ALASKA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

P. O. BOX 1149, JUNEAU, ALASKA 99802

STATE OF ALASKA,
DEPARTMENT OF LABOR,

Complainant,

vs.

JOHN CABOT TRADING COMPANY,

Contestant.

Docket No. 87-712
Inspection No. Ru-2218-462-87

DECISION AND ORDER

Introduction

This matter came before the board for a hearing on March 1, 1988 in Anchorage, Alaska. The State of Alaska, Department of Labor, Division of Labor Standards and Safety, Occupational Safety and Health Section (hereafter "the Department") was represented by Assistant Attorney General Jan Hart DeYoung. John Cabot Trading Company ("the contestant") was represented by its president, Hank Lind. By stipulation of the parties Board Member J.C. Wingfield, who was unable to attend the hearing due to a prior business commitment, was excused from participation in the case and it was agreed that the decision in this matter would be rendered by the two remaining and participating board members.

At issue are five (5) alleged violations of Alaska safety and health regulations which were observed and cited by departmental compliance officer Mike Russell during an inspection which he performed of the contestant's worksite in King Salmon, Alaska on or about July 10, 1987. The citations, which carry a total proposed penalty of $360.00, are discussed individually below.

The record closed upon completion of the hearing.
SUMMARY OF FACTS

Compliance officer Russell testified that he conducted a duly authorized inspection of the contestant's worksite on July 10, 1987. He further testified that during the course of that inspection he observed the following conditions, each of which is a violation of the occupational safety and health regulation cited in brackets.

a. Open electrical breaker panels or exposed wiring in both the shop and the fueling shack. [Electrical Code 03.002(g)(2)(A)]

b. Employee sleeping quarters which were unclean, rough, and uninhabitable condition. [Occupational and Industrial Structures Code 02.110(c)(18)]

c. An exit door which was nailed shut and not usable as a means of exit. [Occupational and Industrial Structures Code 02.310(b)(4)]

d. Failure of the contestant to provide employees with sheets, blankets, pillows and mattress covers. [Employees were apparently using their own sleeping bags instead. [Occupational and Industrial Structures Code 02.110(c)(7)(E)]

e. No occupational illness and injury logs as required by 8 AAC 61.230(a).

The department submitted photographic exhibits in support of Russell's testimony.

Lind testified for the contestant. He stated that the contestant did not provide housing for its employees in the indicated areas and that the individuals living in the areas observed by Russell were itinerants or transient employees. Contestant contends that the individuals were "casual laborers" employed on an intermittent basis by contestant and that housing provided by contestant is not a requisite condition of employment. (Lind agreed, however, that the housing facilities
observed by Russell were substandard and not suitable for living "by any kind of human being."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

We find that there is no essential dispute with respect to the inspector's account that employees were exposed to live electrical wires and an open breaker panel which was under contestant's control. Accordingly, we conclude that, with respect to that item, the citation should be affirmed.

Concerning the "living quarters" allegations, we are not impressed with contestant's plea that the individuals were merely "casual labor." It is clear to us that those individuals were on site for the primary purpose of aiding the employer in the accomplishment of its business. Such being the case, we conclude that the contestant violated applicable regulatory provisions. See Department of Labor v. Rogers & Babler, OSHA Docket No. 86-664 (1986).

ORDER

1. Citations ________________ are AFFIRMED.

2. The proposed penalty of $360.00 are AFFIRMED.

DATED at Juneau, Alaska this 13th day of June, 1988.

By: ___________________________
    Guy Stringham

By: ___________________________
    Don Hoff
Employer Discrimination Unlawful — The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Law. An employee who believes that he has been discriminated against may file a complaint no later than 30 days after the discrimination with the Alaska Department of Labor Office at the address shown above.

Employee Responsibilities and Courses of Action — The enclosed booklet outlines employer responsibilities and courses of action and should be read in conjunction with this notification.

To: Cabot Trading Co., Inc.

Subject: Citation

Date: 7/10/87

The violation(s) described in the Citation are alleged to have occurred on or about the date the inspection was made unless otherwise indicated within the description given below.

1. Violation Date: 06/11/87
2. Inspection Number: 1030660212
3. Penalty: $240.00

4. Description:

1002(g)(2)(A): Except as required or permitted elsewhere in this article, live parts of electric equipment operating at 120 or more volts shall be guarded against accidental contact.

For example: Live electrical components were exposed to contact by employees: a) in the shop and b) at the open wiring in the fueling shack.

Failure to Provide — The law gives an employee or his representative the opportunity to object to any abatement set for a violation if he believes the date to be reasonable. The contest must be mailed to the Alaska Department of Labor Office at the address shown above on or before the last working day of the 15th working day following receipt of the contest.

Penalty: $240.00

Case File Copy

AKDOSH-2 (Rev 1/81)
Alaska Department of Labor  
vision of Labor Standards and Safety  
Occupational Safety and Health Section  
PO Box 7022  
nome, AK 99703  

Citation and Notification of Penalty  

<table>
<thead>
<tr>
<th>Type of Violation</th>
<th>Citation Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Serious</td>
<td>02</td>
</tr>
</tbody>
</table>

9. To:  
John Cabot Trading Co. Inc.  
and its successors  
P.O. Box 10-4139  
Anch., AK 99518  

1. Item Number  
2. Standard, Regulation or Section of the Act Violated  
3. Description  
4. Date by Which Violation Must Be Abated  
5. Penalty  
6. Date of Receipt of This Citation  
7. Inspectors Report No  
8. Page No  
9. Proposed Penalty  
10. Signature of Issuing Official  
11. Address of Employer  
12. Name and Title of Person Receiving Citation  
13. Date of Receipt of This Citation  
14. Name and Title of Person Receiving Citation  
15. Total Penalty  
16. Number of Violations  
17. Penalty for Each Violation  
18. Amount of Penalty  

Penalties are due within 15 working days of receipt of this notification. Unless contested, penalties become final 30 days after receipt. The failure to pay a penalty is a violation of this Act.  

WE LAWS REQUIRE that a copy of the Citation be posted immediately in a prominent place at or near the location of the violations alleged below. The Citation must remain posted until the violations listed below have been corrected, or for 3 working days (excluding weekends and State holidays) whichever is longer. 

This Citation describes violations of the AS 18.80. The penalties listed below are based on these violations. You must correct the violations refered to in this Citation by the date listed below and pay the penalties proposed, unless within 15 working days (excluding weekends and State holidays) after the receipt of this Citation you mail a notice of contest to the Alaska Department of Labor Office at the address shown above. (See enclosed booklet which outlines your responsibilities and courses of action and should be read in conjuction with this form.)  

Penalties for each violation must be abated by 08/20/87  

For example: The two quart type bunk houses were very dirty and cluttered with piles of combustible materials inside and outside.  

19. List Pg  

OFFICE TO EMPLOYEES - The law gives an employee or representative the opportunity to object to any abatement set for a violation if he believes the date to be unfair. The consent must be mailed to the Alaska Department of Labor Office at the address shown above within 15 working days (excluding weekends and State holidays) of the receipt by the employer of this citation and notification.  

EMPLOYER RESPONSIBILITIES AND COURSES OF ACTION - The enclosed booklet outlines employer responsibilities and courses of action and should be read in conjunction with this notification.  

CASE FILE COPY  

"CASE FILE COPY"
The violations described in this Citation are alleged to have occurred on or about the day the inspection was made unless otherwise indicated within the description given below.

<table>
<thead>
<tr>
<th>Type of Violation</th>
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<tr>
<td>Serious</td>
<td>02</td>
</tr>
</tbody>
</table>

To: Cebot Trading Co., Inc.

1. Box 10-4139

sh, AK 99916

AW REQUIRES that a copy of this Citation be posted immediately in a prominent place at or near the location of the violations described below. The Citation must remain posted until the violations cited below have been corrected, or for 3 working days (excluding Sundays and State holidays) whenever longer.

The inspection was made whenever the description given below.

1. Inspect Date:

2. Record No.

3. Place of Inspect

4. Date of Inspection

5. City

6. Date of Report

7. Description

8. File No.

9. Report No

10. Date of Inspection

11. Date of Receipt

12. Date of Notice

13. Date of Order

14. Date of Violation

15. Date By Which Violation Must Be Abridged

16. Penalty

3.210(b)(4): In every building or structure exits shall be so located and maintained as to provide free and unobstructed egress from all parts of the building or structure at all times when it is occupied. No lock or fastening to prevent free escape from the inside of the building shall be installed except in an occupied building where supervisory personnel is continuously on duty. Effective provisions are made to remove occupants in case of fire or other emergency.

For example: An exit door in the south bunkerhouse was wired shut and could not be used as a means of egress.

ICE TO EMPLOYEES — The law gives an employee or group the opportunity to object to any statement set forth on a complaint or appeal if he believes the date to be reasonable. The contest must be mailed to the Alaska Department of Labor Office at the address shown above. In 15 working days (excluding weekends and State holidays) of the receipt of the complaint by the employer of this citation and filing.

EMPLOYER DISCRIMINATION UNLAWFUL — The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Law. An employee who believes that he has been discriminated against may file a complaint no later than 30 days after the discrimination with the Alaska Department of Labor Office at the address shown above.

TO EMPLOYER RESPONSIBILITIES AND COURSES OF ACTION — The enclosed booklet outlines employer responsibilities and courses of action and should be read in conjunction with this notification.

TITON AND NOTIFICATION OF PENALTY

CASE FILE COPY
### Citation and Notification of Penalty

#### Type of Violation
- **Other**

#### Citation Number
- **03**

#### Violation

The violations described in this Citation are alleged to have occurred on or about the day the inspection was made unless otherwise indicated within the description given below.

1. **To:**
   - Ihs Cabot Trading Co., Inc.
   - Id its successors
   - O. Box 10-4139
   - Ic., AK 99918

2. ** LAW REQUIRES ** that a copy of this Citation be posted immediately in a prominent place at or near the location of the violation(s) below. The Citation must remain posted until the violations cited below have been corrected, or for 3 working days (excluding weekends and State holidays) whichever is longer.

3. ** Violation **
   - Violations listed below are based on these violations.
   - You must correct the violations mentioned in this Citation by the date listed below and pay the penalties proposed, unless within 15 working days (excluding weekends and State holidays) from your receipt of this Citation you mail a notice of contest to the Alaska Department of Labor Office at the address shown above. (See the enclosed booklet which outlines your responsibilities and courses of action and should be read in conjunction with this form.)

<table>
<thead>
<tr>
<th>Item Number</th>
<th>Description</th>
<th>Date by Which Violation Must Be Abated</th>
<th>Penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>02.110(c)(7)(E): Sleeping bags shall not be permitted in lieu of sheets, blankets, pillows with cases and mattress covers. For example: The employer was not providing bed linen and employees were using their personal sleeping bags.</td>
<td>08/18/67</td>
<td>0.00</td>
</tr>
<tr>
<td>2.</td>
<td>61.230(a): Each employer shall maintain in each establishment a log of occupational injuries and illnesses on a calendar year basis. For example: There were no Occupational Illnesses and Injury logs being maintained.</td>
<td>09/09/67</td>
<td>0.00</td>
</tr>
</tbody>
</table>

### Employer Discrimination Unlawful

The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this law. An employee who believes that he has been discriminated against may file a complaint no later than 30 days after the discrimination with the Alaska Department of Labor Office at the address shown above.

### Employer Responsibilities and Courses of Action

The enclosed booklet outlines employer responsibilities and courses of action and should be read in conjunction with this notification.

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**Citation Number:** 03

**Inspection Date:** 08/12/67

**Inspection Number:** 1050210

**Area:** BC218

**Optional Report No.:** 462-67

**Page No.:** 1 of 1

**Inspection Site:**
- General Delivery
- King Salmon, AK 99913

**Penalties Are Due Within 15 Working Days of Receipt of This Notification.**

**No Interest on Enclosed Checks.**

**This Section May Be Designated Before Posting.**

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**Total Penalty for This Citation:**

**Needless Data on Back of Form:**

**Filed:**

**Inspection Number:**

**Inspection Date:**

**Inspection Site:**

**Citation Number:**

**Inspection Number:**

**Inspection Date:**

**Inspection Site:**

**Citation Number:**

**Inspection Number:**

**Inspection Date:**

**Inspection Site:**

**Citation Number:**

**Inspection Number:**

**Inspection Date:**

**Inspection Site:**

**Citation Number:**

**Inspection Number:**

**Inspection Date:**

**Inspection Site:**

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**Total Penalty for This Citation:**

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**Unreadable:**

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**Case File Copy**