

**STATE OF CALIFORNIA  
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION  
Held on September 4, 2013  
Sacramento, California**

**PRESENT:**

Art Carter, Chairperson  
Ed Lowry, Member  
Judith Freyman, Member  
Ursula Clemons, Presiding Administrative Law Judge  
Kari Johnson, Executive Officer  
Jeff Mojcher, Chief Counsel  
Thomas Song, Industrial Relations Counsel  
Lee Berlin, Executive Secretary  
Mary Christian, Staff Analyst

**MINUTES OF AUGUST 21, 2013 MEETING:**

*(Approve or amend minutes of previous Board meeting)*

ACTION: Member Freyman moved that the Board approve the draft minutes of the August 21, 2013 Board Meeting. Member Lowry seconded. The Board voted to approve the draft minutes of the August 21, 2013 Board meeting.

**ADMINISTRATIVE MATTERS:**

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

**EXPEDITED PROCEEDINGS UPDATE:**

ACTION: Executive Officer Johnson reported that 59 appeals entered the Expedited Proceedings track since the new rule took effect on July 1, 2013. Of those, 13 were previously abated, 10 have not concluded the timeline provided to the District Manager for proof of abatement, and 36 have been scheduled for hearing. There was some discussion of how to measure the success of the rule.

**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.)*

**BUDGET:**

ACTION: No report.

**LEGISLATION:**

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

ACTION: Chair Carter reported that AB1165 is in motion and going to its third reading.

**CHAIRPERSON'S REPORT:**

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

**REPORT ON DIR SENIOR MANAGEMENT MEETING:**

ACTION: The Senior Management Meeting was postponed to a later date in September. However, Chair Carter reported on a meeting he attended with EO Johnson, ALJ Neil Robinson of the Appeals Board staff, DIR Director Christine Baker and Manny Ortiz of DIR's Office of Information. They discussed the ORACLE upgrade project and concluded that the project, which is taking more time and labor than expected, would only repair bugs within the current ORACLE program, and would not provide any additional technical capacity required by the Board staff. The group decided that a new calendar, case and document management system should be developed. Chair Carter has asked that the project be concluded by November 1 of 2014.

The Board also discussed the Process Safety Management group, which is planning to expand its operations. Should the group expand, it will produce additional citations and an additional number of appeals. EO Johnson explained that the Board would require additional ALJ, IRC and Senior Legal Typist hours to keep up, and informed the Director's office of the projected requirements.

**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.)*

**PROGRESS REPORT ON ORACLE ENHANCEMENT PROJECT**

ACTION: EO Johnson reported that the project to create a new calendar, case and document management system has begun with some shifting of staff time into the new project.

**PROCESS IMPROVEMENT UPDATE**

ACTION: No report.

**STAFF REPORTS:**

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

ACTION: Chief Counsel Mojcher reported that XL Construction has filed an appeal with the Superior Court after the Board prevailed on an earlier writ.

Any matter not completed at this meeting may be continued to subsequent meetings

**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:**

CA PRISON INDUSTRY AUTHORITY, 08-R2D5-3426 THROUGH 3429

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

FUTURE FOODS, INC. DBA SANTA BARBARA BAY, 12-R6D2-2441 THROUGH 2447

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

MARIA DE LOS ANGELES COLUNGA DBA MERCED FARM LABOR, 08-R2D1-3093 THROUGH 3098

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

RUSKIN COMPANY, 12-R3D3-2999

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:**

DIANA'S MEXICAN FOOD PRODUCTS, INC., 13-R4D4-9094

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.

ESPRESSO BAR @ SUNRISE, 13-R2D1-9102

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.

LA CITY BUILDING AND SAFETY, 13-R4D1-9110

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 PETITIONS FOR RECONSIDERATION (DRAFT):**

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

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

RICHARD LOMPA, 12-R1D4-1796

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

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

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.

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

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BRUNTON ENTERPRISES, INC. DBA PLAS-TAL MFG. CO., 08-R3D3-3445 AND 3448  
BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563  
C & L BLUE INC., 11-R4D1-2942 and 11-R4D1-2943 THROUGH 2945

ACTION: Member Lowry moved that the Board accept the Legal Unit's recommendation to issue an order rescinding its previous order of reconsideration as improvidently issued. Member Freyman seconded. The Board voted to issue an order rescinding its previous order of reconsideration.

CABRILLO ECONOMIC DEVELOPMENT CORP., 11-R4D3-3185 & 3186  
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  
CORONADO IRRIGATION SERVICES, 09-R4D2-0385 THROUGH 0387  
CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038  
DAVIS DEVELOPMENT COMPANY, 10-R3D1-3360 THROUGH 3362  
DISH NETWORK CAL. SVC. CORP., 12-R4D3-0455  
EZ MIX, INC., 08-R4D3-1898  
FERMA CORPORATION, 12-R2D2-1669  
GRANITE ROCK COMPANY, 08-R1D3-3675 THROUGH 3687  
HARRIS CONSTRUCTION, 03-R2D5-3914  
HYDRO-SCIENCE OPERATIONS INC., 10-R1D2-0389  
IN THE POCKET, INC. DBA BRENTWOOD BOWL, 11-R1D3-2272  
JERRY'S TREE SERVICE, A PARTNERSHIP, 13-R1D5-9022  
K H S & S OF CONCORD, INC., 11-R2D2-0374 and 0375  
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  
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  
ONESTOP INTERNET, INC., 11-R4D2-2636 AND 2637  
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  
SHIMMICK-OBAYASHI, 08-R3D3-5023 THROUGH 5025  
SIERRA FOREST PRODUCTS, 09-R2D5-3979

SMUD, 08-R2D1-4887 THROUGH 4889  
MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 08-R2D1-3414  
THROUGH 3418  
SONIC DRIVE-IN, 12-R2D5-2734  
STAFFCHEX, 10-R4D3-2456 THROUGH 2458  
SUNRISE GROWERES 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  
TRADEMARK CONSTRUCTION CO., INC., 12-R4D1-0096 & 0097

**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.)*

**ORDERS DISMISSING APPEAL:**

BLUE CHIP MOVING STORAGE, INC., 12-R6D2-3724 THROUGH 3726  
ACTION: Member Lowry moved that the Board approve this Order Dismissing Appeal of an Administrative Law Judge. Member Freyman seconded. The Board voted to approve this Order Dismissing Appeal of an Administrative Law Judge

**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. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459 THROUGH 2461)
2. FLATIRON CONSTRUCTION CORP, 34-2012-80001029 (10-R4D1-2789)
3. SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 12CV01039 (07-R2D3-0275)

ACTION: Chief Counsel Mojcher reported that he attended a hearing in this matter but has not yet received word from the court regarding the resolution.

4. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
5. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
6. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
7. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
8. SHERWOOD MECHANICAL, INC., 37-2012-00101466 (08-R3D2-4690 ~ 4693)  
ACTION: Chief Counsel Mojcher reported that he attended a hearing on this matter and the Board prevailed.
9. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
10. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
11. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258 (05-R2D4-2650 AND 2651)
12. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
13. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
14. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
15. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
16. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
17. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
18. A. TEICHERT & SON, DBA TEICHERT AGGREGATES, RG12 659881 (10-R5D1-3029)
19. HOME DEPOT USA, INC., BS141301 (10-3284)
20. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)
21. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00628178 (10-3667)
22. THYSSENKRUPP ELEVATOR CORP., 34-2013-80001456 (11-2217 ~ 2219)
23. BIG LOTS STORES, INC., 37-2013-00045936 (11-R3D2-1929 ~ 1931)

24. GUARDSMARK, LLC, 30-2013-00651094 (12-R3D1-0056)
25. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00652023 (12-0439)
26. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00651875 (12-0440)
27. AC TRANSIT, RG13687314 (08-R1D4-0135)
28. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 34-2013-80001575  
(12-R5D1-337)
29. BAY AREA RAPID TRANSIT DISTRICT, RG13689346 (09-R2D2-1219 & 1221)

**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.)*

ACL CONSTRUCTION COMPANY, INC., 12-R3D6-2370 AND 2371  
AMERICAN METAL RECYCLING, INC., 13-R3D3-1935 AND 13-R3D3-2299  
AMERICAN WRECKING INC., 12-R4D1-2668  
AMSEC LLC, 13-R6D2-0802 THROUGH 0804  
A. RUIZ CONSTRUCTION CO. & ASSOC. INC., 13-R1D1-2052  
BAY VALLEY FOODS, 12-R6D2-3171 THROUGH 3182  
BIG VALLEY TRACTOR LLC., 12-R2D4-3749  
CALIFORNIA DRYWALL CO., 13-R2D2-1294  
CALIFORNIA HOMES & KITCHEN DESIGN CENTER, INC., 13-R1D3-1282  
CALPI, INC., 12-R4D3-1459 \*  
CATHOLIC CHARITIES CYO, 12-R1D1-3378  
CENTRAL VALLEY PAINTING, INC., 13-R1D4-2315 THROUGH 2317  
DAIRY FARMERS OF AMERICA, 12-R4D3-3760 AND 3716  
DEAN DISTRIBUTORS, INC., 13-R6D2-1350 THROUGH 1352  
E & B NATURAL RESOURCES MANAGEMENT CORP., 12-R4D3-3273 AND  
13-R4D3-0329 THROUGH 0331  
ENSIGN UNITED STATES DRILLING (CALIFORNIA) INC. CITED AS ENSIGN  
UNITED STATES DRILLING INC., 12-R3D5-3433  
FERALLOY CORPORATION, 12-R2D4-2900 AND 2901  
FRESH JIVE MANUFACTURING, INC., 12-R6D5-3478 THROUGH 3480  
HARRIS FREEMAN & COMPANY DBA HARRIS TEA CO., 13-R3D1-1571  
AND 1572  
HENRY MAYO NEWHALL MEMORIAL HOSPITAL, 12-R4D3-3620  
IDEAL CONCRETE WORX, 12-R4D3-3794  
KEMBAR CONSTRUCTION, 13-R3D2-1707  
LESLIE POOLMART INC., 13-R1D2-0818 THROUGH 0819 \*  
LYTLE CONSTRUCTION, INC., 13-R2D1-2211

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MAPLEGROVE GLUTEN FREE FOODS, INC., 12-R6D2-2166 THROUGH 2168  
MATT CONSTRUCTION CORPORATION, 12-R4D3-2955  
MICHAEL NICHOLAS DESIGN, INC., 12-R6D2-3406 THROUGH 3408  
NANO H2O, INC., 12-R3D5-3646 \*  
NEWHALL LAND AND FARMING COMPANY, 13-R4D3-0628 AND 0629  
NORTH BAY CONCRETE, INC., 13-R6D7-0199  
OASIS PAIN AND WELLNESS CENTER, INC., 13-R1D4-2108 AND 2109  
PACIFIC CONSTRUCTION & RESTORATION, INC., 13-R4D3-0708  
THROUGH 0711  
PENINSULA PLASTICS RECYCLING, INC., 13-R6D1-1889  
POTENTIAL INDUSTRIES, 12-R3D5-3575 THROUGH 3578 \*  
QG PRINTING CORP., 12-R3D3-3160 AND 3161  
RAMCO ENTERPRISES, LP, 13-R1D2-0600  
RARIG CONSTRUCTION COMPANY, 13-R2D5-0093 AND 0094  
REITER BERRY FARMS INC., 13-R4D3-0112 THROUGH 0114  
RENO/TAHOE EAGLE WINDOW AND DOOR COMPANY, INC., 13-R2D1-0087  
AND 0088  
REPUBLIC FENCE COMPANY, INC., 12-R4D3-2958 AND 2959  
R & F ROLAPP ENTERPRISES, INC., DBA BEVERLY HILLS TRANSFER &  
STORAGE, 13-R6D2-0433 AND 0434  
RR DONNELLEY, 12-R3D2-1421 THROUGH 1423  
R.R. DONNELLEY, INC., 12-R3D5-2624 AND 2625  
SENG CHEANG MONG FOOD GROUP, 12-R3D6-2665 THROUGH 2667  
STATE OF CALIFORNIA, NORTH KERN STATE PRISON, 12-R4D3-2113  
THROUGH 2116  
TRI VALLEY-VEGETABLE HARVESTING INC., 13-R4D3-0060 THROUGH 0064  
WILLIAM WEI KANG TU & BONNIE YABO YAN TU, 12-R3D6-2662  
AND 2663  
TUFF SHED, 13-R3D2-1800  
UNDERGROUND SOLUTIONS, INC., 12-R2D1-1007 AND 1008  
UNIVERSAL CONSTRUCTION, 12-R3D6-2550  
UPS, 12-R3D5-3716  
USMAN ARIF DBA THE TIRE DEPOT, 13-R2D1-0007 AND 0008  
WEST COAST CHAIN, 12-R3D6-2234 AND 2235  
XTRA LEASE LLC, 13-R1D4-0919  
ZIM INDUSTRIES INC DBA BAKERSFIELD WELL & PUMP CO,  
12-R4D6-3278 AND 3279  
ZIM INDUSTRIES INC DBA BAKERSFIELD WELL & PUMP CO,  
12-R4D7-3445

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.

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**PERSONNEL:**

*(Issues regarding staff)*

**ACTION:** The Board discussed the addition of a new IRC II to the staff on September 9. Chair Carter also announced that Ellen Widess has left her position as DOSH Chief.

The Closed Session adjourned at 11:19 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 11:20 a.m.