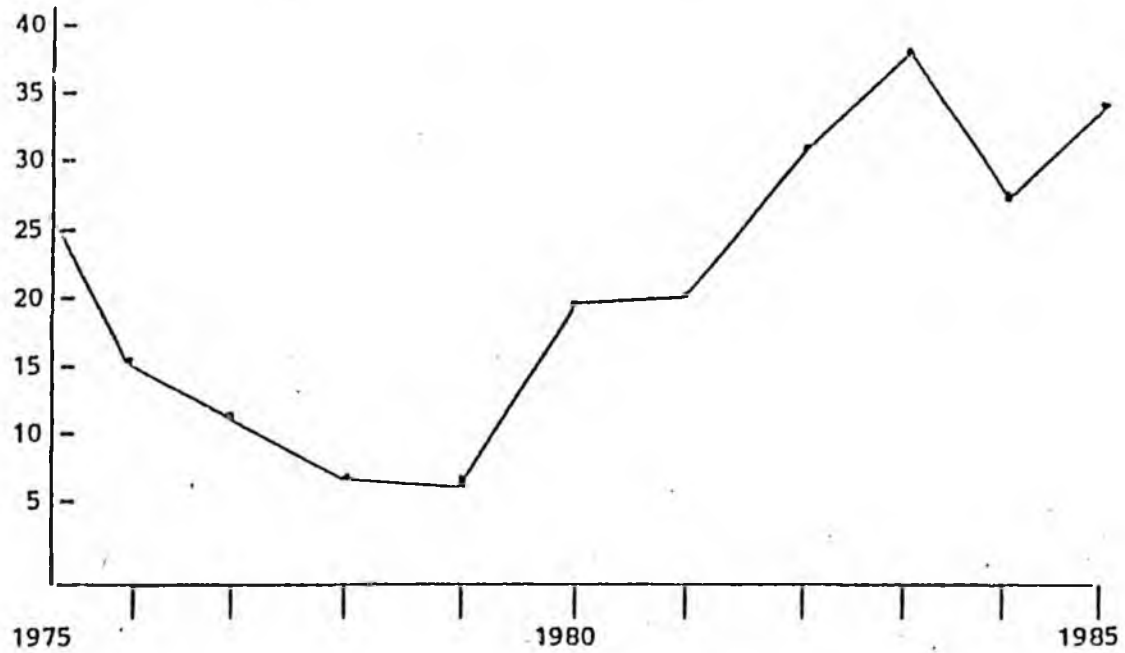
  
Jim Sampson, Commissioner  
Department of Labor

D

Incidence rates of Recordable Occupational Injuries and Illnesses  
Comparison of all States - Private Sector  
1983 to 1984

	1983	1984
USA	7.6	8.0
Maine	11.0	13.2
Oregon	9.8	10.6
Alaska	10.6	10.3
Vermont	9.2	10.0
Hawaii	10.6	10.0
Washington	9.7	9.9
Oklahoma	9.9	9.8
Arizona	9.3	9.5
California	9.1	9.3
Utah	8.5	9.2
Nevada	9.0	9.0
Florida	8.7	8.9
Nebraska	8.4	8.8
New Mexico	7.8	8.7
Tennessee	7.9	8.6
Wyoming	7.9	8.6
Montana		8.5
Rhode Island	9.3	9.4
Connecticut	8.0	8.3
Alabama	7.9	8.3
Kentucky	7.6	8.3
Iowa	7.8	8.1
Arkansas	8.1	8.0
Mississippi		8.0
Missouri	7.5	8.0
Louisiana	7.4	7.9
Maryland	7.6	7.8
Minnesota	7.3	7.7
Kansas		7.7
Indiana	7.3	7.7
Virginia	7.0	7.6
Michigan	6.8	7.6
North Carolina	6.9	7.2
West Virginia	6.7	7.2
South Carolina	6.7	6.9
Delaware	5.3	5.5
Puerto Rico	4.2	3.9
American Samoa	2.5	3.0
Guam	2.7	3.3
Virgin Islands	2.8	1.4
Texas		
Illinois		
New Hampshire		
New Jersey		
Wisconsin		
Massachusetts		
Idaho		
Georgia		
Ohio		
South Dakota		
North Dakota		
Colorado		
Pennsylvania		
New York		

Alaska Injury and Illness Rate  
Percentage Above National Average



Alaskan versus National Incidence Rates By Year

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>
Alaska	11.5	10.7	10.4	10.0	10.1	10.4	10.0	10.3	10.6	10.3	10.7
U.S.	9.1	9.2	9.3	9.4	9.5	8.7	8.3	7.7	7.6	8.0	7.9
Percentage Above National Average	26.0	16.3	11.8	6.38	6.3	19.5	20.4	33.7	39.4	28.0	35.0

## Sample of Penalty Structure

### Other-than-Serious:<sup>1</sup>

Number of Employees	Present Penalty	Penalty under HB 53
3	\$60	\$600
50	\$240	\$2,400
200	\$300	\$3,000

### Serious:

Number of Employees	Present Penalty	Penalty under HB 53
3	\$60	\$1,280
13	\$240	\$4,350
65	\$450	\$10,520
300	\$550	\$13,150

### Repeated Violations:<sup>2</sup>

Number of Employees	Present Penalty	Penalty under HB 53
3	\$120	\$2,560
13	\$480	\$8,700
65	\$900	\$21,240
200	\$1,100	\$26,300

### Willful Violations:

Number of Employees	Present Penalty	Penalty under HB 53
3	\$1,800	\$18,000
50	\$2,400	\$24,000
100	\$5,000	\$50,000

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<sup>1</sup>It is the department's current policy not to assess a penalty for "other" violations unless 10 or more violations are found at the worksite.

<sup>2</sup>If the violation is repeated a second time, the original penalty is multiplied by four and if it is repeated a third time the original penalty is multiplied by 10.

Failure to Abate Violation:<sup>3</sup>

Number of Employees	Present Penalty	Penalty under HB 53
3	\$240	\$2,400
13	\$1,680	\$30,450
65	\$4,050	\$95,580
300	\$5,500	\$131,500

Posting Violations:

	Present Penalty	Penalty under HB 53
Failure to post the "Safety and Health Protection on the Job" poster	\$60	\$300
Failure to post the "Annual Summary of Occupational Injuries and Illnesses" form	\$100	\$500
Failure to post a citation issued by the Department of Labor	\$250	\$1,250
Failure to post the "Right-to-Know" poster	\$60	\$300

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<sup>3</sup>Note the maximum penalty under HB 53 for each day a violation is uncorrected is \$25,000. In calculating these penalties it is assumed that the violation was uncorrected for 10 days.

Criminal Willful:<sup>4</sup>

Present Penalty

\$10,000

Penalty under HB 53

\$150,000

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<sup>4</sup>The department has never issued a criminal willful violation; however, if such a violation was found, the department would ask for the maximum penalty allowed under the law.

Comparison of Alaska and U.S. Injury/Illness Rate\* by Industry Type  
1980 - 1984

	1980		1981		1982		1983		1984	
	Alaska U.S.	% Above U.S. Average	Alaska U.S.	% Above U.S. Average	Alaska U.S.	% Above U.S. Average	Alaska U.S.	% Above U.S. Average	Alaska U.S.	% Above U.S. Average
Oil and Gas Production	<u>12.4</u> <u>13.4</u>	-7%	<u>15.8</u> <u>14.1</u>	12%	<u>15.3</u> <u>12.1</u>	26%	<u>11.8</u> <u>9.8</u>	20%	<u>10.6</u> <u>11.8</u>	- 0%
Construction	<u>16.5</u> <u>15.7</u>	5%	<u>17.2</u> <u>15.1</u>	14%	<u>19.4</u> <u>14.6</u>	33%	<u>17.6</u> <u>14.8</u>	19%	<u>16.9</u> <u>15.5</u>	9%
Seafood Processing Canned	<u>21.4</u> <u>20.2</u>	6%	<u>19.9</u> <u>22.4</u>	-11%	<u>18.6</u> <u>17.8</u>	5%	<u>21.4</u> <u>17.1</u>	25%	<u>25.0</u> <u>-</u>	-
Seafood Processing Frozen	<u>31.7</u> <u>19.4</u>	63%	<u>24.6</u> <u>18.6</u>	32%	<u>21.8</u> <u>17.1</u>	28%	<u>32.9</u> <u>17.9</u>	84%	<u>26.1</u> <u>17.3</u>	51%
Lumber	<u>32.5</u> <u>18.6</u>	75%	<u>26.8</u> <u>17.6</u>	52%	<u>26.9</u> <u>16.9</u>	59%	<u>31.2</u> <u>18.3</u>	70%	<u>43.0</u> <u>19.6</u>	119%
Transportation	<u>12.2</u> <u>9.4</u>	30%	<u>11.6</u> <u>9.0</u>	29%	<u>10.7</u> <u>8.5</u>	26%	<u>11.4</u> <u>8.2</u>	39%	<u>12.1</u> <u>8.8</u>	38%
Wholesale Trade	<u>10.9</u> <u>8.2</u>	33%	<u>9.8</u> <u>7.7</u>	27%	<u>9.6</u> <u>7.1</u>	35%	<u>12.3</u> <u>7.0</u>	76%	<u>11.7</u> <u>7.2</u>	62%
Retail Trade	<u>6.8</u> <u>7.1</u>	-4%	<u>7.4</u> <u>7.1</u>	4%	<u>9.3</u> <u>7.2</u>	29%	<u>9.6</u> <u>7.3</u>	31%	<u>9.5</u> <u>7.5</u>	27%
Services	<u>4.3</u> <u>5.2</u>	-17%	<u>4.3</u> <u>5.0</u>	-14%	<u>4.4</u> <u>4.9</u>	-10%	<u>4.7</u> <u>5.1</u>	-8%	<u>5.1</u> <u>5.2</u>	-2%

\* per 100 full-time workers

# MEMORANDUM

# State of Alaska

TO: Sheri Paul  
Aide to Representative Koponen

DATE: January 23, 1987

FILE NO:

TELEPHONE NO: 465-4854

FROM: Richard Arab, Deputy Director  
Occupational Safety and Health

SUBJECT: Alaska Occupational Safety  
and Health Activity for  
FY 1984 - 1986

Attached are computer printouts for the past three years that shows the major activity measures for Alaska's program. The report is divided into two columns, AK10 represents activity performed by our safety compliance officers and AK20 represents activity performed by our industrial health enforcement staff. The categories on the computer printout are written for someone familiar with our program and therefore, I will be glad to explain them if they are confusing.

I was able to compile data for federal OSHA activity for FY 1986. OSHA covers approximately 27 states including such major states as New York, Illinois and Texas. It is, therefore, difficult to compare OSHA's experience with a single state such as Alaska. Please keep this in mind when you look at OSHA's totals.

cc: Eileen Plate w/attachments

(10R) STATE DATA ONLY

	DIVISION AK 10	DIVISION AK 20	STATE TOTAL	REGION TOTAL
TOTAL INSPECTIONS	771	141	912	912
RECORDS INSPECTIONS	48	0	48	48
INSPECTIONS BY CATEGORY				
SAFETY INSPECTIONS	768	5	773	773
HEALTH INSPECTIONS	3	136	139	139
INSPECTIONS BY TYPE				
UNPROGRAMMED				
ACCIDENT	12	3	15	15
COMPLAINT	65	50	115	115
REFERRAL	71	5	76	76
MONITORING	0	0	0	0
VARIANCE	1	0	1	1
FOLLOW-UP	9	3	12	12
UNPROGRAMMED RELATED	17	0	25	25
OTHER	0	0	0	0
PROGRAMMED				
PLANNED	590	67	657	657
PROGRAMMED RELATED	6	5	11	11
OTHER	0	0	0	0
OTHER	0	0	0	0
INSPECTIONS BY INDUSTRY				
CONSTRUCTION	509	35	544	544
MARITIME	0	1	1	1
MANUFACTURING	128	26	154	154
OTHER	134	79	213	213
INSPECTIONS BY OWNERSHIP				
PRIVATE SECTOR	747	120	867	867
PUBLIC SECTOR	24	21	45	45
FEDERAL AGENCY	0	0	0	0

*Fails limit to 5%*

*AK 10 - Safety Inspections*

*AK 20 - Health Inspections*


## (18B) STATE DATA ONLY

	DIVISION AK 10	DIVISION AK 20		STATE TOTAL	REGION TOTAL
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## INSPECTION CLASSIFICATION

SAFETY PLANNING GUIDE

639 5

600 600

HEALTH PLANNING GUIDE

1 46

47 47

LOCAL EMPHASIS PROGRAM

82 25

107 107

NATIONAL EMPHASIS PROGRAM

71 11

82 82

MIGRANT FARMWORKER CAMP

0 0

0 0

## EMPLOYEE INFORMATION

EMPLOYED IN ESTABLISHMENT

20139 6706

26879 26879

COVERED BY INSPECTION

11631 4022

15653 15653

## AVG CASE HRS PER INSP

SAFETY

10 33

10 10

HEALTH

17 30

30 30

## VIOLATIONS

WILLFUL

0 0

0 0

REPEAT

29 1

30 30

SERIOUS

268 12

280 280

OTHER

1024 220

1244 1244

F-T-A

1 0

1 1

TOTAL

1322 233

1555 1555

## PENALTIES

WILLFUL

0 0

0 0

REPEAT

9170 1000

10170 10170

SERIOUS

45825 4610

50435 50435

OTHER

1570 1600

3170 3170

F-T-A

300 0

300 300

TOTAL

56865 7210

64075 64075

## CONTESTED CASES

INSPECTIONS CONTESTED

11 4

15 15

INSP W/CITATIONS CONTESTED (%)

2.3 4.8

2.7 2.7

## LAPSE DAYS INSP TO CIT ISSUED

AVG LAPSE SAFETY INSP

18 12

18 18

AVG LAPSE HEALTH INSP

36 30

30 30

AVG LAPSE ALL INSP

18 30

20 20

U. S. DEPARTMENT OF LABOR  
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
INSPECTION REPORT

REGION 10 STATE 2 - AK

CROSS STATE DATA ONLY	DIVISION		STATE TOTAL	REGION TOTAL
	AK 10	AK 20		
TOTAL INSPECTIONS	707	229	977	977
RECORDS INSPECTIONS	40	0	40	40
INSPECTIONS BY CATEGORY				
SAFETY INSPECTIONS	707	0	707	707
HEALTH INSPECTIONS	2	229	230	230
INSPECTIONS BY TYPE				
PROGRAMMED				
ACCIDENT	33	1	34	34
COMPLAINT	93	91	184	184
REFERRAL	54	13	67	67
MONITORING	0	1	1	1
VARIANCE	0	0	0	0
FOLLOW UP	10,97%	1,47%	8	8
UNPROGRAMMED RELATED	97	42	139	139
OTHER	0	0	0	0
PROGRAMMED				
PLANNED	408	70	526	526
PROGRAMMED RELATED	17	1	18	18
OTHER	0	0	0	0
OTHER	0	0	0	0
INSPECTIONS BY INDUSTRY				
CONSTRUCTION	510	62	572	572
MARITIME	0	0	0	0
MANUFACTURING	94	55	149	149
OTHER	105	111	256	256
INSPECTIONS BY OWNERSHIP				
PRIVATE SECTOR	729	178	907	907
PUBLIC SECTOR	20	50	70	70
FEDERAL AGENCY	0	0	0	0

AK 10 = Safety Compliance  
AK 20 = Health Compliance

REGION 10 STATE 2 - AK

(100) STATE DATA ONLY	DIVISION AK 10	DIVISION AK 20	STATE TOTAL
<b>INSPECTION CLASSIFICATION</b>			
SAFETY PLANNING GUIDE	599	0	599
HEALTH PLANNING GUIDE	1	92	93
LOCAL EMPHASIS PROGRAM	67	30	97
NATIONAL EMPHASIS PROGRAM	2	28	30
MIGRANT WORKER CAMP	0	0	0
<b>EMPLOYEE INFORMATION</b>			
EMPLOYED IN ESTABLISHMENT	33253	11222	44475
COVERED BY INSPECTION	10751	7276	18027
<b>AVG CASE HRS PER INSP</b>			
SAFETY	12	0	12
HEALTH	79	21	22
<b>VIOLATIONS</b>			
WILLFUL	1	0	1
REPEAT	17	1	18
SERIOUS	306	19	325
OTHER	1021	280	1301
F T A	1	4	5
TOTAL	1346	304	1650
<b>PENALTIES</b>			
WILLFUL	8000	0	8000
REPEAT	7300	120	7500
SERIOUS	53060	3230	57090
OTHER	0	300	300
F T A	0	2400	2400
TOTAL	69240	6050	75290
<b>CONTESTED CASES</b>			
INSPECTIONS CONTESTED	14	1	15
INSP W/CITATIONS CONTESTED (%)	3.2	1.0	2.8
<b>LAPSE DAYS INSP TO CIT ISSUED</b>			
AVG LAPSE SAFETY INSP	24	0	24
AVG LAPSE HEALTH INSP	11	36	36
AVG LAPSE ALL INSP	24	36	25

REGION 10 STATE 2 - AK

DEPARTMENT OF HEALTH AND WELFARE ADMINISTRATION  
 INSPECTION DIVISION  
 ALASKA 1972

TABLE 1

GOOD STATE DATA ONLY	DIVISION DIVISION		STATE TOTAL	REGION TOTAL
	AK 10	AK 20		
TOTAL INSPECTIONS	661	63	660	660
REGULAR INSPECTIONS	04	0	04	04
INSPECTIONS BY CATEGORY				
SAFETY INSPECTIONS	551	0	551	551
HEALTH INSPECTIONS	50	63	113	113
INSPECTIONS BY TYPE				
UNREPAIRED				
ACCIDENT	17	0	17	17
COMPLAINT	06	23	109	109
FEDERAL	22	0	26	26
INDUSTRIES	0	0	0	0
VARIATE	1	0	1	1
FOLLOW UP	10	0	10	10
UNREPAIRED RELATED	53	3	56	56
OTHER	0	0	0	0
REPAIRED				
PLANNED	377	25	402	402
UNREPAIRED RELATED	35	0	43	43
OTHER	0	0	0	0
OTHER	0	0	0	0
INSPECTIONS BY INDUSTRY				
CONSTRUCTION	165	25	390	390
MARITIME	0	0	0	0
MANUFACTURING	66	0	74	74
OTHER	170	30	200	200
INSPECTIONS BY OWNERSHIP				
PRIVATE SECTOR	221	57	278	278
PUBLIC SECTOR	15	1	21	21
FEDERAL AGENCY	0	0	0	0

AK 10 - Safety Compliance  
 AK 20 - Health Compliance

ALASKA HEALTH ADMINISTRATION  
INSPECTION REPORT

PAGE

REGION 10 STATE AK

UNID STATE DATA ONLY	DIVISION		STAFF TOTAL	REGION TOTAL
	AK 10	AK 20		
<b>INSPECTION CLASSIFICATION</b>				
SAFETY PLANNING GUIDE	329	0	329	329
HEALTH PLANNING GUIDE	28	12	47	47
LOCAL EMPHASIS PROGRAM	109	13	117	117
NATIONAL EMPHASIS PROGRAM	0	6	6	6
MIGRANT FARMWORK CAMP	0	0	0	0
<b>EMPLOYEE INFORMATION</b>				
EMPLOYED IN ESTABLISHMENT COVERED BY INSPECTION	22207	1910	33097	33097
	8376	837	9213	9213
<b>AVG CASE IRS PER INSP</b>				
SAFETY	11	0	11	11
HEALTH	27	23	25	25
<b>VIOLATIONS</b>				
WILLFUL	3	0	3	3
REPEAT	4	0	4	4
SERIOUS	123	1	126	126
OTHER	303	11	314	314
F T A	2	0	2	2
TOTAL	1105	14	1119	1119
<b>FEUILTIES</b>				
WILLFUL	2320	0	2320	2320
REPEAT	1090	0	1090	1090
SERIOUS	32765	240	33205	33205
OTHER	1290	0	1290	1290
F T A	2000	0	2000	2000
TOTAL	12615	240	12855	12855
<b>CONTESTED CASES</b>				
INSPECTIONS CONTESTED	23	0	23	23
INSP W/CITATIONS CONTESTED (%)	6.7	0.0	6.6	6.6
<b>LAPSE DAYS INSP TO CIT ISSUED</b>				
AVG LAPSE SAFETY INSP	21	0	21	21
AVG LAPSE HEALTH INSP	47	54	50	50
AVG LAPSE ALL INSP	23	54	23	23

§ 18.60.093

violation under this  
the discovery of the  
violation. (§ 7 ch 72

itions which are not seri-  
of the third sentence, and  
sentence.

If, after an inspec-  
re to correct a viola-  
tice, the department  
reasonable time after  
or expiration of the  
er by certified mail  
er by certified mail  
the employer has 15  
on and the OSHA  
test the citation or  
king days after re-  
soner, the employer  
employer intends to  
penalty, the citation  
final and not subject

that an employer has  
olation for which a  
notify the employer  
posed to be assessed  
as 15 working days  
OSHA Review Board  
tion of the proposed  
s from the receipt of  
employer fails to give  
or proposed assess-  
as proposed shall be  
ew by any court.

contest the citation  
the OSHA Review  
and thereafter issue  
ifying, or vacating  
ing other appropri-  
its issuance.

§ 18.60.095

HEALTH AND SAFETY

§ 18.60.095

(d) The OSHA Review Board shall notify the authorized representa-  
tive of the affected employees that an employer is contesting a citation  
or notification issued under (a) or (b) of this section and afford the  
representative an opportunity to participate in the hearing on the  
matter.

(e) An employer, an affected employee or a representative of  
affected employees has 15 working days from the receipt of a citation  
within which to notify the commissioner and the OSHA Review Board  
that the period of time fixed in the citation for the abatement of a  
violation is unreasonable. The OSHA Review Board shall afford an  
opportunity for a hearing and thereafter issue an order, based on  
findings of fact, affirming or modifying the original period for abate-  
ment, and the order is final 30 days after its issuance. If the contest is  
initiated by the employer, the OSHA Review Board shall notify the  
employees in the same manner as provided by (d) of this section. If the  
contest is initiated by the employees, the OSHA Review Board shall  
notify the employer and afford the employer an opportunity to partici-  
pate in the hearing on the matter. (§ 7 ch 72 SLA 1973; am § 2 ch 26  
SLA 1983)

Effect of amendments. — The 1983  
amendment, in subsection (a), inserted "or  
after an employer's failure to correct a vi-  
olation for which the employer has been  
issued a notice" and "or expiration of the  
time period set out in the notice" in the  
first sentence, substituted "after receipt of  
the penalty notice" for "from the receipt of  
the notice" in the second sentence, re-  
moved personal pronouns from the first  
and second sentences, and made a minor  
word change in the second sentence.

Opinions of attorney general. —  
Agencies assessed penalties under this

section and AS 18.60.095 must, as a gen-  
eral rule, pay those penalties, within the  
limits of available appropriations, from  
their operating budgets. In the event an  
agency wishes to contest a citation, the  
agency may be represented by its assigned  
counsel in the Attorney General's Office  
before the Occupational Safety and  
Health Act Review Board; if the agency  
chooses to contest an adverse determina-  
tion by the review board, outside counsel,  
funded by the agency, will have to be em-  
ployed. March 27, 1980 Op. Att'y Gen.

NOTES TO DECISIONS

The 1973 amendments to this title  
made mandatory the enforcement of  
safety regulations in most instances.  
Wallace v. State, Sup. Ct. Op. No. 1852  
File No. 2683, 557 P.2d 1120 (1976).

Sec. 18.60.095. Penalties. (a) An employer who wilfully or repeat-  
edly violates a provision of AS 18.60.010 — 18.60.105 that is applica-  
ble 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 \$10,000 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 em-  
ployer 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 up

to \$1,000 for each violation. 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 of 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 up to \$1,000 for each violation.

(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 \$1,000 for each day during which the failure to correct the violation continues.

(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.

(f) A person who knowingly makes a false statement, representation, or certification in an application, record, report, plan or other document filed or required to be maintained under AS 18.60.010 — 18.60.105, 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.

(g) An employer who violates the posting requirements of this chapter shall be assessed by the commissioner a civil penalty of up to \$1,000 for each violation.

(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. (§ 7 ch 72 SLA 1973)

**Opinions of attorney general.** — Agencies assessed penalties under AS 18.60.095 and this section must, as a general rule, pay those penalties, within the limits of available appropriations, from their operating budgets. In the event an agency wishes to contest a citation, the

agency may be represented by its assigned counsel in the Attorney General's Office before the Occupational Safety and Health Act Review Board; if the agency chooses to contest an adverse determination by the review board, outside counsel, funded by the agency, will have to be employed. March 27, 1980 Op. Att'y Gen.

The state may enforce the duties set out in subsection

**Section and former compared.** — See *Krall v. Am., Inc.*, 374 F. Supp. 1-1973).

Whereas former AS 18.60 "fines" and "imprisonment" this section, which replaced this section, now specifies "civil most violations, saving "imprisonment" for serious violations. See *Krall v. Royal Inns of Am.* Supp. 146 (D. Alaska 1973).

Neither mention tort nonavailability of contribution. — See *Krall v. Royal Inc.*, 374 F. Supp. 146 (D.

Defense of contributor not abolished. — See *Krall v. Am., Inc.*, 374 F. Supp. 1-1973).

From indicia concerning AS 18.60.090 the federal district not persuaded the legislature abolish the defense of contribution for a violation of the Federal Safety Code or in any way depart from the normal principle of the defense. *Krall v. Am., Inc.*, 374 F. Supp. 1-1973).

The Alaska legislature did deny the defense of contribution to negligence per se sections of the Alaska General. *Krall v. Royal Inns of Am.* Supp. 146 (D. Alaska 1973).

**Sec. 18.60.096.** In designated agent as a restraining a particular that constitute immediately cause an order issued under the necessary to avoid, correct; prohibit the employer under conditions where order may allow the correct, or remove the

(b) When and as includes that condition.

§ 18.60.095

section, a serious as in the place of serious physical ad to exist if the f reasonable dili-

tion of a provision the employer of a — 18.60.105. and a serious nature. ty of up to \$1,000

within the period s been issued may of not more than rrect the violation

ates a provision of the employer or a ) — 18.60.105. and conviction. is punish- imprisonment for not a second conviction ath, an employer is y imprisonment for

tement, representa- port, plan or other ber AS 18.60.010 — ne of not more than months, or by both. ements of this chap- il penalty of up to

oner shall give due he employer being ith of the employer. 72 SLA 1973)

represented by its assigned Attorney General's Office Administrative Service and Law Board; if the Agency get an adverse determina- low board, outside counsel. 1973) will have to be em- 1973) Atty Gen.

§ 18.60.096

The state may enforce the criminal pen- alties set out in subsections (e) and (f) on

HEALTH AND SAFETY

§ 18.60.096

the Annette Islands Reserve, May 3, 1983 Op. Att'y Gen.

NOTES TO DECISIONS

Section and former AS 18.60.090 compared. — See Krail v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

Whereas former AS 18.60.090 set forth "fines" and "imprisonment" as penalties, this section, which replaced the former section, now specifies "civil penalties" for most violations, saving "fines" and "imprisonment" for serious violations only. Krail v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

Neither mention tort remedies or nonavailability of contributory negligence. — See Krail v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

Defense of contributory negligence not abolished. — See Krail v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

From indicia concerning former AS 18.60.090 the federal district court was not persuaded the legislature intended to abolish the defense of contributory negligence for a violation of the Alaska General Safety Code or in any way intended to depart from the normal practice of allowing the defense. Krail v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

The Alaska legislature did not intend to deny the defense of contributory negligence to negligence per se based on violations of the Alaska General Safety Code. Krail v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

Sec. 18.60.096. Imminent dangers. (a) The commissioner, or a designated agent as authorized by the commissioner, may issue orders restraining a particular condition or practice in any place of employment that constitutes a danger that could reasonably be expected to immediately cause death or serious physical harm. The terms of an order issued under this section may require steps to be taken as necessary to avoid, correct, or remove the imminent danger and may prohibit the employment or presence of an individual in locations or under conditions where imminent danger exists. The terms of the order may allow the presence of individuals necessary to avoid, correct, or remove the imminent danger.

(b) When and as soon as a representative of the department concludes that conditions or practices described in (a) of this section exist

The effect of the Alaska General Safety Code and the enabling legislation is not to place the entire responsibility for the harm on the defendant employer. Krail v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

Action by injured workman for damages not authorized. — Nowhere in either AS 18.60.010 — 18.60.105 or regulations can there be found authorization for a claim for relief and award of civil damages to an injured workman for harm resulting from the breach of AS 18.60.010 — 18.60.105 or the General Safety Code. Morris v. City of Soldotna, Sup. Ct. Op. No. 1296 (File No. 2296), 553 P.2d 474 (1976).

The worker's limited ability to exercise self-protective care because of economic duress did not persuade the federal district court to construe this article to eliminate the defense of contributory negligence. Krail v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

Fact finder to sift through facts of each case. — By retaining the defense of contributory negligence, it remains to the finder of fact to sift through the facts and circumstances of each case and determine whether the employee met that duty. Krail v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

Applied in Woods & Rohde, Inc. v. State, Dept. of Labor, Sup. Ct. Op. No. 1433 (File No. 2903), 565 P.2d 138 (1977).

FEDERAL OSHA ACTIVITY  
FY '86

	<u>Safety</u>	<u>Health</u>
Total Inspections	53,365	8,794
<u>Inspections by Type</u>		
Unprogrammed		
Accident	1,383	92
Complaint	4,490	4,144
Referral	2,531	1,297
Monitoring	148	139
Variance	1	1
Follow-up	1,465	463
Unprogrammed related	3,441	424
Unprogrammed other	3	33
Programmed		
Planned	37,149	2,073
Programmed related	1,762	74
Programmed other	992	4
<u>Violations</u>		
Willful	222	99
Repeat	2,357	365
Serious	32,215	3,239
Other	<u>73,829</u>	<u>14,782</u>
TOTAL	109,123	18,485
<u>Penalties</u>		
Willful	\$ 1,558,060	\$1,932,100
Repeat	1,750,453	190,660
Serious	3,450,045	1,164,665
Other	53,605	18,510
TOTAL	\$11,812,163	\$3,305,935
Contested Cases:	1,104	251

# Job-related injuries on the increase

## Statistics show on-the-job hazards up for hospital, restaurant, hotel workers

By MATT YANCEY

THE ASSOCIATED PRESS

WASHINGTON — Working in the mines is not as dangerous as it used to be, but on-the-job hazards have increased in hospitals, restaurants and hotels, according to government figures on occupational injuries and illnesses.

The number of work-related injuries rose by 86,900 from 1984 to nearly 5.3 million in 1985 and job-caused illnesses rose by 800 to 125,600, the Bureau of Labor Statistics reported Thursday.

Work-related deaths in 1985 totaled 3,750. Two-thirds of them in the construction, manufacturing, transportation and public utilities industries. The total is 10 more deaths than in 1984.

As in previous years, the leading cause of death was motor vehicle accidents, accounting for nearly one-third of the fatalities, the BLS said.

Because of a 2 million increase in the number of Americans working full time, the rate of job-related injuries and illnesses fell from 8.0 to 7.9 per every 100 workers, the BLS said.

The rate of injuries and illnesses had increased sharply in 1984, from a record low of 7.6 per 100 workers in 1983.

"This strengthens our belief that

we are making progress, because additional workers and longer hours often are associated with greater, rather than fewer job-related injuries and illnesses," said John Pendergrass, head of the Occupational Safety and Health Administration.

The overall figures masked dramatic declines in some traditionally hazardous occupations. Injury rates fell from 13.5 to 10.6 per 100 workers among foresters, from 9.5 to 8.3 per 100 among miners and from 15.4 to 15.0 in construction.

At the same time, it increased from 6.0 to 6.8 per 100 employees among health care workers, from 7.7 to 8.1 per 100 among restaurant employees and from 9.7 to 9.9 among hotel workers.

Margaret Seminario, associate director of occupational safety and health for the AFL-CIO, said the numbers show injuries are decreasing only in declining industries while at the same time they are rising in the rapidly expanding service areas of the economy.

"What that suggests is that we can't have increases in economic activity in this country without also having increases in injury rates," she said. "We need a policy that doesn't rely on recessions to decrease injuries to workers."

Seminario also renewed an ongoing complaint from labor unions that the BLS data under-report the real incidence of job injuries because of 1981 changes by the Reagan administration in OSHA inspection and enforcement policies.

And in an unusual disclaimer on the cover of the report released Thursday, BLS Commissioner Janet L. Norwood also expressed "concern about the completeness of the record, keeping upon which the survey is based."

The data is compiled from a BLS survey of OSHA-required injury and illness logs from 280,000 of the nation's 5 million workplaces employing 11 or more full-time workers.

Ms. Norwood said her agency is taking several steps to address what bureau officials acknowledged "may be problems" with the data.

Those problems have been highlighted in recent months by fines totaling \$1,184,000 against the Chrysler Corp., Union Carbide Corp., and Fibria Corp. for under-reporting injuries and illnesses on logs used by OSHA to enforce health and safety laws by the BLS to track trends in the area.

"We don't have any direct evidence of under-reporting," Associate BLS Commissioner William Eisenberg said Thursday. "But there have been some recent cases where the Labor Department has brought actions against a few firms and people are making allegations that the logs aren't accurate."

The White House Office of Man-

agement and Budget earlier this year rejected a request by the BLS to conduct in-plant audits of injury and illness logs using backup medical records at a small sample of plants.

However, OSHA, after coming across the incidence of under-reporting at Carbide, Chrysler and Fibria, has launched a pilot survey involving on-site evaluations of the records of 200 companies in two states. The BLS said it is awaiting the results of those surveys.

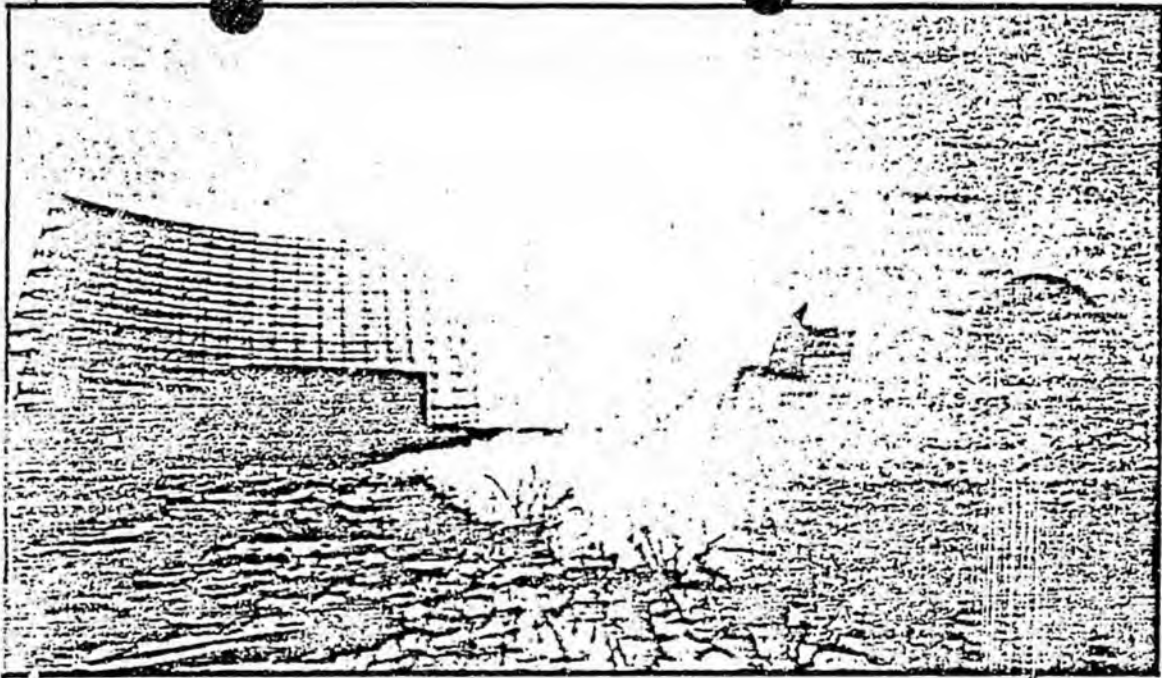
Unions claim the record problem began in 1981 when the Reagan administration abandoned a previous OSHA policy of trying to inspect all workplaces in hazardous industries and, instead, said it would inspect only those with higher-than-average injury and illness rates based on their logs.

"Employers are being exempted from inspections based on their injury rates," said the AFL-CIO's Seminario. "That's an incentive for them to under-report."

The labor statistics bureau's Eisenberg also there is a problem in recognizing occupational illnesses such as asbestosis, brown lung and black lung that have long latency periods. Rarely do those cases show up in the data used by the bureau.

Eisenberg said the BLS has asked the National Academy of Sciences to review the entire safety and health statistics system used by the government and possibly develop new methods for estimating the extent of occupational illnesses.





Clear Air Force Station, part of the 'United States' ballistic missile early warning system. U.S. Air Force photo

## After their exposure to microwaves at Clear, workers are looking for help

By RICHARD MAUER  
Daily News reporter  
Copyright © Anchorage Daily News

**C**LEAR — On a normal day, the giant aluminum web dish of the Clear tracking radar is pointed at the heavens, casting two powerful microwave beams skyward. The invisible, 5 million watt searchlight probes space for operating satellites, orbiting junk or ballistic missiles aimed at North America.

But on Sept. 14, the tracker beams were cut off and its motor drives stilled. The only noise within the dome sheltering the tracker dish came from eight men at work.

Richard Eldridge and John Jessop were welding a cracked aluminum tube. Carl Keppler and William Emmons, civil service inspectors from California, inspected the work and checked the alignment of critical parts. Ronald Foster and Ed Forsling, two radar technicians, helped the others. Two electri-

cians were installing floodlights beneath the dish.

Sometime after 3 that afternoon, strange things began to happen.

Eldridge, Jessop and Emmons couldn't understand why it was becoming so uncomfortably warm. The radome temperature had been about 60 when they walked in that morning.

Their scalps were especially annoying, as if they had worn hats all day in the summer sun.

Even odder were the stinging metal filings. The welders prepared the aluminum for welding with a grinding wheel, which threw off hot and biting bits of metal.

As Foster crawled around the tracker radar looking for a hole where a fallen bolt belonged, he also felt the strange warmth.

Keppler left his spot on top of the dish and came over to the others. His flashlight was hot to the touch. The bulb had burned out.

See Page A-10, WORKERS

# Radiation victims remain uncertain about the extent of damage and what future holds

Continued from Page A-1

Before it died, the light shined even when the switch was off, he told them.  
"Are you kidding me?" Foster said. It sounded like a weird joke.

Someone asked Emmons, "Do you have a flashlight?"  
Emmons reached into his shirt pocket and pulled out a penlight.

It was glowing. The switch was off.  
Emmons sweat his arm around in an arc. The light in his hand shone brightly first, then dimmed as he swung it in front of him. At the end of the arc, it started blinking in a rapid rhythm.

At the same time, Eldridge heard something overhead on the aluminum screen. It was a crackling electrical arc, shooting between the tubular pieces. The blue spark was flashing in time with Emmons' light.

The mystery was over.  
"We've got radiation! We've got to get the hell out of here," Eldridge said.

Jessop, on this job less than a year, hesitated.

"Junn, we've got to get out of here now," Eldridge told him.

The tracker had turned into an enormous microwave oven.

No one panicked. While the six men slumped down, Eldridge asked Jessop the time. It was 3:41.

The electricians, snafued from the radiation by distance and the oncom of the tracker screen, wondered what the commotion was about.

As the men left the radome with changes in their minds and bodies they don't understand to this day, it brought an end to the most serious reported radiation accident at the Ballistic Missile Early Warning System base at Clear.

But the way it began, and the subsequent response of the Air Force and the International Telephone & Telegraph Co., subsidiary that operates the site, have raised serious questions about safety and operations at Clear, a cornerstone in the strategic defense of North America.

Documents submitted to government agencies in connection with the microwave overexposure, reports prepared by ITT and the Air Force, and interviews with Clear employees and others close to the investigation show:

• An ingenious and foolproof radar shutdown system that could have prevented the accident was routinely bypassed as a matter of company policy.

• Monitoring panels and automatic controls don't match the actual layout of transmitting equipment because of an equipment switch made before the base was opened in 1962. The fault, which was never corrected, contributed to the accident.

• Men who were not fully trained were working alone on key control panels, while one critical work station was unmanned at the time of the accident.

• A simulation of the accident by the Air Force to determine the workers' exposure levels was conducted with a broken detection meter. A second working meter was used incorrectly.

• Despite repeated requests by the Alaska Department of Labor to the U.S. Occupational Safety and Health Administration for help in conducting a second, independent exposure simulation, the federal government has failed to respond. Last November, an OSHA radiation specialist in Salt Lake City was told to pack his bags for a flight to Alaska, but the trip was called off by the regional OSHA administrator in Seattle.

The men, who continue to suffer from the overexposure and whose conditions may deteriorate with time, say they have been treated callously by officials who appear to be more eager to minimize the accident than to provide them with proper medical care. They are especially concerned about their eyes because cataracts have been linked to microwave exposure.

Of the six, only Eldridge has seen independent doctors who are experts in the field of microwave overexposure, and he was fired by the ITT subsidiary, Felec Services Inc., while undergoing consultations on the East Coast. He said he was forced to remain away from his job longer than he expected because the Air Force wouldn't provide his medical records. It was not until he asked Sen. Ted

Stevens, R-Alaska, for assistance that the records were finally sent to his doctors in New York and Massachusetts, he said.

When Dr. Don Justesen read about the Clear accident in Microwave News, a trade publication specializing in the kind of radiation emitted by radio transmitters and electrical devices, he noticed some striking parallels to his observations of laboratory mice and rats.

For the same reason that microwave ovens cook so rapidly — the radiation penetrates the food, warming it inside at the same time the surface is heated — microwaves from any source can be harmful to living organisms.

The great danger in exposure to high levels of radiation is that there is no way to know what is happening, said Justesen, director of the Veterans Administration Behavioral Radiology Laboratories in Kansas City.

The human body is designed to recognize heat that goes from "the outside in" because the nerve sensors that recognize heat are near the skin's surface, Justesen said. Intense microwave radiation, especially at the 420 megahertz frequency used by the Clear tracker, penetrates deep into tissue, Justesen said. Cells begin to die at temperatures several degrees lower than heat that triggers pain, he said.

When microwaves are beamed at rats or mice — animals that surpass most species in their ability to escape noxious situations — "they seem to get confused," Justesen said in a telephone interview. "They don't attribute the warming to external forces."

While it's difficult to translate effects from rats to man, one thing is clear, he said. "You could absorb quite a dollop of energy and even feel thermally discomforted and not know where it's coming from."

Whatever happened to the men at Clear, Justesen said, it would have been important for them to see a physician at once, especially if they complained of being warm or overheated. "The danger, as I see it, is delay," he said.

Four hours passed before the men saw even a nurse, Justesen was told.

"Oh, lord," he said.

When the workers got out of the radome, Ron Foster, the radar technician, asked his lead man, Andrew Souders, if the radar was on. Souders blanched.

A Nov. 29 ITT investigation would level most of the blame on Souders, who had opened the switches that allowed the radiation to enter the tracker and had pushed the button that, unbeknown to him, had started the radar transmitter.

But employees familiar with the site say the accident occurred because of a compounding series of errors. Souders' actions wouldn't have put the men in jeopardy if other precautions had been followed, they said.

While Foster was talking with Souders, welder Richard Eldridge was calling his boss, Vern Finch.

"We just had a radiation accident," Eldridge told him.

When Finch arrived, the two welders weren't showing any signs of serious medical problems other than feeling warm and a bit out of sorts. He told them to go back up and finish the job. They balked.

"What guarantees do you have that this won't happen again?" Eldridge asked.

"You've got my word," Finch said.

"That's not good enough," said Eldridge. Foster and Forsling were also told to return to work.

"They didn't treat it like an accident," Foster said later.

The workers finally agreed to go back and pick up their tools and re-oolt the parts that would allow the tracker to operate normally.

At 6:30 that evening, they were taken to the base nurse, another Felec employee. Their temperatures were still elevated. She measured their other vital signs.

Keppler had large red areas on his upper torso. Eldridge's wrist was burned where it rubbed a metal snap from his denim work shirt. He said later that the nurse failed to note that in her report.

Air Force officials promised the men that they would get expert care from the aerospace medicine center at Brooks Air Force Base in San Antonio, Texas — a promise that wouldn't be fulfilled for nearly a month.

ning over radiation badges worn by Eldridge and Jessop. The film badges were the kind used by people who work around sources of ionizing radiation — such as X-rays, or the radiation that emanates from uranium and plutonium.

Eldridge and welder John Jessop said that Tom Miller, Felec chief of safety and security at Clear, assured them the badges would also detect radio frequency radiation, which includes microwaves. When the men challenged that assertion, Miller became adamant.

"There's 250 experts on this base, I guess, but I'm telling you this is a dual-purpose badge, that it detects radio frequency and ionizing radiation," Miller said, according to Eldridge.

(Miller declined to comment for this article. He referred all questions to Robert Laird, industrial relations manager for Felec Services in Colorado Springs, Colo. Laird, who has represented the company in meetings with the Alaska Department of Labor, refused to comment about any aspect of the radiation accident and referred questions to ITT's public relations department in Paramus, N.J. There, John O'Grady, who oversees the public relations department as an ITT vice president and director of administration, also refused to discuss the accident. "We have no comment at all," O'Grady said.)

Miller promised to send the badges to a lab for processing. "We'll fly them out and in 24 hours, we'll know the level of radiation," he told Eldridge.

The men spent a restless night. They reported for work the next morning. After lunch, they were taken by van to Fairbanks Memorial Hospital, 30 miles away.

While the doctors there acknowledged their lack of experience in microwave radiation, they diagnosed the men as suffering nothing more than a "mild sunburn," according to the workers. The symptoms the men were complaining about — restlessness, dizziness, disorientation, headaches and pain through their bodies — could be attributed to stress, they said.

While at the hospital, Jessop began feeling woozy and sick to the stomach. He was hospitalized about a week, Eldridge checked in the next day.

Seven days after the accident, the secretary for the Clear site manager called Eldridge and Jessop at home. The results from the film badges had finally come back.

The men had not been radiated, she said.

"Why the hell did they give them radiation badges?" said Samuel Koslov, former special assistant for science to the assistant secretary of the Navy and now a researcher at Johns Hopkins University in Baltimore. "I would suspect that was really stupid."

Film badges can't detect microwave radiation, Koslov said in a telephone interview.

Though the radiation at Clear failed to darken the film badges as X-rays would have, it could have done something to the men, said Koslov, who based his opinion on reports of the exposure in Microwave News.

"That's a very high exposure, but a fairly short time," he said.

After decades of research into the biological effects of microwaves, scientists are sharply divided.

Some scientists say that even at low-power levels, radio waves at certain frequencies, especially in the microwave range, can change body cells and chemistry in subtle ways and also alter behavior.

Cataracts, or clouding of the eye lenses, are one possible effect, they say. Genetic changes and alterations in the body's disease-fighting immunological system are also possible.

Russian scientists long ago concluded that microwaves change behavior and have set an occupational standard one-thousandth that of the U.S. standard.

The Russian research has led some American scientists to speculate that the "Moscow signal" — a low-power microwave transmission beamed at the U.S. Embassy in Moscow for more than a decade — was designed to disrupt the thoughts of U.S. diplomats. That belief was not shared officially by the State Department or the CIA.

Koslov said that despite all the years of U.S. research into microwaves, most of it, paid for by the Pentagon, has been misdirected.

There seems to be more of an effort

proving there are no effects," he said. He compared the situation to the debate over Agent Orange, the Vietnam war defoliant blamed for numerous ailments by veterans but which the Defense Department maintains was safe.

Koslov said the Clear workers received a strong enough dose of radiation to cause damage. It was critical that they be examined immediately to establish medical and psychological baselines from which future changes could be plotted.

"It would appear to me that responsible Air Force management would have been concerned as hell to get as much information as they can and handle it in a responsible manner."

On Sept. 22, eight days after the accident, the Air Force sent a team to Clear to simulate what happened and determine how much radiation hit the men.

Heading the Air Force team was Lt. Col. David Nuss of Elmendorf Air Force Base. He was accompanied by Capt. John Clero, an Eielson Air Force Base in Fairbanks.

Ron Foster, the radar technician, assisted the two, and he immediately became suspicious about the results. In conducting the tests, Nuss used two radiation detection meters. Though both were the same make and model, their readings were substantially different when placed side by side at the base of the tracker.

"Like 30 percent different," Foster said. Weeks later, when the lower-reading meter was sent to the factory, the company reported the meter probe was broken, Foster said.

The team laid the meter probe where they believed each man was working, on the radar dish just beneath the source of radiation. They left the dish to avoid being exposed to an radioed technician Ed Forsling in the control room, who turned on the power.

The meter had to be exposed for a minimum of six seconds of radiation to achieve an accurate reading, Foster said, but instead they relied on a five-second count. Though Nuss' written report said his key readings were taken with 10-second exposures, Forsling said log entries would prove that the radar ran for only five seconds.

An internal Felec memo written Oct. 13 to the company's radiation protection officer, Cecil Gates, said Nuss used the meter in a position designed for measuring radiation leaks from microwave ovens, not the enormous and complex radiation fields produced by radar.

When Nuss took his readings, the radar emanated 600,000 watts. It produced about 10 million watts on Sept. 14, Foster said.

Nuss turned down a request for an interview, directing questions to the Air Force Space Command Headquarters in Colorado Springs, which is responsible for Clear. An Air Force spokeswoman at the Space Command said she couldn't provide answers about the survey over the phone. A series of written questions about the Clear accident mailed to the Space Command Feb. 9 had not been answered by Friday.

In a meeting after his Sept. 22 survey, Nuss presented his results to the workers. They were told not to worry.

"It was a slight exposure, like a mild sunburn. You don't require any medical attention," the men were told, according to Foster.

Nuss said the overexposure lasted 10 minutes, ranging from a low of 19 milliwatts per square centimeter for Eldridge to a high of 102 milliwatts for Keppler. The maximum exposure allowed by the Air Force is 1 milliwatt, a standard that is about to be lowered to four milliwatts, according to Dr. John Mitchell, who directs the Air Force radiation research lab at Brooks.

During the Sept. 22 meeting, Foster did some rough calculations and concluded that the exposure was closer to 360 times the standard.

The next Monday, there was a conference call to Brooks. The doctors there would see the six men for intensive "flight physicals," but not for two weeks. Keppler, Eldridge, Emmons and Forsling agreed to go. Jessop and Foster would not. They were getting too suspicious of the Air Force.

Foster and Jessop finally visited Brooks last month, but they have yet to receive the

# Workers who suffered radiation at Clear look for answers and someone they can trust

Continued from Page A-10

medical records, they were told the base legal department would have to review the reports first.

"They said they mailed them yesterday," Foster said Friday. "They've been mailing them yesterday for two weeks now. We need to get those records so we can get started on some treatments."

Felce conducted its investigation into the accident, which it submitted to the Air Force on Nov. 27.

Foster made an independent investigation. He concluded that the company left out important information about the cause of the accident. He gave his own report, which he initially prepared for the Air Force Inspector General, to the Alaska Department of Labor.

At the heart of the safety system for the Clear tanker calor is a series of key interlocks. If the system was used as it was designed, it would have prevented the accident, Foster said.

Foster and Congressional aide William Sharrow, who is investigating the Clear accident for Alaska Rep. Don Young, said inadequate control room staffing contributed to the accident.

"There's not adequate manning when the government is paying for it," Foster said. "To tell the truth about the accident is to tell the truth about a lot of money not accounted for."

One ITT subsidiary or another has operated and maintained the Ballistic Missile Early Warning System for 12 of the past 22 years. Under its current contract, ITT's Felce subsidiary is paid \$47,752,189 to operate and maintain the BMEWS headquarters at Colorado Springs and BMEWS stations at Clear, Greenland and Iceland.

The Alaska Department of Labor cited Felce for two "serious" occupational safety violations on Dec. 22 and threatened to fine it \$840.

Jorgensen said the labor department and Felce have reached a tentative settlement on the case. Under the agreement, which is not yet in writing, Felce will be allowed to pay a reduced penalty of \$150 without admitting wrongdoing. Jorgensen said he is satisfied with the company's efforts to avoid a repeat of the accident. Foster is not.

Five months after the Clear accident, Ed Forsling, 44; Jessop, 42; Jim Foster, 41; and Richard Eldridge, 40, some of their initial symptoms — short-term memory loss, vertigo, exhaustion and coping problems — have receded. But they have not gone away.

Foster said that sometimes he loses control of his arms, which start "flapping like a chicken." While on the job yesterday, his legs buckled beneath him. He was sent home on a medical leave.

Linda Jessop today said their family life has suffered.

"It hurts watching what's going on with my husband," she said in Fairbanks recently while waiting for her husband to complete an eye examination. "I see the signs and symptoms, and the pain."

Jessop used to be an extremely active man, the 44-year-old generally working on welding projects in his own shop on Saturdays and spending all day Sunday with the four children still at home. Now Jessop spends all day Saturday sleeping and only after lying in bed through Sunday morning can he find the energy to spend with his youngsters.

"All of a sudden, we don't do anything anymore. I have to tell the kids, 'Daddy don't feel well.' It's really hard on them because they can't see it. It's hard to explain that someone can be hurt without showing outside symptoms. It's not like the measles or chicken pox, or spring a leg and so."

On top of that, Mrs. Jessop said, she has had to cope with anonymous telephone threats.

About a month ago, someone called and asked, "Could

ing Felce and its workmen's compensation insurance company to send them to non-Air Force physicians who specialize in their injuries."

But the workers got another setback. In a letter dated Feb. 1, the insurance company said that a recommended specialist, Dr. Charles Becker of San Francisco University, "doubts not to become involved in this, particular case due to the political nature of the claim."

Dr. Herbert Pollack, a physician who led Project Pandora, a secret government study in the 1960s and 1970s into the effects of the Moscow Signal, downplayed the severity of the Clear accident in a telephone interview at his office in Palm Beach, Fla.

"The amount of damage one can expect in this particular situation is minimum, if any, at all," he said.

Others are not so sure.

Dr. Hans-Arne Hansson, a clinical and laboratory researcher at the university in Goteborg, Sweden and a leading expert in microwave radiation, said in a telephone interview that it would be hard to assess the damage in the men because so little is known about microwave exposure. Accidents like the one at Clear "are only rarely known," Hansson said.

But research is slowly catching up, Hansson said. Technical improvements in equipment and methods have enabled researchers to detect minute changes in body chemistry caused by microwaves — changes that could have significant impact on a person as time goes on.

Hansson is now doing clinical studies for the Swedish armed forces on workers who have been exposed to radar, but he wouldn't reveal his preliminary findings.

"This is hot stuff," he said. Swedish doctors are convinced of one thing: in the case of a microwave overexposure, patients should be treated "in the range of a day or so," Hansson said.

If the men at Clear develop cataracts, they can be treated surgically, said Dr. Milton Zaret, an ophthalmologist from Scarsdale, N.Y., who identified a "microwave" cataract when conducting research for the Air Force.

But the cure is never com-

plete.

"The eye is really a disabled eye from that point on. You can't focus anymore," Zaret said.

Because additional exposure could cause cumulative and irreversible damage to the workers at Clear, Zaret said, they might be wise to avoid microwave radiation sources, whether at Clear or from leaking microwave ovens, computer video display terminals or even citizen's band radios.

Zaret examined Richard Eldridge in December and found swelling of the eye lens. He said it was too early to predict whether Eldridge would develop cataracts.

The delays that the Clear workers went through before receiving treatment may have had more than medical effects, Zaret said.

"Part of the problem with these fellows now is that they're so suspicious that they wouldn't feel a good doctor-patient relationship with any of the physicians being put forward by the military establishment or some of the (military) sponsored research scientists," Zaret said.

The Clear case has caught the interest of Alaska's congressional delegation. On Jan. 18, Rep. Don Young called for a full-scale investigation of safety procedures at Clear in a letter he sent to Verne Orr, the Air Force secretary.

Young said the Air Force and Felce "did not cooperate in good faith with the affected employees in evaluating and treating any injuries or physical damage that may have occurred."

Young's aide, William Sharrow was unhappy with the public responses of both Felce and the Air Force. "One refers the public questions to the other, and the other refuses to answer. It almost smacks of collusion."

K. Cormler, a spokeswoman for the Air Force Space Command in Colorado Springs, Colo., said Friday the Air Force has not yet responded to Young's demands. While a contract compliance team from the Air Force is scheduled to arrive at Clear today, she said, the visit is a routine annual inspection, not an investigation of the accident.

Sens. Ted Stevens and Frank Murkowski of Alaska have asked the Air Force to keep them informed of official

actions in the case.

"In December, Sen. Stevens and Sen. Murkowski both wrote the Air Force and asked that the victims get proper medical attention," said an aide to Stevens. "We got a letter back that was not satisfactory to either office."

Young has also called for a independent evaluation to measure how much radiation the workers were exposed to. He is not alone.

According to state documents, the Alaska Department of Labor requested the U.S. Occupational Safety and Health Administration office in Seattle to provide assistance in a new survey three times since Nov. 1. The request was referred to Jim Lake, OSHA regional administrator in Seattle, when he visited Juneau Thursday on other matters.

Irv Jorgensen, chief industrial hygienist for the state labor department, said state investigators lack the equipment and experience for a survey. Though OSHA is usually "more than cooperative to provide assistance," Jorgensen said, in this case the answer from Lake has so far been negative.

In an internal memo to Lake, Robert Curtis, senior industrial hygienist for OSHA's special health response team in Salt Lake City, suggested Jan. 12 that a second survey be done to alleviate the doubts expressed by the workers. The memo was obtained under the Freedom of Information Act.

In his memo, Curtis reported that Col. Roger Granam of Oregon Air Force Base had said the official Air Force position is to "discourage additional measurements." Curtis said he was told by Dr. John Mitchell, also of Ilwaco, that the problems of the Clear workers could be attributed to "age and smoking habits."

In an interview, Curtis said his OSHA supervisors in November asked him to prepare to fly to Alaska to conduct a second survey at Clear. But Lake, who has jurisdiction over OSHA activities in Alaska, called "and told us not to come."

Lake said in an interview that he "was still struggling" over whether to order a new survey.

"Hell, I don't know myself what I'm going to do," Lake said. "Based on the Air Force expertise in this area, we've

made up our minds that the Air Force is competent to handle it. It wouldn't have made a difference what kind of exposure the workers had because the medical evaluation that was done would take care of any situation I don't know what we would buy by going back in and doing a re-measurement."

But Foster said Lake was wrong. "It happens everyone is sick from this, and that's going to be with us for the rest of our lives. Every one of our doctors is telling us an accurate survey is important."

John Jessop, the welder, no longer remembers very strong while working in an unshielded ground utility corridor near the giant detection radar dishes at Clear. The discovery has him nervous.

"I'm no expert, but I know what I've seen," Jessop said. "I've seen some very disturbing, grossly deformed little children, screws and red barked veins. I've seen their backs crooked, their legs, humps on their backs, deformities in their heads, and some without even any eyes. They run around out here in the back of the streets."

Jessop said he talked about the contents in the meeting with Air Force personnel following the accident. A writer from Emission Air Force Base seemed interested at the time but so far no one has gone to Clear to capture them.

After seeing what microwave radiation may have done to the mice and feeling what it already has done to him, Jessop is wondering what the future holds.



Ron Foster gets an eye test.

you give me the price of a coffin for a seven-year old girl!" She couldn't figure out what the child was talking about and hung up. The next night, the same person called, this time asking, "Could you give me the price of a coffin for a nine-year old boy?"

Those were the eyes and fears of two of her children. Mrs. Jessop said she went to the FBI and alerted her children's teachers and school bus driver. She didn't tell her husband at first. He had enough on his mind, she said.

Neither William Emmons nor Carl Keppeler, the two technical specialists from Sacramento, could be reached for comment.

Forsling has also been suffering pain, faint spells and numbness in his left side. Both Foster and Jessop said that in addition to headaches, they have trouble seeing backlit objects like television.

Forsling, who never wore glasses before, has been told he needs bifocals. Foster said his eye doctor has seen a rupture inside his eyeball.

Jessop has gone through two eyeglass prescriptions since the accident. On Feb. 14, while undergoing a follow-up eye examination in Fairbanks, Dr. Alfred Dellamus said, "It looks like something is starting to happen in there." Though it was too early to make a definite diagnosis, Dellamus thought the change he was seeing in Jessop's right eye might be the start of a cataract.

Foster said that he, Jessop and Forsling have been press-

FEB 6 1985

*Clear Air Force Base*

# Radiation accident report reveals 'definite problems'

by David Ramsour  
Times Washington Bureau

Washington — A federal investigation of a September 1983 radiation accident at Clear Air Force Base has turned up "definite problems," but details won't be made public until June, said Alaska Rep. Don Young.

Young was briefed today on an ongoing General Accounting Office investigation of the incident in which six workers were exposed to dangerous levels of radiation at the base south of Fairbanks.

Young declined to release details of the briefing because he said the investigation is unfinished.

"I am impressed with the findings of the investigation which indicate that there are definitely problems at the Clear facility, but I'm not going to release any specific findings so as to not prejudice further investigatory work," Young said in a prepared statement.

"It is apparent that an investigation by an outside, neutral body was necessary in order to

set the record straight so that future operations at the Clear facility will be conducted in the manner consistent with protecting the health and safety of the workers," he added.

Chuck Davis, Young's press aide, said a draft GAO report will be released in June for comments by those involved in the incident and a final report probably will be released in September.

Federal agencies will oversee the Clear operations for 18 months following the release of

the final report, Davis said.

The problem originated when workers were repairing a large radar dish at the Missile Early Warning System site that was apparently turned on.

An investigation by the federal Occupational Safety and Health Administration last November found that the workers may have been subjected to radiation levels up to 35 times those considered acceptable by the federal government.

A separate Air Force investigation found that the radiation

was similar to a minor sunburn.

Several of the workers became ill after the accident and have complained of continuing medical problems.

The contractor on the job was Feltec Services, Inc., a wholly-owned subsidiary of International Telephone and Telegraph.

ITT was cited by the Alaska Department of Labor for violations of state safety laws. The company, seeking to avoid a state safety hearing last fall, agreed to pay a \$100 fine and changed its radar dish repair

procedures.

Young, who has criticized the Air Force treatment of the incident, has pushed for independent investigations.

He was briefed today by three members of the GAO's Washington staff and one Denver investigator.

The GAO investigation is focusing on whether the employees received proper medical treatment following their exposure and whether the Air Force and Feltec acted properly both before and after the incident.

to preliminary findings released this past week.

The pollution was serious enough to force closure or other steps to purify water in 109 of the wells, said Dr. Ken Kizer, director of the state Department of Health Services.

Six contaminated wells are still operating — all in Southern California — because no other supplies are available, the state reported. But customers have been warned of the health risks and most are presumed to be drinking bottled water.

Another 315 of the 2,558 wells tested showed levels of contamination that were severe enough to warrant further monitoring, but not closure, according to the findings.

Kizer said that the results are a cause for concern, "but I don't think they are alarming."

In some respects, he added, the findings "are reassuring" since the samples came from areas where state inspectors expected to find the worst contamination.

At least 25 percent of the wells were tested in 753 water

start, but we know it's not the whole picture," he said. "It's clear that we need to move quickly to analyze wells in the hundreds in surrounding areas that have not yet been tested."

Connelly, a Sacramento Democrat, authored the bill that ordered the study. In recent months he has been chafing at delays in completing it.

The study was to be finished last July, but the preliminary report contained only about 80 percent of the results.

Kizer said the report will be finished in January. He blamed computer problems for the delay and noted that no state has ever undertaken such a large sample before.

The report also concluded that the "workload was onerous. In spite of all the planning that had been done beforehand to streamline the process."

Many of the test results still to be evaluated come from the Los Angeles area and the San Gabriel Valley, in particular, Kizer said.

Los Angeles County led the list with 89 wells showing worrisome levels of pollution.

## More Sick Workers, Less OSHA

What accounts for the big increase in job-related injuries and illnesses recently reported by the Labor Department? The Reagan Administration's hostility to health and safety regulation, says the A.F.L.-C.I.O. Increased business activity and employment, says an analyst for the Congressional Office of Technology Assessment. The answer almost surely is both, but while the latter is inescapable, the former is inexcusable.

When more people are working, obviously more are risking job-related health problems. Public regulation can help, but the Administration wants neither to regulate nor help.

The regulator is supposed to be the Occupational Safety and Health Administration. Created in 1971 to reduce job illnesses and injuries, OSHA has ever been a regulatory paragon. Under this Administration, however, it has become less a thorn in the side of business, as the President charges, than a cipher. Unless it can be energized and given clear direction, it won't much matter why the worker health figures are getting worse.

The 12 percent increase in health problems in 1984 was the first in four years and the biggest since the government started collecting these data. Over all, workplace injuries and illnesses rose to 5.4 million in 1984 from 4.9 million in 1983, and the workdays lost rose to 3.7 per 100 workers, from 3.4.

Increased business activity undoubtedly was a factor. But the policies of the administration also played a role. From the beginning, its hostility toward OSHA has been undisguised. It has tried in a variety of ways to cripple the agency, in the interest of "getting Government off the back of business."

That is especially unfortunate because, during the Carter Administration, OSHA seemed for the first time to have found its bearings.

Ideally, the agency should focus on occupational health — protecting workers from hazardous substances and conditions that require investigation to identify and regulate. This is where the resources and expertise of a Government agency are of greatest help. Workplace safety, though a legitimate Government concern, may be more easily addressed non-governmentally, through union-management agreements, for instance, and insurance requirements.

Under Eula Bingham in the Carter Administration, OSHA was finally moving in this direction. That momentum was destroyed, however, by Thorne Aucher and Robert Rowland, the two men who have headed OSHA under President Reagan. Through exuberant budget-cutting they stripped the agency of technical and scientific expertise. With piddling fines they let employers know that OSHA had no teeth.

The agency has not even had a chief since Mr. Rowland's resignation last July. After a search, during which several prospects reportedly said no, Labor Secretary Bill Brock has submitted the name of a candidate to the White House.

No matter how capable, a new OSHA chief can be no more effective than the Administration allows. The Office of Management and Budget recently delayed a regulatory change on cotton dust that had won the agreement of organized labor, the textile industry, OSHA and Mr. Brock; that O.M.B. decision gives no reason for hope. The Administration seems in the grip of zealots who want not to see OSHA improved, but eliminated.

U.S. Department of Labor

Occupational Safety & Health Administration  
Federal Building & U.S. Courthouse  
701 C Street, Box 29  
Anchorage, Alaska 99513

Telephone: (907) 271-5152

LSS 1-31



Reply to the Attention of:

November 7, 1986

Richard Arab  
Deputy Director  
State of Alaska Department of Labor  
Division of Labor Standards and Safety  
1111 West Eighth Street, Room 304  
Juneau, Alaska 99802

Comm.	<i>RL</i>	<input checked="" type="checkbox"/>
Deputy	<i>RL</i>	<input checked="" type="checkbox"/>
Sp. Asst.	<i>LH</i>	<input checked="" type="checkbox"/>
Info. Off.	<i>LH</i>	<input checked="" type="checkbox"/>
Adm. Asst.	<i>RL</i>	<input checked="" type="checkbox"/>
Int. Aud.	<i>1</i>	<input checked="" type="checkbox"/>
Med. Dir.		<input checked="" type="checkbox"/>
To:		
cc:		
cc:		
cc:		

Dear Mr. Arab:

Enclosed is a copy of the State of Alaska's Annual Evaluation Report covering the period October 1, 1985 through September 30, 1986.

A meeting will be held at the Anchorage DCSH offices at 10:00 a.m. on November 13, 1986. If you should have any questions, please do not hesitate to call me.

Sincerely,

*L. P. Limtiaco*  
Leonardo P. Limtiaco  
Area Director

Enclosure

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CONSUL HEAD

## INTRODUCTION

This is an evaluation report of the Alaska Division of Occupational Safety and Health (DOSH) operations under Section 18(f) of the Occupational Safety and Health Act (OSH Act). Alaska's State plan was approved July 3, 1973, and the developmental period, as required by Section 18(e) of the OSH Act, ended October 1, 1976. The plan's enabling legislation, the Alaska Occupational Safety and Health Act, was passed by the Alaska Legislature and signed by the Governor, effective July 24, 1973.

The Alaska statutes provide a system of law and procedures similar to those established under the OSH Act, and DOSH is responsible for enforcing compliance with the standards and regulations adopted under the Alaska law.

The State of Alaska received certification for completing all developmental steps as specified in the plan. The certification was published in the Federal Register and became effective September 13, 1977.

The State received 18(e) determination after the program met the criteria established by the Assistant Secretary, and was determined as effective as the Federal program. The determination was published in the Federal Register and became effective September 26, 1984.

In accordance with the 18(e) determination in Alaska, Federal enforcement in the State of Alaska is limited to those areas identified as exclusive Federal jurisdiction and to both offshore and onshore enforcement responsibility under maritime, except work sites employing State and local government employees. Federal enforcement is also exercised on Annette Island and the Denali National Park.

The State had an unsettling year; during the last seven months of the evaluation period the State had to move their offices twice. The original office building was closed in February after several employees in other agencies became ill, apparently from the environment in the building. The enforcement section was moved to the National Guard Armory along with several other agencies, while the consultation staff was located in office space in another building. The armory space was limited, so much of the division's equipment was put in storage or left in the original building, including the Altos microcomputer. Enforcement personnel began working out of their homes under a system which required them to report to the armory one day a week and to call in for assignments other days. Citations were prepared on word processing equipment used prior to the installation of the Altos system and files were identified as to whether the forms had been data entered. The second move was in May to the temporary office space the State is occupying at the current time. This space is large enough for both enforcement and consultation, and has telephone service for the Altos. The State was able to enter and verify the accuracy of the February through

August data in time for the SPAM report used for the enforcement sections of this report.

Two CASPA's were received during the evaluation period, both of which concerned the State's response to complaints. Neither CASPA was found to be valid.

The evaluation is based on the State of Alaska's performance from October 1, 1985 through September 30, 1986. Sections A, B, C, D, G, and I use data collected through on-site monitoring activities for the entire evaluation period. Sections E, F, and H are based on SPAM report data through August 30, 1986. Information for Section J was obtained from a variety of sources, including OMDS reports, on-site monitoring, and grant applications. Section K data was provided by the Bureau of Labor Statistics. All measures are evaluated. The format of the report describes a measure, lists the numerical limits or ranges of State performance that, if met, will generally result in no further review of State performance (the Further Review Level, or FRL) the appropriate performance data, and analysis of the data. Each section concludes with a summary.

## SUMMARY

Alaska DOSH's timely response to Federally initiated standards has improved. The related performance measures were within acceptable limits as were the performance measures relating to the State's variance program.

The public sector consultation program met the goals and objectives for public sector consultation. DOSH, while devoting only 1.25 man-years of effort to the program, has successfully provided prompt and accurate identification of workplace hazards in the public sector. Consultative staff have also given public sector employers reliable, timely, and cost-effective recommendations for controlling workplace hazards. The consultative staff continually works with public sector employers to ensure timely correction of serious hazards and imminent danger situations. They have also been adept in encouraging employers to establish effective safety and health programs as well as providing the training and technical assistance necessary for this program development.

The project continues to have the managerial and administrative support necessary. There has been an excessive lag time from the closing conference until the report is mailed to the employer. However, examination of the facts contributing to this outlier seem to indicate that unusual and non-recurring circumstances, such as having the program move twice in one year, has had a negative effect. Although this element is considered an outlier, tighter administrative control by the program manager plus the fact that the program is not scheduled to move, should reduce this element to non-outlier status. Tighter administrative control would include a weekly review of closing conference dates and when those reports were due to the employers. Regional TCCFAP staff will make periodic checks to ensure a reduction in the time it take for an employer to get his written report.

## RECOMMENDATION

Ensure, through appropriate administrative control, that all reports going to the employer are mailed within 15 calendar days\* from the date of the closing conference. For those cases that have to rely on sample analysis, compute this time lag from the time the last samples are received from the laboratory. \*The 15 calendar day figure represents a program average.

The public sector enforcement program is administered equally with the private sector enforcement program. The State directed 5.3 percent of their inspection resources into the public sector, principally by responding to complaints and referrals. The types of violations cited in the public sector mirrored the private sector.

The State schedules programmed inspections in approximately the same proportion as the Federal sector. The health section's percentage

programmed inspections is higher, however, due to the lower percentage of referrals inspected. The health section's lower not-in-compliance rate for programmed inspections is attributable to scheduling several inspections into SIC groups where no violations were found. A recommendation has been made to monitor the results of inspections by SIC group.

The State once again inspected a higher percentage of complaints than the Federal sector. All complaints were responded to properly. Complaints were responded to in a timely manner.

A study is currently under way to determine why so few referrals between safety and health are shown in the SPAM report. No analysis of the obviously-incorrect data has been made.

The State encountered two denials of entry for which warrants were promptly secured and reentry occurred immediately.

The State generally follows correct inspection procedures. The circumstances creating the outlier for employee participation occurred early in the evaluation period. The measure is not currently a six-month outlier.

The State experienced outliers for the average number of violations cited in programmed safety inspections with citations and the percent of health violations cited serious. Steps have been implemented to correct the safety outlier, however, no specific cause for the health deviation has been found.

The State assigns reasonable abatement periods and conducts followup inspections when warranted.

The State Department of Labor and the Alaska Review Board continue to adhere to approved procedures for the handling of contested cases. Cases appealed constitutes a 5 percent contest rate for the period. This rate is over one percent less than last period and continues to show Alaska's emphasis for handling settlements in the field. DOSH performance in the area of informal and formal review continues to reflect a good rate for sustaining contested violations. The rate for affirming a serious violation was approximately 74 percent as compared to almost 81 percent last period. The rate for sustaining other violations was about 92 percent this period. Although a recommendation was made to DOSH officials for program improvement in the area of vacating serious violations. Alaska's performance under the "Review Procedures" section of the program was found to be operating overall at an acceptable level.

The State conducts quality discrimination investigations and has a satisfactory level of performance.

Alaska's response in submitting timely and quality responses to both Federal and State-Initiated Changes has improved. The State experienced a 98 percent and 100 percent performance in the submission of Federal and State-Initiated Changes, respectively, for this evaluation period. This compares with last period's performance of 93 percent and 91 percent respectively. The State's submissions are generally very thorough and complete, with comparison documents and analysis submitted where required. The State sends samples to an AIHA-accredited lab whose turnaround times are well within acceptable limits.

Alaska's safety and health compliance positions are fully staffed. The State's occupational safety and health program is adequately funded by the State. The costs of the Alaska program are high because of the higher cost of living in Alaska, because of the higher ratio of compliance officers to covered employees than is the case for Federal OSHA, and because the State's small program cannot achieve the economies of scale possible in larger programs.

The increase in the lost workdays for manufacturing is considered a volatile rate which was affected by sharp increases in the LWD for two SIC groups in manufacturing. The Total Cases and Lost Workday Cases went down for the State between 1983 and 1984 for all other categories. Increases in the number of hours of exposure contributed to the increase in the Lost Workday Cases for the Trucking and Warehousing industry, however, no cause for the increase in the Logging industry cases could be established.

Special measures were developed to measure the State's performance in a program known as Notice of Violations. The State issues Notices onsite for general violations, providing employers agree to abate the hazard, and agree not to contest the Notice. During the last evaluation period the recommendation was made to develop procedures to increase the number of inspections with verification of abatement in the file. The State has improved their performance on this measure, and had verification in 33 percent of the NOV files.

The State's program, overall, remains as effective as the Federal program. The deviations discussed in the report can easily be remedied by closer supervisory attention, and do not represent flaws in the State's policies or procedures.

Incidence rates of Recordable Occupational Injuries and Illnesses  
 Comparison of all States - Private Sector  
 1983 to 1984

	1983	1984
USA	7.8	8.0
Alabama	7.7	8.1
Alaska	10.0	10.0
Arizona	8.0	8.0
Arkansas	8.1	8.0
California	8.3	8.4
Colorado		
Connecticut	8.0	8.0
Delaware	8.0	8.0
Florida	8.1	8.0
Georgia		
Hawaii	10.6	10.0
Idaho		
Illinois		
Indiana	7.2	7.7
Iowa	7.8	8.1
Kansas		7.7
Kentucky	7.6	8.3
Louisiana	7.4	7.8
Maine	11.0	12.8
Maryland	7.6	7.8
Massachusetts		
Michigan	8.8	7.8
Minnesota	7.0	7.7
Mississippi		8.0
Missouri	7.9	8.0
Montana		8.8
Nebraska	8.4	8.6
Nevada	8.0	8.0
New Hampshire		
New Jersey		
New Mexico	7.8	8.1
New York		
North Carolina	8.8	7.8
North Dakota		
Ohio		
Oklahoma	8.8	8.8
Oregon	8.8	10.8
Pennsylvania		
Rhode Island	8.8	8.4
South Carolina	8.1	8.8
South Dakota		
Tennessee	7.8	8.8
Texas		
Utah	8.8	9.8
Vermont	8.8	10.0
Virginia	7.0	7.8
Washington	8.4	8.8
West Virginia	8.4	7.8
Wisconsin		
Wyoming	7.8	8.8
Washington, D.C.	8.8	7.8
Guam	8.4	8.8
Guinea Bissau	8.8	8.8
Virgin Islands	8.8	8.4

Incidence rates of Recordable Occupational Injuries and Illnesses  
 Comparison of all States - Private Sector  
 1983 and 1984

	1983	1984
USA	7.6	8.0
Maine	11.0	12.8
Oregon	9.8	10.5
Alaska	10.5	10.3
Vermont	9.8	10.0
Massachusetts	10.5	10.0
Washington	9.7	9.5
Idaho	9.0	9.8
Arizona	9.6	9.8
California	9.1	9.3
Utah	8.9	9.8
Nevada	9.0	9.0
Florida	8.7	8.9
Nebraska	8.4	8.8
New Mexico	7.8	8.7
Wyoming	7.8	8.8
Tennessee	7.6	8.8
Montana		9.9
Rhode Island	8.6	8.4
Alabama	7.8	8.3
Kentucky	7.8	8.4
Connecticut	8.0	8.3
Iowa	7.6	8.1
Mississippi		8.0
Arkansas	8.1	8.0
Missouri	7.9	8.0
Louisiana	7.4	8.0
Maryland	7.8	7.8
Minnesota	7.6	7.7
Kansas		7.7
Illinois	7.2	7.7
Virginia	7.0	7.6
Michigan	8.8	7.6
North Carolina	8.8	7.6
West Virginia	8.1	7.6
South Carolina	8.7	8.0
Delaware	8.2	8.0
Puerto Rico	4.9	6.0
American Samoa	8.9	6.0
Guam	8.7	6.0
Virgin Islands	8.8	6.7
New Hampshire		
South Dakota		
Wisconsin		
Texas		
Illinois		
Colorado		
New York		
Georgia		
Pennsylvania		
North Dakota		
New Jersey		
Massachusetts		
Idaho		
Ohio		

Expenditures have been reclassified from Occupational Injuries and Illnesses  
 Commission of 21 States - Private Sector  
 1953 and 1954

1953 1954

7.3 8.0

State	1953	1954
Alabama	11.5	11.5
Alaska	10.5	10.5
Arizona	10.5	10.5
Arkansas	9.5	9.5
California	9.5	9.5
Colorado	9.5	9.5
Connecticut	10.0	10.0
Delaware	9.5	9.5
District of Columbia	9.5	9.5
Florida	9.5	9.5
Georgia	9.5	9.5
Idaho	9.5	9.5
Illinois	9.5	9.5
Indiana	9.5	9.5
Iowa	9.5	9.5
Kansas	9.5	9.5
Kentucky	9.5	9.5
Louisiana	9.5	9.5
Maine	9.5	9.5
Maryland	9.5	9.5
Massachusetts	9.5	9.5
Michigan	9.5	9.5
Minnesota	9.5	9.5
Mississippi	9.5	9.5
Missouri	9.5	9.5
Montana	9.5	9.5
Nebraska	9.5	9.5
Nevada	9.5	9.5
New Hampshire	9.5	9.5
New Jersey	9.5	9.5
New Mexico	9.5	9.5
New York	9.5	9.5
North Carolina	9.5	9.5
North Dakota	9.5	9.5
Ohio	9.5	9.5
Oklahoma	9.5	9.5
Oregon	9.5	9.5
Pennsylvania	9.5	9.5
Rhode Island	9.5	9.5
South Carolina	9.5	9.5
South Dakota	9.5	9.5
Tennessee	9.5	9.5
Texas	9.5	9.5
Utah	9.5	9.5
Vermont	9.5	9.5
Virginia	9.5	9.5
Washington	9.5	9.5
West Virginia	9.5	9.5
Wisconsin	9.5	9.5
Wyoming	9.5	9.5

7.7 8.0

State	1953	1954
Alabama	7.7	8.0
Alaska	7.7	8.0
Arizona	7.7	8.0
Arkansas	7.7	8.0
California	7.7	8.0
Colorado	7.7	8.0
Connecticut	7.7	8.0
Delaware	7.7	8.0
District of Columbia	7.7	8.0
Florida	7.7	8.0
Georgia	7.7	8.0
Idaho	7.7	8.0
Illinois	7.7	8.0
Indiana	7.7	8.0
Iowa	7.7	8.0
Kansas	7.7	8.0
Kentucky	7.7	8.0
Louisiana	7.7	8.0
Maine	7.7	8.0
Maryland	7.7	8.0
Massachusetts	7.7	8.0
Michigan	7.7	8.0
Minnesota	7.7	8.0
Mississippi	7.7	8.0
Missouri	7.7	8.0
Montana	7.7	8.0
Nebraska	7.7	8.0
Nevada	7.7	8.0
New Hampshire	7.7	8.0
New Jersey	7.7	8.0
New Mexico	7.7	8.0
New York	7.7	8.0
North Carolina	7.7	8.0
North Dakota	7.7	8.0
Ohio	7.7	8.0
Oklahoma	7.7	8.0
Oregon	7.7	8.0
Pennsylvania	7.7	8.0
Rhode Island	7.7	8.0
South Carolina	7.7	8.0
South Dakota	7.7	8.0
Tennessee	7.7	8.0
Texas	7.7	8.0
Utah	7.7	8.0
Vermont	7.7	8.0
Virginia	7.7	8.0
Washington	7.7	8.0
West Virginia	7.7	8.0
Wisconsin	7.7	8.0
Wyoming	7.7	8.0

7.7 8.0

State	1953	1954
Alabama	7.7	8.0
Alaska	7.7	8.0
Arizona	7.7	8.0
Arkansas	7.7	8.0
California	7.7	8.0
Colorado	7.7	8.0
Connecticut	7.7	8.0
Delaware	7.7	8.0
District of Columbia	7.7	8.0
Florida	7.7	8.0
Georgia	7.7	8.0
Idaho	7.7	8.0
Illinois	7.7	8.0
Indiana	7.7	8.0
Iowa	7.7	8.0
Kansas	7.7	8.0
Kentucky	7.7	8.0
Louisiana	7.7	8.0
Maine	7.7	8.0
Maryland	7.7	8.0
Massachusetts	7.7	8.0
Michigan	7.7	8.0
Minnesota	7.7	8.0
Mississippi	7.7	8.0
Missouri	7.7	8.0
Montana	7.7	8.0
Nebraska	7.7	8.0
Nevada	7.7	8.0
New Hampshire	7.7	8.0
New Jersey	7.7	8.0
New Mexico	7.7	8.0
New York	7.7	8.0
North Carolina	7.7	8.0
North Dakota	7.7	8.0
Ohio	7.7	8.0
Oklahoma	7.7	8.0
Oregon	7.7	8.0
Pennsylvania	7.7	8.0
Rhode Island	7.7	8.0
South Carolina	7.7	8.0
South Dakota	7.7	8.0
Tennessee	7.7	8.0
Texas	7.7	8.0
Utah	7.7	8.0
Vermont	7.7	8.0
Virginia	7.7	8.0
Washington	7.7	8.0
West Virginia	7.7	8.0
Wisconsin	7.7	8.0
Wyoming	7.7	8.0

## FATALITY RATES From BLS-OSH Survey

Bureau of Labor Statistics calculates a fatality rate for private sector firms employing more than 10 workers. The rate has a base of 100,000 full-time workers and is computed (estimated number of fatalities x 200,000,000)/hours worked. If we use the fatalities estimated by the OSH survey for Alaska and follow the same formula we get comparable statistics. An important point is that the fatalities estimated by the survey equal about half of those reported to Workers' Compensation. Fatality rate is therefore underestimated.

	<u>U.S.</u>	<u>Alaska</u>
1974	9.8	
1975	9.4	
1976	<del>7.9</del>	
1977	9.1	
1978	8.2	
1979	8.6	
1980	7.7	
1981	7.6	
1982	7.4	
1983	5.6	15.3
1984	6.4	14.7
1985		16.1

## ILLNESS RATES From BLS-OSH Survey

The annual survey computed its incidence rates using a base of 100 full-time workers (using the formula [number of cases x 200,000]/hours worked). In its last release of data for 1984, the Bureau of Labor Statistics computed an illness rate using a base of 10,000 workers (number of cases x 20,000,000)/hours worked. This was done to make the illness statistic more meaningful. We can compute comparative data for Alaska.

Illness Rates Using a Base of 10,000 workers:

	<u>U.S.</u>	<u>Alaska</u>
1983		28.8
1984	18.4	21.4
1985		28.7

# HOUSE COMMITTEE REPORT

(7)

Date referred: 1/30/87

FURTHER REFERRALS: Finance

DATE: 1-29-87

The Judiciary Committee has considered HB 53

"An Act relating to penalties for violation of workplace safety laws."

**RECOMMENDS:**

- replace with C.S. 14353 (Judiciary) [ ] the same title
- [ ] attached amendment(s) [  ] a new title
- [  ] do pass
- [ ] do not pass
- [ ] no recommendation
- [ ] individual recommendations
- [ ] additional referral to the \_\_\_\_\_ Committee

**ADOPTS:** [ ] \_\_\_\_\_ letter of intenc

**ATTACHES NEW FISCAL NOTE(S):**

- [ ] fiscal impact [  ] same as previous fiscal note published 1/3/87
- [ ] zero fiscal note [ ] same as previous zero fiscal note published \_\_\_\_\_
- [ ] zero with analysis

**SIGNING DO PASS:**

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**SIGNING OTHER RECOMMENDATIONS:**

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*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*

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*[Signature]*

*[Signature]*

Chairman's signature

Original sponsors: Koponen, Goll,  
Davis and Donley



1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 53 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to violations of workplace safety  
7 laws."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 18.60.095(a) is amended to read:

10 (a) An employer who wilfully or repeatedly violates a provision  
11 of AS 18.60.010 - 18.60.105 that is applicable to the employer or a  
12 standard or regulation adopted under AS 18.60.010 - 18.60.105 may be  
13 assessed by the commissioner a civil penalty of not more than \$25,000  
14 [\$10,000] for each violation.

15 \* Sec. 2. AS 18.60.095(b) is amended to read:

16 (b) An employer who receives a citation for a serious violation  
17 of a provision of AS 18.60.010 - 18.60.105 that is applicable to the  
18 employer or of a standard or regulation adopted under AS 18.60.010 -  
19 18.60.105 shall be assessed by the commissioner a civil penalty of not  
20 less than [UP TO] \$1,000 and not more than \$10,000 for each violation.  
21 For purposes of this subsection, a serious violation is considered to  
22 exist if the violation creates in the place of employment a substan-  
23 tial probability of death or serious physical harm. However, a seri-  
24 ous violation is not considered to exist if the employer did not, and  
25 could not with the exercise of reasonable diligence, know of the  
26 presence of the violation.

27 \* Sec. 3. AS 18.60.095(c) is amended to read:

28 (c) An employer who receives a citation for a violation of a  
29 provision of AS 18.60.010 - 18.60.105 that is applicable to the

1 employer or [OF] a standard or regulation adopted under AS 18.60.010 -  
2 18.60.105, and the violation is specifically determined not to be of a  
3 serious nature, may be assessed by the commissioner a civil penalty of  
4 up to \$5,000 [\$1,000] for each violation.

5 \* Sec. 4. AS 18.60.095(d) is amended to read:

6 (d) An employer who fails to correct a violation within the  
7 period permitted for its correction for which a citation has been  
8 issued may be assessed by the commissioner a civil penalty of not more  
9 than \$10,000 [\$1,000] for each day during which the failure to correct  
10 the violation continues.

11 \* Sec. 5. AS 18.60.095(e) is amended to read:

12 (e) An employer who knowingly [WILFULLY] or repeatedly violates  
13 a provision of AS 18.60.010 - 18.60.105 that is applicable to the  
14 employer or a standard or regulation adopted under AS 18.60.010 -  
15 18.60.105, and the violation causes death to an employee, upon con-  
16 viction, is punishable by a fine of not more than \$150,000 [\$10,000],  
17 or by imprisonment for not more than six months, or by both. However,  
18 upon a second conviction after a prior conviction for a violation  
19 causing death, an employer is punishable by a fine of not more than  
20 \$500,000 [\$20,000], or by imprisonment for not more than one year, or  
21 by both.

22 \* Sec. 6. AS 18.60.095(f) is amended to read:

23 (f) A person who knowingly makes a false statement, representa-  
24 tion, or certification in an application, record, report, plan or  
25 other document filed or required to be maintained under AS 18.60.010 -  
26 18.60.105, upon conviction, is punishable by a fine of not more than  
27 \$25,000 [\$10,000], or by imprisonment for not more than six months, or  
28 by both.

29 \* Sec. 7. AS 18.60.095(g) is amended to read:

1 (g) An employer who violates the posting requirements of this  
2 chapter shall be assessed by the commissioner a civil penalty of up to  
3 \$2,000 [\$1,000] for each violation.

4 \* Sec. 8. The amendments made by this Act apply to violations that  
5 occur on or after the effective date of this Act.  
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5-0251L ✓

Cramer  
2/21/87

Original sponsors: Koponen, Goll,  
Davis and Donley

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 53 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to violations of workplace safety  
7 laws."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 18.60.095(a) is amended to read:

10 (a) An employer who knowingly [WILFULLY] or repeatedly violates  
11 a provision of AS 18.60.010 - 18.60.105 that is applicable to the  
12 employer or a standard or regulation adopted under AS 18.60.010 -  
13 18.60.105 may be assessed by the commissioner a civil penalty of not  
14 more than \$25,000 [\$10,000] for each violation.

15 \* Sec. 2. AS 18.60.095(b) is amended to read:

16 (b) An employer who receives a citation for a serious violation  
17 of a provision of AS 18.60.010 - 18.60.105 that is applicable to the  
18 employer or of a standard or regulation adopted under AS 18.60.010 -  
19 18.60.105 shall be assessed by the commissioner a civil penalty of not  
20 less than [UP TO] \$1,000 and not more than \$10,000 for each violation.

21 For purposes of this subsection, a serious violation is considered to  
22 exist if the violation creates in the place of employment a substan-  
23 tial probability of death or serious physical harm. However, a seri-  
24 ous violation is not considered to exist if the employer did not, and  
25 could not with the exercise of reasonable diligence, know of the  
26 presence of the violation.

27 \* Sec. 3. AS 18.60.095(c) is amended to read:

28 (c) An employer who receives a citation for a violation of a  
29 provision of AS 18.60.010 - 18.60.105 that is applicable to the

1 employer or [OF] a standard or regulation adopted under AS 18.60.010 -  
2 18.60.105, and the violation is specifically determined not to be of a  
3 serious nature, may be assessed by the commissioner a civil penalty of  
4 up to ~~\$3,000~~ <sup>5,000</sup> [\$1,000] for each violation.

5 \* Sec. 4. AS 18.60.095(d) is amended to read:

6 (d) An employer who fails to correct a violation within the  
7 period permitted for its correction for which a citation has been  
8 issued may be assessed by the commissioner a civil penalty of not more  
9 than \$10,000 [\$1,000] for each day during which the failure to correct  
10 the violation continues.

11 \* Sec. 5. AS 18.60.095(e) is repealed and reenacted to read:

12 (e) An employer is guilty of a class B misdemeanor if the em-  
13 ployer knowingly or repeatedly violates a provision of AS 18.60.010 -  
14 18.60.105 that is applicable to the employer or a standard or regu-  
15 lation adopted under AS 18.60.010 - 18.60.105 and if the violation  
16 causes death to the employee. The commissioner may also assess a  
17 civil fine of not more than \$150,000 against the employer. An em-  
18 ployer who has a prior conviction under this subsection is guilty of a  
19 class A misdemeanor if the employer is subsequently convicted for a  
20 violation causing death, and the commissioner may <sup>also</sup> assess a civil fine  
21 of not more than \$500,000 against the employer.

22 \* Sec. 6. AS 18.60.095(f) is amended to read:

23 (f) A person who knowingly makes a false statement, representa-  
24 tion, or certification in an application, record, report, plan or  
25 other document filed or required to be maintained under AS 18.60.010 -  
26 18.60.105, upon conviction, is punishable by a fine of not more than  
27 \$25,000 [\$10,000], or by imprisonment for not more than six months, or  
28 by both.

29 \* Sec. 7. AS 18.60.095(g) is amended to read:

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(g) An employer who violates the posting requirements of this chapter shall be assessed by the commissioner a civil penalty of up to

~~2,500~~ <sup>2,000</sup> ~~\$5,000~~ [\$1,000] for each violation.

\* Sec. 8. The amendments made by this Act apply to violations that occur on or after the effective date of this Act.

Adopted

AMENDMENT #1

BY: SUND

Offered in the House  
TO: CSHB 53 (HESS)

Page 1, Line 6, amend title to read:

"An Act relating to violations of workplace safety laws"

Page 1, Line 10 delete "wilfully" replace with "knowingly"

Page 2, Line 12 delete "wilfully" replace with "knowingly"

AS 11.81.900(a)(2) defines "knowingly"

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

Adopted

AMENDMENT #2

BY: SUND

Offered in the House  
TO: CSHB 53 (HESS)

Page 2, line 4:  
delete "\$5,000" insert "\$3,000"

AMENDMENT HB 53

#3

Page 2, line 12-20 delete and replace with the following language:

(e) An employer who knowingly ~~and~~ 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, the employer may be assessed by the commissioner a civil penalty of not more than \$150,000. An employer who knowingly 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 the death of a second employee, the employer may be assessed by the commissioner a civil penalty of not more than \$500,000. The provisions of this section do not preclude a prosecutor from bringing a criminal charge against an employer for the death of the employee and the sentence given to the employer upon conviction of the crime shall be in addition to the civil penalties provided in this section.

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

**REQUEST:** \_\_\_\_\_

Bill Version : CSHB 53 (HESS)  
Publish Date : \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: "An Act relating to penalties  
for violation of workplace safety laws"  
Sponsor: Koponen and Goll  
Requestor: House HESS

Agency Affected: Labor  
BRU: Occupational Safety and  
Health  
Components: Occupational Safety and  
Health

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL		3.2	1.7			
CONTRACTUAL		60.0	27.5			
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>63.2</b>	<b>29.2</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>CAPITAL</b>						
<b>REVENUE</b>	<b>0</b>	<b>242.9</b>	<b>132.0</b>	<b>91.1</b>	<b>91.1</b>	<b>91.1</b>

**FUNDING:** (Thousands of Dollars)

GENERAL FUND		31.6	14.6			
FEDERAL FUNDS		31.6	14.6			
OTHER						
<b>TOTAL</b>	<b>0</b>	<b>63.2</b>	<b>29.2</b>	<b>0</b>	<b>0</b>	<b>0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

(see attached)

Prepared by: Tom Stuart, Director *TSA* Phone: 465-4870  
Division: Labor Standards and Safety Date: 1/30/87

Approved by Commissioner: Jim Sampson *JMS* Date: 1/30/87  
Agency: Labor

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

Fiscal Note Analysis  
For Committee Substitute for House Bill 53 (HESS)

Committee Substitute for House Bill 53 increases penalties for violations of workplace safety and health laws and is viewed as an effective deterrent to such violations. However, it is anticipated that a two-year period will be required for the deterrent effects of the increased penalties to be fully realized. Until the deterrent effect is fully realized, it is projected that the increased penalties will result in increased contests which will temporarily result in increased expenditures. Likewise, it is expected that revenues from penalties will initially increase and then decline as the deterrent effect materializes.

The increased costs are:

Contractual:

In FY 88 an additional \$45,000 will be required for legal costs for services provided by the Department of Law in connection with contested citations, and collection of penalties. This amount will decrease in FY 89 as the increased deterrent effect of the increased penalties is realized, and by FY 90, contests will have returned to present levels.

In FY 83, an additional \$10,000 in hearing officer costs will also be incurred for the OSHA Review Board which decides contested cases. As with the Department of Law costs, this fiscal note anticipates a decline in the caseload in FY 89, and a return to present levels in FY 90.

A one-time cost of \$5,000 is also included for mailing a notice to all employers in the state to inform them of the increased penalties.

Travel:

In FY 88, an additional \$3,200 in per diem costs will be incurred for the three-member OSHA Review Board which decides contested cases. The Board will meet an additional 8 days to hear the additional cases. These costs would likewise decrease in FY 89 and dissipate in FY 90.

Following are the specific workload assumptions used in projecting costs and revenues:

1. Increased penalties will take effect July 1, 1987;
2. In FY 88, there will be a 25% reduction in the number of serious violations and the number of serious citations. In FY 89 and FY 90, there will be further reductions of 35% and 20%, respectively. After FY 90, further reductions are not anticipated.

	<u>FY 87</u>	<u>FY 88</u>	<u>FY 89</u>	<u>FY 90</u>
Number of Serious violations	250	190	125	100
Number of Serious citations	165	125	80	65

(Serious citations average 1½ serious violations each. Therefore, the number of citations issued is less than the number of serious violations.)

3. 40% of the Serious citations issued by the Department will be contested. (This is the present contest rate for citations with penalties of \$500 or more.)

	<u>FY 87</u>	<u>FY 88</u>	<u>FY 89</u>	<u>FY 90</u>
Number of Contested citations	25	50	32	25

Additional Revenues:

The increased revenues are projected upon increases in penalties as follows:

Type of of Violation	FY 87		FY 88		FY 89		FY 90	
	Violations	Penalties	Violations	Penalties	Violations	Penalties	Violations	Penalties
Repeat	30	\$10,700	20	\$71,400	10	\$35,700	5	\$17,850
Serious	250	45,000	190	342,000	125	225,000	100	180,000
Failure to Abate	1	300	1	3,000	0	0	0	0
Willful	0	0	1	15,000	0	0	0	0
Proposed Penalties		\$56,000		\$431,400		\$260,700		\$197,850
Less penalty reduction as a result of negotiated settlements and uncollect- ible penalties		(\$18,480)		(\$151,000)		(\$91,200)		(\$69,200)
Less Current Revenues		(37,520)		(37,520)		(37,520)		(37,520)
Additional Revenues		0		\$242,880		\$131,980		\$91,130

Fiscal Note Analysis  
For House Bill 53

House Bill 53 increases penalties for violations of workplace safety and health laws and is viewed as an effective deterrent to such violations. However, it is anticipated that a two-year period will be required for the deterrent effects of the increased penalties to be fully realized. Until the deterrent effect is fully realized, it is projected that the increased penalties will result in increased contests which will temporarily result in increased expenditures. Likewise, it is expected that revenues from penalties will initially increase and then decline as the deterrent effect materializes.

The increased costs are:

Contractual:

In FY 88 an additional \$45,000 will be required for legal costs for services provided by the Department of Law in connection with contested citations, and collection of penalties. This amount will decrease in FY 89 as the increased deterrent effect of the increased penalties is realized, and by FY 90, contests will have returned to present levels.

In FY 88, an additional \$10,000 in hearing officer costs will also be incurred for the OSHA Review Board which decides contested cases. As with the Department of Law costs, this fiscal note anticipates a decline in the caseload in FY 89, and a return to present levels in FY 90.

A one-time cost of \$5,000 is also included for mailing a notice to all employers in the state to inform them of the increased penalties.

Travel:

In FY 88, an additional \$3,200 in per diem costs will be incurred for the three-member OSHA Review Board which decides contested cases. The Board will meet an additional 8 days to hear the additional cases. These costs would likewise decrease in FY 89 and dissipate in FY 90.

Following are the specific workload assumptions used in projecting costs and revenues:

1. Increased penalties will take effect July 1, 1987;
2. In FY 88, there will be a 25% reduction in the number of serious violations and the number of serious citations. In FY 89 and FY 90, there will be further reductions of 35% and 20%, respectively. After FY 90, further reductions are not anticipated.

	<u>FY 87</u>	<u>FY 88</u>	<u>FY 89</u>	<u>FY 90</u>
Number of Serious violations	250	190	125	100
Number of Serious citations	165	125	80	65

(Serious citations average  $1\frac{1}{2}$  serious violations each. Therefore, the number of citations issued is less than the number of serious violations.)

3. 40% of the Serious citations issued by the Department will be contested. (This is the present contest rate for citations with penalties of \$500 or more.)

	<u>FY 87</u>	<u>FY 88</u>	<u>FY 89</u>	<u>FY 90</u>
Number of Contested citations	25	50	32	25

Additional Revenues:

The increased revenues are projected upon increases in penalties as follows:

Type of of Violation	<u>FY 87</u> Violations/Penalties		<u>FY 88</u> Violations/Penalties		<u>FY 89</u> Violations/Penalties		<u>FY 90</u> Violations/Penalties	
Repeat	30	\$10,700	20	\$142,800	10	\$71,400	5	\$35,700
Serious	250	45,000	190	684,000	125	450,000	100	360,000
Failure to Abate	1	300	2	6,000	0	0	0	0
Willful	<u>0</u>	<u>0</u>	<u>1</u>	<u>30,000</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Proposed Penalties		\$56,000		\$862,800		\$521,400		(\$395,700)
Less penalty reduction as a result of negotiated settlements and uncollect- ible penalties		(\$18,480)		(\$302,000)		(\$182,500)		(\$138,500)
less Current Revenues		(37,520)		(37,520)		(37,520)		(37,520)
Additional Revenues		0		\$523,280		\$301,380		\$219,680

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : CSHB 53 (HESS)  
 Title : Relating to penalties for violation  
of workplace safety laws

Sponsor : Koronen, Coll. Davis  
 Requestor : House Judiciary Committee  
 Date of Request : 2/6/87

**FISCAL DETAIL**

Agency Affected : Alaska Court System  
 BRU : Trial Courts

Components : \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

**POSITIONS :**

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Workload impact will be minimal, and can be absorbed without additional resources.

Prepared by : Karla Forsythe, General Counsel

Division : Alaska Court System

Phone : 264-8228

Date : 2/9/87

Approved by Commissioner : Stephanie Cole for Act

Agency : Alaska Court System

Date : 2-9-87

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)



Alaska Court System  
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORBYTHE  
STAFF COUNSEL

303 K Street  
Anchorage, Alaska 99501

(907) 264-0228

February 9, 1987

Representative John Sund  
Chair, House Judiciary Committee  
P. O. Box V  
Juneau, Alaska 99811

Dear Representative Sund:

You asked the Alaska Court System to indicate its position regarding CS for House Bill Number 53, an act relating to penalties for violation of workplace safety laws.

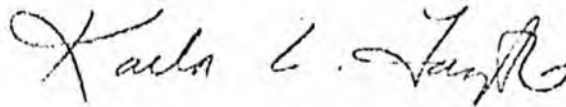
This measure would appear to impact the courts in two ways. In general, this bill substantially increases both the civil and criminal penalties for OSHA violations. Citations which subject offenders to a civil penalty are initially processed through the department, but ultimately can be appealed to the courts for administrative review. According to information provided by the Department of Labor, very few cases are appealed, and those that are appealed generally are remanded for further action. Even with the substantial increase in the penalty, the workload for the courts should not increase to the point that additional judicial or clerical resources would be required to process these cases.

The second area of impact appears in Sections 5 and 6, which substantially increase criminal fines for willful or repeated OSHA violations. Again, the Department of Labor indicates that action is rarely brought against offenders under these sections. It appears that any additional workload impact on the court could also be absorbed.

FEB 10 87 08:51 AM END JOB DIST FAXED 6542  
Representative John Sund  
February 9, 1987  
Page Two

I hope this information is helpful to the committee. Please let me know if you have any questions.

Sincerely,



Karla L. Forsythe  
Staff Counsel

KLF:bs

cc: Representative Nillo Koponen  
Representative Peter Goll  
Representative Mike Davis  
Arthur H. Snowden, II, Administrative Director

2/9/87-1

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

REQUEST: \_\_\_\_\_

Bill Version: HB 53  
Publish Date: \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: "An Act relating to penalties  
for violation of workplace safety laws"  
Sponsor: Kodonen and Coll  
Requestor: House HESS

Agency Affected: Labor  
BRU: Occupational Safety and  
Health  
Components: Occupational Safety and  
Health

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL		3.2	1.7			
CONTRACTUAL		60.0	27.5			
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>63.2</b>	<b>29.2</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL						
---------	--	--	--	--	--	--

REVENUE	0	523.3	301.4	219.7	219.7	219.7
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND		31.6	14.6			
FEDERAL FUNDS		31.5	14.6			
OTHER						
<b>TOTAL</b>	<b>0</b>	<b>63.2</b>	<b>29.2</b>	<b>0</b>	<b>0</b>	<b>0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

(see attached)

Prepared by: Tom Stuart, Director Phone: 465-4870  
Division: Labor Standards and Safety Date: 1/26/87

Approved by Commissioner: Jim Sampson Date: 1/26/87  
Agency: Labor

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

PACIFIC SEAFOOD PROCESSORS ASSOCIATION

P.O. BOX 1625 • JUNEAU, ALASKA 99802 • (907) 586-6366

February 17, 1987

FEB 17 1987

Hon. John Sund, Chairman  
House Judiciary Committee  
Pouch V  
Juneau, Alaska 99811

RE: HB 53 Penalties for Safety Violations

Dear John:

I am concerned that this bill will work an unnecessary hardship on employers. The reduction of the maximum penalty to \$10,000., for a so called serious violation, is still too high. That coupled with the minimum penalty of \$1,000. is clearly excessive and sure to force the employer to appeal almost every penalty. The appeal process will be very costly and probably prohibitive to a small business.

It doesn't seem that the seafood processing industry is such a safety hazard that large fines are being imposed. The maximum penalty imposed on a seafood processor in the past 15 months was \$560.00, and that was for failure to post a safety poster. In fact, during the past 15 months there have been only 31 safety violations where a civil penalty was imposed on a seafood processor. Of the many hundreds of seafood processing plants in Alaska only 13 were cited for any violation during that time. Considering that our industry is the largest private employer in this state I don't think that is a poor record.

As the bill now reads a fine of \$500. would jump to over \$5,000. and it would not be unusual for a plant to have violations of several regulations during one inspection. If you failed to display a poster, one employee took out their ear plugs and another walked into a hardhat area not wearing it (even though the employer provided them) the penalty would be close to \$20,000. That seems excessive.

Sincerely,



Richard B. Lauber  
Vice President and  
Alaska Manager

H353

TERMS OF IMPRISONMENT AND AUTHORIZED FINES IN REVISED CRIMINAL CODE

	FIRST FELONY	SECOND FELONY	THIRD FELONY
Sexual Assault in the First Degree; Sexual Abuse of a Minor in the First Degree	4-[8]-30 5-[10]*-30	7½-[15]-30	12½-[25]-30
"A" Felony	2½-[5]-20 3½-[7]**-20	5-[10]-20	7½-[15]-20
"B" Felony	0-10***	0-[4]-10	3-[6]-10
"C" Felony	0-5***	0-[2]-5	0-[3]-5

MAXIMUM FINES - PERSONS

Murder, Kidnapping,  
Sexual Assault I,  
Misconduct Invol-  
ving Controlled  
Substance I - \$75,000  
A, B, or C Felony - \$50,000  
A misdemeanor - \$ 5,000  
B misdemeanor - \$ 1,000  
Violation - \$ 300

MAXIMUM FINES - ORGANIZATIONS

All offenses - \$100,000 or  
3 X pecuniary gain -  
whichever is greater

MAXIMUM TERM OF IMPRISONMENT FOR MISDEMEANORS

A misdemeanor - 1 year  
B misdemeanor - 90 days

SENTENCES FOR UNCLASSIFIED FELONIES

Murder I: 20-99 years  
Murder II, Kidnapping,  
Misconduct Invol-  
ving Controlled  
Substance I: 5-99 years

KEY

Number in bracket is presumptive sentence. Number to left is lowest mitigated sentence. Number to right is highest aggravated sentence.

- \* Ten year presumptive term applies if defendant possessed a firearm, used a dangerous instrument or caused serious physical injury.
- \*\* Seven year presumptive term applies if first A felony conviction, other than manslaughter, and defendant possessed a firearm, used a dangerous instrument or caused serious physical injury or directed offense at peace officer or other emergency responder.
- \*\*\* Presumptive sentencing may apply if offense directed at peace officer or other emergency responder.

MISDEMEANORS AND VIOLATIONS

A	B	C
Concealment of Merchandise \$50-\$500 AS 11.46.220(c) (2)	Issuing a Bad Check less than \$50 AS 11.46.280	
Removal of Identification Marks \$50-\$500 AS 11.46.260(b) (2)	Fraudulent Use of a Credit Card less than \$50 AS 11.46.285(b) (3)	
Unlawful Possession (of Altered Property). \$50-\$500 AS 11.46.270(b) (2)	Criminal Trespass II AS 11.46.330	
Issuing a Bad Check, \$50-\$500 AS 11.46.280(d) (3)	Criminal Mischief IV AS 11.46.486	
Fraudulent Use of Credit Card, \$50-\$500 AS 11.46.295(b) (2)	Criminal Simulation, less than \$50 AS 11.46.530(b) (3)	
Obtaining a Credit Card by Fraudulent Means AS 11.46.290(a) (3)	Unlawful Evasion II AS 11.56.350	
Criminal Trespass I AS 11.46.320	Hindering Prosecution II AS 11.56.780	
Criminally Negligent Burning AS 11.46.430	Impersonating a Public Servant AS 11.56.830	
Failure to Control or Report a Dangerous Fire AS 11.46.450	Disorderly Conduct AS 11.61.110 (10 day maximum)	
Criminal Mischief III AS 11.46.494	Harassment AS 11.61.120	
Forgery III AS 11.46.510	Promoting an Exhibition of Fighting Animals (Second Offense) AS 11.61.145	
Criminal Simulation, \$50-\$500 AS 11.46.530(b) (2)	Obstruction of Highways AS 11.61.150	
Obtaining a Signature by Deception AS 11.46.540	Misconduct Involving Weapons III AS 11.61.220	
Criminal Impersonation AS 11.46.570	Criminal Possession of Explosives with Intent to Commit A or B Misdemeanor AS 11.61.240(b) (5)	
Misapplication of Property less than \$500 AS 11.46.620	Prostitution AS 11.56.100	
Deceptive Business Practices AS 11.46.710	Misconduct Involving Controlled Substances VI AS 11.71.060	
Misrepresentation of Use of a Propelled Vehicle AS 11.46.720		

## Method of Penalty Adjustment

### I. Non-Serious and Serious Violations

- A. Adjustment for gravity of violation<sup>1</sup> The Gravity Based Penalty results from an up to 90% reduction of starting penalty calculated using the following formula:

$$\% \text{ Reduction} = \left[ \frac{\text{Severity Factor} + \text{Probability Factor}}{2} \right] \times 10 = 0-90\%$$

Gravity Based Penalty = % reduction x starting penalty of \$10,000  
or  
\$ 5,000

Gravity Based Penalty for a Serious Violation = \$1,000-\$10,000

Gravity Based Penalty for a Non-Serious Violation = \$ 500-\$ 5,000

- B. The Gravity Based Penalty is then reduced by as much as 80% for:

1. Size of business (# of employees) = up to 40% reduction
2. Good Faith = up to 30% reduction
3. No Prior History of Violations = up to 10% reduction

Range of Final Adjusted Penalty for Serious = \$1,000-\$10,000  
Non-Serious = \$ 100-\$ 5,000

<sup>1</sup> Severity Factor: The severity of the injury or illness that could result from the hazard on a scale of 1-10.

1 - 3 Injury or illness not resulting in hospitalization or temporary reversible illness requiring minor treatment.

7 - 10 Injuries including permanent disability or chronic, irreversible illness or death.

Probability Factor: The probability that the injury or illness would occur due to the hazard on a scale of 1-10 taking into consideration number of workers exposed, frequency or duration or exposure, employee proximity, working conditions such as lighting.

II. Failure to Abate

Gravity Based Penalty = \$1,000-\$10,000

Maximum adjustment for: size 40%  
good faith 30%  
history 10%  
\$ 200-\$2,000/per day

No adjustment for: size  
good faith  
History  
\$1,000-\$10,000/per day

III. Posting Violations

Current penalties for posting set by Federal OSHA by policy x 5

Posters [\$ 60-\$100] x 5 = \$300-\$500

Injury/Illness  
List for that Worksite [\$100-\$200] x 5 = \$500-\$1,000

Failure to Post  
A Citation [\$250-\$500] x 5 = \$1,250-\$2,500  
Issued by DOL

*is this subject  
to gravity adjustment*

IV. Repeated Violations

Original Serious : \$1,000-\$10,000 x 2 First Repeat \$ 2,000-\$20,000  
Violations x 4 Second Repeat \$ 4,000-\$25,000  
x 10 Third Repeat \$10,000-\$25,000

V. Willful Violations: Penalty for willful violations = Gravity Based  
Penalty x 10

\$1,000-\$10,000 x 10 = \$10,000-\$25,000

EXAMPLES OF VIOLATIONS

1. Serious Violation: Unguarded saw used once a month
- |  | <u>INITIAL AND<br/>ADJUSTED PENALTY</u> |
|--|---|
| Initial Penalty  | \$10,000                                |
| Gravity Based Penalty reduced 90% for low probability/severity | \$ <u>9,000-</u>                        |
| Final Penalty  | \$ 1,000                                |
2. Serious Violation: Trench not shored in unstable ground
- |  |                 |
|--|-----------------|
| Initial Penalty  | \$10,000        |
| No Reduction for Gravity Based Penalty                                 |                 |
| Probability of collapse high, 0% adjustment                            |                 |
| Severity is high = death   |                 |
| Final Penalty  | <u>\$10,000</u> |
| <u>Minimum adjustment for size, good faith, &amp; history = 0%</u>     | \$10,000        |
| >100 employees = 0% reduction for size                                 |                 |
| Poor overall safety of worksite = 0% for good faith                    |                 |
| History of multiple, previous, uncorrected violations = 0% for history |                 |
| Final Penalty  | <u>\$10,000</u> |
| <u>Maximum adjustment for size, good faith &amp; history = 80%</u>     | \$ 2,000-       |
| <10 employees  |                 |
| Overall safety conditions of the rest of the worksite is good          |                 |
| No previous history of violation                                       |                 |
3. Non-Serious Violation: failure to monitor asbestos level in air
- |   |               |
|---|---------------|
| Initial Penalty   | \$ 5,000      |
| Gravity Based Penalty = 90% reduction   | 500           |
| (does not directly cause death, injury or illness)                                      |               |
| <10 employees =   | 40% reduction |
| Overall safety conditions = (inadequate effort to protect/incorrect respirators in use) | 30% reduction |
| New employer, no previous violations =  | 10% reduction |
|   | 80% reduction |
| <br>  |               |
| \$500 x .80 = \$400   |               |
| \$500 - \$400 = \$100 Final Penalty   |               |
4. Repeated Violations
- |                             |                      |               |                   |
|-----------------------------|----------------------|---------------|-------------------|
| Original Serious Violations | \$1,000-\$10,000 x 2 | First Repeat  | \$ 2,000-\$20,000 |
|                             | x 4                  | Second Repeat | \$ 4,000-\$25,000 |
|                             | x 10                 | Third Repeat  | \$10,000-\$25,000 |
5. Willful Violations: Penalty for willful violations = Gravity Based Penalty x 10 \$1,000-\$10,000 x 10 = \$10,000-\$25,000

### Sample of Penalty Structure

Other-than-Serious:<sup>1</sup>

Number of Employees <sup>2</sup>	Present Penalty	Penalty under CSHB 53
3	\$60	\$300
50	\$240	\$1,200
200	\$300	\$1,500

Serious:

Number of Employees	Present Penalty	Penalty under CSHB 53
3	\$60	\$1,000
13	\$240	\$2,400
65	\$450	\$4,500
300	\$550	\$5,500

Repeated Violations:<sup>3</sup>

Number of Employees	Present Penalty	Penalty under CSHB 53
3	\$120	\$1,200
13	\$480	\$4,800
65	\$900	\$9,000
200	\$1,100	\$11,000

Willful Violations:

Number of Employees	Present Penalty	Penalty under CSHB 53
3	\$1,800	\$18,000
50	\$2,400	\$24,000
100	\$5,000	\$25,000

---

<sup>1</sup>It is the department's current policy not to assess a penalty for "other" violations unless 10 or more violations are found at the worksite.

<sup>2</sup>Each example for a certain number of employees is assuming a different set of circumstances from actual case files.

<sup>3</sup>If the violation is repeated a second time, the original penalty is multiplied by four and if it is repeated a third time the original penalty is multiplied by 10.

Failure to Abate Violation:<sup>4</sup>

Number of Employees	Present Penalty	Penalty under CSHB 53
3	\$450	\$4,500
13	\$750	\$7,500
65	\$1,050	\$10,500
300	\$1,350	\$13,500

Posting Violations:

	Present Penalty	Penalty under CSHE 53
Failure to post the "Safety and Health Protection on the Job" poster	\$60-\$100	\$300-\$500
Failure to post the "Annual Summary of Occupational Injuries and Illnesses" form	\$100-\$200	\$500-\$1000
Failure to post a citation issued by the Department of Labor	\$250-\$500	\$1,250-\$2,500
Failure to post the "Right-to-Know" poster	\$60-\$100	\$300-\$500

Criminal Willful:<sup>5</sup>

Present Penalty	Penalty under HB 53
\$10,000	\$150,000

<sup>4</sup>Note the maximum penalty under HB 53 for each day a violation is uncorrected is \$10,000. In calculating these penalties it is assumed that the violation was uncorrected for 5 days.

<sup>5</sup>The department has never issued a criminal willful violation; however, if such a violation was found, the department would ask for the maximum penalty allowed under the law.

TERMS OF IMPRISONMENT AND AUTHORIZED FINES IN REVISED CRIMINAL CODE

	FIRST FELONY	SECOND FELONY	THIRD FELONY
Sexual Assault in the First Degree; Sexual Abuse of a Minor in the First Degree	4-[8]-30 5-[10]*-30	7½-[15]-30	12½-[25]-30
"A" Felony	2½-[5]-20 3½-[7]**-20	5-[10]-20	7½-[15]-20
"B" Felony	0-10***	0-[4]-10	3-[6]-10
"C" Felony	0-5***	0-[2]-5	0-[3]-5

MAXIMUM FINES - PERSONS

Murder, Kidnapping,  
Sexual Assault I,  
Misconduct Invol-  
ving Controlled  
Substance I - \$75,000  
A, B, or C Felony - \$50,000  
A misdemeanor - \$ 5,000  
B misdemeanor - \$ 1,000  
Violation - \$ 300

MAXIMUM FINES - ORGANIZATIONS

All offenses - \$100,000 or  
3 X pecuniary gain -  
whichever is greater

MAXIMUM TERM OF IMPRISONMENT  
FOR MISDEMEANORS

A misdemeanor - 1 year  
B misdemeanor - 90 days

SENTENCES FOR  
UNCLASSIFIED FELONIES

Murder I: 20-99 years  
Murder II, Kidnapping,  
Misconduct Invol-  
ving Controlled  
Substance I: 5-99 years

KEY

Number in bracket is presumptive sentence. Number to left is lowest mitigated sentence. Number to right is highest aggravated sentence.

- \* Ten year presumptive term applies if defendant possessed a firearm, used a dangerous instrument or caused serious physical injury.
- \*\* Seven year presumptive term applies if first A felony conviction, other than manslaughter, and defendant possessed a firearm, used a dangerous instrument or caused serious physical injury or directed offense at peace officer or other emergency responder.
- \*\*\* Presumptive sentencing may apply if offense directed at peace officer or other emergency responder.

5-1

MISDEMEANORS AND VIOLATIONS

A	B	C
Concealment of Merchandise \$50-\$500 AS 11.46.270 (c) (2)	Issuing a Bad Check less than \$50 AS 11.46.280	
Removal of Identification Marks \$50-\$500 AS 11.46.260 (b) (2)	Fraudulent Use of a Credit Card less than \$50 AS 11.46.285 (b) (3)	
Unlawful Possession (of Altered Property), \$50-\$500 AS 11.46.270 (b) (2)	Criminal Trespass II AS 11.46.330	
Issuing a Bad Check, \$50-\$500 AS 11.46.280 (d) (3)	Criminal Mischief IV AS 11.46.486	
Fraudulent Use of Credit Card, \$50-\$500 AS 11.46.285 (b) (2)	Criminal Simulation, less than \$50 AS 11.46.530 (b) (3)	
Obtaining a Credit Card by Fraudulent Means AS 11.46.290 (a) (3)	Unlawful Evasion II AS 11.56.350	
Criminal Trespass I AS 11.46.320	Hindering Prosecution II AS 11.56.780	
Criminally Negligent Burning AS 11.46.430	Impersonating a Public Servant AS 11.56.830	
Failure to Control or Report a Dangerous Fire AS 11.46.450	Disorderly Conduct AS 11.61.110 (10 day maximum)	
Criminal Mischief III AS 11.46.484	Harassment AS 11.61.120	
Forgery III AS 11.46.510	Promoting an Exhibition of Fighting Animals (Second Offense) AS 11.61.145	
Criminal Simulation, \$50-\$500 AS 11.46.530 (b) (2)	Obstruction of Highways AS 11.61.150	
Obtaining a Signature by Deception AS 11.46.540	Misconduct Involving Weapons III AS 11.61.220	
Criminal Impersonation AS 11.46.570	Criminal Possession of Explosives with Intent to Commit A or B Misdemeanor AS 11.61.240 (b) (5)	
Misapplication of Property less than \$500 AS 11.46.620	Prostitution AS 11.56.100	
Deceptive Business Practices AS 11.46.710	Misconduct Involving Controlled Substances VI AS 11.71.060	
Misrepresentation of Use of a Propelled Vehicle AS 11.46.720		

MISDEMEANORS AND VIOLATIONS

A	B	C
Defrauding Creditors, \$500 or less AS 11.46.730		
Criminal Nonsupport AS 11.51.120		
Contributing to the Delin- quency of a Minor AS 11.51.130		
Unlawful Marrying AS 11.51.140		
Receiving Unlawful Gratu- ities AS 11.56.120		
Unsworn Falsification AS 11.56.210		
Escape IV AS 11.56.330		
Unlawful Evasion I AS 11.56.340		
Promoting Contraband II AS 11.56.380		
Tampering with a Witness II AS 11.56.545		
Simulating Legal Process AS 11.56.520		
Resisting or Interfering with Arrest AS 11.56.700		
Harming a Police Dog II AS 11.56.710		
Compounding AS 11.56.790		
Making a False Report AS 11.56.800		
Tampering with Public Records AS 11.56.820		
Official Misconduct AS 11.56.850		
Misuse of Confidential Information AS 11.56.860		
Misconduct Involving a Corpse AS 11.61.130		
Cruelty to Animals AS 11.61.140		

# MEMORANDUM

# State of Alaska

TO: Richard Arab, Deputy Director  
Labor Standards & Safety  
Department of Labor - Juneau

DATE: February 3, 1987

FILE NO:

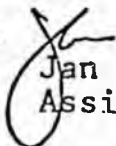
TELEPHONE NO:

276-3550

FROM: Grace Berg Schaible  
Attorney General

SUBJECT: Amending AS 18.60.095(e)

By:

  
Jan Hart DeYoung  
Assistant Attorney General

I spoke with Dean Guanelli about whether Title 11 could cover the conduct prohibited in AS 18.60.095(e). No existing statute in the criminal code covers the kind of conduct that our statute, AS 18.60.095, covers. AS 11.41.130, criminally negligent homicide, and AS 11.41.200-.220, assault, could work in appropriate circumstances. The problem with the criminal code is that the defense of contributory negligence probably applies. For example, in the Wiker case, the defense would be that the danger was so obvious that the worker should have perceived the risk and that this negligence was a cause contributing to his death. AS 18.60.095(e), on the other hand, is an effort to transfer responsibility for worker safety to the employer and this kind of defense should not be appropriate.

Dean Guanelli's preference is to work with AS 18.60.095, rather than rely on the criminal code. He has reservations about the mental state in AS 18.60.095, willful or repeated, and would like to see this amended. He is more comfortable with the mental states set forth in the criminal code. For example, recklessness might be appropriate--awareness of the risk and conscious disregard of it. He is also concerned about his lack of familiarity with OSHA and the possibility that a body of case law exists interpreting the language of AS 18.60.095 that could respond to his concerns. Dean was aware that a bill was pending that would change the penalties. He passed on to Gayle Horetski of the criminal division his concerns on this subject. If Representative Gruenberg wants more information, he may want to contact Gayle (465-3460).

I would like to be kept advised of any amendments.

JHD:jg

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## CHAPTER VI

### PENALTIES

#### A. Civil Penalties.

1. Type of Violation as a Factor. In proposing civil penalties for violations, a distinction is made between serious violations and all other violations. There is no statutory requirement that a penalty be proposed when the violation is not serious; but a penalty must be proposed when the violation is serious. The maximum penalty that may be proposed for a serious or an other than serious violation is \$1,000. In the case of willful or repeated violations, a civil penalty of up to \$10,000 may be proposed. For other specific violations of AS 18.60.010--.105, civil penalties of up to \$1,000 may be proposed. Penalties for failure to abate a violation may be up to \$1,000 for each calendar day that the violation continues beyond the stated abatement date.
2. Serious and Other than Serious Violations. AS 18.60.095(b) provides that any employer who has received a citation for an alleged violation of the Statute which is determined to be of a serious nature shall be assessed a civil penalty of up to \$1,000 for each violation. (See DOSH PD 86-10 for current congressional exemptions and limitations placed on penalties.) AS 18.60.098(c) provides that, when the violation is specifically determined not to be of a serious nature, a proposed civil penalty of up to \$1,000 may be assessed for each violation. AS 18.60.095(g) provides that, when a violation of a posting requirement is cited, a civil penalty of up to \$1,000 shall be assessed.
  - a. Penalty Factors. AS 18.60.095(h) provides that penalties shall be assessed on the basis of four factors.
    - (1) The gravity of the violation,
    - (2) The size of the business,
    - (3) The good faith of the employer, and
    - (4) The employer's history of previous violations.
  - b. Amount of Penalty. Using procedures for calculating penalties as outlined in this chapter, gravity-based penalties for violations shall range from \$100 to \$1,000 for each violation. (See the DOSH PD 86-10 for current congressional exemptions and limitations placed on penalties.)
  - c. Minimum Penalty. The following guidelines apply:

- (1) When the adjusted proposed penalty for a serious violation is calculated, it shall not be less than \$60.
- (2) When the adjusted proposed penalty for an other-than-serious violation (citation item) would amount to less than \$60, no penalty shall be proposed for that violation.
- (3) When, however, there is a citation item for a posting violation, this minimum penalty amount does not apply with respect to that item since penalties for such items are mandatory under the Statutes.

d. Gravity of Violation. The gravity of the violation is the primary factor in determining penalty amounts. It shall be the basis for calculating the basic penalty for both serious and other violations.

- (1) To determine the gravity of a violation the following two factors shall be considered:
  - (a) The severity of the injury or illness which could result from the alleged violation.
  - (b) The probability that an injury or illness could occur as a result of the alleged violation.
- (2) The size of the business, the good faith of the employer and the history of previous violations shall be taken into account in deciding whether the gravity-based penalty shall be reduced.

e. Severity Factor. The classification of the alleged violations as serious or other than serious, in accordance with the instructions in Chapter IV of the Compliance Manual, is based on the severity of the injury or illness which could result from the violation. This classification constitutes the first step in determining the gravity of the violation. The most serious type of injury or illness which is reasonably predictable as a result of the type of accident or health hazard exposure shall be assigned a severity factor in accordance with the following:

<u>Injury/Illness</u>	<u>Severity</u>
Category I--Other than serious violations.	0
Category II--Injuries/illnesses not resulting in hospitalization or temporary, reversible illnesses requiring minor supportive treatment.	1-3

(Table Continued)

Category III--Injury/illnesses resulting in hospitalization or temporary, reversible illnesses with a variable but limited period of disability. 4-6

Category IV--Injuries involving permanent disability or chronic, irreversible illnesses or death. 7-10

NOTE: Categories II, III, and IV apply to serious violations. The penalty for other than serious violations shall be calculated in accordance with A.2.h., using 0 as the severity factor.

f. Probability Assessment--Safety. The probability of the occurrence of an accident has no role in determining the classification of a violation. Probability does affect the amount of the penalty to be proposed and shall be estimated by considering five probability factors to which an appropriate numerical value shall be assigned in accordance with the relative contribution of each as follows:

(1) Number of workers exposed:

Each worker up to 10 1-10

(2) Frequency of exposure:

Any exposure up to once a week 1-3

More than once a week up to a daily exposure 4-6

Continuous daily exposure 7-10

(3) Employee proximity:

Fringe of danger zone 1-3

Near Danger zone 4-6

At the point of danger 7-10

(4) Working conditions including environmental and other factors (e.g., speed of operations, lighting, temperature, weather conditions, noise, housekeeping, etc.) which may influence the likelihood of an accident resulting in injury:

Low stress/good conditions 1-3

Medium stress/fair conditions 4-6

High stress/poor conditions 7-10

(5) Other factors which may affect significantly the probability of an accident:

- (a) If there are mitigating circumstances such as specific safety instructions, evidence of correction underway, warning signs, mandated use of protective gear, or mandatory controls providing some, though less than full protection, assign a low number of points to lower the probability.
  - (b) If there are additional contributing factors such as inappropriate safety instructions, faulty equipment, etc., assign an appropriately higher number of points.
- (6) If, in the opinion of the CO or IH, any of the above factors do not significantly influence the probability of an injury-causing accident, that factor shall not be considered in the probability calculation.
  - (7) If, on the other hand, use of a factor would tend to dilute the penalty excessively, that factor shall not be entered into the penalty calculation. For example, in a particularly dangerous trenching situation, when only one or two employees are exposed, it may not be appropriate to average in factor (1), number of employees exposed.
  - (8) To determine overall probability, the factors used must be averaged. Total the points assigned for each factor and divide by the number of factors used. Any fractions shall be disregarded. The resulting number is called the "probability quotient".
  - (9) When strict adherence to the probability assessment procedures would result in an unreasonably high or low probability/severity quotient [See A.2.h.(c).], the CO or IH may use professional judgement to adjust the probability quotient accordingly. Such decisions shall be adequately documented.
- g. Probability Assessment--Health. To determine the probability that an illness could result from an overexposure to a health hazard, the CO or IH shall consider the number of workers exposed, the duration of exposure, the use of personal protective equipment and the results of medical testing as noted below:

- (1) Number of workers exposed:

Each worker up to 10	1-10
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- (2) Duration of exposure:

1 to 8 hours per week	1-3
Over 8 hours per week but not continuous daily exposure	4-8

(TABLE CONTINUED)

- Continuous daily exposure 9-10
- (3) Use of appropriate personal protective equipment:
- Personal protective equipment utilized by all exposed employees, and a good program is in effect 1-2
  - Personal protective equipment utilized by some of the exposed employees but with minor deficiencies in the program 3-6
  - Personal protective equipment not utilized by any of the exposed employees 7-10
- (4) Evaluation of the medical surveillance program: (If there is no applicable surveillance program, this category shall not be considered).
- The medical surveillance program effectively protects the employee 1-2
  - The medical surveillance program partially protects the employee 3-6
  - No medical surveillance program is in effect, or the medical program does not effectively protect the employee 7-10
- (5) Other factors which may significantly affect the degree of probability of an illness:
- (a) If there are mitigating circumstances, such as good training, warning signs and labels or special procedures, assign a low point total.
  - (b) Similarly, assign an appropriately higher point count if there are additional contributing circumstances.
- (6) If, in the opinion of the CO or IH, any of the above factors do not significantly influence the probability of an illness-producing accident, that factor shall not be considered in the probability calculation.
- (7) If, on the other hand, use of a factor would tend to dilute the penalty excessively, that factor shall not be entered into the penalty calculation. For example, in a confined space where there is insufficient oxygen to support life, even when only one or two employees are exposed, it would not be appropriate to average in factor (1), number of employees exposed.

- (8) To determine overall probability, the factors used must be averaged. Total the number of points for each factor and divide by the number of factors used. Any fraction shall be disregarded. This is the "probability quotient".
- (9) When strict adherence to the probability assessment procedures would result in an unreasonably high or low probability/severity quotient [See A.2 h.(1).], the CO or IH may use professional judgement to adjust the probability quotient accordingly. Such decisions shall be adequately documented.
- h. Gravity-based Penalty. The gravity-based penalty is the unadjusted penalty and is calculated in accordance with the following procedures:
- (1) The gravity-based penalty for each violation is determined by averaging the severity factor and the probability quotient. The sum is divided by two and results in the probability/severity quotient. Any fractions shall be disregarded.
- (2) The probability/severity (P/S) quotient is then used to determine the gravity-based penalty (GBP) by consulting the penalty table. The penalty is found in the column marked GBP opposite the numerical P/S quotient which has been assigned to the specific violation and will not be less than \$100.

PENALTY TABLE A -- SERIOUS VIOLATIONS

<u>P/S</u> <u>Quotient</u>	<u>Percent Reduction</u>								
	<u>GBP</u>	<u>10</u>	<u>20</u>	<u>30</u>	<u>40</u>	<u>50</u>	<u>60</u>	<u>70</u>	<u>80</u>
1	100	90	80	70	60				
2	200	180	160	140	120	100	80	60	
3	300	270	240	210	180	150	120	90	60
4	400	360	320	280	240	200	160	120	80
5	500	450	400	350	300	250	200	150	100
6	600	540	480	420	360	300	240	180	120
7	700	630	560	490	420	350	280	210	140
8	800	720	640						
9	900	810							
10	1000								

PENALTY TABLE B -- OTHER THAN SERIOUS VIOLATIONS

<u>P/S</u> <u>Quotient</u>	<u>Percent Reduction</u>								
	<u>GBP</u>	<u>10</u>	<u>20</u>	<u>30</u>	<u>40</u>	<u>50</u>	<u>60</u>	<u>70</u>	<u>80</u>
1									
2									
3									
4									
5	300	270	240	210	180	150	120	90	60

i. Gravity Calculations for Combined or Grouped Violations.  
The guidelines for calculating penalties given in A.2.e. through h. generally apply to combined and grouped violations except as indicated in the following sections.

(1) The severity and probability factors for combined violations shall be based on the instance with the highest P/S quotient. It is not necessary to complete the penalty calculations for each instance or subitem of a combined or grouped violation if it is clear which instance has the highest P/S quotient.

(2) For grouped violations the following special guidelines shall be adhered to:

(a) Severity Factor. There are two considerations to be kept in mind in calculating the severity of grouped violations.

1 The severity assigned to the grouped violation shall be no less than the severity of the most serious reasonably predictable injury or illness that could result from the violation of any single item.

2 If a more serious injury or illness is reasonably predictable from the grouped items than from any single violation item, the more serious injury or illness shall serve as the basis for the calculation of the severity factor of the grouped violation.

(b) Probability Factors. There are three considerations to be kept in mind in calculating the probability of grouped violations.

1 The probability assigned to the grouped violation shall be no less than the probability of the item which is most likely to result in an injury or illness.

- 2 If the overall probability of injury or illness is greater with the grouped violation than with any single violation item, the greater probability of injury or illness shall serve as the basis for calculation of the probability assessment of the grouped violation.
- 3 Some individual probability factors may be increased by grouping and others may not. The increased values shall be used in the probability calculation, if, in the professional judgment of the CO or IH, a more appropriate probability assessment will result. For example, the number of employees exposed may be increased while the proximity factor may not.

(c) Gravity-based Penalty. A single P/S quotient for the combined or grouped violation will result from the foregoing considerations. That result shall be the basis for selecting an appropriate GBP for the violation item according to the guidelines in A.2.f. The penalty shall be entered in the penalty column of the DOSH-2 across from the first item of the violation.

- (3) Combined and grouped violations shall normally be considered as one violation for penalty purposes, and in such cases the guidelines for calculating penalties given in A.2.e. through h. shall apply.
- (4) In egregious cases; i.e., willful, repeated and high gravity serious citations and failures to abate, an additional factor of up to the number of violation instances may be applied to the gravity-based penalty calculated in accordance with A.2.i.(2)(c) or the regulatory penalty assigned in accordance with A.8.b. and c. and adjusted in accordance with A.2.j., A.5., A.6., A.7., and A.8., as described in the following subsections. Penalties calculated with this additional factor shall not be proposed without the concurrence of the commissioner.

j. Penalty Adjustment Factors. The gravity-based penalty may be adjusted downward as much as 80 percent depending upon the employer's "good faith", "size of business", and "history of previous violations". Up to 40 percent reduction will be permitted for size, 30 percent for good faith, and 10 percent for history.

- (1) Since these rates are based on the general character of a business and its safety and health performance, the rates shall generally be calculated only once for each employer. This shall be done after the classification and probability ratings have been determined for each violation and the

general character of the employer's performance will be apparent.

- (2) Limits to the rate of penalty reduction for good faith, size and history of previous violations in the case of certain high probability, serious violations may necessitate lower reductions for such violations in some instances. (See A.2.j.(5)(a)3 and (d).)
- (3) If a serious violation is classified as repeated, a penalty reduction for good faith and history shall not ordinarily be given since the employer has exhibited a lack of good faith and reflected a poor history by repeating a previously cited violation. A reduction for good faith and history may be applied to a repeated violation only when the violation is other than serious or, when serious, if it occurs in spite of the employer's efforts to control it, as when employees have disobeyed the employer's orders.
- (4) For willful violations, although consideration shall be given to the penalty adjustment factors, there will normally be no penalty reduction due to the egregious nature of such violations.
- (5) The rate of penalty reduction for size of business, employer's good faith and employer's history of previous violations shall be calculated on the basis of the criteria described in the following paragraphs:
  - (a) Size. A maximum penalty reduction of 40 percent is permitted for small businesses. "Size of business" shall be measured on the basis of the number of employees employed by an employer in all workplaces. Information on the total number of an employer's employees can generally be obtained at the inspected worksite. However, on occasion it may be necessary to obtain or confirm the information from the employer's headquarters.

1 The rates of reduction to be applied are as follows:

<u>Employees</u>	<u>Percent reduction</u>
10 or fewer	40
11 to 25	30
26 to 60	20
61 to 100	10
More than 100	None

2 An employer's ability to pay a penalty shall not normally be investigated or considered in determining the penalty reduction for size of business. However, if an employer presents convincing evidence of an inability to pay a penalty because of the financial difficulties of the business at an informal conference, the Chief may determine that a penalty reduction is appropriate: such a determination shall be documented in the case file.

3 When a small business has one or more serious violations of very high probability (8-10) or a significant number of moderate probability (4-7) which indicates a notable lack of concern for employee safety and health, the Chief may determine that only a partial reduction in penalty shall be permitted for size of business.

(b) Good Faith. A maximum penalty reduction of 30 percent is permitted in recognition of an employer's "good faith". Good faith is measured in terms of the following criteria.

1 Evidence of genuine and effective safety and health efforts prior to the inspection. Such efforts need not involve a formalized program, especially for small businesses which frequently lack the resources to operate such a program. Factors which shall be considered in evaluating safety and health efforts, whether or not the business has a formal program, include:

a The information describing the employer's safety and health program collected during the inspection and noted in the case file.

b The overall condition of the workplace as reflected by the control or elimination of hazards, especially hazards of high gravity.

c The extent to which control of or protection against cited hazards was attempted, even though inadequately; such attempts may include incomplete efforts to identify and implement feasible engineering and/or administrative controls for toxic substances and harmful physical agents.

d The extent to which more serious injuries and illnesses have been investigated and steps taken to prevent their recurrence.

- e The presence of effective monitoring of health-hazard exposures.
  - f The degree to which the employer, employees and their supervisors show knowledge and concern about safety and health in their actions-- including effective training and supervision of employees regarding good work practices.
  - g Up-to-date maintenance and review of injury/illness records.
  - h Specific actions to prevent recurrence of recorded injuries and illnesses.
  - i The extent to which violations observed and injuries and illnesses which have occurred relate to hazards involving difficult, expensive and not widely known controls.
- 2 Evidence of a desire to comply with the statutes during and after an inspection. Primary factors demonstrating such a desire are the speed and willingness with which the employer initiates correction of hazards noted during an inspection.
- 3 Reductions shall, in general, be made as follows:
- a 30-percent. For generally thorough and effective safety and health efforts and prompt and aggressive initiation of abatement of cited violations during the inspection or (by commitment) as soon as is practical reflected by:
    - + Absence of most violations, including all willful, repeated and serious of moderate or high gravity.
    - + Absence of most serious injuries and illnesses.
  - b 20-percent. For moderately thorough and effective safety and health efforts with a few deficiencies and slightly reluctant initiation of abatement reflected by:
    - + Absence of all willful violations, repeated violations of a serious nature, and serious violations of moderate or high gravity.
    - + Absence of most serious injuries and illnesses.

c 10-percent. For fairly thorough and effective safety and health effort with a number of deficiencies and initiation of abatement with barely acceptable promptness or with some reluctance reflected by:

- + Absence of all willful violations, repeated violations of a moderate or high gravity and high gravity serious violations.
- + Absence of easily controlled serious injuries and illnesses.

d No reduction. For little safety and health effort with minimal effectiveness and for obvious reluctance to initiate correction of violation with indications that complete correction may not be made reflected by:

- + Presence of willful or repeated or high gravity serious violations.
- + Presence of easily controlled serious injuries or illnesses.

4 Since many employers will not fit exactly these general criteria for specific rates of reduction, professional judgement will be required to balance the important factors in determining an appropriate rate for a particular employer.

(c) History. A reduction of 10-percent is permitted in recognition of an employer's lack of a significant history of previous violations. The evaluation of an employer's history shall be based on whether there have been serious, repeated, or willful violations or a large number of other than serious violations of moderate or high gravity in previous OSH inspections and whether the current inspection shows a continuing poor performance. The 10-percent reduction in relation to history of previous violations shall be given when:

1 No previous OSH inspections and no OSH-funded consultation visits have been conducted.

2 There has been previous OSH inspection or consultation activity and there are:

a No new serious violations of moderate or high gravity (4-10);

- b No willful violations and no repeated violations of a serious nature; or
- c Few serious violations of low gravity or repeated violations of a nonserious nature and few other-than-serious violations of a moderate or high gravity.

3 Otherwise, there is no reduction allowed.

(d) Total. The total reduction will normally be the sum of the reductions for each of the adjustment factors. For serious violations with a severity/probability quotient of 8 or more, the combined rate of penalty reduction for size, good faith and history of previous violations shall be limited. Where the S/P quotient for a specific, high-gravity, serious violation is as follows, the maximum penalty reduction for all adjustment factors combined shall be lowered as indicated in the following chart:

S/P Quotient	Maximum Penalty Reduction
8	20%
9	10%
10	0 %

3. Imminent Danger Situations. Detailed instructions and procedures for handling allegations of imminent danger situations are contained in Chapter VII. Penalties shall be assessed in accordance with the following:
  - a. Classifications. An imminent danger situation will normally involve a serious, willful or repeated violation.
  - b. Proposed Penalties. Penalties shall be proposed in cases where citations are issued in imminent danger situations even though, after being informed by the CO or IH, the employer immediately eliminates the imminence of the danger and initiates steps to abate the hazard. The procedures given in this chapter for calculating and assessing proposed penalties shall be applied in the case of imminent danger situations, as appropriate.
  
4. Effect on Penalties If Employer Immediately Corrects or Initiates Corrective Action. Appropriate penalties will be proposed with respect to an alleged violation even though, after being informed of such alleged violation by the CO or IH, the employer immediately corrects or initiates steps to correct the hazard. These actions shall be favorably considered when figuring the penalty adjustment factor for good faith credit.

5. Failure to Abate. AS 18.60.095(d) provides criteria for assessing civil penalties for failure to abate a violation. A penalty of not more than \$1,000 may be assessed for each day the violation continues past the final abatement date.
- a. Application. A Notification of Failure to Abate Alleged Violation (DOSH-2F) shall be issued in cases where violations have not been corrected as required.
- (1) Failure to abate penalties shall be applied when an employer has not corrected a violation which was cited previously when the previous citation has become a final order of the Board.
  - (2) A good faith but unsuccessful effort to abate the violation shall be taken into consideration when determining the appropriate penalty amount as indicated in f. of this subsection.
- b. No Employer Contest. If a timely notice of contest has not been filed, the citation and proposed penalties shall be deemed to be a final order of the Review Board upon the expiration of the contest period. Penalties for failure to abate shall be applied where abatement has not been accomplished.
- c. Employer Contests Alleged Violation(s). If an employer contests one or more of the alleged violations, the period for abatement does not begin to run, as to those items contested, until the day following the entry of the final order by the Review Board affirming the citation.
- (1) If the employer contests only the amount of the proposed penalty, the employer must correct the alleged violation within the prescribed abatement period.
  - (2) If an employer contests an abatement date in good faith, a Failure to Abate Notice shall not be issued for the item contested until a final order affirming a date is entered, the new abatement period, if any, has been completed, and the employer has still failed to abate.
- d. Calculation of Additional Penalties. A gravity-based penalty for unabated violations is to be calculated for failure to abate a serious or other than serious violation on the basis of the facts noted upon reinspection. This recalculated gravity-based penalty, however, shall not be less than that proposed for the item when originally cited, except as provided in A.5.e.
- (1) In those instances where no penalty was initially proposed, an appropriate penalty shall be determined after consulting with the supervisor. In no case shall the penalty be less

than \$100. Adjustment factors shall then be applied to arrive at the daily proposed penalty.

- (2) Adjustment factors for size, good faith and history shall be applied based upon the circumstances noted during the inspection.
  - (3) The daily proposed penalty shall be multiplied by the number of calendar days that the violation continued unabated. The number of days unabated will be counted from the day following the abatement date specified in the citation or in the final order. It will include all calendar days between that date and the date of re-inspection, excluding the date of reinspection. Normally the total proposed penalty for failure to abate a particular violation shall not exceed 10 times the amount of daily proposed penalty.
  - (4) In unusual circumstances, such as where the gravity of the violation is especially high or the employer has willfully failed to abate the violation, higher penalties shall be proposed. In such situations the proposed penalty and factors involved shall be approved by the Deputy Director.
- e. Partial Abatement. When a citation has been only partially abated the daily proposed penalty shall take this into consideration.
- (1) When a violation consists of a number of instances and the follow-up inspection reveals that only some instances of the violation have been corrected, the additional daily proposed penalty shall take into consideration the extent that the violation has been abated. For example, where 3 out of 5 instances have been corrected, the daily proposed penalty (calculated as outlined in A.5.d without regard to any partial abatement) may be reduced by 60 percent.
  - (2) In multi-step correction items, only the failure to comply with substantive (rather than procedural) requirements shall generally incur a full failure to abate penalty. On rare occasions, when the Chief decides to issue a Failure to Abate Notice for failure to comply with procedural requirements, the calculation of the daily proposed penalty shall consider the extent to which a violation has been substantially abated with the daily proposed penalty (calculated as outlined in A.5.d without regard to any partial abatement) reduced accordingly.
- f. Good Faith Effort to Abate. When the CO or IH believes that the employer has made good faith efforts to correct the violation and had good reason to believe that it was fully abated,

the Chief may reduce or eliminate the daily proposed penalty that would otherwise be justified.

6. Repeated Violations. AS 18.60.095(a) provides that, for a repeated violation of the Act, an employer may be assessed a civil penalty of not more than \$10,000 for each violation.
  - a. Gravity and Penalty Factors. Each violation shall be classified as serious or other-than-serious. A gravity-based penalty shall then be calculated for repeated violations based on facts noted during the current inspection. Appropriate adjustment factors based upon the re-inspection shall be applied.
  - b. Penalty Increase Factors. Generally, once the gravity-based penalty is determined, it shall be doubled for the first repeated violation and quadrupled if the violation has been cited twice before. If a third repetition of a violation has occurred, the gravity-based penalty shall be multiplied by 10. For any further repetition, the Deputy Director shall be consulted.
  - c. No Gravity-Based Penalty. In those instances where a gravity-based penalty does not result from the calculation based on current facts, an appropriate gravity-based penalty shall be determined following consultation with the supervisor. In no event shall the penalty be less than \$100.
  
7. Willful Violations. AS 18.60.095(a) provides that, for a willful violation of the Alaska Occupational Safety and Health laws, an employer may be assessed a civil penalty of not more than \$10,000 for each violation.
  - a. Gravity and Penalty Factors. Each violation shall be classified as serious or other than serious. After determining the gravity of the violation, a gravity-based penalty shall be determined based on the facts noted during the inspection. There will normally be no reduction based on adjustment factors. The gravity-based penalty is multiplied by 10 to arrive at the proposed penalty.
  - b. No Gravity-Based Penalty. In those instances where a gravity-based penalty does not result from the calculation based on current facts, an appropriate gravity-based penalty shall be determined following consultation with the supervisor. In no event shall the penalty be less than \$100.
  - c. Mixed Violations. Repeated violations for which there is evidence of willfulness shall be cited as repeated with the penalty calculated as if they were willful when it appears that OSH would have difficulty proving the element of willfulness. In such cases the Chief shall consult with the Deputy Director before issuing the citation.

8. Violation of 8 AAC 60.010-80.010 Regulatory Requirements. AS 18.60.095(g) provides that an employer who violates any of the posting or recordkeeping requirements shall be assessed a civil penalty of up to \$1,000 for each violation. For egregious violations, an additional factor may be applied in accordance with A.2.I.(4).
- a. General Application. The procedures that follow shall be used in determining proposed penalties for violations of 8AAC 61.225 and .230 regulatory requirements only when the employer has received a copy of the "Recordkeeping Requirements" booklet or had knowledge of the requirements.
- (1) If the employer has not received the booklet and did not have knowledge, citations without proposed penalties will be issued.
  - (2) All penalties for regulatory violations shall have the adjustment factors applied in determining the proposed penalty.
- b. Posting Requirements. Penalties for violation of posting requirements shall be proposed as follows:
- (1) OSH Notice. If the employer has not displayed (posted) the notice furnished by the Occupational Safety and Health Section as prescribed in 8 AAC 61.450, an other than serious citation shall normally be issued. The unadjusted penalty for this alleged violation shall be \$100.
  - (2) Annual Summary. If an employer fails to post the summary portion of the DOSH-200 Form during the month of February, as required by 8AAC 61.240, an other than-serious citation shall be issued with a proposed, unadjusted penalty of \$200.
  - (3) Citation. If an employer received a citation which has not been posted as prescribed in AS 18.60.091(b), an other-than-serious citation shall normally be issued. An unadjusted penalty of \$500 shall be proposed.
  - (4) Right-to-Know. If an employer is covered by AS 18.60.068, he is required to display a poster and Material Safety Data Sheets (or a list of chemicals) to inform employees of toxic and hazardous substances. If such an employer fails to meet this posting requirement, an unadjusted penalty of \$100 will be proposed.
- c. Reporting and Recordkeeping Requirements. AS 18.60.095(g) provides that violations of the recordkeeping and reporting requirements may be assessed civil penalties of up to \$1,000 for each violation.

- (1) DOSH-200 and DOSH-101 Forms. If the employer does not maintain the "Log and Summary of Occupational Injuries and Illnesses", DOSH-200 Form, and the "Supplementary Record", DOSH-101 Form (or equivalent), as prescribed in 8 AAC 61.240, an other than serious citation shall be issued. There shall be an unadjusted penalty of \$100 for each OSH form not maintained. When no recordable injuries or illnesses have occurred, these forms will be considered as being maintained, even though no entries appear in them.
  - (2) Reporting. Employers are required to report either orally or in writing to the nearest OSH office within 24 hours, any occurrence of an employment accident which is fatal to one or more employees or which results in the overnight hospitalization of one or more employees. An other than serious citation shall be issued for failure to report such an occurrence. The unadjusted penalty shall be \$400.
- d. Grouping. Violations of the posting and recordkeeping requirements which involve the same document (e.g., summary portion of the DOSH-200 Form was neither posted nor maintained) shall be grouped as an other than serious violation for penalty purposes. The unadjusted penalty for the grouped violations would then take on the highest dollar value of the individual items; e.g., the unadjusted penalty for not posting the DOSH-200 Form is \$200 and \$100 for not maintaining the DOSH-200 Form. The group unadjusted penalty would be \$200 rather than \$300.
  - e. Access to Records. If the employer fails upon request to provide records required in Sections 8 AAC 61.260 and 61.270 for inspection and copying by any authorized representative of the Commissioner of Labor or by any employee, former employee, or authorized representative of employees, a citation for violation of 8 AAC 61.270 shall normally be issued. The unadjusted penalty shall be \$100 for each form not made available. Thus, if the OSH-200 for the three preceding years is not made available, the unadjusted penalty would be \$300. If the employer is to be cited for failure to maintain these records, no citation of 8 AAC 61.270 shall be issued.
  - f. Notification Requirements. When an employer has received advance notice of an inspection and fails to notify the authorized employee representative as required by 8 AAC 61.040, an other than serious citation shall be issued with an unadjusted penalty of \$200.

B. Criminal Penalties.

1. AS 18.60.010--18.60.105 provide for criminal penalties in the following cases:

- a. Willful violations causing death
  - b. Giving unauthorized advance notice
  - c. Giving false information
  - d. Killing--assaulting or hampering the work of a CO or IH
2. Criminal penalties are imposed by the courts after trials and not by the Occupational Safety and Health Section or the Occupational Safety and Health Review Board.

C. Handling Monies Received from Employers.

The Alaska Department of Labor's Fiscal Policies and Procedures Manual will be followed for billing and handling penalty monies received from employers.

D. Collection of Penalties. The Chief shall be guided by the following with regard to penalty collection:

- a. Time Allowed for Payment of Penalties. The date when penalties become due and payable depends on whether or not the employer contests.
  - (1) Uncontested Penalties. When citations and/or proposed penalties become uncontested, the penalties are due and payable 15 working days following the employer's receipt of the Citation and Notification of Penalty, or in the case of Informal Settlement Agreements, the execution of the agreement unless otherwise agreed upon in the settlement. (See Chapter V, G.2.)
  - (2) Follow-up Procedures. If payment is not received in 15 working days, a dunning letter (signed by the Commissioner) will be sent requesting payment. If no payment is received after 30 calendar days of the dunning letter the penalty will be referred to the legal counsel for court action. The Administrative Assistant shall follow up on a quarterly basis to ensure prompt notification of disposition.
  - (3) Contested Penalties. When citations and/or proposed penalties are contested, the penalties are due and payable 30 calendar days after the issuance of a final order by the Review Board. If the Board order is appealed to a Superior Court, the penalties are due and payable 30 calendar days after the issuance of the court's judgment, provided that further review by the Supreme Court has not been sought.
  - (4) Partially Contested Penalties. When only part of a citation and/or a proposed penalty is contested, the due date for payment as expressed in D.2.a.(1) will be used for the

uncontested items and the due date expressed in D.2.a.(2) for the contested items.

NOTE: For collection purposes partially contested cases are to be treated as contested cases.

- E. Contest Penalties. On receipt of an employer's notice of intent to contest a proposed penalty, the Chief shall forward the notice and a copy of the case file to the legal counsel with a transmittal letter informing the legal counsel that penalty payment resulting from the litigation must be directed to the Department of Labor's Fiscal Section and requesting that the case file be returned promptly after settlement.
- a. Follow-up Procedures. While the case files are in the hands of the legal counsel, the Chief shall follow up on a quarterly basis to determine the disposition of the case and to ensure prompt notification of disposition.

*- Senate - passed unanimously*

SB 4721

WISHA

I. Bill addresses department's enforcement of WISHA

Would change 2 major areas:

1. Duration of redetermination period
2. Amount of penalties for safety violations

II. REDETERMINATION

- If director decides to reassume jurisdiction proposal would extend amount of time allowed to complete redetermination from 15 days to 30 days
- Number of requests for reassumption have increased dramatically
  - 1982 -- 590 appeals
  - 1985 -- 1688 appeals
- Director's new emphasis to resolve appeals administratively
- Additional time is needed to allow for proper preparation and consideration of the appeal

III. PENALTIES INCREASED

A. Why?

1. Publicity about recent industrial accidents
  - Public concern about amount of WISHA fines

- Column in P-I

"Safety Watchdog Has Itty Bitty Teeth"

a. 32 ton crane with operator fell 25 floors

- Onto Pike Street in front of Metro bus

- Operator survived

- Firm fined \$350 <sup>1,700</sup>

b. Construction Company

- Worker died when trench wall collapsed

- Company had 2 previous serious violations

- Sharing equipment available on site but company was in a hurry

- Fined \$30,000 <sup>\$150,000</sup>

- Obviously, amount of potential fine not enough to deter unsafe conduct

2. Director ordered a study of situation

a. Penalties not increased since enactment in 1973

b. Latest statistics show 12% increase in construction industry accident rate

c. Current penalties are so minimal that they are absorbed as a cost of doing business

- Cheaper to pay penalty than to be safe

3. Preferable to increase penalties as a deterrent rather than hire additional staff for enforcement

B. Result

1. Significant increase in maximum penalties will result in increase in actual penalties but very rarely reaching maximum amount

*- # of affected employees  
- gravity of violation  
- employer size  
- history of previous violations*

- Department uses formula to determine actual penalty
- Factors for formula are set out in statute
- Support use of formula:
  - Avoid heavy handed inspector
  - Helps tailor penalty to situation
- Department has no interest in levying maximum fines
- We want to encourage abatement and correction rather than being punitive

2. Increased penalties will be greater deterrent
3. Higher penalties will help reduce unfair competition from businesses that cut corners or safety to reduce costs

C. Summary

- Reaffirm legislative intent of WISHA
- Encourage accident prevention without being excessively punitive

WISHA PENALTIES (RCW 49.17.180)

Rational:

- Reaffirm legislative intent regarding a public policy of Safety and Health in the work place.
- Inflation adjustment factors since 1973. (No increase since passage of the act.)
- Eliminate unfair competition factors in the market place.  
Current penalties are often perceived as a cost of doing business vs. consequence of failure to provide a safe workplace and correct safety hazards.
- Deterrent effects vs. increased staffing requirements.
- Fees collected are not operating budget \$ - rather \$ go into Supplemental Pension Fund (i.e. widows and orphans).
- Current penalty structure does not factor in employer's accident record - rather citation record.
- Currently the only significant economic deterrent is the industrial insurance rate - this is always after injury/fatality - the driver needs to be accident prevention.
- Penalty structure is consistent with public outcry for accountability in enforcement agencies. (John Marshall - P.I. 10/24/85)

12% INCREASE CONSTRUCTION ACCID

PENALTY COMPARISONS (samples)

- as of 1983 -

• Dept. of Ecology:

- 1.) Improper disposal of hazardous wastes, Ch. 70.105 RCW  
\$10,000/day and gross misdemeanor.
- 2.) Willful pollution of state waters, Ch. 90.48 RCW  
\$10,000 and 1 year gross misdemeanor  
plus: \$5,000/day and liability for damages.
- 3.) Pollution of watershed - \$500 misdemeanor.

• Littering: Ch. 70.93 RCW

Littering highways: \$50 - \$1,000 and 90 days misdemeanor.

• Clean Air Act: Ch. 70.94 RCW (automobile exhaust)

\$200 misdemeanor plus: \$250/day additional.

• Pirated Recordings: Ch. 19.25 RCW (black market records and tapes)

\$1,000 and 1 year gross misdemeanor.

Game Commission: game and gamefish

- 1.) Seizure of game and devices (truck, gun ...), Ch. 77.12 RCW.
- 2.) \$250 - 1,000 and 1 year gross misdemeanor, Ch. 77.21 RCW.
- 3.) Reimburse state for loss \$500 - \$1,000, Ch. 77.21 RCW.

Improper Collection Activities: Ch. 19.16 RCW

- 1.) Failure to license, \$1,000 civil penalty.
- 2.) Improper activities, \$25,000 civil penalty.

\* \* \*

Criminal Penalties, Ch. 9A.20 RCW (standard ranges):

Gross Misdemeanor: \$5,000 and 1 year max.

Misdemeanor: \$1,000 and 90 days max.

# Safety watchdog has itty bitty teeth

Strange but true tales from Washington state government, where a watchdog agency seems to have more bark than bite:

□ A 32-ton construction crane falls 25 stories and crashes onto Fourth Avenue in Seattle. The crane operator survives with slight injuries, but no one else is hurt, miraculously, because the crane happens to fall on a Saturday morning.

The state Department of Labor and Industries investigates the accident. It finds that Mobil Crane of Seattle did not follow recommended procedures in raising the crane boom. The department cites the company for a safety violation.

Labor and Industries imposes this fine: \$350.

□ A Japanese dancer falls to his death during a performance while suspended from a rope hanging from a building in Pioneer Square. Labor and Industries investigates the accident. It finds that the rope was worn and should have been destroyed; it also finds that rope was not of the thickness required by law.

The department cites On the Boards, a Seattle arts group that was sponsoring the dancers' appearance in Seattle, for the two safety violations (a decision which On the



**JOHN MARSHALL**

Boards will appeal). The department also cites the New York producers of the dancer company's tour.

On each of the two groups, Labor and Industries imposes this fine: \$600.

How can safety violations that presumably led to a man's death result in only a \$600 fine? How can a safety violation that sent a 32-ton crane crashing down on Seattle streets result in only a \$350 fine? Are such fines supposed to be any sort of penalty or punishment? If this is enforcement, then it seems to be enforcement with itty bitty baby teeth.

That's exactly what Richard Davis, the new director of Labor and Industries, thought when he took over the job eight months ago in the Gardner administration. The longtime executive at Pacific Northwest Bell saw such small fines being

assessed and immediately wondered, "Where do we get these amounts?"

Thus did Davis embark on a journey down the rabbit hole of state law and state bureaucracy, to a place where such fines for safety violations are set according to a complicated three-page formula, a formula that doesn't even take into account whether a death has resulted from the safety violations.

What matters to Labor and Industries and determines its fines, according to state law, is whether such safety violations are "willful" and "repeated." If so, then the maximum fine is \$10,000.

But if safety violations are "serious" but are not part of a repeated pattern, accidents such as those involving the Seattle crane or the Japanese dancer, then the maximum fine is only \$1,000. And the complex formula used means that the \$1,000 fine is rarely assessed.

The result of Davis' journey is that Labor and Industries plans to ask the Legislature to raise the \$1,000 maximum fine, in effect since 1973, to \$5,000. The department also is conducting an examination of the fines and procedures used by other states and the federal government to see if changes in state law are warranted.

But Davis emphasizes that his department remains much more interested in making sure that safety violations don't happen again than in punishing past violations. Especially when even Davis admits that the low fines allowed by law can be seen as nothing more than "nuisance fines."

"We have life-threatening situations out in the workplace where we have fining authority," Davis says. "But we'd rather have a firm spend its money resolving safety problems than us go around fining people. The whole key is making sure there are no repeat violations."

Labor and Industries' philosophy in this may make some sense. But it does not diminish the sense of outrage that results when a worn rope sends a man to the most horrible of public deaths, and the state's response is a \$600 wrist slap.

Perhaps justice and punishment are the courts' concerns. But it still says something very sad about a society when safety violations can end a life and the only penalty imposed by the state is a few hundred bucks.

□ P-I staff columnist John Marshall appears here Tuesday, Thursday and Saturday.

SENATE BILL NO. 4721

State of Washington      49th Legislature      1986 Regular Session  
by Senators Warnke, Newhouse, Vognild and Bauer

Read first time 1/21/86 and referred to Committee on Commerce & Labor.

1      AN ACT Relating to the Washington industrial safety and health  
2 act: amending RCW 49.17.140, 49.17.180, and 49.17.190; and  
3 prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON.

5      Sec. 1. Section 14, chapter 80, Laws of 1973 and RCW 49.17.140  
6 are each amended to read as follows:

7      (1) If after an inspection or investigation the director or his  
8 authorized representative issues a citation under the authority of  
9 RCW 49.17.120 or 49.17.130, the department, within a reasonable time  
10 after the termination of such inspection or investigation, shall  
11 notify the employer by certified mail of the penalty to be assessed  
12 under the authority of RCW 49.17.180 and shall state that the  
13 employer has fifteen working days within which to notify the director  
14 that he wishes to appeal the citation or assessment of penalty. If,  
15 within fifteen working days from the communication of the notice  
16 issued by the director the employer fails to notify the director that  
17 he intends to appeal the citation or assessment penalty, and no  
18 notice is filed by any employee or representative of employees under  
19 subsection (3) of this section within such time, the citation and the  
20 assessment shall be deemed a final order of the department and not  
21 subject to review by any court or agency.

22      (2) If the director has reason to believe that an employer has  
23 failed to correct a violation for which a citation has been issued  
24 within the period permitted in the citation for its correction, which  
25 period shall not begin to run until the entry of a final order in the  
26 case of any appeal proceedings under this section initiated by the  
27 employer in good faith and not solely for delay or avoidance of  
28 penalties, the director shall notify the employer by certified mail  
29 of such failure to correct the violation and of the penalty to be

1 assessed under RCW 49.17.180 by reason of such failure, and shall  
 2 state that the employer has fifteen working days from the  
 3 communication of such notification and assessment of penalty to  
 4 notify the director that he wishes to appeal the director's  
 5 notification of the assessment of penalty. If, within fifteen  
 6 working days from the receipt of notification issued by the director  
 7 the employer fails to notify the director that he intends to appeal  
 8 the notification of assessment of penalty, the notification and  
 9 assessment of penalty shall be deemed a final order of the department  
 10 and not subject to review by any court or agency.

11 (3) If any employer notifies the director that he intends to  
 12 appeal the citation issued under either RCW 49.17.120 or 49.17.130 or  
 13 notification of the assessment of a penalty issued under subsections  
 14 (1) or (2) of this section, or if, within fifteen working days from  
 15 the issuance of a citation under either RCW 49.17.120 or 49.17.130  
 16 any employee or representative of employees files a notice with the  
 17 director alleging that the period of time fixed in the citation for  
 18 the abatement of the violation is unreasonable, the director may  
 19 reassume jurisdiction over the entire matter, or any portion thereof  
 20 upon which notice of intention to appeal has been filed with the  
 21 director pursuant to this subsection. If the director reassumes  
 22 jurisdiction of all or any portion of the matter upon which notice of  
 23 appeal has been filed with the director, any redetermination shall be  
 24 completed and corrective notices of assessment of penalty, citations,  
 25 or revised periods of abatement completed within a period of  
 26 ~~((fifteen))~~ thirty working days, which redetermination shall then  
 27 become final subject to direct appeal to the board of industrial  
 28 insurance appeals within fifteen working days of such redetermination  
 29 with service of notice of appeal upon the director. In the event  
 30 that the director does not reassume jurisdiction as provided in this  
 31 subsection, he shall promptly notify the state board of industrial  
 32 insurance appeals of all notifications of intention to appeal any  
 33 such citations, any such notices of assessment of penalty and any  
 34 employee or representative of employees notice of intention to appeal  
 35 the period of time fixed for abatement of a violation and in addition  
 36 certify a full copy of the record in such appeal matters to the

1 board. The director shall adopt rules of procedure for the  
 2 reassumption of jurisdiction under this subsection affording  
 3 employers, employees, and employee representatives notice of the  
 4 reassumption of jurisdiction by the director, and an opportunity to  
 5 object or support the reassumption of jurisdiction, either in writing  
 6 or orally at an informal conference to be held prior to the  
 7 expiration of the ~~((fifteen))~~ thirty-day period. A notice of appeal  
 8 filed under this section shall stay the effectiveness of any citation  
 9 or notice of the assessment of a penalty pending review by the board  
 10 of industrial insurance appeals, but such appeal shall not stay the  
 11 effectiveness of any order of immediate restraint issued by the  
 12 director under the authority of RCW 49.17.130. The board of  
 13 industrial insurance appeals shall afford an opportunity for a  
 14 hearing in the case of each such appellant and the department shall  
 15 be represented in such hearing by the attorney general and the board  
 16 shall in addition provide affected employees or authorized  
 17 representatives of affected employees an opportunity to participate  
 18 as parties to hearings under this subsection. The board shall  
 19 thereafter make disposition of the issues in accordance with  
 20 procedures relative to contested cases appealed to the state board of  
 21 industrial insurance appeals.

22 Upon application by an employer showing that a good faith effort  
 23 to comply with the abatement requirements of a citation has been made  
 24 and that the abatement has not been completed because of factors  
 25 beyond his control, the director after affording an opportunity for a  
 26 hearing shall issue an order affirming or modifying the abatement  
 27 requirements in such citation.

28 Sec. 2. Section 18, chapter 80, Laws of 1973 and RCW 49.17.180  
 29 are each amended to read as follows:

30 (1) Any employer who willfully or repeatedly violates the  
 31 requirements of RCW 49.17.060, ~~((or))~~ of any safety ~~((and))~~ or health  
 32 standard promulgated under the authority of this chapter, of any  
 33 existing rule or regulation governing the conditions of employment  
 34 promulgated by the department, or of any order issued granting a  
 35 variance under RCW 49.17.080 or 49.17.090 may be assessed a civil  
 36 penalty not to exceed ~~((ten))~~ fifty thousand dollars for each

1 violation.

2 (2) Any employer who has received a citation for a serious  
3 violation of the requirements of RCW 49.17.060, of any safety or  
4 health standard promulgated under the authority of this chapter, of  
5 any existing rule or regulation governing the conditions of  
6 employment promulgated by the department, or of any order issued  
7 granting a variance under RCW 49.17.080 or 49.17.090 as determined in  
8 accordance with subsection (6) of this section, shall be assessed a  
9 civil penalty not to exceed ~~((one))~~ five thousand dollars for each  
10 such violation.

11 (3) Any employer who has received a citation for a violation of  
12 the requirements of RCW 49.17.060, of any safety ~~((and))~~ or health  
13 standard promulgated under this chapter, ~~((or))~~ of any existing rule  
14 or regulation governing the conditions of employment promulgated by  
15 the department, or of any order issued granting a variance under RCW  
16 49.17.080 or 49.17.090, where such violation is specifically  
17 determined not to be of a serious nature as provided in subsection  
18 (6) of this section, may be assessed a civil penalty not to exceed  
19 ~~((one))~~ three thousand dollars for each such violation, unless such  
20 violation is determined to be de minimis.

21 (4) Any employer who fails to correct a violation for which a  
22 citation has been issued under RCW 49.17.120 or 49.17.130 within the  
23 period permitted for its correction, which period shall not begin to  
24 run until the date of the final order of the board of industrial  
25 insurance appeals in the case of any review proceedings under this  
26 chapter initiated by the employer in good faith and not solely for  
27 delay or avoidance of penalties, may be assessed a civil penalty of  
28 not more than ~~((one))~~ five thousand dollars for each day during which  
29 such failure or violation continues.

30 (5) Any employer who violates any of the posting requirements of  
31 this chapter, or any of the posting requirements of rules promulgated  
32 by the department pursuant to this chapter related to employee or  
33 employee representative's rights to notice, including but not limited  
34 to those employee rights to notice set forth in RCW 49.17.080,  
35 49.17.090, 49.17.120, 49.17.130, 49.17.220(1) and 49.17.240(2), shall  
36 be assessed a penalty ~~((ef))~~ not to exceed ~~((one))~~ three thousand

1 dollars for each such violation. Any employer who violates any of  
2 the posting requirements for the posting of informational,  
3 educational, or training materials under the authority of RCW  
4 49.17.050(7), may be assessed a penalty ~~((of))~~ not to exceed one  
5 thousand five hundred dollars for each such violation.

6 (6) For the purposes of this section, a serious violation shall  
7 be deemed to exist in a work place if there is a substantial  
8 probability that death or serious physical harm could result from a  
9 condition which exists, or from one or more practices, means,  
10 methods, operations, or processes which have been adopted or are in  
11 use in such work place, unless the employer did not, and could not  
12 with the exercise of reasonable diligence, know of the presence of  
13 the violation.

14 (7) The director, or his authorized representatives, shall have  
15 authority to assess all civil penalties provided in this section,  
16 giving due consideration to the appropriateness of the penalty with  
17 respect to the number of affected employees of the employer being  
18 charged, the gravity of the violation, the size of the employer's  
19 business, the good faith of the employer, and the history of previous  
20 violations.

21 (8) Civil penalties imposed under this chapter shall be paid to  
22 the director for deposit in the supplemental pension fund established  
23 by RCW 51.41.033. Civil penalties may be recovered in a civil action  
24 in the name of the department brought in the superior court of the  
25 county where the violation is alleged to have occurred, or the  
26 department may utilize the procedures for collection of civil  
27 penalties as set forth in RCW 51.48.120 through 51.48.150.

28 Sec. 3. Section 19, chapter 80, Laws of 1973 and RCW 49.17.190  
29 are each amended to read as follows:

30 (1) Any person who gives advance notice of any inspection to be  
31 conducted under the authority of this chapter, without the consent of  
32 the director or his authorized representative, shall, upon conviction  
33 be guilty of a gross misdemeanor and be punished by a fine of not  
34 more than one thousand dollars or by imprisonment for not more than  
35 six months, or by both.

36 (2) Whoever knowingly makes any false statement, representation

1 or certification in any application, record, report, plan, or other  
 2 document filed or required to be maintained pursuant to this chapter  
 3 shall, upon conviction be guilty of a gross misdemeanor and be  
 4 punished by a fine of not more than ten thousand dollars, or by  
 5 imprisonment for not more than six months or by both.

6 (3) Any employer who wilfully and knowingly violates the  
 7 requirements of RCW 49.17.060, any safety ~~((and))~~ or health standard  
 8 promulgated under this chapter, any existing rule or regulation  
 9 governing the safety ~~((and))~~ or health conditions of employment and  
 10 adopted by the director, or any order issued granting a variance  
 11 under RCW 49.17.080 or 49.17.090 and that violation caused death to  
 12 any employee shall, upon conviction be guilty of a gross misdemeanor  
 13 and be punished by a fine of not more than ~~((ten))~~ one hundred  
 14 thousand dollars or by imprisonment for not more than six months or  
 15 by both; except, that if the conviction is for a violation committed  
 16 after a first conviction of such person, punishment shall be a fine  
 17 of not more than ~~((twenty))~~ two hundred thousand dollars or by  
 18 imprisonment for not more than one year, or by both.

19 (4) Any employer who has been issued an order immediately  
 20 restraining a condition, practice, method, process, or means in the  
 21 work place, pursuant to RCW 49.17.130 or 49.17.170, and who  
 22 nevertheless continues such condition, practice, method, process, or  
 23 means, or who continues to use a machine or equipment or part thereof  
 24 to which a notice prohibiting such use has been attached, shall be  
 25 guilty of a gross misdemeanor, and upon conviction shall be punished  
 26 by a fine of not more than ~~((one))~~ ten thousand dollars or by  
 27 imprisonment for not more than six months, or by both.

28 (5) Any employer who shall knowingly remove, displace, damage, or  
 29 destroy, or cause to be removed, displaced, damaged, or destroyed any  
 30 safety device or safeguard required to be present and maintained by  
 31 any safety or health standard, rule, or order promulgated pursuant to  
 32 this chapter, or pursuant to the authority vested in the director  
 33 under RCW 43.22.050 shall, upon conviction, be guilty of a  
 34 misdemeanor and be punished by a fine of not more than ~~((two-hundred~~  
 35 ~~fifty))~~ one thousand dollars or by imprisonment for not more than  
 36 ninety days, or by both.

1 (6) Whenever the director has reasonable cause to believe that  
 2 any provision of this section defining a crime has been violated by  
 3 an employer, the director shall cause a record of such alleged  
 4 violation to be prepared, a copy of which shall be referred to the  
 5 prosecuting attorney of the county wherein such alleged violation  
 6 occurred, and the prosecuting attorney of such county shall in  
 7 writing advise the director of the disposition he shall make of the  
 8 alleged violation.

Alaska State Legislature  
Representative Niilo Kaponen

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POSITION PAPER

HB 53 - "AN ACT RELATING TO PENALTIES FOR VIOLATIONS TO  
WORK-PLACE SAFETY LAWS"

This legislation would reinforce the legislative intent in AS 18.60.010, which states that the legislature finds that "...personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, the people of the state in terms of loss of production, wage loss, medical expenses and disability compensation payments." The health and safety of every Alaskan worker should be a first priority in any work-place.

Alaska has continued to have one of the highest occupational injury and illness rates in the country. It is therefore necessary to undertake a program to reduce the incidence of work-related accidents and health hazards in the state. My decision to strengthen the work-place safety laws resulted from past discussions with laborers, and research into case examples of the asbestos problems and other work-place accidents that have occurred within Alaska. These incidents include the Clear A.F.B. case, where avoidable microwave exposure causing severe injury to six workers resulted in an approximately \$400 fine.

This legislation parallels actions taken by the Washington State Legislature last year (1986) by increasing penalties for serious work-place violations. For example, under current Alaska Statute the penalty for a serious work-place safety violation is a maximum fine of \$1,000. This penalty is then adjusted downward by the Occupational Safety and Health Administration (OSHA), taking into consideration factors such as the size of the employee's business, good faith of the employer and any previous history of violations. The adjusted average fine for a serious violation is \$175.00. This penalty structure, which has not been adjusted for the past 17 years, is not an effective deterrent to serious hazards.

HB 53 would increase the maximum fine to \$25,000. With the application of the adjustment formula this is expected to increase the average fine to \$4,375. The possibility of more severe fines should encourage companies to pay more attention to worker safety. In Washington, an equivalent violation now carries a maximum fine of \$50,000.

There is no reason why an employer can not abide by the standards that the federal and state statutes have established. There is a

common-law duty to provide a safe work-site that affects whomever supplies and controls that work-site. This duty protects all people on the site and not just the employees. (AS18.60.075.)

HB 53 is a deterrent intended to encourage businesses to conform to work-place safety laws and regulations. The main purpose of this legislation is to remind employers of their responsibility to prevent accidents. An increase in fines is one way of making sure that safety in the work-place is a top priority. Employees and the public need this protection. If an employer complies with required statutes and standards, then there should be no worry of being fined. Small fines are not effective enough to make changes occur.

It is the sponsor's earnest hope that greater compliance will result in a decrease in the number of fines levied. Collected fines levied will be deposited into the general fund which can be used to offset the temporary administrative costs that the Department of Labor will have until the new fines are promulgated.

Bill No.

Committee Substitute for  
House Bill No. 53 (HESS)

Date

February 3, 1987

Title

"An Act relating to penalties for  
violation of workplace safety laws."

Contact:

Eileen Plate  
465-2700

Richard Arab  
465-4856

Under Committee Substitute for House Bill 53, the penalties assessed by the Department of Labor for violations of Alaska's Occupational Safety and Health law and regulations would be increased.

Specifically, the provisions of this bill:

- (1) increase the maximum penalty for a willful or repeat violation from \$10,000 to \$25,000;
- (2) establish a \$1000 minimum penalty for a serious violation; and increase the maximum penalty for a serious or failure to abate violation from \$1,000 to \$10,000;
- (3) increase the maximum penalty for a non-serious violation from \$1,000 to \$5,000;
- (4) increase the maximum penalty for a willful or repeat violation which results in the death of a worker from \$10,000 to \$150,000; and increase from \$20,000 to \$500,000 the maximum penalty for a second conviction of a willful or repeat violation causing death;
- (5) increase from \$10,000 to \$25,000 the maximum penalty for falsifying or otherwise misrepresenting occupational safety and health records or documents; and
- (6) increase the maximum penalty for a violation of occupational safety and health posting requirements from \$1,000 to \$5,000.

The penalties in effect have not been increased since Alaska's occupational safety and health law was initially enacted in 1973.

More important than providing for an overdue inflationary increase in the penalty system, however, the increased penalties would serve as an effective deterrent to workplace safety and health violations. This, of course, will translate into safer workplaces, and a reduced risk of injury and illness to Alaska's workers.

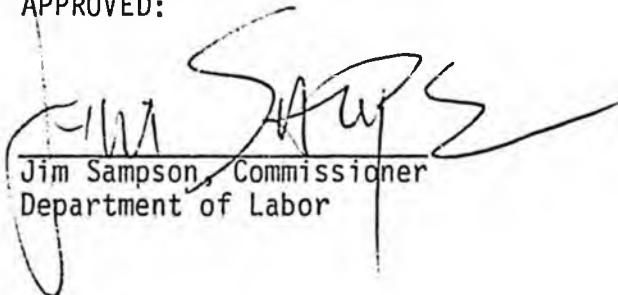
An increased emphasis on worker safety and health is particularly important in times of economic decline, such as are presently being experienced. When cost-saving measures are implemented by employers during recessionary periods, equipment maintenance and replacement are diminished, and the need to increase worker productivity often results in unsafe "shortcuts" that would not be

**POSITION PAPER/Department of Labor**

taken or even considered in more prosperous times. The deterrent effect of increased penalties would, therefore, assure that implementation of cost-saving measures by Alaska business is not at the expense of or to the detriment of the safety and health of Alaska's workers.

The Department of Labor supports the increased penalties for violations of Alaska's occupational safety and health law and regulations as provided in this bill.

APPROVED:



Jim Sampson, Commissioner  
Department of Labor

Relation w/ HB 22

Dept of Labor supports bill

5-0251B

Offered: 1/30/87  
Referred: Judiciary and Finance

Original sponsors: Koponen, Goll and Davis

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 53 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to <sup>violations</sup> ~~penalties~~ for violations of work-  
7 place safety laws."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 18.60.095(a) <sup>knowingly</sup> is amended to read:

10 (a) An employer who wilfully or repeatedly violates a provision  
11 of AS 18.60.010 - 18.60.105 that is applicable to the employer or a  
12 standard or regulation adopted under AS 18.60.010 - 18.60.105 may be  
13 assessed by the commissioner a civil penalty of not more than \$25,000  
14 [\$10,000] for each violation.

15 \* Sec. 2. AS 18.60.095(b) is amended to read:

16 (b) An employer who receives a citation for a serious violation  
17 of a provision of AS 18.60.010 - 18.60.105 that is applicable to the  
18 employer or of a standard or regulation adopted under AS 18.60.010 -  
19 18.60.105 shall be assessed by the commissioner a civil penalty of not  
20 less than [UP TO] \$1,000 and not more than \$10,000 for each violation.

21 For purposes of this subsection, a serious violation is considered to  
22 exist if the violation creates in the place of employment a  
23 substantial probability of death or serious physical harm. However, a  
24 serious violation is not considered to exist if the employer did not,  
25 and could not with the exercise of reasonable diligence, know of the  
26 presence of the violation.

27 \* Sec. 3. AS 18.60.095(c) is amended to read:

28 (c) An employer who receives a citation for a violation of a  
29 provision of AS 18.60.010 - 18.60.105 that is applicable to the

what is a serious violation

minimum fine

Def serious violation

Hess amended 25,000

3,000  
1 chapter shall be assessed by the commissioner a civil penalty of up to  
2 \$5,000 [\$1,000] for each violation.  
3 \* Sec. 8. The amendments made by this Act apply to violations that  
4 occur on or after the effective date of this Act.

The Sacramento Bee • Tuesday, July 2, 1985

## 25-year sentences for execs in job-related death



Associated Press

Daniel Rodriguez

Steven J. O'Neil

Charles Kirschbaum

By SHARON COHEN

MAYWOOD, Ill. (AP) — Three former executives of a silver-recycling plant were sentenced Monday to 25 years each in prison and fined \$10,000 each for their landmark murder convictions in the job-related cyanide death of a worker.

Cook County Circuit Judge Ronald J.P. Banks compared the actions of the three officials of defunct Film Recovery Systems Inc. to someone who would leave "a time bomb ... ticking off" in an airplane.

"What happened is a gross injustice," Banks said. "A man is dead."

Sentenced were Steven J. O'Neil, former president of Film Recovery Systems; Charles Kirschbaum, plant manager, and Daniel Rodriguez, a foreman. Banks revoked their bonds of \$2,500 each and ordered them taken into custody.

Banks found the three men guilty June 14 of murder and reckless conduct after an eight-week, non-jury trial.

The murder convictions were believed to be the first in the nation of corporate officials in a job-related death. They stemmed from the Feb. 10, 1983, death of Stefan Golab, a 61-year-old Polish immigrant who died after inhaling cyanide fumes at the plant in suburban Elk Grove Village. Cyanide was used to recover silver from used X-ray film.

Banks said at the sentencing that the defendants were clearly aware of hazardous plant conditions and didn't have appropriate warning signs for the workers, many of whom were illegal aliens and couldn't speak English.

He said it was as if someone would "take a bomb and put in an airline (and run away while) ... the time bomb is ticking off. Every day people worked there, it kept ticking. It kept ticking."

"All of the defendants are going to pay for it harshly," he said.

In arguments Monday, Tom Tucker, assistant state's attorney, said plant workers regularly suffered from nausea, headaches and vomiting.

"They (the defendants) had knowledge of the workers becoming ill on a daily basis," he said. "They were motivated by greed, and greed

alone."

Defense attorneys contended the defendants had been unaware of dangerous conditions at the plant and had worked there themselves.

Banks also sentenced the defendants to 364 days in jail for each of 14 counts of reckless conduct. Those sentences were ordered served concurrently.

Banks revoked their bonds of \$2,500 each and ordered them taken into custody, but an appeals court restored the original bonds within hours.

The convictions were expected to be appealed.

Banks also fined Film Recovery and another corporation, Metallic Marketing, \$10,000 each on involuntary manslaughter convictions in Golab's death. In addition, the companies were fined \$1,000 for each of 14 counts of reckless conduct.

Chief prosecutor Jay Magnuson said he was satisfied with the sentences which could have been as high as 40 years.

The defendants must serve half of their sentences, minus 90 days for good behavior, before being eligible for parole, said Terry Levia, spokesman for the state's attorney's office.

Defense attorney Elliot Samuels, who represented Kirschbaum, compared the trial to a "witch hunt." He refused to propose a sentence for his client, saying he was confident the appellate court would correct the "grave injustice."

In May, a fourth defendant, former plant manager and vice president Gerald Pett, was acquitted on the murder charge.

A fifth company official, Michael MacKay of Salt Lake City, has twice avoided extradition to Illinois, but prosecutors are expected to make a third attempt.

The plant closed after Golab's death.

Chicago Tribune 5/9/85

## Plant played down cyanide, inspector says

A federal safety official who inspected an Elk Grove Village factory after a worker died allegedly from inhaling cyanide fumes testified Wednesday that the firm's president told him that employees would be "scared away" if they knew the hazardous chemical was being used.

Michael Selway, an industrial hygienist for the Occupational Safety and Health Administration, testified at the trial of four officials of Film Recovery Systems Inc., charged with murder in the death of Stefan Golab.

Selway said Steven J. O'Neil, company president, made the statement during Selway's three-day inspection after Golab's death Feb. 10, 1983.

Selway said O'Neil told him that "he didn't want to overemphasize the hazards associated with the operation because it would scare away the employees." They were talking about the lack of employee training at the plant, Selway said.

At a recess in the Cook County Circuit Court trial, O'Neil denied making the statement.

Also on trial are Gerald Pett, a vice president; Charles Kirschbaum, a plant manager; and Daniel Rodriguez, a plant foreman.

Selway said the hydrogen cyanide level recorded in the plant

Selway said he didn't cite the company for violating the air standards because he wasn't able to monitor the air quality on a normal workday.

But the company was fined \$2,425 for several violations, including not providing employees proper safety masks, gloves, training and an antidote for

According to Selway, a safety inspector visited the firm in November, 1982, and reviewed the firm's records on employee injuries but didn't inspect the plant because the company had an excellent record.

A medical supply saleswoman also testified Wednesday that her company sold a used, stocked medical cabinet to the firm for a yacht, but Film Recovery rejected offers to contract for safety

Feb. 22 was 50 percent higher than federal standards allow, and the plant wasn't operating at full capacity that day.

But he said the 15 parts per million concentration of cyanide he recorded was well below the 50

mu

Eileen (see other side too)

# Occ. Health

18 CHICAGO SUN-TIMES, Sunday, June 23, 1985



SUN-TIMES/AL POGORIS

Former workers at Chicago Magnet Wire Corp. stand in front of the northwest suburban plant where the bosses now face criminal charges after some workers suffered ailments they say were caused

by working conditions. From left are Roberto Ponce, Enrique Ibaceta, Eredio Estevez, Juan Molina, Leonel Chavarria, Antoni Morales and Inocencio Alejandre.

## 2nd firm's bosses head for trial on toxic danger

By Debbe Nelson

More than 125 employees at Chicago Magnet Wire Corp. left the company over a two-year period, diagnosed with ailments ranging from temporary respiratory problems to permanent brain damage.

The workers blamed toxic chemical fumes at the Elk Grove Village wire factory for their ills. Now their bosses face criminal charges for their injuries.

The case, scheduled for trial in the fall, will be the second attempt by the Cook County state's attorney's office to make unhealthy working conditions a crime.

On June 14, county prosecutors established national precedent by winning the conviction of three officials from Film Recovery Systems Inc., another Elk Grove Village factory, on charges of murder. A worker, Stefan Golab, died Feb. 10, 1983, at the silver recovery plant after he was overcome by cyanide fumes.

Buoyed by that landmark

victory, prosecutors now are turning their attention to Magnet Wire. There, five top company executives are charged with 41 counts of aggravated battery, 40 counts of reckless conduct and one count of conspiracy.

Just as Film Recovery represented the first time in legal history that corporate officers were charged with murder for a job-related death, the Magnet Wire case is believed to be the nation's first effort to convict management of aggravated battery for job-related injuries.

"What will be significant," said Assistant State's Attorney Lynn Worley, "is that this will show that Illinois criminal law can be used to protect all of the citizens of Illinois, no matter where they are harmed."

One doctor who examined numerous employees described the environment at Magnet Wire as "a toxic cocktail" of dangerous chemicals.

The company is located

at 901 Chase in the huge industrial park that comprises half of northwest suburban Elk Grove Village. In dozens of three-story ovens, wire is coated and baked using a variety of solvents and enamels.

Employees told of dizziness, fainting and coughing as they worked in rooms where temperatures climbed to 150 degrees and fumes flowed from open vats of hot enamel.

The workers claim their bosses told them the chemicals were safe. Gary Olson, the company's former safety director and a key prosecution witness, supports the workers' contentions. He said he was told to keep quiet about the dangers.

Company officials have refused to comment on the charges made by workers or prosecutors, except through court documents denying that unsafe conditions existed at the plant or caused any worker illness.

In fact, the U.S. Occupational Safety and Health Administration visited the plant in 1983 and found

only one instance of chemical fumes at a dangerous level. The company was fined for improper storage of chemicals and failing to provide adequate protective equipment to employees.

But State's Attorney Richard M. Daley said his office's investigation found serious safety hazards at Magnet Wire and a conscious effort by management to hide the dangers from workers. As a result, he said, "dozens of workers are now seriously ill and some are disabled and unable to support their families."

Dr. Mark Round of Barrington, who has examined more than 100 of the employees, said nearly all suffered temporary respiratory illnesses such as bronchitis or chemical pneumonia, 80 percent suffer from liver or kidney damage, 25 percent from loss of mental ability and 70 percent from impotence.

Most have improved in the one to two years since they left their jobs, Round said, but not before mount-

ing an average \$8,000 hospital and medical bill that remain unpaid pending resolution of multimillion-dollar civil litigation.

Nearly all of those who took sick leave from Magnet Wire have been fired after a company doctor declared them healthy and fit for work.

"People are afraid to get involved with anybody who works at Chicago Magnet Wire," said Peter Stankovic, 30, of Hanover Park, who has been looking for work since 1983. "They are afraid you're going to cause trouble for them or die on the spot."

Enrique Ibaceta, 27, of Des Plaines, finally found a job last week to support himself and his family. He is not making as much as he did at Magnet Wire, but he does not regret his decision to leave the company.

"I'm feeling much better now. I'm feeling optimistic about what happened to the other company [Film Recovery], and now I have a job," he said. "Now I just want to see justice done."