

State of California
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION AGENDA
Government Code § 11126 (a), (c)(3), (e) and (f)
for
Wednesday, September 4, 2013
9:30 a.m.
Sacramento, California
&
West Covina, California

TO: Members of the California Occupational Safety and Health Appeals Board

FROM: J. Jeffrey Mojcher, Chief Counsel

DATE: August 23, 2013

RE: Closed Session of the Board to be held on September 4, 2013

Pursuant to Government Code section 11126, subdivisions (a), (c)(3), (e) and (f) and the Labor Code sections 6609 and 6620, the Appeals Board will hear the following items in Closed Session. Any matter not completed at this meeting may be continued to subsequent meetings. If the closed session agenda is not completed on the scheduled day, the closed session will continue from day to day until completion and adjournment.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

(Written decision issued by an Administrative Law Judge. The decision summarizes the evidence received from the Division of Occupational Safety & Health and the Employer, makes findings of fact for all issues involved in the appeal and gives reasons and grounds for the decision. The Board Members review the decision and decide if they will reconsider the ALJ decision on their own motion.)

1. CA PRISON INDUSTRY AUTHORITY, 08-R2D5-3426 THROUGH 3429
2. FUTURE FOODS, INC. DBA SANTA BARBARA BAY, 12-R6D2-2441 THROUGH 2447
3. MARIA DE LOS ANGELES COLUNGA DBA MERCED FARM LABOR, 08-R2D1-3093 THROUGH 3098
4. RUSKIN COMPANY, 12-R3D3-2999

PETITIONS FOR RECONSIDERATION:

1. DIANA'S MEXICAN FOOD PRODUCTS, INC., 13-R4D4-9094
2. ESPRESSO BAR @ SUNRISE, 13-R2D1-9102

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR SEPTEMBER 4, 2013**

Page 2

3. LA CITY BUILDING AND SAFETY, 13-R4D1-9110

DENIAL OF PETITIONS FOR RECONSIDERATION (DRAFT):

1. HYPOWER, INC. DBA HYPOWER ELECTRIC SERVICES, INC., 12-R3D3-1498

2. RICHARD LOMPA, 12-R1D4-1796

MATTERS PENDING RECONSIDERATION:

(If the Appeals Board orders reconsideration of an Order or Decision, it reviews the record and then affirms, rescinds, alters or amends the Order or Decision being reconsidered.)

1. A-1 PROTECTIVE SERVICES, INC., 10-R1D1-1592

2. AGRI-VALLEY IRRIGATION, INC., 07-R2D5-3785 AND 3786

3. ARMOUR STEEL CO., INC., 08-R2D1-2649 THROUGH 2655

4. BOBERG ENGINEERING & CONTRACTING, INC., 06-R3D3-4963

5. BRUNTON ENTERPRISES DBA PLAS-TAL MFG. CO., 09-R6D2-2239
THROUGH 2241

6. BRUNTON ENTERPRISES, INC. DBA PLAS-TAL MFG. CO., 08-R3D3-3445
AND 3448

7. BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563

8. C & L BLUE INC., 11-R4D1-2942 and 11-R4D1-2943 THROUGH 2945

9. CABRILLO ECONOMIC DEVELOPMENT CORP., 11-R4D3-3185 & 3186

10. C.C. MYERS, INC., 08-R1D1-952 THROUGH 955

11. CLARK PACIFIC PRECAST, LLC, ET AL, 09-R2D1-0282

12. COFFMAN SPECIALTIES, INC., 10-R3D3-3532

13. COMMERCIAL METAL FORMING, 09-R3D1-1592

14. COMMUNITY RECONSTRUCTION SOLUTIONS, INC., 11-R1D1-1484

15. CONTRA COSTA ELECTRIC, INC., 09-R1D4-3271, 3272 AND 3960

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR SEPTEMBER 4, 2013**

Page 3

16. CORONADO IRRIGATION SERVICES, 09-R4D2-0385 THROUGH 0387
17. CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038
18. DAVIS DEVELOPMENT COMPANY, 10-R3D1-3360 THROUGH 3362
19. DISH NETWORK CAL. SVC. CORP., 12-R4D3-0455
20. EZ MIX, INC., 08-R4D3-1898
21. FERMA CORPORATION, 12-R2D2-1669
22. GRANITE ROCK COMPANY, 08-R1D3-3675 THROUGH 3687
23. HARRIS CONSTRUCTION, 03-R2D5-3914
24. HYDRO-SCIENCE OPERATIONS INC., 10-R1D2-0389
25. IN THE POCKET, INC. DBA BRENTWOOD BOWL, 11-R1D3-2272
26. JERRY'S TREE SERVICE, A PARTNERSHIP, 13-R1D5-9022
27. K H S & S OF CONCORD, INC., 11-R2D2-0374 and 0375
28. LAND O' LAKES PURINA FEED LLC, 08-R2D4-1843 AND 1844
29. LIQUIVISION TECHNOLOGY, INC., 08-R2D1-1712 THROUGH 1714
30. LION RAISINS, INC., 08-R2D5-2253 AND 2254
31. L & S CONSTRUCTION, INC., 10-R3D1-1821 AND 1822
32. M1 CONSTRUCTION, INC., 12-R4D1-0222 AND 0223
33. McCARTHY BUILDING CO., INC., 11-R4D2-1706 AND 2406
34. MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298
35. NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791
36. ONESTOP INTERNET, INC., 11-R4D2-2636 AND 2637
37. OWENS-ILLINOIS GLASS CONTAINER, INC., 09-R1D4-2021 AND 2022

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR SEPTEMBER 4, 2013**

Page 4

38. PARAMOUNT FARMS, KING FACILITY, 09-R4D3-0864
39. PERFORMANCE CONTRACTING GROUP DBA PERFORMANCE CONTRACTING, INC., 08-R2D1-0025 AND 0026
40. PERSONNEL PLUS, INC., 11-R3D5-1302
41. ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048
42. JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710
43. SHIMMICK-OBAYASHI, 08-R3D3-5023 THROUGH 5025
44. SIERRA FOREST PRODUCTS, 09-R2D5-3979
45. SMUD, 08-R2D1-4887 THROUGH 4889
46. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 08-R2D1-3414 THROUGH 3418
47. SONIC DRIVE-IN, 12-R2D5-2734
48. STAFFCHEX, 10-R4D3-2456 THROUGH 2458
49. SUNRISE GROWERES FROZ SUN FOODS, 09-R4D3-2850
50. A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443
51. TL PALVICH CONSTRUCTION, INC., 11-R3D6-1303 THROUGH 1310
52. TRADEMARK CONSTRUCTION CO., INC., 12-R4D1-0096 & 0097

ORDERS DISMISSING APPEAL:

1. BLUE CHIP MOVING STORAGE, INC., 12-R6D2-3724 THROUGH 3726

MATTERS HELD OVER FROM PREVIOUS MEETINGS:

(If the Board is unable to conclude its deliberations and/or if any matter(s) is (are) put over from a previous meeting, they will be further discussed.)

LEGISLATION:

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR SEPTEMBER 4, 2013**

Page 5

PENDING LITIGATION:

(If the Division of Occupational Safety & Health or the Employer disagrees with a decision after reconsideration or a denial of a petition for reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

SUPERIOR COURT:

1. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
2. WEBCOR BUILDER, INC., 34-2010-80000439 (06-R1D1-3030/3032)
3. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP,
34-2010-80000640 (08-R2D1-0027 THROUGH 0030)
4. SMUD, 34-2010-80000723 (08-R2D1-4887)
5. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
6. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)
7. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965
(10-0188~0191)
8. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459
THROUGH 2461)
9. FLATIRON CONSTRUCTION CORP, 34-2012-80001029 (10-R4D1-2789)
10. SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 12CV01039
(07-R2D3-0275)
11. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
12. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
13. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
14. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
15. SHERWOOD MECHANICAL, INC., 37-2012-00101466 (08-R3D2-4690 ~ 4693)
16. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219
AND 0220)

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR SEPTEMBER 4, 2013**

Page 6

17. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
18. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258
(05-R2D4-2650 AND 2651)
19. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
20. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
21. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
22. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
23. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
24. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332
(09-R4D5-0459 & 0460)
25. A. TEICHERT & SON, DBA TEICHERT AGGREGATES, RG12 659881
(10-R5D1-3029)
26. HOME DEPOT USA, INC., BS141301 (10-3284)
27. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)
28. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00628178 (10-3667)
29. THYSSENKRUPP ELEVATOR CORP., 34-2013-80001456 (11-2217 ~ 2219)
30. BIG LOTS STORES, INC., 37-2013-00045936 (11-R3D2-1929 ~ 1931)
31. GUARDSMARK, LLC, 30-2013-00651094 (12-R3D1-0056)
32. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00652023 (12-0439)
33. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00651875 (12-0440)
34. AC TRANSIT, RG13687314 (08-R1D4-0135)
35. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 34-2013-80001575
(12-R5D1-337)
36. BAY AREA RAPID TRANSIT DISTRICT, RG13689346 (09-R2D2-1219 & 1221)

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR SEPTEMBER 4, 2013**

Page 7

ORDERS OF ADMINISTRATIVE LAW JUDGES:

(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the order and decide if they will reconsider or remand the issued order.)

1. ACL CONSTRUCTION COMPANY, INC., 12-R3D6-2370 AND 2371
2. AMERICAN METAL RECYCLING, INC., 13-R3D3-1935 AND 13-R3D3-2299
3. AMERICAN WRECKING INC., 12-R4D1-2668
4. AMSEC LLC, 13-R6D2-0802 THROUGH 0804
5. A. RUIZ CONSTRUCTION CO. & ASSOC. INC., 13-R1D1-2052
6. BAY VALLEY FOODS, 12-R6D2-3171 THROUGH 3182
7. BIG VALLEY TRACTOR LLC., 12-R2D4-3749
8. CALIFORNIA DRYWALL CO., 13-R2D2-1294
9. CALIFORNIA HOMES & KITCHEN DESIGN CENTER, INC., 13-R1D3-1282
10. CALPI, INC., 12-R4D3-1459
11. CATHOLIC CHARITIES CYO, 12-R1D1-3378
12. CENTRAL VALLEY PAINTING, INC., 13-R1D4-2315 THROUGH 2317
13. DAIRY FARMERS OF AMERICA, 12-R4D3-3760 AND 3716
14. DEAN DISTRIBUTORS, INC., 13-R6D2-1350 THROUGH 1352
15. E & B NATURAL RESOURCES MANAGEMENT CORP., 12-R4D3-3273 AND 13-R4D3-0329 THROUGH 0331
16. ENSIGN UNITED STATES DRILLING (CALIFORNIA) INC. CITED AS ENSIGN UNITED STATES DRILLING INC., 12-R3D5-3433
17. FERALLOY CORPORATION, 12-R2D4-2900 AND 2901
18. FRESH JIVE MANUFACTURING, INC., 12-R6D5-3478 THROUGH 3480
19. HARRIS FREEMAN & COMPANY DBA HARRIS TEA CO., 13-R3D1-1571 AND 1572

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR SEPTEMBER 4, 2013**

Page 8

20. HENRY MAYO NEWHALL MEMORIAL HOSPITAL, 12-R4D3-3620
21. IDEAL CONCRETE WORX, 12-R4D3-3794
22. KEMBAR CONSTRUCTION, 13-R3D2-1707
23. LESLIE POOLMART INC., 13-R1D2-0818 THROUGH 0819
24. LYTLE CONSTRUCTION, INC., 13-R2D1-2211
25. MAPLEGROVE GLUTEN FREE FOODS, INC., 12-R6D2-2166 THROUGH 2168
26. MATT CONSTRUCTION CORPORATION, 12-R4D3-2955
27. MICHAEL NICHOLAS DESIGN, INC., 12-R6D2-3406 THROUGH 3408
28. NANO H2O, INC., 12-R3D5-3646
29. NEWHALL LAND AND FARMING COMPANY, 13-R4D3-0628 AND 0629
30. NORTH BAY CONCRETE, INC., 13-R6D7-0199
31. OASIS PAIN AND WELLNESS CENTER, INC., 13-R1D4-2108 AND 2109
32. PACIFIC CONSTRUCTION & RESTORATION, INC., 13-R4D3-0708
THROUGH 0711
33. PENINSULA PLASTICS RECYCLING, INC., 13-R6D1-1889
34. POTENTIAL INDUSTRIES, 12-R3D5-3575 THROUGH 3578
35. QG PRINTING CORP., 12-R3D3-3160 AND 3161
36. RAMCO ENTERPRISES, LP, 13-R1D2-0600
37. RARIG CONSTRUCTION COMPANY, 13-R2D5-0093 AND 0094
38. REITER BERRY FARMS INC., 13-R4D3-0112 THROUGH 0114
39. RENO/TAHOE EAGLE WINDOW AND DOOR COMPANY, INC., 13-R2D1-0087
AND 0088
40. REPUBLIC FENCE COMPANY, INC., 12-R4D3-2958 AND 2959

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR SEPTEMBER 4, 2013**

Page 9

41. R & F ROLAPP ENTERPRISES, INC., DBA BEVERLY HILLS TRANSFER & STORAGE, 13-R6D2-0433 AND 0434
42. RR DONNELLEY, 12-R3D2-1421 THROUGH 1423
43. R.R. DONNELLEY, INC., 12-R3D5-2624 AND 2625
44. SENG CHEANG MONG FOOD GROUP, 12-R3D6-2665 THROUGH 2667
45. STATE OF CALIFORNIA, NORTH KERN STATE PRISON, 12-R4D3-2113 THROUGH 2116
46. TRI VALLEY-VEGETABLE HARVESTING INC., 13-R4D3-0060 THROUGH 0064
47. WILLIAM WEI KANG TU & BONNIE YABO YAN TU, 12-R3D6-2662 AND 2663
48. TUFF SHED, 13-R3D2-1800
49. UNDERGROUND SOLUTIONS, INC., 12-R2D1-1007 AND 1008
50. UNIVERSAL CONSTRUCTION, 12-R3D6-2550
51. UPS, 12-R3D5-3716
52. USMAN ARIF DBA THE TIRE DEPOT, 13-R2D1-0007 AND 0008
53. WEST COAST CHAIN, 12-R3D6-2234 AND 2235
54. XTRA LEASE LLC, 13-R1D4-0919
55. ZIM INDUSTRIES INC DBA BAKERSFIELD WELL & PUMP CO, 12-R4D6-3278 AND 3279
56. ZIM INDUSTRIES INC DBA BAKERSFIELD WELL & PUMP CO, 12-R4D7-3445

PERSONNEL: *(Issues regarding staff.)*

Any matter not completed at this meeting may be continued to subsequent meetings. If the closed session agenda is not completed on the scheduled day, the closed session will continue from day to day until completion and adjournment.