

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on September 5, 2012, 2012
Sacramento, California**

PRESENT:

Art R. Carter, Chairperson
Ed Lowry, Member
Judith Freyman, Member
Michael Wimberly, Executive Officer
Ursula Clemons, Presiding Administrative Law Judge
Martin Fassler, Presiding Administrative Law Judge
Jeff Mojcher, Chief Counsel
Kari Johnson, Industrial Relations Counsel III
Thomas Song, Industrial Relations Counsel II
Lee Berlin, Executive Secretary
Marti Fisher, Policy Advocate, California Chamber of Commerce

MINUTES OF AUGUST 29, 2012 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the August 29, 2012 Board Meeting. Member Freyman seconded. The Board voted to approve the draft minutes of the August 29, 2012 Board Meeting.

ADMINISTRATIVE MATTERS:

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

1. STATISTICS

(Review and discuss most current Board statistics)

ACTION: Executive Officer Wimberly compared some statistics from the Fed OSHA 2011 report to current Board lapsed time statistics.

2. 2012 RULEMAKING MATTERS

(Discuss potential Board rulemaking changes)

ACTION: Counsel Johnson explained arrangements for the September 17 public hearing on rulemaking.

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)

ACTION: Executive Officer Wimberly reported he is working with DIR on the budget allotment, which is still being reviewed.

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: Chairperson Carter reported that the Board has been asked to develop bill analysis for several impending pieces of legislation.

CHAIRPERSON'S REPORT:

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

ACTION: Chairperson Carter reported that he will be on vacation during the October 3 Board Meeting and has authorized Member Lowry to act as Chair and Executive Officer Wimberly to act as Deputy Member for that meeting.

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.)

ACTION: No report.

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 for the California Chamber of Commerce, was in attendance and was asked for brief comments on several pieces of legislation.

The Board recessed to its Closed Session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

M J BROTHERS, INC., 11-R2D5-1810 AND 1811

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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.

ORDERS OF ADMINISTRATIVE LAW JUDGES:

AA PORTABLE POWER CORPORATION, 11-R2D2-2771 THROUGH 2773 *
AARON METALS COMPANY, INC., 09-R1D4-2137 AND 2138 *
ACE AUTO WRECKERS, 12-R2D4-0428 THROUGH 0430
ALLIED HEATING & AIR CONDITIONING CO., INC., 12-R1D5-1058 THROUGH 1059
MARK R. AMARAL DBA MARK AMARAL ROOFING, 11-R6D7-0691 AND 0692
AMERICAN MEDICAL RESPONSE DBA AMR, 11-R2D4-2460
A T & T, 10-R2D5-2395 AND 2396
A T & T CALIFORNIA, 12-R1D5-1151
JASWANT S. BAINS DBA JASWANT BAINS FARMS, 11-R2D1-0087 AND 0088
BANNER AUTO SALES, INC., DBA VICTORY AUTO DISMANTLER, 11-R6D7-0644
THROUGH 0646 *
BASIN EXCAVATING & EQUIPMENT, INC., 11-R1D2-1517 AND 1518
BAY VALLEY FOODS, INC., DBA DEL TACO, 11-R2D2-3080
BLACKBURN FARMING CO., INC., 10-R2D5-3065 AND 3066
BLUE CROSS BEAUTY PRODUCTS, 12-R4D3-1180
BORDER VALLEY TRADING LTD, 12-R2D4-0520 THROUGH 0524
BZ SERVICE STATION MAINTENANCE INC., 12-R2D1-0116 *
CALIFORNIA DAIRIES INC., 10-R2D4-2616
CERTIFIED COATING CO., 12-R2D3-0154
COVI CONCRETE CONSTRUCTION, INC., 11-R3D2-2094
CREATIVE STONE MFG. INC. DBA CORONADO STONE PRODUCTS, 12-R3D3-0446
AND 0447
CROP PRODUCTION SERVICES, INC., 12-R6D3-0561
DIAMOND REFRACTORY SERVICE, 11-R6D7-1913 THROUGH 1915 *
D & T FIBERGLASS INC., 10-R2D1-2609 THROUGH 2613 *
EQUITY EXTERIOR INC., 11-R3D1-3066
GOLDEN ARCHES ENT. DBA McDONALD'S, 11-R2D3-3215
GOLDEN STATE UTILITY CO., 10-R2D5-2393 AND 2394
GOODWILL INDUSTRIES OF SOUTHERN CALIFORNIA, 11-R3D6-2717
GRANITE CONSTRUCTION COMPANY, 11-R5D1-1320
GRANITE CONSTRUCTION COMPANY, 11-R5D1-2784
GRANITE CONSTRUCTION COMPANY, 11-R5D1-2833
GRAUNSTADT ENTERPRISES DBA DELTA SCRAP & SALVAGE, 11-R2D2-2665
GLENNA HAVERCROFT, 12-R2D4-1011 THROUGH 1017
HAYWARD ELECTRIC COMPANY, 12-R3D3-1567 AND 1568
HCL CONSTRUCTION, 12-R1D5-1307 AND 1308
HEALTH BREADS INC. DBA OASIS BREADS, 11-R6D2-1712 THROUGH 1717
HERITAGE DAIRY, 11-R2D2-2666
IBLETO, INC. DBA IBLETO MEATS, INC., 10-R1D5-0477 AND 0478

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INTERNATIONAL LINE BUILDERS, INC., 11-R1D2-1406 AND 1407
JOHN'S WELDING & REPAIRS, 10-R2D5-1548 AND 1549
JTP LIMITED, INC., DBA VJ MEMORIAL, 12-R3D6-0535
J & W WALKER FARMS, INC., 12-R2D3-0637
KANGAROOTER, INC., 11-R2D5-1414
KINDERS CUSTOM MEATS, 11-R2D2-2625 AND 2626
MICHAEL KRAGER DBA MICHAEL KRAGER CONTRACTING, 11-R6D7-1828
AND 1829
L3 COMMUNICATIONS CORPORATION, 12-R1D4-1477 AND 1478 *
YING & KATHLEEN LAM DBA WESTSIDE APARTMENTS, 10-R2D1-2158
THROUGH 2164
LIGHTS OF AMERICA, 12-R3D6-0506 AND 0507
JAMES RICHARD MARSHALL DBA H.M. MARSHALL & SON, 12-R2D5-1065
MARSHALL'S MA INC., A DIV. OF TJX CO. INC., 12-R3D6-0064 AND 0065
McTEER PLANTING, 10-R2D5-3241
MILLER ENVIRONMENTAL INC., 12-R3D3-0354 AND 0355
NATURE'S HILIGHTS INC., 12-R2D3-1800
NEVADA CO. CONSOLIDATED FIRE DISTRICT, 12-R2D3-1010
PATRIOT ENVIRONMENTAL SERVICES, INC., 11-R4D3-2617 AND 2618 *
PATTERSON VEGETABLE COMPANY, LLC, 12-R6D3-0761
PECK & HILLER COMPANY, 11-R1D3-1836
PHILLIPS ELECTRONICS NORTH AMERICA CORPORATION, 12-R3D6-0333
PROSCAPE LANDSCAPE CO., 11-R2D5-3296
RESTORATION HARDWARE, INC., 12-R1D5-0876 AND 0877
JUAN HERNANDEZ REYES DBA REYES DRYWALL CONSTRUCTION,
11-R2D1-2765
RE WEST BUILDERS INC., 11-R6D7-1558
SAN FRANCISCO FLOORING SPECIALISTS, DBA HY-VAC, 11-R1D4-2396
SAVE MART SUPERMARKETS DBA SAVE MART #602, 12-R2D3-0079
SEAN CLINES FRAMING, INC., 11-R2D5-2405
SIMAS FLOOR CO., INC DBA SIMAS FLOOR & DESIGN COMPANY, INC.,
10-R2D1-3772 AND 3773
SOLANO GARBAGE COMPANY, 12-R2D2-0048 AND 0049
SOUTH FEATHER WATER AND POWER, 12-R2D3-0776
SUNSWEET GROWERS INC., 09-R2D1-0765 AND 0766
SUPERIOR STUCCO & PLASTERING, 12-R4D3-0174
TEICHERT CONSTRUCTION, 09-R2D1-0397 AND 0398
THE LIVING DESERT, 12-R3D3-0530 THROUGH 0533
THOR EQUITIES, LLC., 11-R1D1-3099
TOM LEWIS RESTORATION & CONSULTING, INC., 10-R1D1-3736 AND 3737 *
T & S CONST CO INC DBA THOMAS SPINELLA CONSTR INC., 12-R2D3-1073
AND 1074
RAJBIR VIRDEE, 12-R2D1-0205
WATERPROOFING ASSOCIATES, INC., 11-R1D2-2604
WATERPROOFING ASSOCIATES, INC., 12-R1D2-0846 AND 0847
WHEELABRATOR SHASTA ENERGY CO., INC. 11-R2D1-0009 AND 0010

WILBUR RANCH, 11-R2D3-0152

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

ORDERS DISMISSING APPEALS:

ELK GROVE POWER SPORTS, INC., 11-R2D1-0472
P.F.L. CONTRACTING INC., 11-R1D2-2020

ACTION: Member Lowry moved that the Board approve these Orders Dismissing Appeal from Administrative Law Judges. Member Freyman seconded. The Board voted to approve these Orders Dismissing Appeal from Administrative Law Judges.

MATTERS HELD OVER FROM PREVIOUS MEETINGS:

IN THE POCKET DBA BRENTWOOD BOWL, 11-R1D3-2272

ACTION: This matter was held over from the previous meeting. Member Lowry moved that the Board grant reconsideration of this matter on its own motion. Member Freyman seconded. The Board voted to grant reconsideration of this matter on its own motion.

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.)

MOUNTAIN CASCADE, INC. 12-R2D3-9096

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.

POM WONDERFUL, 09-R2D5-1401 AND 1402

ACTION: The Board took no action on this matter.

DENIAL OF PETITION FOR RECONSIDERATION (DRAFT):

MATTERS PENDING RECONSIDERATION:

A-1 PROTECTIVE SERVICES, INC., 10-R1D1-1592
ALLIED SALES & DISTRIBUTION, INC., 11-R6D2-0480

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AC TRANSIT, 08-R1D4-0135

AGRI-VALLEY IRRIGATION, INC., 07-R2D5-3785 AND 3786

ARMOUR STEEL CO., INC., 08-R2D1-2649 THROUGH 2655

BAY AREA RAPID TRANSIT DISTRICT, 09-R2D2-1219 AND 1221

ACTION: Member Lowry moved that the Board vote to approve this draft Decision After Reconsideration for signature as amended. Member Freyman seconded. The Board voted to approve this draft Decision After Reconsideration for signature as amended.

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

CENTRAL VALLEY ENGINEERING & ASPHALT, INC.

08-R2D1 5001 AND 5002

COFFMAN SPECIALTIES, INC., 10-R3D3-3532

COMMERCIAL METAL FORMING, 09-R3D1-1592

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

DENIO'S ROSEVILLE FARMERS MARKET & AUCTION INC. 11-R2D1-2431

DISTRIBUTION CENTER MANAGEMENT GROUP (DCMG), 11-R3D3-2896

DUKE PACIFIC, INC., 08-R3D3-574

ECO BAY SERVICES, INC., 10-R1D1-1233 THROUGH 1236

EPSILON ELECTRONICS, INC. DBA POWER ACOUSTIK ELECTRONICS,
09-R6D2-2325 THROUGH 2332

EZ MIX, INC., 08-R4D3-1898

FORTUNA IRON WORKS 06-R2D3-4222

GRANITE ROCK COMPANY, 08-R1D3-3675 THROUGH 3687

HOME DEPOT, 10-R3D6-3284

HYDRO-SCIENCE OPERATIONS INC., 10-R1D2-0389

IRWIN INDUSTRIES, 08-R6D4-1454

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

MARINE TERMINALS, 08-R6D2-1920

MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298

NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791

ORANGE COUNTY FIRE AUTHORITY, 10-R3D1-3667

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

POUK & STEINLE, INC., 09-R3D3-0491

ACTION: The Board discussed this matter pending reconsideration.

ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048
JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710
SAN FRANCISCO FIRE DEPARTMENT, 09-R1D1-3128 THROUGH 3131
SDCCD – CONTINUING EDUCATION N C CENTER, 11-R3D2-1196
SDUSD – PATRICK HENRY HIGH SCHOOL, 11-R3D2-1296 AND 1297
SHEEDY DRAYAGE COMPANY, 06-R1D4-3053 THROUGH 3055
SHIMMICK-OBAYASHI, 08-R3D3-5023 THROUGH 5025
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 FROZSUN FOODS, 09-R4D3-2850
A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443
A. TEICHERT & SON, INC. DBA TEICHERT CONSTRUCTION, 09-R4D5-0459 AND
0460
A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 10-R5D1-3029

LEGISLATION:

PENDING LITIGATION

1. MCI WORLDCOM, 34-2008-00006043-CU-WM-GDS (DOSH v. OSHAB) (00-440)
ACTION: Chief Counsel Mojcher provided an update on this matter.
2. XL CONSTRUCTION, 34-2009-80000300 (08- 1191/1193)
3. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
4. WEBCOR BUILDER, INC., 34-2010-80000439 (06-R1D1-3030/3032)
5. WPCS INTERNATIONAL SUISUN CITY, INC., 34-2010-80000430
(09- 9280/9281)
6. GRANITE CONSTRUCTION CO., INC., (DOSH V OSHAB) 34-2010-800006047 (07-
R5D1-3611)
7. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP,
34-2010-80000640 (08-R2D1-0027 THROUGH 0030)
8. SMUD, 34-2010-80000723 (08-R2D1-4887)
9. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)

10. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)
11. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-0188~0191)
12. GUILLAUME GRAPEVINE NURSERY, INC., 34-2011-800001010 (08-R2D1-3273)
ACTION: Chief Counsel Mojcher provided an update on this matter.
13. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459 THROUGH 2461)
14. FLATIRON CONSTRUCTION CORP, 34-2012-800001029 (10-R4D1-2789)
15. HOLLANDER HOME FASHION, BS-135444 (10-R4D2-3704)
16. SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 12CV01039 (07-R2D3-0275)
ACTION: Chief Counsel Mojcher provided an update on this matter.
17. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
18. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
19. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
20. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
21. SHERWOOD MECHANICAL, INC., 37-2012-00101466 (08-R3D2-4690 ~ 4693)

COURT OF APPEAL:

1. JERLANE, INC., D060844 (2007-00056381) (01-4344 and 4345)

PERSONNEL: *(Issues regarding staff)*

ACTION: No report.

The Closed Session adjourned at 1:19 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 1:20 p.m.