

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on August 20, 2015
Sacramento, California**

PRESENT:

Art Carter, Chair
Ed Lowry, Member
Judith Freyman, Member
Han Ha, Interim Executive Officer
Jeff Mojcher, Chief Counsel
Neil Robinson, Presiding Administrative Law Judge
Aaron Jackson, Industrial Relations Counsel
Lee Berlin, Staff Services Manager

MINUTES OF AUGUST 5, 2015 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the August 5, 2015 Board meeting. Chair Carter seconded. The Board voted to approve the draft minutes of the August 5, 2015 Board meeting.

NEW BUSINESS:

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

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: No report.

CHAIRPERSON'S REPORT:

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

ACTION: Chair Carter reported that he appointed Kevin Elmendorf as the Board's newest Administrative Law Judge. ALJ Elmendorf will be assigned to the Sacramento office.

Mr. Carter attended the Cal/OSHA Advisory Committee meeting along with staff members Han Ha and Neil Robinson. Member Freyman also attended the meeting. Chair Carter mentioned that the meeting was well attended and discussed some of the meeting topics, including heat illness and Cal/OSHA's quest to recruit additional inspectors.

BOARD MEMBERS' REPORTS:

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

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

For August 20, 2015

Page 2

ACTION: Member Lowry plans to be in the West Covina office to attend the OASIS IT Project meeting in September.

Member Freyman had provided an online link to Washington State's appeals educational videos and instructions. She would like to see a similar outreach effort by the Board. The matter will be scheduled for additional discussion at future meetings.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters)

STAFFING UPDATE:

ACTION: EO Ha reported that Kevin Elmendorf's first day will be August 26.

OPERATIONS UPDATE:

ACTION: EO Ha reported that the Board members are considering holding the October 15 Board meeting in West Covina. If the meeting is held in the West Covina office, the Board plans to spend some time talking with the staff there.

REPORTS:

ACTION: The Board reviewed the Hearing Calendar, Expedited Proceedings and Appeals Volume Report. The Board will take a hiatus from tracking appeals volume timeframes because of staff changes and the difficulty involved in manual counting. However, the OASIS team plans on creating a standard report that will compute and track this statistic for the Board when the system is in place.

STAFF REPORTS:

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

OASIS PROJECT:

ACTION: Business Lead Robinson reported that the OASIS team is beginning the process of mapping work flows within the system. The initial discussions concern how appeals are initiated within the system and where cases are routed after the initial case file is created.

GENERAL/REGULATORY PILOT PROJECT:

ACTION: The statistics for the pilot project show that 21% of the cases in the pilot group were processed by the analyst, 7% were resolved by ALJs and the remainder were sent on for calendaring. Preliminary results indicate with the assistance of the analyst, considerable ALJ time was

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

For August 20, 2015

Page 3

saved. Final results will be available after the pilot project ends in October.

RULEMAKING:

ACTION: No report.

LITIGATION UPDATE:

ACTION: No report.

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.

PUBLIC COMMENT:

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

ACTION: No report.

The Board recessed to its closed session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

CRANEVEYOR CORP, 13-R3D2-1396 AND 1397

ACTION: The Board took no action on this matter.

KENAI DRILLING LIMITED, 12-R4D3-1230 AND 1231

ACTION: The Board took no action on this matter.

SAVANT CONSTRUCTION, INC., 14-R3D1-3018 THROUGH 3021

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.

SYAR INDUSTRIES INC, 13-R5D1-1876 THROUGH 1880

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.

SYAR INDUSTRIES INC, 14-R5D1-1761

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.

PETITIONS FOR RECONSIDERATION:

MASTER ROOFING SYSTEMS, INC. 14-R1D1-3619

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.

MCM CONSTRUCTION, INC., 13-R1D2-3851 THROUGH 3854 (Employer)

ACTION: This matter was placed on the agenda in error.

SECURITY PAVING COMPANY, INC., 14-R4D7-2442

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.

SHIMMICK CONSTRUCTION CO., INC/OBAYASHI CORP., 12-R3D1-0781

ACTION: This matter was placed on the agenda in error.

SHIMMICK CONSTRUCTION CO., INC./OBAYAHSI CORPORATION, JV,
11-R3D1-2562 THROUGH 2570

ACTION: Member Lowry moved that the Board deny the Petition for Reconsideration and grant the employer's supplemental petition. Member Freyman seconded. The Board voted to Board the Petition for Reconsideration and grant the employer's supplemental petition.

SECURITY PAVING COMPANY, INC., 14-R4D7-2442

ACTION: This matter was placed on the agenda in error

W.A. RASIC CONSTRUCTION, INC., 13-R3D1-2952

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

DENIAL OF PETITION FOR RECONSIDERATION (DRAFT):

SHIMMICK CONSTRUCTION CO., INC/OBAYASHI CORP., 12-R3D1-0781

ACTION: This matter was placed in this agenda section in error.

AMENDED ORDER:

AEG MANAGEMENT GARLAND, LLC, 14-R1D4-2657 THROUGH 2660

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

ORDERS DISMISSING APPEAL:

MATTERS INVOLVING LATE APPEALS:

(These are matters such as orders dismissing appeal, orders granting leave to file late appeal and orders denying leave to file late appeal)

ORDER GRANTING LATE APPEAL

MATILDE ALVEREZ DE PEREZ DBA M A FASHION, 15-R6D5-2541 AND 2542

ACTION: Member Lowry moved that the Board approve this Order Granting Leave to File Late Appeal of an Administrative Law Judge. Member Freyman seconded. The Board voted to approve this Order Granting Leave to File Late Appeal of 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.)

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 TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 11-R5D1-1895 (ER)
A TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 11-R5D1-1895 (DOSH)
B.A.R.T., 11-R2D2-3137 THROUGH 3139 (ER)
CHEVRON U.S.A. INC., 13-R6D3-0655 THROUGH 0662
CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038
CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364
DIONYSUS DREAM INC., DBA NEWPORT MESA CARWASH & SERVICE,
15-R6D5-9087
ECHO ALPHA INC. ET AL, 14-R3D1-0802 THROUGH 0804
EKEDAL CONCRETE, INC., 13-R3D1-0131 THROUGH 0133
GOLDEN STATE WARRIORS, 15-R1D4-9060

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

For August 20, 2015

Page 6

L & S CONSTRUCTION, INC., 10-R3D1-1821 AND 1822
McCARTHY BUILDING CO., INC., 11-R4D2-1706 AND 2406
McCARTHY BUILDING CO., INC., 12-R1D4-3458
MCM CONSTRUCTION, INC., 13-R1D2-3851 THROUGH 3854
NATIONAL DISTRIBUTION CENTERS, LP, 12-R6D2-0391
GONZALO OLASCOAGA DBA GONZALO OLASCOAGA, 13-R6D5-2097 AND 2098
SIERRA FOREST PRODUCTS, 09-R2D5-3979
SKYLINE HOMES, INC., 15-R3D3-9035
TRI-STATE STAFFING, 12-R6D2-0378
UNITED PARCEL SERVICE, 14-R2D1-1779
HERMAN WEISSKER, INC., 13-R3D1-3279

ACTION: The Board discussed this matter.

LEGISLATION:

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. FLATIRON CONSTRUCTION CORP, 34-2012-80001029 (10-R4D1-2789)
3. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
4. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
5. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
6. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
7. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
8. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
9. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258 (05-R2D4-2650 AND 2651)

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
Minutes of the Public Meeting and Closed Session
For August 20, 2015
Page 7

10. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
11. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
12. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
13. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
14. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
15. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
16. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)
17. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 34-2013-80001575 (12-R5D1-337)
18. HILL CRANE SERVICE, INC., 34-2014-80001730 (12-R4D1-2475)
19. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 34-2014-80001749 (2008-R2D1-3414 THROUGH 3418)
20. SHIMMICK-OBAYASHI, 34-2014-80001750 (08-R3D3-5023 THROUGH 5025)
21. TAD VAN NGUYEN, CPF-14-513482 (13-R1D1-9163)
22. BRUNTON ENTERPRISES DBA PLAS-TAL MFG CO., 34-2014-80001817 (09-R6D2-2238 ~ 2241)
23. WEST VALLEY CONSTRUCTION, INC., 34-2014-80001832 (12-R2D5-3526)
24. BARNARD IMPREGILO HEALY JV, CPF-14-513697 (14-R5D1-9013)
25. TL PAVLICH CONSTRUCTION, INC., BS14-9660 (11-R3D6-1303 THROUGH 1310)
26. DAVIS DEVELOPMENT CO., 34-2014-80001892 (10-R3D1-3360 THROUGH 3362)
27. MORROW MEADOWS CORP., BS151385 (09-R3D3-2295)
ACTION: The Board discussed this matter.
28. FEDEX GROUND PACKAGING SYSTEM, INC., CIVDS1415696 (13-R3D1-1220)

29. KEY ENERGY SERVICES, INC., S-1500-CV-283958, EB (13-R4D3-2239 ~ 2242)
30. KDTD, INC. DBA KD DEVELOPMENT, INC., 37-2015-00003550-CU-WM-CTL (14-R3D2-1935 & 1936)
31. HHS CONSTRUCTION, 34-2015-80002052 (12-R3D2-0492 THROUGH 0497)
32. MARIA DE LOS ANGELES COLUNGA dba MERCED FARM LABOR, 15CV-00945 (08-R2D1-3093 ~ 3098)
33. STANISLAUS FOOD PRODUCTS CO., 34-2015-80002087 (13-R2D4-0572 ~ 0574)

APPELLATE COURT:

1. XL CONSTRUCTION, C074514, 34-2009-80000300 (08-R1D2-1191 THROUGH 1193)
2. AC TRANSIT, A142799, RG13-687314 (08-R1D4-0135)
3. THYSSENKRUPP ELEVATOR CORPORATION, C077115, 34-2013-80001456 (11-R2D1-2217 ~ 2219)
4. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, C078953, 34-2011-80000965, (10-R6D2-0188 THROUGH 0191)

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.)

ADVANCED CONSTRUCTION SOUTHWEST, INC., 14-R1D2-3960
A GOOD ROOFER INC., 14-R3D2-3763 AND 3764
AGWOOD MILL & LUMBER INC., 14-R2D1-3031 AND 3032
AIREHART CONSTRUCTION INC., 15-R2D3-2404 AND 2405
ALL AMERICAN ASPHALT, 14-R3D3-0037 AND 0038
ASSOCIATES, INC, 14-R2D1-3248
AVIATION PORT SERVICES L.L.C., 15-R1D4-0035 THROUGH 0037
B & M TEAR OFF, 13-R2D2-3002 THROUGH 3004
CA HIGHWAY PATROL, 12-R2D3-3195
CAREFUSION, 15-R6D2-1834 THROUGH 1836
CITY OF ARCATA, 15-R2D3-2403
C J FOODS AMERICA DBA CJ FOODS MANUFACTURING CORPORATION,

15-R3D1-0862 AND 0863
COLLEGE HOSPITAL OF CERRITOS, 14-R3D5-0897 THROUGH 0900
COLLINGS INTERIORS, LLC, 15-R3D1-2320
COLOR MARBLE COMMERCIAL PROJECTS INC., 15-R3D1-0931
AND 0932
COMPREMED MED. GROUP INC. DBA DEL CARMEN MED. CTR., 14-R4D3-0337
COPPER ELECTRIC INC., 15-R3D3-0753 AND 0754
CORPORATE CONTRACTORS, INC., 11-R4D2-2416 THROUGH 2418
CUSTOM COOLER, INC., 14-R4D4-0522 AND 0523
DIAMOND WIPES INTERNATIONAL, INC., 15-R4D4-0784 THROUGH 0787
DOW AGROSCIENCES, LLC, 15-R2D1-1284 THROUGH 1286
EDWARD'S SHEET METAL SUPPLY INC., 15-R6D2-1883 THROUGH 1886
ENSIGN UNITED STATES DRILLING, INC., 13-R4D7-2444
EXCEL CABINETS INC., 15-R3D3-1294 THROUGH 1296
FDS MANUFACTURING CO., 14-R4D4-3900
FIRST CLASS CONSTRUCTION & DEVELOPMENT, INC., 15-R6D5-2287 AND
15-R6D5-2489
FRESHKO PRODUCE SERVICES, 13-R2D5-3402
FRESH MXN, LLC., 13-R3D2-3445 THROUGH 3447
EDGAR GARZA DBA EDGAR GARZA CONSTRUCTION, 15-R4D1-1790
GHX INDUSTRIAL, LLC, 15-R2D4-0930
LEO GILARDI, JOHN GILARDI & BILL GILARDI, PARTNERS DBA GILARDI
FARMS, 15-R2D4-1021
GLEN VILLANUEVA DBA LONG BEACH AUTO TECH, 15-R6D5-2290
GOODSON REAL ESTATE CO., 15-R4D1-0171 THROUGH 0174
G.O. LANGLOIS CONSTRUCTION, INC., 14-R3D3-4013 AND 4014
GRAND VIEW GERANIUM GARDENS INC., 15-R6D2-0918 THROUGH 0920
GUY YOCUM CONSTRUCTION, INC., 14-R2D4-3035 THROUGH 3037
HARPER TREE SERVICE, INC., 15-R4D1-1774 AND 1775
HUMANITY FOR HORSES, 15-R2D3-2356
INSTANT SIGNS AND BANNERS, 15-R3D1-0908 AND 0909
JFP CONSTRUCTION CONSULTING CO., 15-R6D5-0577
JIM'S GERMAN AUTO, 15-R6D5-2288
J R C C , INC. DBA JR CONCRETE, 15-R1D2-1735 AND 1736
LATHROP EQUIPMENT RENTAL & LABOR COMPANY DBA LATHROP
WOODWORKS, 15-R6D1-1229 THROUGH 1234
LINEAGE LOGISTICS LLC, 15-R3D3-1325 AND 1326
MAGORIAN MINE SERVICES, 14-R5D3-2425
CHRIS MARTIN DBA C L MARTIN CONSTRUCTION, 15-R6D5-2289
MCLELLAN INDUSTRIES, INC., 14-R2D5-3595
MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY,
15-R6D3-1614
MYERS AND SONS CONSTRUCTION LP, 14-R2D1-3053 AND 3054
MYRIAD FLOWERS INTERNATIONAL, 15-R6D2-1039 THROUGH 1041
NADY SYSTEMS, INC., 15-R1D4-1303 AND 1304

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

For August 20, 2015

Page 10

NH3 PLUS INC, 15-R7D1-1407 THROUGH 1409
OLIVEIRA FAMILY DAIRY, 15-R2D4-0729 THROUGH 0732
OROVILLE HOSPITAL, 15-R2D1-0313 AND 0314
PALISADE BUILDERS, INC., 14-R1D2-3835
MONICA HERNANDEZ PEREZ DBA GRAPE VALLEY CONTRACTING,
15-R4D7-0682
PPC ENTERPRISES INC., 14-R4D3-3954 AND 3955
PRECISION SPORTS INC., 14-R3D3-2355
PRESTIGE GOURMET, INC., DBA BERNARD'O RESTAURANT, 14-R3D2-3876
AND 3877
PRINSCO, INC., 15-R1D4-0899 THROUGH 0901
QUALITY AG INC., 15-R4D3-0960 AND 0961
R G DRYWALL, INC., 15-R6D5-2390 THROUGH 2393
REPUBLIC FURNITURE MFG., INC., 14-R6D2-3886 THROUGH 3889
RSCO INC DBA RISING SUN CO., 14-R1D2-3643
SEARS HOLDING CORP DBA KMART, 15-R2D5-1759
SEARS HOLDING CORPORATION DBA SEARS, 15-R2D5-2407
SEWING COLLECTION, INC., 15-R4D1-0768 THROUGH 0770
SIERRA WES WALL SYSTEMS, INC., 14-R2D2-4050 AND 4051
SKYLINES ROOFING, 15-R2D4-2406
SOUTHEAST PERSONNEL LEASING INC, 14-R2D4-1639
SUFFOLK-ROEL SAN DIEGO, 13-R3D2-3426 AND 3427
TIGRIS KINGS, LLC. DBA OMAR HAND CAR WASH, 15-R6D5-2241
AND 2242
TIM O-REILLY WOODWORKING, 14-R1D2-4046
TRI-VALLEY ELECTRICAL SERVICE, INC., 15-R1D2-0655 THROUGH 0659
TROSACK CABINETS INC., 15-R6D2-1042 AND 1043
TWE ENTERPRISES, 14-R2D4-3450 AND 3451
T-Y NURSERY, INC., 15-R3D2-0864
UNITY ELECTRIC LP, 15-R6D1-1545
WEST COAST DRYWALL & COMPANY INC., DBA WEST COAST DRYWALL AND
PAINT, 15-R4D3-1988 AND 1989
WESTERN BUILT CONSTRUCTION, 14-R4D1-3690 AND 3691
WHOLESOME HARVEST BAKING INC DBA GRACE BAKING COMPANY,
15-R1D5-1741 AND 1742
YOGURT TIME LLC, 15-R6D1-1931

PERSONNEL:

(Issues regarding staff)

ACTION: The Board discussed personnel matters.

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

For August 20, 2015

Page 11

The Closed Session was adjourned at 12:50 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 12:51 p.m.