

State of California
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION AGENDA
Government Code § 11126 (a), (c)(3), and (e)
for
Wednesday, April 30, 2008
10:00 a.m.
Sacramento, California
&
West Covina, California

TO: Members of the California Occupational Safety and Health Appeals Board

FROM: J. Jeffrey Mojcher, Chief Counsel

DATE: April 16, 2008

RE: Closed Session of the Board on April 30, 2008

Pursuant to Government Code section 11126, subdivisions (a), (c)(3), and (e) and the Labor Code sections 6609 and 6620, the Appeals Board will hear the following items in Closed Session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

(Written decision issued by an Administrative Law Judge. The decision summarizes the evidence received from the Division of Occupational Safety & Health and the Employer, makes findings of fact for all issues involved in the appeal and gives reasons and grounds for the decision. The Board Members review the decision and decide if they will reconsider the ALJ decision on their own motion.)

1. BUTTON TRANSPORTATION, 04-R1D4-363 THROUGH 365
2. THE HERRICK CORP., 07-R3D1-495
3. J. F. SHEA COMPANY, INC., 06-R2D3-1539
4. SAN FRANCISCO FIRE DEPARTMENT, 07-R1D1-3002

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.)

1. 2 G ROSES LLC, 07-R1D2-3853 THROUGH 3856

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2. A TEICHERT & SON, INC. dba TEICHERT AGGREGATES, 07-R5D1-2544 AND 2545
3. AAW INC., 06-R4D1-2040 AND 06-R4D1-2042 THROUGH 2048
4. ABRASIVE WATERJET & CNC INC., 07-R3D5-2958 AND 2959
5. ACKER AND GUERRERO ROOF COMPANY INC., 07-R1D4-2306
6. AG EXPRESS, 07-R6D4-4522 THOROUGH 4524
7. AIRPORT TERMINAL SERVICES, 07-R1D2-2153
8. ALBERTSONS, 06-R4D2-1456
9. ALBERTSONS BREA DISTRIBUTION CENTER, 06-R3D7-4815
10. ALEMENDROS, INC., 07-R4D3-2330
11. ALMADEN CONSTRUCTION, INC., 07-R1D2-2151
12. AMERICAN CONCRETE PUMPING, 07-R2D3-854
13. HEATH ANDERSON CONSTRUCTION, 07-R4D5-3368 THROUGH 3371
14. ANNANDALE GOLF CLUB, 06-R4D2-2330 AND 2331
15. APPLIANCE RECYCLED CENTERS OF AMERICA, 07-R4D2-2764 THROUGH 2767
16. ARB, INC 06-R4D1-4636
17. ARCHADEL, INC., 07-R3D5-4424
18. BALLY TOTAL FITNESS #60401, 08-R3D2-0566 THROUGH 0568
19. B.J. TRUCKING, INC., 07-R3D5-4419
20. JEFFREY E. BOHANNON 07-R4D3-537
21. BURNEY MOUNTAIN POWER, 06R2D3-4022 AND 4023
22. CABERNET CONSTRUCTION & DEVELOPMENT , INC., 06-R1D5-4119 AND 4120
23. CALIFORNIA STATE POLYTECHNIC UNIVERSITY, POMONA 07-R4D4-3605 THROUGH 3608

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24. CANTU LABOR, 06-R2D5-912 AND 913
25. CARLISLE TIRE AND WHEEL, INC., 07-R3D5-2960 AND 2961
26. CEDAR VALLEY CONCRETE CORP. (CVC CONSTRUCTION), 07-R2D3-851
27. CLASSIC CONTAINERS, INC., 06-R6D2-5379 THROUGH 5385
28. COMMERCE CONSTRUCTION INC., 06-R4D4-1467 AND 1468
29. DEJON ENTERPRISES, INC., dba McDONALD RESTAURANT, 07-R4D4-3367
30. D & J FARMS MANAGEMENT, 07-R4D3-3270
31. DOANE PET CARE COMPANY, 07-R3D3-4035 AND 4036
32. ELEVEN WESTERN BUILDERS, 06-R4D2-5086
33. ELY JR'S PUMPING & SEPTIC SYSTEM INSTALLATIONS, 06-R4D2-1628 THROUGH 1632
34. THE FAIRMONT SAN JOSE, 07-R1D2-2156
35. FED EX EXPRESS, 07-R2D3-1374
36. FOSTER FARMS, 07-R2D5-2829 AND 2830
37. FOSTER PRINTING, 06-R6D2-763
38. FRENCH GULCH (NEVADA) MINING CORP., 07-R5D1-3993
39. THE FRENCH PASTISSERIE INC., 07-R6D1-4278 THROUGH 4280
40. FUJITRANS USA, INC., 07-R3D5-2424 AND 2425
41. GAINEY CERAMICS, 06-R4D4-1128 THROUGH 1133
42. GARWOOD, INC. dba ARCHITECTURAL WOODWORKING, 06-R2D1-4573 THROUGH 4576
43. GILL RANCH COMPANY, LLC., 07-R3D2-1029 AND 1030
44. GOOD CENTS SOLUTIONS, 06-R3D3-4270

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45. GREEN VALLEY CORP., 07-R1D2-3729 THROUGH 3732
46. GRIMMWAY FARMS, INC., 06R2D5-1404 AND 1405
47. D. HAIGHT ROOFING, 07-R1D4-0468 AND 0469
48. HALEY BROS., INC., 06-R3D3-2600 AND 2601
49. HART PLASTERING, INC., 07-R3D1-2027
50. HB PARKCO CONSTRUCTION INC., 06-R3D5-4780 AND 07-R3D5-0513
51. HERITAGE FOODS, 09-R6D2-710 AND 711, AND 08-R6D2-1377
52. HITACHI KOKI USA, LTD., 07-R4D1-2056
53. GEO. M. HUFF LUMBER COMPANY, 07-R4D4-3497 AND 3498
54. HYDRATECH, 05-R2D5-2811 AND 2812
55. HYPERION TREATMENT PLANT, 06-R6D2-1356 THORUGH 1360
56. HYPERION TREATMENT PLANT, 06-R6D2-1348 THROUGH 1355
57. INTERSTATE BRANDS CORPORATION, 06-R4D2-5188
58. KERN COUNTY BUILDING INSPECTION DIVISION, 07-R2D5-3960
59. LANCE PATTERSON PLASTERING, INC., 07-R3D2-1695 THROUGH 1698
60. LAUSD-POMELO DRIVE ELEM. SCHOOL, 07-R4D3-2244
61. MACSTEEL SERVICE CENTERS USA, 06-R3D3-4755 THROUGH 4757
62. MANHATTAN STITCHING COMPANY dba, BRENDAN SCREEN
PRINTING & EMBROIDERY, 07-R6D2-5087 THORUGH 5089
63. MAPLE LEAF FROZEN BAKERY, 07-R6D2-3844 THROUGH 3849
64. McCANN PLASTERING, INC., 07-R2D1-1018 THROUGH 1021
65. McCURLEY DAY MASONRY, 06-R2D5-4028 AND 4029
66. MARZOLA CONSTRUCTION COMPANY, 07-R3D1-4242 THROUGH 4244
67. MAS ASSET MANAGEMENT CORPORATION, 07-R1D1-5264

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68. MEIR PLUMBING, INC., 07-R3D5-3264
69. MIKE MURRAY PLUMBLING & FIRE PROTECTION, 07-R2D3-850
70. NASSCO, 07-R6D2-3386 AND 3387
71. NASSCO, 07-R6D2-1750
72. NAUTICAL ENGINEERING INC., 06-R6D1-4868 THROUGH 4872
73. OAKLAND UNIFIED SCHOOL DISTRICT , 06-R1D4-3057
74. PABON CONSTRUCTION CO., 06-R4D4-3796
75. PELCO, 06-R2D5-3554
76. CITY OF PETALUMA, PUBLIC WORKS DEPT., 07-R1D5-3573
77. PORTER CONSTRUCTION CO., INC. 07-R1D2-0465 THROUGH 0467
78. R. H. FRAMING INC., 07-R1D2-1109
79. RAINBOW DISPOSAL CO., INC. 07-R6D2-3402 THROUGH 3408
80. RCP ELECTRIC, INC., 06-R4D2-2345
81. RICKY'S HAND CAR WASH, 07-R4D1-1305 AND 1306
82. ROBERTSON'S READY MIX LTD., 06-R5D3-2068 AND 2069
83. SACCANI DISTRIBUTION COMPANY, 06-R2D1-4017 AND 4018
84. SBC/AT&T, 07-R3D5-3588
85. SELECTBUILD DISTRIBUTION, INC., dba KBI NORCAL DISTRIBUTION
06-R2D3-2467
86. SFO IMPACT, INC. dba EAGLE FABRICS, 07-R3D5-3262
87. SO CAL TILE, 07-R3D1-4385
88. SPAULDING EQUIPMENT COMPANY, 07-R3D3-1034 AND 1035
89. ST. LUKE'S UNITED METHODIST CHURCH, 05-R2D5-3601 AND 3602
90. TARGET STORES INC., 08-R1D4-0802

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91. TROUT CREEK LANDSCAPE, INC., 07-R2D1-485 AND 486
92. U. S. GYPSUM COMPANY, 06-R3D2-4958
93. W. D. YOUNG & SONS INC., 07-R3D3-2936
94. WESTERN NONWOVEN, INC., 07-R3D5-3263
95. XL CONSTRUCTION CORPORATION, 07-R1D3-3006 THROUGH 3010

ORDERS DISMISSING APPEALS:

1. DONNIE WAYNE YINGLING dba ALL WALL & CEILING, 07-R1D4-0125 THROUGH 0128
2. DUKE PACIFIC, 06-R3D3-2246 THROUGH 2248

ORDERS DENYING LEAVE TO FILE LATE APPEALS:

1. LUCKY DRAGON, 07-R3D2-0168 THROUGH 0170

ORDERS GRANTING LEAVE TO FILE LATE APPEALS:

NONE.

ORDERS DENYING LEAVE TO REOPEN APPEALS:

NONE.

ORDERS GRANTING APPEALS:

NONE.

PETITIONS FOR RECONSIDERATION:

(The Division of Occupational Safety & Health and the Employer each has the right to petition the Appeals Board to reconsider a decision or order of an Administrative Law Judge. The Appeals Board must decide to grant or deny each petition.)

1. ADAMS & SMITH, INC., 05-R1D1-2882
2. GOLDEN STATE BORING & PIPE JACKING, INC., 05-R5D2-2359
3. KENYON PLASTERING, 07-R2D4-3026 AND 3207
4. LUIS MICHEL dba LUIS CUEVA MICHEL, 08-R2D1-9147
5. UNION DENTAL, 08-R1D4-9135

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DENIAL OF PETITION FOR RECONSIDERATION (DRAFTS):

NONE.

DECISIONS AFTER RECONSIDERATION (DRAFTS):

(If the Appeals Board grants a petition for reconsideration it reviews the facts of the appeal and then issues a decision after reconsideration upholding, reversing or modifying the underlying ALJ decision.)

1. A. TEICHERT & SON, INC., A CORPORATION dba TEICHERT AGGREGATES, 04-R5D2-850 AND 851
2. AC FRAMERS INC., 03-R2D3-3475
3. A & C LANDSCAPING, INC., aka A & C CONSTRUCTION, INC., 03-R4D4-4791
4. ASC PROFILES, INC., 06-R2D1-1181
5. BART, 03-R1D1-5170
6. BAY AREA SYSTEMS & SOLUTIONS, dba BASS ELECTRIC, 01-R1D3-106
7. BIMBO BAKERIES USA, 03-R1D3-5215 THROUGH 5217
8. BLF, INC., dba LARRUBURE FRAMING, 02-R4D1-4675 THROUGH 4680
9. BLF, INC., dba LARRABURE FRAMING, 03-R4D3-4428 AND 4429
10. BLUE DIAMOND MATERIALS, 02-R5D2-1268
11. CALDWELL-ROLAND ROOFING, INC., 03-R1D4-2905
12. CALIFORNIA FAMILY FITNESS, 03-R2D1-095 & 096
13. CALIFORNIA FRESH FARMS LLC., 06-R2D4-4127 AND 4224
14. CENTRAL CHEVROLET, 05-R1D4-2615 THROUGH 2618
15. CENTRAL VALLEY CONTRACTING, 05-R4D3-2351
16. COX COMMUNICATIONS, 03-R3D2-1942
17. DADE BEHRING, 05-R2D1-2203

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18. DAVIS BROTHERS FRAMING, INC., 03-R3D1-0114
19. DAVIS BROTHERS FRAMING, INC., 05-R3D3-634 THROUGH 636
20. DYNALECTRIC, 03-R1D1-4101
21. ETTER & SON CONSTRUCTION, INC., 03-R1D5-3131
22. FORKLIFT SALES OF SACRAMENTO, INC., 05-R2D1-3477
23. GENERAL TRUSS CO. INC., 06-R2D1-0783 AND 0784
24. GHILOTTI BROS. CONTRACTORS, 04-R1D5-2321 AND 2322
25. GLASS PAK, 03-R2D2-0750 AND 0751
26. GRAND BUILDERS, 07-R4D3-9344
27. HARRY L. MURPHY, INC., 06-R1D2-218 AND 219
28. HEARN CONSTRUCTION, INC., 02-R6D1-3533 THROUGH 3536
29. HELPMATES STAFFING SERVICES, 05-R3D3-2239
30. HUSSMAN CORPORATION, 03-R3D1-2939
31. ILH CONSTRUCTION, 02-R1D1-4172
32. INDUSTRIAL MASONRY, INC., 07-R3D2-0735 AND 0736
33. JOHN LAING HOMES, 04-R3D1-194 AND-195
34. KELLY SERVICES, INC., 06-R1D2-1024
35. KENNY-SHEA-TRAYLOR-FRONTIER/KEMPER, JV, 03-R5D2-0323
36. KIMES-MORRIS CONSTRUCTION, 02-R1D4-1204 THROUGH 1209 & 02-1273
37. LONG BEACH CITY COLLEGE, 03-R3D5-2747
38. LOS ANGELES, CITY OF, FIRE DEPARTMENT, 03-R2D5-3960
39. LOS ANGELES, CITY OF, HOUSING AUTHORITY, (HACLA),05-R4D2-2541
40. O & M INDUSTRIES, 04-R1D5-1597

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41. PMR RACE CARS, 03-R3D3-1825
42. POUK & STEINLE, INC., 03-R4D2-1495 & 1496
43. RII PLASTERING INC., 02-R3D1-2679
44. R & L BROSAMER, INC., 03-R1D5-4832
45. SACRAMENTO MUNICIPAL UTILITY DISTRICT, 02-R2D1-1654
THROUGH 1656
46. SANTA ROSA CITY TRANSIT AND PARKING DEPARTMENT, 05-R1D5-
1417
47. STACY & WITBECK INC., 05-R1D1-1142
48. STATE CENTER COMMUNITY COLLEGE DISTRICT, 05-R2D5-1688
THROUGH 1692
49. STRUCTURAL SHOTCRETE SYSTEM, 03-R4D3-986
50. TEICHERT AGGREGATES, 04-R5D1-2982
51. TRIO METAL, 03-R4D4-0317
52. UKIAH FORD-LINCOLN-MERCURY, INC., 06-R1D5-2556 AND 2557
53. WESTCOAST COMMUNICATION, 05-R2D3-2801 AND 2802
54. WESTERN DOOR, 01-R3D1-2827
55. WEST VALLEY CONSTRUCTION COMPANY, INC., 01-R1D2-3017 AND
3018

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. BRUTOCO ENGINEERING & CONSTRUCTION, INC., 30-2007 00100159
(07-9223)
2. HFS INVESTMENTS, INC., 01CS00981 (96-3079)

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3. KIEWIT/FCI/MANSON (KFM) A JOINT VENTURE (08379369)
4. MURRAY COMPANY, BS112469 (07-9190-9192)
5. UNITED ASSOCIATION LOCAL UNION 246, AFL-CIO; IDEPSCA INSTITUTO DE EDUCACION POPULAR DEL SUR DE CALIFORNIA AND CENTRO LEGAL DE LA RAZA, (HARRIS CONSTRUCTION COMPANY, INC.), 07CS00518 (02-3914)
6. INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, LOCAL LODGE 1781; JULIA SMITH, (UNITED AIRLINES dba UNITED AIRLINES SFO SYC), 07CS00331 (00- 2844)
7. WESTERN MILLING, LLC, 06 CE CG 04007 (06- 9039/9040)
8. IRBY CONSTRUCTION COMPANY, ECU03759 (03-2728)
9. JERLANE v DIVISION OF OCCUPATIONAL SAFETY & HEALTH, 37-2007-0005631-CU-WM-NC, (01-4344-4345)
10. DIVISION OF OCCUPATIONAL SAFETY AND HEALTH v. OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD (J.F. SHEA CONSTRUCTION, INC) 34-2007-00882187-CU-WM-GDS, (02-801)
11. DIVISION OF OCCUPATIONAL SAFETY AND HEALTH v. OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD (E. L. YEAGER CONSTRUCTION COMPANY, INC.), 34-2007-00882192-CU-WM-GDS, (01-3261)

APPELLATE COURT:

NONE.

OTHER LEGAL MATTERS:

(Any legal matter that comes about after the agenda is noticed 10 days in advance of the meeting announcement and that must be acted upon or legal matters pending before the Board requiring specific Board action but do not fall within the above categories.)

Kinder Morgan Energy Partners LP, Docket No. 05-R2D4-2013 and 2014.

PERSONNEL: *(Issues regarding staff.)*

NONE.

Any matter not completed at this Closed Session may be continued to subsequent meetings.