

### FINDINGS OF FACT

1. Contestant is a construction contractor in Juneau and employs a total of six employees. Contestant has a shop located at 5000 Glacier Highway in Juneau. Contestant's mailing address is P.O. Box 020126, Juneau, Alaska 99802.

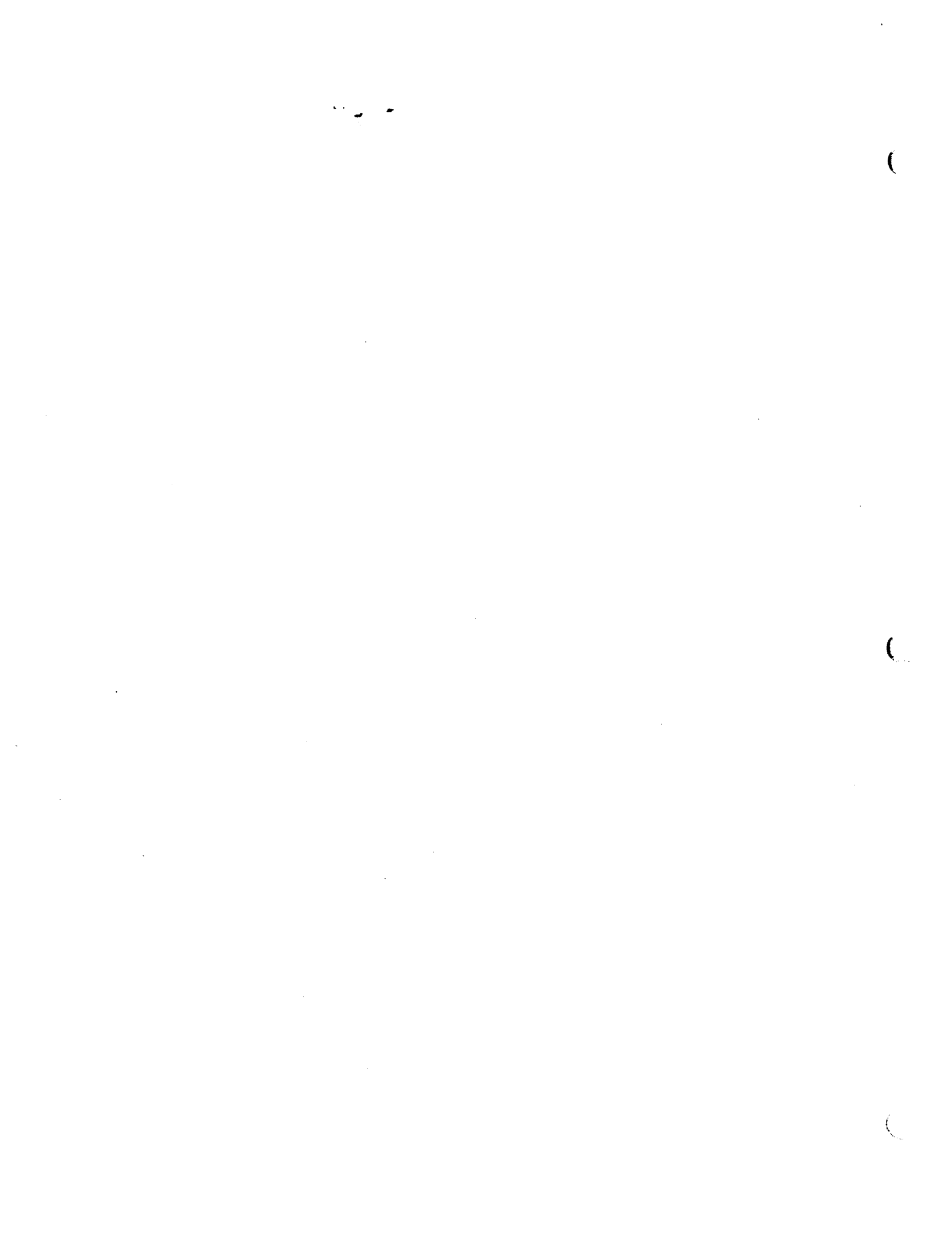
2. On March 26, 1992, the Department conducted an occupational safety and health inspection at Contestant's work site at 120 Second Street in Juneau. As a result of the inspection, the Department issued a citation to Contestant dated May 12, 1992, alleging two "serious" violations of the Alaska Construction Code and assessing a total monetary penalty of \$400.

3. On April 7, 1992, the Department conducted a separate inspection at Contestant's work site at 114 West Fourth Street in Juneau. As a result of that inspection, the Department issued a citation to Contestant dated May 15, 1992, alleging one "serious" violation of the Construction Code and assessing a monetary penalty of \$300.

4. Both of the Department's citations were sent by certified mail, return receipt requested, to Contestant at its shop address at 5000 Glacier Highway.

5. The citations were received and signed for by an unidentified person at Contestant's shop on May 15 and May 18, 1992, respectively.

6. Contestant did not file a notice of contest of the Department's citations within 15 working days of receipt of the



citations. Contestant also did not remit payment of the monetary penalties assessed.

7. On November 6, 1992, the Department sent two penalty collection demand letters (one for each citation) to Contestant at its shop address by certified mail, return receipt requested. Both letters were received and signed for by an unidentified person on November 12, 1992. No penalty payments were remitted by Contestant in response to the demand letters.

8. On March 11, 1993, the Attorney General's Office, on behalf of the Department, sent additional penalty collection demand letters to Contestant at three addresses: Contestant's shop address; Contestant's post office box address; and the address of Contestant's registered agent. All three letters were sent by certified mail, return receipt requested, and were received at each address.

9. In a letter dated April 29, 1993, Contestant's owner Robert Didier for the first time indicated that he wished to contest the Department's citations. Contestant's letter states:

Your letter of March 11, 1993 was the first notification I received. It appears that previous communications have been given to ex-employees, mailed to 500 Glacier and delivered to job sites. The shop for Silver Bow Construction is located at 5000 Glacier Highway (not 500) but we do not receive mail there. Occasionally some piece of mail will get through to us, but it is pure luck. Our correct mailing address is PO Box 020126, Juneau, AK 99802-0126. Employees are not always a dependable source for passing on paperwork; they do not pay the bills or answer for the company. If you're going to write a



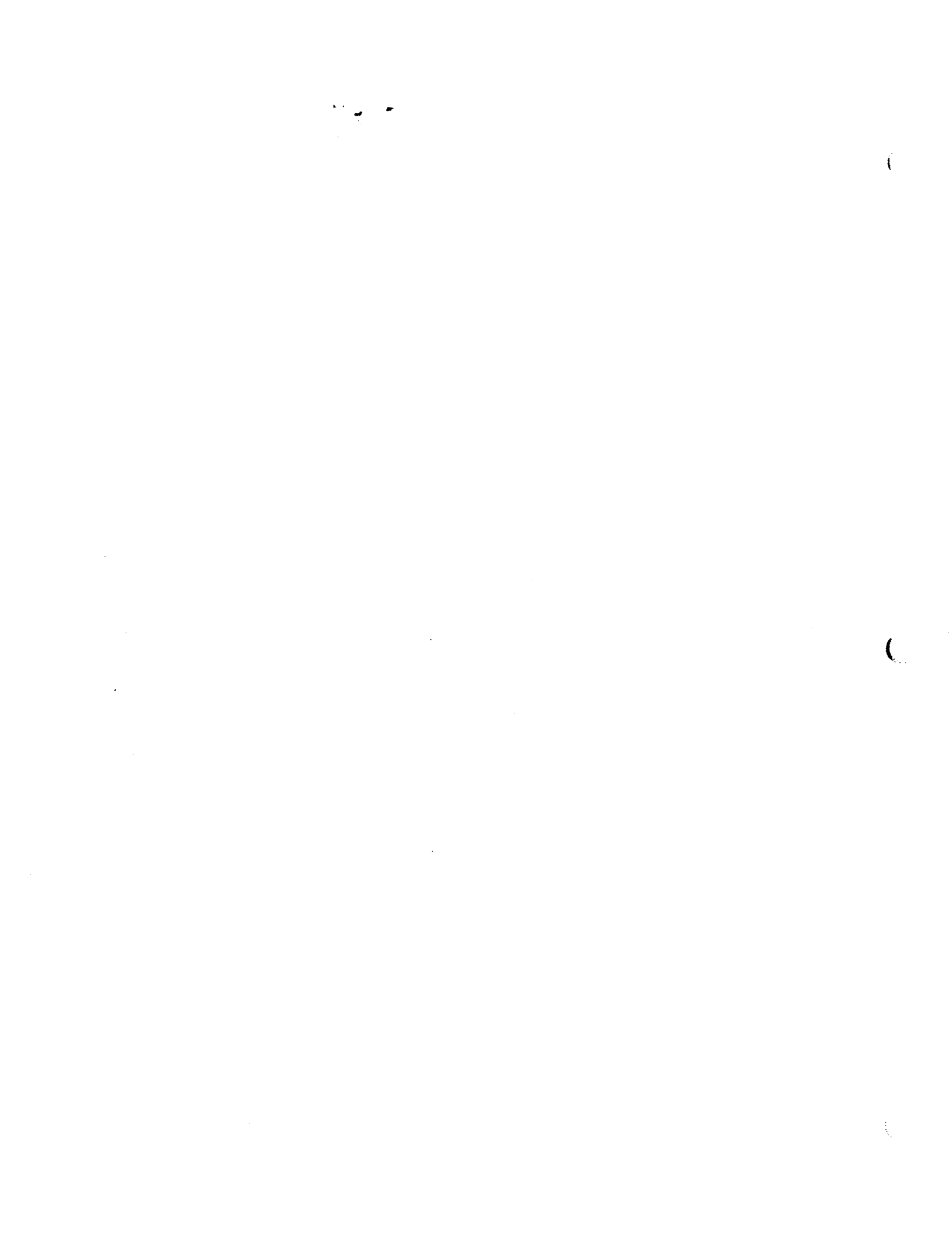
serious citation against a company, you should at the very least notify the responsible party.

10. The Department's records show that Contestant was sent previous OSHA citations at its shop address and paid the penalties assessed.

#### CONCLUSIONS OF LAW

AS 18.60.093(a) provides that if an employer fails to notify the Board of its intention to contest a citation within 15 working days after receiving the citation, the citation and any proposed penalties are considered final and are not subject to review by any court. In Neal and Company, Inc., Docket No. 91-858 (Alaska OSH Review Board, May 3, 1991), we held that an employer's late notice of contest may be allowed under Civil Rule 60(b) upon a showing of mistake, inadvertence, surprise, excusable neglect or any other reason justifying relief from a final order. Each petition to accept a late notice of contest must be evaluated on its own merits. See also J.I. Hass Co., Inc. v. OSHRC, 648 F.2d 190 (3rd Cir. 1981); Branciforte Builders, Inc., 9 OSHC 2113, 1981 OSHD ¶ 25,591 (OSHRC 1981).

In this case, Contestant alleges that the appropriate person in authority did not become aware of the Department's citations until the demand letters from the Attorney General's Office were received in March 1993. Contestant asserts that the citations were mailed to the wrong address; that it does not normally receive mail at its shop address; and that employees who

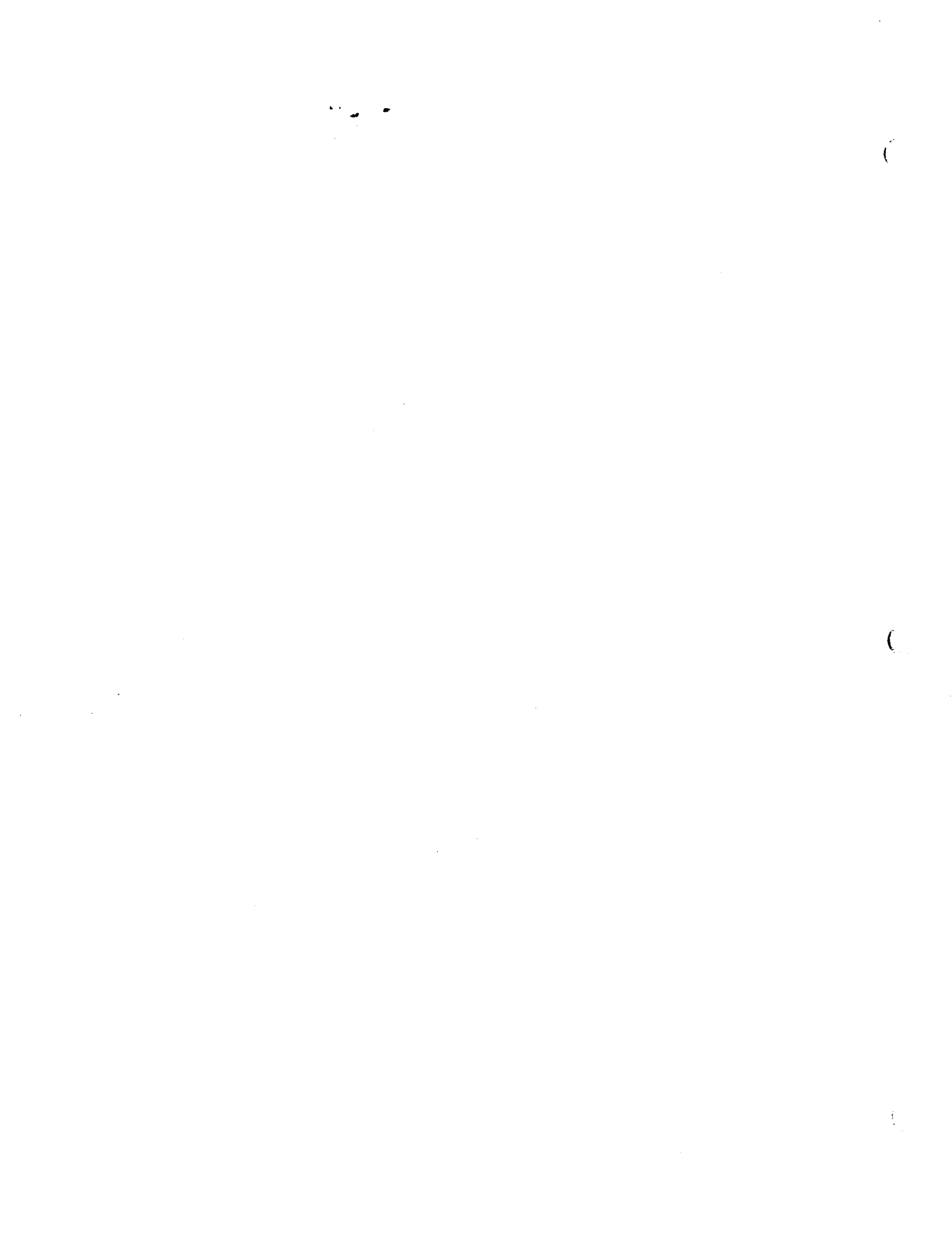




might have received mail at the shop address failed to forward the citations to the appropriate company official. However, we are not persuaded that any of these contentions justify allowing Contestant's late notice of contest.

First, the Department's certified mail receipts show that both citations were mailed to Contestant's correct shop address at 5000 Glacier Highway. Although the text of one of the citations contains a typographical error indicating Contestant's address as "500 Glacier Highway," it is clear that the citations were mailed to the correct address.

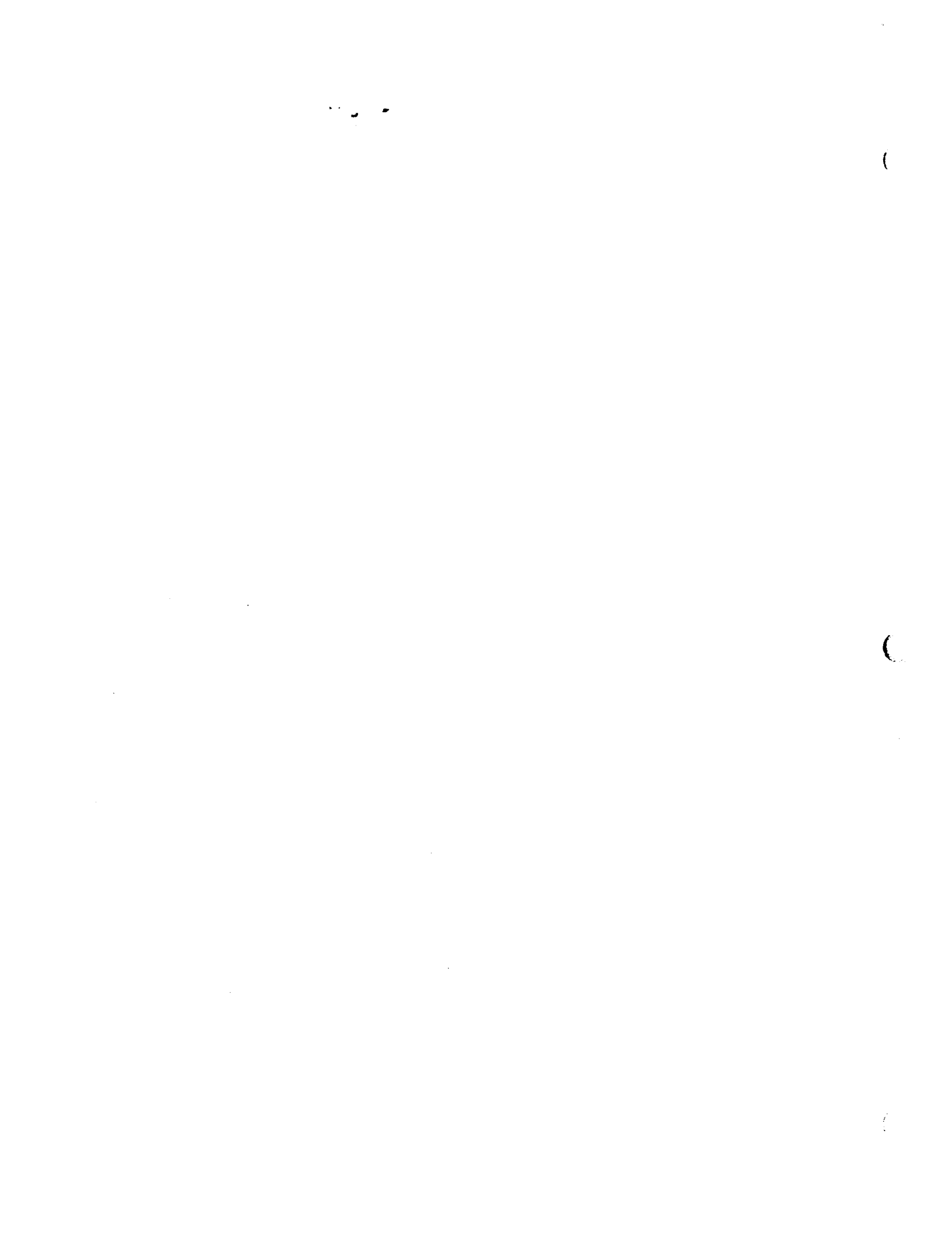
Second, the evidence shows that Contestant does in fact receive mail at its shop address. All of the certified mail sent to Contestant's shop address -- the citations, the subsequent collection letters and the Attorney General's demand letters -- were received and signed for, apparently by one of Contestant's employees. There is no indication that the Department was aware of Contestant's post office box address or that it was informed of this address during the inspections. Although Contestant may have a separate post office box mailing address, there is no requirement that the Department must use this address to serve citations or other papers. Service of documents is proper if it "is reasonably calculated to provide an employer with knowledge of the citation and notification of proposed penalty and an opportunity to determine whether to contest or abate." B.J. Hughes, Inc., 7 OSHC 1471, 1979 OSHD ¶ 23,675 (OSHRC 1979). In view of Contestant's



small company size, we find nothing improper in mailing the citations to Contestant's shop address rather than to its post office box address. We note that Contestant had been sent previous OSHA citations at its shop address and had paid the assessed penalties, suggesting that service of documents at the shop address was adequate and sufficient.

Third, even if the employee who received the citations at Contestant's shop failed to bring them to the attention of the appropriate company official (a fact alleged but not proved by Contestant), this would not excuse Contestant's late notice of contest. Federal courts in OSHA cases have rejected the argument that the 15-day contest period should begin to run only when appropriate company officials receive the citation rather than when the citation was actually received at the company's office. See Capital City Excavating Co. v. Donovan, 679 F.2d 105 (6th Cir. 1982). Even if an employee without authority signs the certified mail receipt, the date of receipt starts the notice of contest period. An employer's internal mail routing policies are not the responsibility of the Department. See Henry C. Beck Co., 8 OSHC 1395, 1980 OSHD ¶ 24,484 (OSHRC 1980); Otis Elevator Co., 6 OSHC 1515, 1978 OSHD ¶ 22,632 (OSHRC 1978); see generally Rothstein, Occupational Safety and Health Law § 258, at 300-01 (3rd ed. 1990).

For the foregoing reasons, we conclude that no grounds exist under Civil Rule 60(b) to allow Contestant's late notice of contest.



ORDER

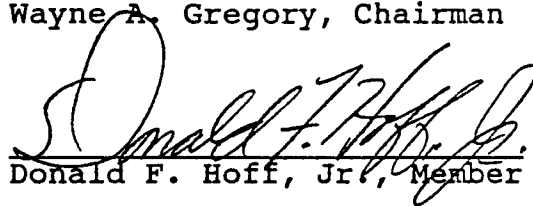
Contestant's request for a hearing is denied. The Department's citations and penalties are affirmed under AS 18.60.093(a).

DATED this 3<sup>rd</sup> day of June, 1993.

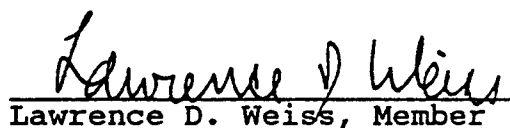
ALASKA OCCUPATIONAL SAFETY  
AND HEALTH REVIEW BOARD

NOT PARTICIPATING

Wayne A. Gregory, Chairman



Donald F. Hoff, Jr., Member



Lawrence D. Weiss, Member

