

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on February 20, 2013
Sacramento, California**

PRESENT:

Art Carter, Chairperson
Ed Lowry, Member
Judith Freyman, Member
Kari Johnson, Acting Executive Officer
Ursula Clemons, Presiding Administrative Law Judge
Martin Fassler, Presiding Administrative Law Judge
Jeff Mojcher, Chief Counsel
Thomas Song, Industrial Relations Counsel II
Lee Berlin, Executive Secretary
Mary Christian, Staff Services Analyst
Phyllis Eldredge, Staff Services Analyst
DeWayne Holloway, Legal Analyst

MINUTES OF FEBRUARY 6, 2013 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the February 6, 2013 Board Meeting. Member Freyman seconded. The Board voted to approve the draft minutes of the February 6, 2013 Board meeting.

ADMINISTRATIVE MATTERS:

(Information regarding the general administration of cases pending before the Appeals Board)

1. 2012 RULEMAKING MATTERS

(Discuss/implement Board rulemaking changes)

ACTION: The legal unit presented a draft of the final statement of reasons for the rulemaking package to the Board. Member Lowry moved that the rulemaking package as it was modified following the 15-day comment period be approved. Member Freyman seconded. The Board voted to approve proposed changes to Board Rules of Practice and Procedure, Title 8 sections 345, 371.2, 373, 376.1, and as modified in the Notice of Proposed Change and 15-day comment period. The package will be sent to the Office of Administrative Law upon completion.

2. 2013 HEARING CALENDAR/STATISTIC REPORTS:

(Review and discuss current calendaring and statistical information)

ACTION: The Board reviewed the appeals disposition statistics for January. Hearing calendar statistics were not presented, but staff member Phyllis Eldredge did explain a new report comparing the number of “serious” citations appealed before and after AB 2774. The report showed

a small decline in the number of serious violations issued and appealed following the effective date of the change implemented by AB 2774.

3. PROPOSED BOARD MEETING DATES:

ACTION: The Board set its meeting dates for the next quarter: April 3 and 7; May 1, 15 and 29; and June 12 and 26, 2013.

NEW BUSINESS:

(The Appeals Board hears and discusses new reports presented by staff.)

1. 2012/2013 BUDGET:

(Review and discuss budget issues for the fiscal year)

ACTION: No report.

OLD BUSINESS:

(The Appeals Board hears and/or discusses matters on a follow-up basis.)

ACTION: No report.

LEGISLATION:

(Review and discuss current legislation which may affect the Appeals Board)

ACTION: Chair Carter mentioned that, at this point in the legislative process, there appears to be no pending legislation that will affect the operations of the Board. Other bills related to the OSH Standards Board were identified.

CHAIRPERSON'S REPORT:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

ACTION: Chair Carter discussed the DOSH Advisory Council meeting, which he attended on February 7. He reported that he was particularly impressed by a presentation regarding research into the levels of lead that may constitute a hazard. He also acknowledged and welcomed the new members of the Occupational Safety and Health Standards Board. Chair Carter also asked the Presiding Law Judges to outline workshops that could be held to educate members of the public and DOSH personnel on the appeals process.

BOARD MEMBERS' REPORTS:

(Hear reports from Board Members on activities and issues affecting the Appeals Board.)

ACTION: No report.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters and news from the Department and Appeals Board.)

ACTION: Acting Executive Officer Johnson reported that the Board staff should be finished testing the ORACLE conversion program by the end of the month. In the meantime, staff members are brainstorming phase two of the project. She also explained that the IT group does not support the

Access database and will create a plan to move the data or either Excel or File Maker Pro.

STAFF REPORTS:

(Reports from the Presiding ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

ACTION: No report.

PUBLIC COMMENT:

(Public comment will be entertained during the discussion of each agenda item of the Open Meeting.)

ACTION: No report.

The Board recessed to its Closed Session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

DHALIWAL VINEYARD, 12-R2D4-1564

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge

GUARDSMARK, LLC, 12-R3D1-0056

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge

MASS FRAN DBA WEST COAST WATERPROOFING

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge

ORANGE COUNTY FIRE AUTHORITY, 12-R3D1-0440

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge

DECISION AFTER REMAND

HARRIS CONSTRUCTION, 03-R2D5-3914

ACTION: Member Lowry moved that the Board reconsider this Decision After Remand on its own motion. Member Freyman seconded the motion. The Board voted to approve this Decision After Remand on its own motion.

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ORDERS OF ADMINISTRATIVE LAW JUDGES:

ACKER & GUERRERO ROOF COMPANY, INC., 12-R1D3-3127 AND 3128
A-CO TEMPORARY POWER, 10-R4D1-3110 AND 11-R4D1-9206
ALMONDS EIGHT LLC., 11-R2D5-2890 THROUGH 2892
AMERICAN APPAREL, AMERICAN APPAREL (USA) LLC, 12-R4D1-0820 AND 0821
RONALD ARVIZU DBA LOS AMIGOS CONSTRUCTION, 10-R1D2-0256 THROUGH 0258
ASCENT BUILDERS, INC., 12-R6D7-2141
A. TEICHERT & SON INC. DBA TEICHERT AGGREGATES, 10-R5D1-1043
BARBOSA BUILDERS, INC., 12-R2D2-1694
BEST BUY MARKET, 12-R2D5-2040
BERKELEY LAND DAIRY, 11-R2D5-2292
BNBT BUILDERS, INC., DBA BNBUILDERS, INC., 12-R1D1-1521 AND 1522
BRIDGEPOINT CONSTRUCTION SERVICES, 12-R4D3-0720 THROUGH 0722
BRIDGE WAREHOUSE INC., 12-R6D2-3553 THROUGH 3556
CAIRN CONSTRUCTION COMPANY, INC., 12-R1D3-2876
CAL-TERA RESTORATION INC. DBA PUROFIRST FIRE & WATER RESTORATION,
12-R3D3-2471 AND 2472
CBC RESTAURANT CORP. DBA CORNER BAKERY CAFÉ, 12-R3D1-0122 AND 0123
MICHAEL CHIARELLO DBA BOTTEGA, LLC., 12-R1D5-0976 THROUGH 0977
C & H TREE SERVICE INC. DBA C & H GARDENS ARTISTIC, 12-R3D2-0747
CLOVIS PUBLIC WORKS DEPARTMENT, 10-R2D5-4106 AND 4107
CRS DBA TRI STATE STAFFING, 12-R6D2-0509
DIGGER'S DINER, 12-R2D2-0599
D & S CONSTRUCTION COMPANY, 12-R3D2-0444 AND 0445
EAGLE MARINE SERVICES, LTD., 12-R1D4-1895 THROUGH 1897
ELLIOTT AUTO SUPPLY CO, INC. DBA FACTORY MOTOR PARTS, 11-R2D1-2658
FOXFIRE CONSTRUCTORS INC., 12-R5D1-2003
FRESH & EASY NEIGHBORHOOD MARKET, INC., 12-R6D2-0872
RAYMUNDO M GARCIA DBA GARCIA FARM LABOR SERVICE, 12-R2D4-2730
G HEDGECKOCK INC., 12-R2D4-3037
GREENBILT, INC., 12-R1D1-1340
HIH CONSTRUCTION MANAGEMENT, 12-R3D6-1539
JEFF ARAMBEL FARMS, 12-R2D4-2996 AND 2997
JFC CONSTRUCTION, 12-R1D5-0153
JIM SLATER CONSTRUCTION, INC., 12-R6D5-1784 AND 1785
JMB CONSTRUCTION, INC., 12-R1D1-1150
JACKSON FAMILY WINES, INC., DBA KENDALL JACKSON MONTEREY WINERY,
12-R1D2-1243 THROUGH 1245
KENYON PLASTERING OF STOCKTON INC., 12-R2D4-2643
KIVA CONTAINER DBA CP PRODUCTS, 12-R3D1-1807
REY JOSE LLAMAS DBA LLAMAS AG LABOR CONTRACTING, 12-R6D7-0039
THROUGH 0040
LONE MOUNTAIN HOMES, INC., 12-R1D1-1149
MANPOWER, 12-R6D2-1369 THROUGH 1373 *
MARQUEZ BROTHERS INTERNATIONAL, INC., 12-R3D6-0711 THROUGH 0714 *

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McLUCAS & ASSOCIATES, INC. DBA MEDICAL CAREER SERVICES, 12-R4D3-1546
MIKE ROVNER CONSTRUCTION INC., 12-R3D2-0323 AND 0324
MORRISSEY CONSTRUCTION COMPANY, INC., 12-R6D7-3050
NATIONAL HOTEL, 11-R2D1-3025 *
NERO APPAREL, INC., 12-R6D5-1690 *
NICKOLAS K CORP DBA THE FORD STORE SAN LEANDRO, 12-R1D4-3705
PAN PACIFIC YARN INC., 11-R6D2-2143 THROUGH 2148
PDC FACILITIES, INC., 12-R3D3-2763
PETERBERG CONSTRUCTION, INC., 12-R4D1-1401
P G & E, 11-R2D5-2056 THROUGH 2058
PICAR FARM LABOR INC., 12-R6D7-2985
PRIORITY BUSINESS SERVICES INC., 12-R3D6-1359
PRO TEK CONSTRUCTION INC DBA BAY CITIES CONSTRUCTION, 12-R6D7-2492
QUINN PLASTERING, 12-R1D1-2212 THROUGH 2214 *
RICKEY & WONG DDS, INC., 12-R2D4-2539 AND 2540 *
ROOFCO, INC., 11-R1D4-1366 THROUGH 1368
R & R LABOR, INC., 12-R6D7-3452 AND 3453
SCHINDLER ELEVATOR CORPORATION, 11-R1D3-2919 *
S & F CONSTRUCTION COMPANY, 12-R6D5-1658 AND 1659
SINCERE CONSTRUCTION COMPANY, INC., 12-R1D1-2252 THROUGH 2260
SOUTHWICK, INC. DBA TOYOTA OF BERKELEY, 12-R1D4-3484 AND 3485
SUNMAID GROWERS OF CALIFORNIA, 12-R2D5-0431 AND 0432
SWECO PRODUCTS, INC., 12-R2D1-3057
THE PLASTER GROUP, INC., 12-R2D2-0702
TORN & GLASSER, INC., 12-R6D2-2557 THROUGH 2559
TORN & GLASSER, INC., 12-R6D2-2567 AND 2568
TRICAL, INC., 10-R6D3-0502 THROUGH 0509
UNITED PARCEL SERVICE, 12-R3D6-0752 AND 0753
VAN GRONINGEN & SONS, INC., 12-R6D7-2865
VISTA METALS CORP., 12-R3D3-2921 THROUGH 2923
WESTERN DENTAL SERVICES, INC., 12-R2D1-1559
Z B I LLC, 12-R4D1-0899

ZEPHYR INDUSTRIES INC., DBA MURTEX FIBER SYSTEMS, 12-R3D6-1267
AND 12-R3D6-1375

ACTION: Member Lowry moved that the Board approve these Orders of Administrative Law Judges. Member Freyman seconded. The Board voted to approve these Orders of Administrative Law Judges. Orders with asterisks are deemed approved as amended.

LFP VIDEO GROUP LLC DBA HUSTLER VIDEO, 11-R6D2-0966 THROUGH 0968

ACTION: Member Lowry moved that the Board reconsider this Order of an Administrative Law Judge on its own motion. Member Freyman seconded. The Board voted to reconsider this Order of Administrative Law Judge on its own motion.

ORDERS DISMISSING APPEALS:

PROFESSIONAL CONSTRUCTION SERVICES, 12-R2D4-2152

ACTION: Member Lowry moved that the Board approve this Order Dismissing Appeal from an Administrative Law Judge. Member Freyman seconded. The Board voted to approve this Order Dismissing Appeal from an Administrative Law Judge.

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.)

K H S & S OF CONCORD, INC., 11-R2D2-0374 and 0375
(Petition for Reconsideration)

ACTION: Member Lowry moved that the Board extend itself an additional 15 days in order to respond to the Petition in accordance with Labor Code section 6624. Member Freyman seconded the motion. The Board voted to extend the time to act by 15 days in order to respond to the petition.

SIERRA FOREST PRODUCTS, 09-R2D5-3979
(Petition for Reconsideration)

ACTION: Member Lowry moved that the Board vote to accept the Legal Unit's recommendation to deny this Petition for Reconsideration. Member Freyman seconded. The Board voted to accept the Legal Unit's recommendation to deny this Petition for Reconsideration.

Member Lowry moved that the Board extend itself an additional 15 days in order to respond to the Petition in accordance with Labor Code section 6624. Member Freyman seconded the motion. The Board voted to extend the time to act by 15 days in order to respond to the petition.

PETITIONS FOR RECONSIDERATION

EDCO WASTE & RECYCLING SERVICES, INC., 12-R3D2-0163 & 0164
RAJ KUMAR SHARMA DBA SUNRISE ORCHARDS, 2010-R2D1-3391
STEVEN D. ANDERSON CONSTRUCTION DBA ANDERSON CONSTRUCTION,
12-R6D5-9181

THYSSENKRUPP ELEVATOR CORPORATION, 11-R2D1-2217-2219

ACTION: Member Lowry moved that the Board vote to accept the Legal Unit's recommendation to deny these Petitions for Reconsideration. Member Freyman seconded. The Board voted to accept the Legal Unit's recommendation to deny these Petitions for Reconsideration.

YNT HARVESTING, 08-R2D5-5010

ACTION: Member Lowry moved that the Board vote to accept the Legal Unit's recommendation to deny this Petition for Reconsideration as amended. Member Freyman seconded. The Board voted to accept the Legal Unit's recommendation to deny this Petition for Reconsideration as amended.

DENIAL OF PETITIONS FOR RECONSIDERATION (DRAFT):

HOFFMAN FOOD MANAGEMENT CO., LLC, 12-R6D7-9156

ACTION: Member Lowry moved that the Board extend itself an additional 15 days in order to respond to the Petition in accordance with Labor Code section 6624. Member Freyman seconded the motion. The Board voted to extend the time to act by 15 days in order to respond to the petition.

RONALD A. LITTLE DBA AAA TREE SERVICE, 11-R2D1-1499

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

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.)

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

AC TRANSIT, 08-R1D4-0135

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

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

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

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

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

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

CALIFORNIA ERECTORS, INC., 10-R1D2-2772 THROUGH 2775

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

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

COFFMAN SPECIALTIES, INC., 10-R3D3-3532

COMMERCIAL METAL FORMING, 09-R3D1-1592

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

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

COUNTY OF ALAMEDA, GENERAL SERVICES AGENCY, 11-R1D4-3064

ACTION: Member Lowry moved that the Board vote to approve an Order of Remand for this matter pending reconsideration. Member Freyman seconded. The Board voted to approve an Order of Remand for this matter pending reconsideration.

CORONADO IRRIGATION SERVICES, 09-R4D2-0385 THROUGH 0387
CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038
DAVIS DEVELOPMENT COMPANY, 10-R3D1-3360 THROUGH 3362
EZ MIX, INC., 08-R4D3-1898
GRANITE ROCK COMPANY, 08-R1D3-3675 THROUGH 3687
HYDRO-SCIENCE OPERATIONS INC., 10-R1D2-0389
IN THE POCKET, INC. DBA BRENTWOOD BOWL, 11-R1D3-2272
IRWIN INDUSTRIES, 08-R6D4-1454
LAND O' LAKES PURINA FEED LLC, 08-R2D4-1843 AND 1844
LIQUIVISION TECHNOLOGY, INC., 08-R2D1-1712 THROUGH 1714
LION RAISINS, INC., 08-R2D5-2253 AND 2254
L & S CONSTRUCTION, INC., 10-R3D1-1821 AND 1822
M1 CONSTRUCTION, INC., 12-R4D1-0222 AND 0223

MARINE TERMINALS, 08-R6D2-1920

ACTION: Member Lowry moved that the Board vote to approve this draft Decision After Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Decision After Reconsideration for signature.

McCARTHY BUILDING CO., INC., 11-R4D2-1706 AND 2406
MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298
NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791
ORANGE COUNTY FIRE AUTHORITY, 12-R3D1-0364
OWENS-ILLINOIS GLASS CONTAINER, INC., 09-R1D4-2021 AND 2022
PARAMOUNT FARMS, KING FACILITY, 09-R4D3-0864
PERFORMANCE CONTRACTING GROUP DBA PERFORMANCE CONTRACTING, INC.,
08-R2D1-0025 AND 0026
PERSONNEL PLUS, INC., 11-R3D5-1302
ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048
JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710
SHEEDY DRAYAGE COMPANY, 06-R1D4-3053 THROUGH 3055
SHIMMICK-OBAYASHI, 08-R3D3-5023 THROUGH 5025
SMUD, 08-R2D1-4887 THROUGH 4889
MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 08-R2D1-3414
THROUGH 3418
SOUTHERN CALIFORNIA EDISON CO., 12-R3D3-0499
SOUTHLAND-TUTOR-PERINI JOINT VENTURE, 11-R5D1-3248
STAFFCHEX, 10-R4D3-2456 THROUGH 2458
SUNRISE GROWERS FROZ SUN FOODS, 09-R4D3-2850
A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443
TL PALVICH CONSTRUCTION, INC., 11-R3D6-1303 THROUGH 1310
VAN EVERY CONSTRUCTION, INC., 11-R1D4-0936 AND 0937

LEGISLATION:

ACTION: No report.

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. XL CONSTRUCTION, 34-2009-80000300 (08- 1191/1193)
2. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
3. WEBCOR BUILDER, INC., 34-2010-80000439 (06-R1D1-3030/3032)
4. GRANITE CONSTRUCTION CO., INC., (DOSH V OSHAB) 34-2010-80006047 (07-R5D1-3611)
5. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP, 34-2010-80000640 (08-R2D1-0027 THROUGH 0030)
6. SMUD, 34-2010-80000723 (08-R2D1-4887)
7. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
8. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)
9. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-0188~0191)
10. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459 THROUGH 2461)
11. FLATIRON CONSTRUCTION CORP, 34-2012-80001029 (10-R4D1-2789)
12. HOLLANDER HOME FASHION, BS-135444 (10-R4D2-3704)
13. SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 12CV01039 (07-R2D3-0275)
14. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
15. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
16. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)

17. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
18. SHERWOOD MECHANICAL, INC., 37-2012-00101466 (08-R3D2-4690 ~ 4693)
19. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
20. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
21. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258 (05-R2D4-2650 AND 2651)
22. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
23. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
24. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
25. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
26. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
27. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
28. A. TEICHERT & SON, DBA TEICHERT AGGREGATES, RG12 659881 (10-R5D1-3029)
29. HOME DEPOT USA, INC., BS141301 (10-3284)
30. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)

PERSONNEL: *(Issues regarding staff)*

ACTION: No Report

The Closed Session adjourned at 1:24 p.m. and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its ACTIONS in the Closed Session, as indicated above. The meeting was adjourned at 1:25 p.m.