

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING AND CLOSED SESSION
Held on November 19, 2015
Sacramento, California**

PRESENT:

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

MINUTES OF OCTOBER 15, 2015 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the November 4, 2015 Board meeting as amended. Member Freyman seconded. The Board voted to approve the draft minutes of the November 4, 2015 Board meeting as amended.

NEW BUSINESS:

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

ACTION: The Board reviewed proposed meeting dates for the new year. The first two meetings scheduled for 2016, Thursday, January 7 and Thursday, January 21, have been posted to the OSHAB website.

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 has a December meeting scheduled with David Shiraishi of the Federal OSHA program.

BOARD MEMBERS' REPORTS:

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

ACTION: Member Lowry reported that he will attend a stakeholder holiday gathering early in December. Member Freyman is also planning to attend a stakeholder event.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters)

OPERATIONS UPDATE:

ACTION: Interim Executive Officer Ha reported that she is working with the Chair and staff to ensure that all tasks will be covered while she is on leave in February and March.

STAFF REPORTS:

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

OASIS PROJECT:

ACTION: OASIS Business lead Robinson reported that the OASIS project is on track and considerable progress has been made on the appeals initiation process and calendaring.

RULEMAKING:

ACTION: No report.

LITIGATION UPDATE:

ACTION: Chief Counsel Mojcher reported there are two hearings scheduled in Superior Courts in December.

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:

CALSTRIP STEEL CORPORATION, 12-R3D6-1998 AND 1999

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.

OC COMMUNICATIONS, INC., 14-R2D2-0120, 14-R2D2-0166 AND 14-R2D2-0340

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.

TROLLEY SECURITY, INC. DBA UNIVERSAL PROTECTION SERVICE,
12-R3D2-2908 THROUGH 2910

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:

A&M ORNAMENTAL IRON, 15-R6D2-9132

ACTION: Member Lowry moved that the Board vote to deny this Petition for Reconsideration. Member Freyman seconded. The Board voted to deny this Petition for Reconsideration

CHER XUECHUAN MA DBA PARADISE ISLAND SPA, 15-R6D5-9160

ACTION: Member Lowry moved that the Board vote to deny this Petition for Reconsideration. Member Freyman seconded. The Board voted to deny this Petition for Reconsideration.

ERDIS PLASTICS MFG, INC., 15-R4D1-9083

ACTION: Member Lowry moved that the Board vote to deny this Petition for Reconsideration. Member Freyman seconded. The Board voted to deny this Petition for Reconsideration

DENIAL OF PETITION FOR RECONSIDERATION (DRAFT):

T & R CONSTRUCTION GROUP, 14-R4D3-4120

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.

ORDERS DISMISSING APPEAL:

MOUNTAIN MOVERS ENGINEERING, 14-R3D2-4067

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 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 DENYING LATE APPEAL

ORDER GRANTING LATE APPEAL

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.)

ACTION METAL RECYCLING, INC., R2D2-1125 THROUGH 1126

CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038

CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364

ECHO ALPHA INC. ET AL, 14-R3D1-0802 THROUGH 0804

ACTION: The Board discussed this matter.

EKEDAL CONCRETE, INC., 13-R3D1-0131 THROUGH 0133

EMPLOYER SOLUTIONS STAFFING GROUP II, LLC, 12-R3D6-3207

FASTEMPS INC., 12-R3D6-3208

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

HERMAN WEISSKER, INC., 13-R3D1-3279

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
ACTION: The Board discussed this matter

SIERRA FOREST PRODUCTS, 09-R2D5-3979
SHIMMICK CONSTRUCTION CO., INC/OBAYASHI CORP., 11-R3D1-2562
THROUGH 2570
UNITED PARCEL SERVICE, 14-R2D1-1779
W.A. RASIC CONSTRUCTION, INC., 13-R3D1-2952
ABM FACILITY SERVICES, INC., DBA ABM BUILDING VALUE, 12-R3D6-3496
THROUGH 3498

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)
10. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)

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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. FEDEX GROUND PACKAGING SYSTEM, INC., CIVDS1415696 (13-R3D1-1220)
28. KEY ENERGY SERVICES, INC., S-1500-CV-283958, EB (13-R4D3-2239 ~ 2242)
29. KDTD, INC. DBA KD DEVELOPMENT, INC., 37-2015-00003550-CU-WM-CTL (14-R3D2-1935 & 1936)
30. HHS CONSTRUCTION, 34-2015-80002052 (12-R3D2-0492 THROUGH 0497)

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31. MARIA DE LOS ANGELES COLUNGA dba MERCED FARM LABOR, 15CV-00945
(08-R2D1-3093 ~ 3098)
32. STANISLAUS FOOD PRODUCTS CO., 34-2015-80002087 (13-R2D4-0572 ~ 0574)
33. OLDCASTLE PRECAST, INC., 34-2015-80002167 (13-R3D3-0583)
34. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP., 34-2015-80002204
(12-R3D1-0781)
35. CHARLES PANKOW BUILDERS, LTD., 34-2015-8000221 (13-R4D1-1759)
36. NATIONAL DISTRIBUTION CENTERS, LP, 12-R6D2-0391
37. TRI STATE STAFFING, 12-R6D2-0378

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.)

100 PERCENT CONCRETE INC, 15-R6D7-2201 AND 2202
AARON METALS COMPANY, 15-R1D4-3620 THROUGH 3622
AASH CONSTRUCTION, INC., 15-R4D1-2325
ACE DRILLING, 15-R1D1-0601 THROUGH 0603
ALKAPURO FULLERTON, INC., 15-R3D5-0764
ANNANDALE GOLF CLUB, 14-R4D1-3097
ASSOCIATED READY MIX CONCRETE, INC., 15-R3D1-0744
ASTRO ALUMINUM TREATING CO., INC., 13-R3D5-2599 AND 2602
BAY SHIP AND YACHT COMPANY, 15-R6D1-3284 THROUGH 3286
BIG 4 PARTY RENTALS, INC, 14-R1D5-2534
BJ'S RESTAURANTS, INC., 15-R3D1-1766

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BRINDERSON, 15-R6D4-1166
BROWN CONSULTING AND CONSTRUCTION, 14-R3D1-3269 THROUGH 3272
BUTTONWILLOW GINNING COMPANY, 15-R4D7-2273 AND 2274
CALIFORNIA COMMERCIAL PROPERTIES MANAGEMENT, INC., 15-R3D1-0956
CARTIER CONSTRUCTION INC, 15-R4D3-1802
CITY OF LONG BEACH POLICE DEPT., 15-R3D5-0249
CRAIG MECHANICAL, INC., 15-R4D4-1402
IGNACIO CUEVAS DBA IGNACIO CUEVAS, 15-R6D5-3544 AND 3545
DEL REAL FOODS LLC, 15-R3D3-3143 THROUGH 3145
DIGITAL NETWORKS GROUP, INC., 15-R3D1-2832
DUNN EDWARDS CORP. DBA DUNN-EDWARDS PAINTS, 15-R1D2-3332
THROUGH 3335
DURHAM SCHOOL SERVICES LP, 15-R3D1-1445 AND 1446
EXCALIBUR EXTRUSIONS, INC., 15-R3D1-0745
FENCE MENDERS INC., 15-R6D2-1837 THROUGH 1839
FRESH & EASY, LLC DBA FRESH & EASY DISTRIBUTION CENTER, 15-R7D2-3138
AND 3139
GDT FRAMING, INC., 15-R4D4-0060 AND 0061
GHILOTTI CONSTRUCTION COMPANY, INC., 14-R1D4-3447 AND 3448
GKN AEROSPACE, 15-R3D1-1765
GUARDPOWER SECURITY SERVICES, INC., 15-R4D4-3107
HELADOS MEXICO DBA TROPICALE FOODS, INC., 15-R4D4-2028
HEMINGWAY AUTO SERVICE INC DBA ONE STOP AUTO BODY AND PAINT,
15-R6D5-3394 THROUGH 3397
HPH CONSTRUCTION INC., 14-R4D1-2291 THROUGH 2295
J.J. FOODSERVICE INC., DBA FIESTA FOODSERVICE, 15-R3D2-3824
THROUGH 3826
JOE LINN CONSTRUCTION AND ROOFING, 15-R3D2-1685
JUST WINGIN IT INC., DBA WING STOP, 15-R2D4-2773
KIRE BUILDERS, INC., 14-R3D2-411
LA VINA CONTRACTING, INC., 14-R4D7-4223 AND 4227
TRAIAN LUPAS DBA L.T. GENERAL CONTRACTING, INC., 15-R3D5-0936
ROBERTO MARQUEZ DBA ROBERTO MARQUEZ ATTORNEY AT LAW,
15-R6D7-1858
MEGGITT SAFETY SYSTEMS, INC., 15-R4D3-2479 AND 2480
MENLO LOGOSTICS INC., 15-R3D3-1642 AND 1643
MERCER, FRASER COMPANY, 15-R5D1-1203 AND 1204
M L K CORPORATION DBA FOLKS AUTO BODY, 15-R4D3-0649
MOTIVE ENERGY TELECOMMUNICATIONS, 14-R3D2-3380 THROUGH 3384
MUTUAL FLAVORS, 15-R4D1-1919
PACIFIC GIS INC. DBA SULTAN ADULT DAY HEALTH CARE, 15-R3D1-2408
PARAMOUNT FARMING COMPANY, LLC., 14-R4D7-3787
JIM PARKER, 14-R4D1-2788 THROUGH 2790
PARKER PERSONNEL, 15-R3D1-1184 AND 1185 & 15-R3D1-1186 AND 1187
PEDRAM EXPERT CONSTRUCTION 1, 15-R4D1-1696

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PIER A SSA TERMINALS (LONG BEACH) LLC DBA SSA TERMINALS
(LONG BEACH) LLC, 15-R3D5-0497
PITMAN FAMILY FARMS, 15-R2D5-3555 AND 3556
POWER CONSTRUCTION, INC, 15-R1D1-3547
PREMIER ENCLOSURE SYSTEMS INC., 15-R6D2-1160 THROUGH 1165
QUEST CONSTRUCTION BLDG. CONTRACTORS, 15-R3D5-1688 THROUGH 1691
RAMCAR BATTERIES INC., 15-R4D1-0671 & 15-R4D1-3973 AND 3974
JOSE RAMIREZ DBA RAMIREZ MOBILE CAR WASH, 15-R6D5-3821
THROUGH 3823
REVOLUTION FOODS, INC., 15-R1D4-1501 AND 1502
SAMS CLUB STORE 6628, 15-R3D5-0937
SA RECYCLING, 14-R3D3-3582
SE PIPELINE CONSTRUCTION COMPANY, 15-R3D5-0246
SHAW PIPELINE, INC., 15-R1D1-3463
SOUTHWEST MOLDING, INC., 15-R4D3-2588 THROUGH 2591
STANDARD EXTERIORS, INC., 15-R6D5-3601
STATE OF CALIFORNIA DEPT OF TRANSPORTATION, 15-R4D3-0779
SUNWEST FRUIT CO., INC., 15-R2D5-3355 AND 3356
TOP OF THE LINE CUSTOM PAINTING, 15-R2D4-2082 AND 2083
VALLEY PALLET INCORPORATED, 15-R6D1-1036 THROUGH 1038
VCI CONSTRUCTION, INC., 15-R3D5-0274
VIA HOME INC., 14-R4D1-4148 AND 4149
VISION POOL SERVICE, 14-R3D1-2650 AND 2651
WILBUR-ELLIS DBA RNA CORP, 15-R2D5-2690

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: The Board discussed personnel matters.

The Closed Session was adjourned at 12:18 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 12:19 p.m.