

**STATE OF NEW MEXICO
CONSTRUCTION INDUSTRIES DIVISION**

MINUTES

The Construction Industries Commission held a regular meeting on May 19, 2006. Officially attending the meeting was:

Thomas A. Montaño, Member,
(Representing Organized Labor)
Larry Shed, Member,
(Representing the Subcontracting Industry)
Steve Crespín, Member
(Representing the Licensed Mechanical Contractors)
Michael Brogdan, Member,
(Representing the General Construction Industry)
Dale Dekker, Member,
(Representing the Registered and Practicing Architects)
John Renner, Member,
(Representing the LP Gas Industry)
Bobby McDade, Member,
(Representing Licensed Electrical Contractors)
Sonny Suazo, Assistant Attorney General
Lisa D. Martinez, Director/CID
Kate Baca, General Counsel/CID
Fermin Aragon, General Construction Bureau Chief
JT Baca, Mechanical Bureau Chief
Rem Pacheco, Electrical Bureau Chief
Marvin Vaughn, LP Gas Bureau Chief
Wayne Dotson, Chief Investigator
Shawna Maloy, Compliance Officer/Attorney, CID
Frank Ladd, Gen. Const. Chief Inspector/CID
JB Pruett, Chair, General TAC Subcommittee

Not Present: David Dallago, Member, Representing Residential Construction; and Paul Wood, Member, Representing the Public Sector

Other Attendees: **See Attachment A.**

ITEM NO. 1 - DETERMINATION OF QUORUM

Commissioner Montano stated there was a quorum and called the meeting to order at 9:50 a.m. All members of the Commission and the audience introduced themselves.

MOTION: Commissioner Dekker moved to approve the Agenda.
Commissioner Shed seconded the Motion.

VOTE: All voted in favor of the Motion.

MOTION: Commissioner Crespin moved to approve the Minutes of the March 17 , 2006 Regular Meeting. Commissioner Dekker seconded the Motion.

VOTE: All voted in favor of the Motion. **See Attachment B.**

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ITEM NO 2. - HORSESHOE MECHANICAL REQUEST TO SET ASIDE DEFAULT IN CASE # 04-0194

Shawna Maloy presented the matter before the Commission. She provided a brief history of the case: A Notice of Contemplated Action was issued in December 2004 for failure to correct code violations; Horseshoe Mechanical did not respond, and a Default Order was issued in January, 2005. There is evidence in file of actual constructive notice to the contractor that the license had been revoked. On December 2005, Horseshoe Mechanical submitted a motion to the Commission that the case be reopened. The Motion was set for the March meeting, however at that meeting it was then moved to the May meeting. Subsequently, The Horseshoe Mechanical's attorney contacted CID and requested that the case be removed again from the agenda and be reset for the meeting in July. The reason given for the current request was that his client (Horseshoe Mechanical) was out of town.

The commission packets contain Mr. Santistevan's motion and legal arguments to reopen the case and CID's response and argument not to reopen. The Commission had adequate records before them to proceed. Ms. Maloy deferred to CIC's legal counsel regarding advisement to the commission as to how to proceed. Mr. Suazo, Assistant Attorney General, did not have any comment at this time.

For the record it was noted that CID has an on-going investigation involving Horseshoe Mechanical pertaining to possible unlicensed activity.

Commissioner Crespin asked if there is a statute of limitations that would set a reasonable time to allow the CIC not to consider the request.

Ms. Maloy responded, stating that at the last meeting, counsel for Horseshoe Mechanical represented to the commission that if CID could provide proof of service of the Notice this matter would be moot. Included in the packet is proof of service, which is an electronic print-out of the USPS tracking of the Notice of the Contemplated Action. **See Attachment C.**

MOTION: Commissioner Crespin made a motion not to reopen the case. Commissioner Dekker seconded the Motion.

Ms Maloy requested clarification of the pleasure of the commission: Does the Commission wish to proceed with the motion to reopen without Horseshoe's counsel present; consider the motion at all, or consider the motion in July when Horseshoe and its attorney are present?

AMENDED MOTION: Commissioner Crespin amended the above motion, stating the commission will proceed without counsel for CIC to consider re-opening the matter. Commissioner Brogdan seconded the Motion

VOTE: All voted in favor of the Motion.

Ms. Maloy presented her argument, summarizing the facts of the case, rebutting Mr. Santistevan's argument, and presenting evidence of proof of proper service of the Notice of Contemplated Action.

MOTION: Commissioner Brogdan made a motion to not to reopen the case. Commissioner McDade seconded the motion.

VOTE: All voted in favor of the Motion.
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ITEM NO. 3 - Request for Default Orders

Ms. Maloy requested that agenda item number 2, Precision Remodeling, be removed from the agenda. Precision Remodeling has contacted CID and is working towards a settlement to make the complainants whole.

MOTION: Commissioner Crespin moved to remove agenda item number 2, Precision Remodeling. Commissioner Dekker seconded the Motion

VOTE: All voted in favor of the Motion.

Agenda item number 1 under the request for default orders, is MR Builders, Rudy Morales, QP. A Notice of Contemplated Action (NCA) was sent to Mr. Morales; Mr. Morales did not respond, ultimately defaulting on all of his cases. Ms. Maloy requested that a default order be granted for failure to respond to the NCA. She recommended that a default order be issued revoking license number 89973, Mr. Morales' QP certificate, and an administrative penalty be assessed in the amount of \$21,100.00

MOTION: Commissioner Crespin moved to adopt the recommendation for a default order in the matter of MR Builders. Commissioner Brogdan seconded the Motion

VOTE: All voted in favor of the Motion.

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ITEM NO. 4 - PRC/Master Meter Update

JT Baca, Mechanical Bureau Chief, introduced Mr. Campbell McMordie, Public Regulation Commission (PRC) Outreach Coordinator, who has done a lot of the footwork on this project. Mr. McMordie distributed a handout summarizing the comparison between the federally mandated code for pipelines, the Uniform Mechanical Code (UMC), and the NFPA 54. He summarized the similarities and conflicts between the requirements, codes and mandates.

Mr. McMordie stated that next step is to put training in place for both the mechanical inspectors and operators. The comparisons do not reveal significant conflicts between the codes. However, the CIC and PRC need to establish an agreement regarding how to mesh the codes on a statewide basis. He reported the work is off to a good start, and he is confident that Mr. Baca and he can resolve this satisfactorily.

Commissioner Montano commended Mr. McMordie and Mr. Baca on the excellent job on the comprehensive comparison. He understands that New Mexico would have to amend its codes to comply with 49 CFR (Code of Federal Regulations). Mr. McMordie stated that the codes would not need to be amended; potential confusion or misunderstandings apply more on the operational side, as opposed to the building side. The industry can operate with the codes the way they are, as one is a construction code and the other is an operational code. However, they overlap in certain areas. The contractor/installer is the common factor between the codes - the one who needs to understand and be aware of the various requirements.

As standard practice, the requirements of the UMC are done once inspections are completed. Subsequently, there is a yearly inspection performed on the pipeline side. It is important to ensure the contractor or installer meets the operator qualifications. Information needs to be distributed to the appropriate licensees and journeymen to inform them that things aren't going to change, but there are additional requirements that need to be met.

In trying to identify the work that needs to be done on this project, the biggest issue has been the lack of communication between the two divisions. Up to this point, the PRC inspectors have been looking at this issue from the federal side, and CID inspectors have solely been looking at it from the construction side. Unfortunately, the contractor gets caught in the middle of the differing regulations. We hope that education will resolve this issue.

Mr. Jack Milarch asked how far can we go on the state level to exempt small, non-professional residences. Mr. McMordie responded, stating that he didn't think there could be exemptions, because federal requirements are involved.

Mr. McMordie recommended the following: create a Powerpoint program to use as a training tool; provide training session for consultants; provide training and information for contractors interested in providing construction and repair to jurisdictional master meters; and continue with the ride-along program to help inspectors understand how the other inspectors work.

Mr. John Horton, Associated General Contractors, provided a brief history of HB 170. He would like to see an amendment to the building code that would alert a contractor about a master meter installation. Commissioner Renner agreed with Mr. Horton and suggested developing a list of

requirements that can be provided to contractors. Mr. McMordie explained that this is already under consideration as one method to help bridge the communication gap.

Mr. Jeep Gilliland stated his amazement at how far this issue has progressed in two years, given the hostility and hatred the two groups once exhibited towards one other. There is a lot more to be done, but significant progress has been accomplished thus far.

A discussion ensued on possible avenues to disseminate information and provide training to contractors, inspectors, operators, and appropriate associations.

Commissioner Renner reminded everyone that a master meter is a relatively small portion of the total work done on a job. It will probably be necessary to call the contractor's attention to the requirements anytime these systems are worked on. Mr. McMordie believes this can be done through annual review procedures.

Commissioner Montano thanked Mr. Baca and Mr. McMordie for their work and the excellent report provided. **See Attachment D.**

NO ACTION TAKEN

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ITEM NO. 5 - REQUEST TO PROCEED TO PUBLIC HEARING TO ADOPT 2003 NMBC AND 2003 NMRC AMENDMENTS (CHAPTERS 7 AND 25) REGARDING WEEP SCREED REQUIREMENTS

On behalf of the division and General Construction Bureau, Frank Ladd, General Construction Chief Inspector, requested to proceed to public hearing with proposed amendments to the 2003 NMBC Chapter 25, Section 2512 exterior plaster; Section 2512.1.1, on-grade floor slab; Section 2512.1.2 weep screed; and the 2003 New Mexico Residential Building Code, Section 703.6.2 paragraph 2, on-grade floor slab; Chapter 7 Section R703.6.2.1, weep screeds. This recommendation was made with the advice and input of the General Construction TAC. The Bureau requested the Commission's concurrence with this recommendation. **See Attachment E.**

MOTION: Commissioner Brogdan moved to concur with the recommendation.
Commissioner Crespín seconded the Motion.

VOTE: All voted in favor of the Motion.

Commissioner Montano requested a break at 10:50 a.m.
Reconvened at 11:05

ITEM NO. 6 - REQUEST APPROVAL OF ELECTRICAL CONTINUING EDUCATION COURSES AND INSTRUCTORS

Rem Pacheco, Electrical Bureau Chief, requested on behalf of the division and Electrical Bureau the approval of additional continuing education courses and instructors as presented. Mr. Pacheco requested the approval of 23 additional courses many of which are on-line courses. He stated the courses and instructor applicants comply with applicable State regulation requirements

for electrical continuing education. The information herein described as **Attachment F** was provided by Mr. Pacheco for approval.

MOTION: Commissioner McDade moved to proceed with the approval of electrical continuing education courses and instructors. Commissioner Shed seconded the Motion.

VOTE: All voted in favor of the Motion.

ITEM NO. 7-REQUEST TO PROCEED TO PUBLIC HEARING TO ADOPT 2005 NEC AMENDMENTS

Mr. Rem Pacheco, Electrical Bureau Chief, requested approval to proceed to Public Hearing with amendments to the 2005 New Mexico Electrical Code, which will clarify the code sections regarding voltage drop, receptacle spacing and grounding requirements. The request was made for the Electrical Bureau with the advice and input of the Electrical TAC. The Bureau requested the commission's approval to proceed with this process. **See Attachment G.**

MOTION: Commissioner McDade moved to proceed to public hearing. Commissioner Dekker seconded the Motion.

VOTE: All voted in favor of the Motion.

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ITEM NO. 8 - PILOT PROJECT FOR LP-04 LICENSING, PERMITTING AND INSPECTIONS

Mr. Marvin Vaughn, LP Gas Bureau Chief, made a presentation requesting the commission's approval of a pilot project from July 1, 2006 to December 6, 2006 during which: the exams for the MM2 and MM98 license/journeyman satisfy to LPG exam requirements, and the installation of LPG appliances by LP-4 licensees be performed and inspected pursuant to a Mechanical/LPG permit. The LP Gas bureau and the division will present an evaluation of the program at the next regular commission meeting following the end of the pilot program. This proposal is supported by the LP Gas Industry, the Mechanical/Plumbing Industries, TAC committees, and will result in more timely inspections and safer LP Gas installations for the citizens of New Mexico.

Commissioner Crespin stated that this proposal will help all of the industries. It will alleviate the potential problems from the LP inspector coming in behind months later and identifying issues of concern at that point. The plumbers can keep working, get work inspected, and continue with the job. Commissioner Crespin asked if this would allow licensees to let their LP-4 license expire if they have an MM98. Mr. Vaughn indicated for now, the individual would still need the LP-4 license, and the journeyman certification to perform the work. He stated that the current statute requires that a person be licensed through the LPG Bureau. However, CID will seek to change the statutory language so the MM licenses will qualify to perform the LPG work.

Chairman Montano stated that the chair would entertain a two-part motion: 1) that the CIC approve a pilot project beginning July 1, 2006 and ending December 31, 2006; under which the exams for the MM2 and MM98 license/journeyman satisfy the LPG exam requirements, and 2) the installation of LPG appliances by LP-4 licensees be performed and inspected pursuant to a Mechanical/LPG permit. Additionally, the division shall prepare a report to be presented to the commission at the next CIC meeting following the end of the pilot project. **See Attachment H.**

MOTION: Commissioner Renner so moved. Commissioner Shed seconded the motion.

VOTE: All voted in favor of the Motion.

Commissioner Crespino requested that an information sheet with bullet points be compiled for dissemination to the industry. Mr. Vaughn replied that the division will put together a business plan that will inform the industry of proposed changes and new requirements.

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ITEM NO. 9 - GENERAL TAC SUBCOMMITTEE REPORT ON BIDDING OUTSIDE CLASSIFICATION ISSUE

JB Pruet presented the executive summary pertaining the work covered by GA/GF and GB/GS licenses.

In January, several people came before the CIC requesting changes in the license requirements for the way work is bid. A subcommittee was appointed to the General TAC to review the request.

After several meetings and discussions, the subcommittee sent out a survey to the industry. The following responses were received: 59 from the GB category, 44 from the EE category, 41 from the MM category, 6 GS, 3GF, 1GA, 5 LPG, 2 from the manufactured housing, and 5 miscellaneous responses.

Answers to the first question of the survey were inconclusive: 47% said yes, 46% said no. 6% were not sure.

Answers to the second question on the survey: 29% said yes, 16% did not know, and 53% said CID should not issue licenses for work they don't inspect or permit. This would require a statutory change to implement. Additionally, some of the work CID does not permit or inspect falls under the statutory definition of a contractor.

Answers to the third question on the survey: 35% said yes, 47% said no, 16% were uncertain. Again, the responses were basically inconclusive.

Answers to the fourth question: 50% said yes, 37% said no, 10% were undecided. The responses tell us there is something to the value of the licensing process. The industry wants licensing and they want the people to know what they are doing after they get a license.

The fifth and last question: 85% said yes; 11% were uncertain, 18% said no. This is the most telling question and response in the survey, informing us that the construction industry is looking to have competent people managing construction projects.

The subcommittee proposed drafting language that will allow the GB 98 contractors, particularly on school projects, but not limited to that, to pick up some of the work under the GA and GS classifications that typically relate to building projects. It will be the type of work performed routinely by a GB98.

Commissioner Crespin provided an example: A requires a reroof. While the roof is off, the mechanical contractor is called to replace all the plumbing, and it turns out that the mechanical work is the larger portion of the work. According to the statute, a GB98 cannot act as prime. Mr. Pruett stated that a GB98 could act as prime with a potential rule change.

Commissioner Brogdan stated that electrical and mechanical work are exempt under the Rule that was mentioned. The issue is work that falls under a GA or GF that could be performed by a GB 98. **See Attachment I.**

MOTION: Commissioner Brogdan moved to have Mr. Pruett’s group present language to the commission that would allow this to happen. Commissioner Shed seconded the Motion.

John Horton stated he applauds the work the subcommittee has done. However, there are still some conflicts created in the rules that are blending the activity of bidding and contracting. The rule appears to allow contracting with subcontractors, but a situation may be created where a contractor is bidding beyond the scope of the license. He requested that CID consider sections 14.6.6.9A1 and A2, and sections 14.6.6.8A and B as examples of the potential conflicts. He also asked that the CIC consider defining “incidental” and “supplemental” as these terms typically apply to subcontractors.

VOTE: All voted in favor of the Motion.

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ITEM NO. 10 – STIPULATED AGREEMENTS

Wayne Dotson presented 42 stipulated agreements, totaling \$49,385.58, for approval by the Commission. **See Attachment J.**

MOTION: Commissioner Crespin moved to accept the stipulated agreements as presented. Commissioner Dekker seconded the Motion.

VOTE: All voted in favor of the Motion.

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ITEM NO. 11 – DIRECTOR’S REPORT

Ms. Lisa Martinez provided an overview of the director’s report.

CID has a new, updated version of the Construction Industries Licensing Act (CILA), which incorporates all legislative changes from 2003 to the present. They are available for the commissioners as well as for sale to the public.

She announced that CID has formally received the PSCOC Funds. They were in place as of March 4th. CID was able to cover the oil and gas deficit; provide in-band pay increases for staff that have assumed additional job duties they haven't been compensated for; and move toward filling 12 positions that have been open for approximately six months now. The division was also able to purchase four vehicles for some of the new inspectors that will be coming on board July 1.

Director Martinez stated that with the help and input of commissioners and industry members, CID was able to secure an additional \$1,250,000 dollars this past legislative session. This will provide 17 new positions that will give CID the ability to ramp up the inspection program, continue work on investigating unlicensed activities, and move forward with more work on the compliance & complaint cases involving licensees. Two of the 17 individuals will be used for the KIVA Support Center that will be discussed in more detail later in the report.

Director Martinez asked the commission to review the attachments in the report relating to test issues, and articles important to our industry. Additionally, an outline depicting an emergency-staffing plan for the mechanical/plumbing bureau is under Attachment C. The Mechanical Bureau is currently experiencing a shortage of 8 staff due to illness and retirement among other reasons. An emergency staffing update is posted on our website weekly, including the inspector's cell phone numbers. We hope to have new inspectors on board next week to provide more assistance for the bureau, especially during this busy time of the year.

Director Martinez further noted that her report contains a significant amount of information that documents the tasks and responsibilities performed by each bureau in addition to plan reviews and inspections. The Division is involved in various subcommittee work in both the division and other state agencies. Additionally, a significant amount of training opportunities are provided by and for CID staff, the public, and the industry. Comprehensive reports will be included in future Director's reports to make the commission and the public aware of the additional work that goes on in the division.

Director Martinez, thanked all those who attended the business planning meeting in April, issuing a special thanks to Randy Traynor, Debbie Traynor, Jack Milarch, and Kate Baca, who have worked extensively on the business plan. The group decided to focus on immediate problems as opposed to a five- or ten-year plan. Seven goals have been defined in the plan: timely inspections; establishing a Kiva support Center; providing more effective management in the field; increasing inspector's use of cell phones in the field; improving the professionalism of field staff; continuing the work of effective investigations into unlicensed activities; and improving IT operations. A more detailed description of the business plan is provided as an attachment to the report.

Chairman Montano asked if the Mechanical Bureau normally provides training to the City of Las Cruces. Mr. Baca stated that most recently the city requested training. Some issues were raised over the fact the CID has adopted a different code from that adopted by the city. The contractors in that area feel they are not getting adequate training due to the "split" in the two codes. The

division spoke to the Las Cruces staff and personnel on a separate occasion to let them know of the upcoming joint venture with the codes. Commissioner Crespin commented that in the past, the Mechanical Bureau provided no less than nine code trainings or refreshers per year.

Commissioner Dekker complimented Director Martinez and the team for the business plan. There appears to be a real effort of comprehensiveness, efficiency and cost effectiveness in the overall plan. Construction is probably the largest economic development issue in the state, and if we can achieve half the plan, it will make a positive impact on the industry.

Director Martinez stated that Attachment D of the Director's report provides an overview of recent outreach activities and the CID newsletter. The next issue of the newsletter will be published in August.

Director Martinez concluded by requesting approval of the new licenses for January and February 2006.

Commissioner Crespin voiced his opposition to government agencies taking out licenses to compete with the people he represents. The City of Farmington is taking out an MM98. He asked the Division to ensure the Department of Labor is notified that licensees have to pay Davis-Bacon wages to the people who perform this work. It is referred to Forced Account Labor. **See Attachment K.**

MOTION: Commissioner Crespin moved to approve the new licenses issued for March and April 2006. Commissioner Dekker seconded the Motion.

VOTE: All voted in favor of the Motion.

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ITEM NO. 12 – PUBLIC COMMENT

Commissioner Crespin stated that the Mechanical Bureau and the City of Albuquerque conducted an outreach program in Ruidoso. Many other jurisdictions attended and it was a very beneficial training. He encouraged CID to conduct other meetings of this sort in other areas of the state. Director Martinez added that Mr. Baca has done a wonderful job in bringing the mechanical bureau and other jurisdictions together and moving all parties forward in the same direction. She further announced that Mr. Baca has also been recently appointed to the IAPMO Certifications Exams Committee. New Mexico will now have a voice in the national exams that IAPMO will produce.

ITEM NO. 13 – OTHER BUSINESS

Chairman Montano stated that Commissioner Renner is unable to serve another term. He thanked him for the tenure he has served, and wished him luck in the future. Commissioner Renner thanked the commission for the education received and the opportunity to have worked with them.

Director Martinez stated that Commissioners Dallago, Crespin, and Brogdan have been reappointed for additional terms. With these reappointments, the commission will have had the

same members for three and one-half years. This enables the CIC to retain historical knowledge which is beneficial to the consistency of the work of the division.

Chairman Montano stated the next regular meeting for the Commission will be on July 21, 2006, at the Regulation & Licensing Department in Albuquerque, at 9:30 a.m.

With no further business, Chairman Montano adjourned the meeting at 12:00 a.m.

Thomas Montano, Chairman

Attest:

Lisa Martinez, Secretary