

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on April 17, 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
David Donnell, ESQ, Robert D. Peterson Law Corporation
Marti Fisher, Policy Advocate, California Chamber of Commerce

MINUTES OF APRIL 3, 2013 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the April 3, 2013 Board Meeting. Chair Carter seconded. The Board voted to approve the draft minutes of the April 3, 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: Acting Executive Officer Johnson reported that the rulemaking package was approved on April 15 by the Office of Administrative Law and has been sent to the Secretary of State. The package will take effect on July 1. She also discussed posting the package to the website.

2. 2013 HEARING CALENDAR/STATISTICS REPORTS:

(Review and discuss current calendaring and statistical information)

ACTION: Acting Executive Officer Johnson explained that the Board docketed 513 appeals in March, an unexpected jump after receiving 300 in January and 297 in February. She will be working with staff to help ensure that these are processed within the average time frame.

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)

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ACTION: Chair Carter reported that the Board has adjusted its 2012/2013 budget to conform to restrictions imposed by the federal sequestration action.

2. 2013/2014 BUDGET:

(Discuss budget issues for upcoming fiscal year)

ACTION: Chair Carter reported that the budget for fiscal year 2013/2014 is still a “moving target” because of the federal sequester. The Board has already worked on cuts for travel and equipment but more may be needed.

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 announced that Kari Johnson has agreed to remain in her current position at the Board. He also said that he is willing to meet with any stakeholder group to discuss pending legislation that may affect the operations of the Board, explaining that the Board does not take positions on pieces of legislation.

BOARD MEMBERS’ REPORTS:

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

ACTION: Member Lowry reported that he is writing an answer to a letter from Senator Darrell Steinberg in the Rules Committee as a prelude to the confirmation process. Member Freyman has also prepared a response to a letter from the Senator.

EXECUTIVE OFFICER’S REPORT:

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

ACTION: Acting Executive Officer Kari Johnson reported that the staff will review the progress of the previous working group to address potential regulations governing the use of videoconferencing equipment for hearings, and have a plan for moving forward by the next meeting.

STAFF REPORTS:

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

ACTION: No report.

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: Marti Fisher, Policy Advocate with the California Chamber of Commerce, congratulated Kari Johnson on her appointment and welcomed Member Freyman back after her illness. David Donnell, of the Robert D. Peterson Law Corporation, seconded Ms. Fisher's comments.

The Board recessed to its Closed Session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

CABRILLO ECONOMIC DEVELOPMENT CORP., 11-R4D3-3185 AND 3186

ACTION: The Board did not take action on this matter.

HILL CRANE SERVICE, INC., 12-R3D3-1569

ACTION: The Board did not take action on this matter.

OLD D's APPAREL, INC., 12-R4D1-1177 AND 1178, 12-R4D1-2236
THROUGH 2238

ACTION: The Board agreed to hold this matter over until the next meeting, which is scheduled for May 1, 2013.

PETITIONS FOR RECONSIDERATION

BILL NELSON GENERAL ENGINEERING CONSTRUCTION, INC.,
10-R2D5-2399 AND 2400

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.

DENIAL OF PETITIONS FOR RECONSIDERATION (DRAFT):

ORANGE COUNTY FIRE AUTHORITY, 12-R3D1-0439

ORANGE COUNTY FIRE AUTHORITY, 12-R3D1-0440

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

ABDUL G. ZADEH DBA ISLAND AUTO PARTS WAREHOUSE, 11-R3D3-1213
AND 1214

ACTION: Member Lowry moved that the Board vote to approve this

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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
C.C. MYERS, INC., 08-R1D1-952 THROUGH 955
C & L BLUE INC., 11-R4D1-2942 AND 11-R4D1-2943 THROUGH 2945
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
EZ MIX, INC., 08-R4D3-1898
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
IRWIN INDUSTRIES, 08-R6D4-1454
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
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
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
STAFFCHEX, 10-R4D3-2456 THROUGH 2458
SUNRISE GROWERES FROZUN FOODS, 09-R4D3-2850
A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443
TL PALVICH CONSTRUCTION, INC., 11-R3D6-1303 THROUGH 1310

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:

ORDERS GRANTING LEAVE TO FILE LATE APPEAL:

SEARS ROEBUCK & CO, 13-R3D1-0598

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

ORDERS DENYING LEAVE TO FILE LATE APPEAL:

USF REDDAWAY, INC., DBA REDDAWAY, 13-R2D1-9025

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

LEGISLATION:

ACTION: The Board discussed AB1277, a new piece of legislation that may affect the operations of the Board.

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)
ACTION: Chief Counsel Mojcher reported that this matter will come to hearing on Friday, April 19.
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. SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 12CV01039
(07-R2D3-0275)
ACTION: Chief Counsel Mojcher advised the Board that a brief in this matter is due next week.
13. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
14. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
15. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
16. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
17. SHERWOOD MECHANICAL, INC., 37-2012-00101466 (08-R3D2-4690 ~ 4693)

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18. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
19. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
20. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258 (05-R2D4-2650 AND 2651)
21. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
22. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
23. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
24. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
25. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
26. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
27. A. TEICHERT & SON, DBA TEICHERT AGGREGATES, RG12 659881 (10-R5D1-3029)
28. HOME DEPOT USA, INC., BS141301 (10-3284)
29. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)
30. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00628178 (10-3667)

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.)

- 99 CENTS ONLY STORES, 12-R2D2-3603
- ACCO ENGINEERING SYSTEMS, INC., 11-R1D4-2888
- AIR SYSTEMS OF SACRAMENTO INC., 12-R2D1-2632
- ALEGACY FOOD SERVICES GROUP INC., 12-R6D2-1968 THROUGH 1970
- AMPAC FINE CHEMICAL LLC., 12-R6D3-1313 THROUGH 1316
- AMPAC FINE CHEMICAL LLC., 12-R6D3-1332
- AMPAC FINE CHEMICAL LLC., 12-R6D3-1333 THROUGH 1338
- ARBOR WEST TREE SURGEONS, 12-R3D2-1720 *
- BEAUCHAMP DISTRIBUTING COMPANY, 12-R4D1-1217 *
- BENCHMARK ELECTRONICS, 12-R2D2-3268
- BLACK DIAMOND ELECTRIC, INC., 12-R6D7-3188

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BUZZBOYS INC., DBA BUZZ WINE BEER SHOP, 12-R4D2-2193 AND 2194
CHATEAU LAKE SAN MARCOS HOA, 12-R6D2-1939
COASTAL PACIFIC FOOD DISTRIBUTION INC., 12-R2D4-2903
CORTEZ FARM LABOR INC., 12-R3D2-2586 AND 2587
COSTCO WHOLESALE CORP., STORE #765, 12-R2D1-3636
DEARDORFF FARM MANAGEMENT INC., 12-R2D4-3314
DOUBLE M RANCHES, INC., 12-R3D2-1995
DRILL TECH DRILLING AND SHORING INC. 12-R5D1-2278
DRIVEN BRANDS, INC., DBA MEINEKE CAR CARE CENTER, 13-R3D2-0048
EAGLE PEAK ROCK & PAVING INC., 12-R5D1-3588
EARTHGRAINS BAKING COMPANIES, INC., DBA SARA LEE CORPORATION,
11-R2D1-2821 THROUGH 2824
ECONOMY TREE SERVICE, INC., 12-R4D3-1404 AND 1405
FACTORY SALES & ENGINEERING, INC., 12-R2D4-2902
FAMILY RANCH, INC., 12-R6D7-3298 AND 3299
FAXON AUTO LITERATURE, 12-R3D3-2426 AND 2427
FMI PRODUCTS, LLC., 12-R3D1-1831 AND 1832
JAMES A. GARCIA, 12-R3D3-2473
GE AVIATION SYSTEMS, 12-R3D1-3530
GRANITE CONSTRUCTION COMPANY, 12-R5D2-2800
HICKEL & HICKEL FARMING, 12-R2D3-0859 AND 0860
JA FARM LABOR INC., 12-R2D5-2184
JA FARM LABOR INC., 12-R2D5-2185
J-M MANUFACTURING COMPANY, INC. DBA J-M EAGLE, 12-R2D4-3196 AND 3197
JOHN BOYD ENTERPRISES, INC. DBA JB RADIATOR SERVICES,
12-R2D1-1247 THROUGH 1250
LAKEPORT, CITY OF MUNICIPAL SEWER DISTRICT, 12-R6D3-2533
LAKE WILDWOOD WASTE WATER TREATMENT PLANT, 12-R6D3-2169
LEND LEASE (US) CONSTRUCTION INC., 12-R1D1-2177
LONGVIEW FIBRE PAPER & PACKAGING, INC., 12-R1D4-3663
LOU'S DOORS, INC., 12-R6D1-2435
LOU'S DOORS, INC., 12-R6D1-2439 AND 2440 *
JAIME MATA DBA M S MARBLE, 12-R3D2-0443
MORENO 760 INC., DBA IHOP 760, 13-R3D3-0165
MONTEJO LANDSCAPING, 12-R3D2-1991 THROUGH 1993 *
TIM MUELLER DBA RIVERDOG FARM, 12-R2D1-2180
ANTHONY/JOSEPH NELES DBA JOHNSON & NELES DAIRY, 12-R6D7-2867
AND 2868
NORTH BAY WATERPROOFING, INC., 11-R1D1-1809
NORTH RANCH BUILDERS, INC., 12-R6D7-3624 THROUGH 3626 *
PACIFIC BELL TELEPHONE COMPANY, DBA AT&T, 12-R2D4-0602
AND 0603
PACIFIC WESTERN PAINTING INC., 12-R3D2-1424 THROUGH 1427
PAPA CANTELLA'S INC., 12-R6D2-2381 THROUGH 2385
PARAMOUNT FARMS INTERNATIONAL, LLC., 11-R4D3-3096
THROUGH 3098

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MOHAMMAD POURNAMDARI, 12-R4D1-2079 THROUGH 2081
PREMIUM PACKING, INC. DBA PREMIUM HARVESTING, 12-R2D4-2038 *
PRIORITY ONE MEDICAL TRANSPORT, 12-R2D4-2263
QUALITY DESIGN DRYWALL, INC., 12-R6D5-1733
QUALITY DESIGN DRYWALL, INC., 12-R6D5-1734 AND 1735
REAL MEX FOODS, 12-R6D2-2122 THROUGH 2129
RIKA CORPORATION DBA DIVERSIFIED METALWORKS, 12-R3D2-2751
RUDOLPH & SLETTEN, INC., 12-R3D2-3203 AND 3204
RUSSELL & BOALS PAINTING INC., 12-R2D3-2395
SACRAMENTO METROPOLITAN FIRE DISTRICT, 11-R2D1-3284 AND 3285
SAFEWAY INC AKA RICHMOND BREAD PLANT, 12-R2D2-3147 THROUGH 3150
SANTA FE AGGREGATES INC., 12-R5D1-2798
SFUSD – JOSE ORTEGA ELEMENTARY SCHOOL, 12-R1D1-1523
SOUTH VALLEY MUSHROOM FARM, INC., 12-R6D7-3300 THROUGH 3302
STEVE MANNING CONSTRUCTION, INC., 11-R2D1-3211 AND 3212
TERMINIX INTERNATIONAL INC., 12-R3D2-2189
TERMINIX INTERNATIONAL, INC., 12-R1D3-2572
TRI-STATE STAFFING, INC., 12-R6D2-0374 THROUGH 0377; 12-R6D2-0379
THROUGH 0384 AND; 12-R6D2-0385 THROUGH 0390
TUTOR-SALIBA CORPORATION, 12-R2D3-0914
UNITED CONTINENTAL HOLDINGS INC., 12-R6D2-2006 AND 2007
UNIVERSITY OF CALIFORNIA, SAN FRANCISCO MEDICAL CENTER,
10-R1D1-1653 AND 1654
YRC, INC. DBA YRC FREIGHT, 12-R3D3-3395

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.

PERSONNEL:

(Issues regarding staff)

ACTION: No Report

The Closed Session adjourned at 1:39 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 1:40 p.m.