

**STATE OF NEW MEXICO
CONSTRUCTION INDUSTRIES DIVISION**

MINUTES

The Construction Industries Commission held a special meeting on February 5, 2007. Officially attending the meeting was:

Thomas A. Montañño, Member,
(Representing Organized Labor)
Michael Brogdan, Member,
(Representing General Construction)
Steve Crespin, Member
(Representing the Licensed Mechanical Contractors)
Dale Dekker, Member,
(Representing the Registered and Practicing Architects)
Bobby McDade, Member,
(Representing Licensed Electrical Contractors)
Kate Baca, General Counsel/CID
Fermin Aragon, General Construction Bureau Chief
Rem Pacheco, Electrical Bureau Chief

Not Present: Lisa Martinez, Director, Construction Industries Division; Paul Wood, Member, Representing the Public Sector; David Dallago, Member, Representing Residential Construction; Brian Steagall, Member, Representing the LP Gas Industry; Larry Shed, Member, Representing the Subcontracting Industry

Other Attendees: See Attachment A.

ITEM NO. 1 - DETERMINATION OF QUORUM AND CALL TO ORDER

Commissioner Montano stated there was a quorum and called the meeting to order at 1:39 p.m. All members of the Commission and the audience introduced themselves.

MOTION: Commissioner Brogdan moved to approve the Agenda.
Commissioner Crespin seconded the Motion.

VOTE: All voted in favor of the Motion.

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ITEM NO. 2 - APPROVAL OF OPEN MEETINGS RESOLUTION

Chairman Montano opened the agenda item for discussion. Open Meetings Resolution herein described as Attachment B.

MOTION: Commissioner Crespin made a motion stating that the Construction Industries Commission has read and verified the Open Meetings Resolution, Section 10-15-1-B of the New Mexico Statutes Annotated 1978 10-15-1 to -4. Commissioner Brogdan seconded the Motion.

Kate Baca, Deputy Director and General Counsel for CID stated there is a provision in the resolution permitting or allowing a member of the commission to attend a meeting by telephone. She added that this is not permissible unless the Division has a rule or statute that permits a member of the commission to

attend by telephone. She stated that she removed the provision from the resolution, but if the commission is inclined to pass a rule to allow a commissioner to attend by telephone, a rule can be promulgated. Chairman Montano asked if this type of rule would be an agenda item in the future, and Ms. Baca replied that it would.

VOTE: All voted in favor of the Motion.

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**ITEM NO. 3 -APPROVAL TO PROCEED TO PUBLIC HEARING ON 14.9.5.14 NMAC
MEDICAL GAS INSTALLATION AND CERTIFICATION**

Commissioner Montano stated that Jerome Baca, Mechanical/Plumbing Bureau Chief was not available. However, Commissioner Crespín will make the presentation in Mr. Baca's absence. **See Attachment C.**

Commissioner Crespín stated that this issue has arisen due to pending legislation that would require small dental offices that administer nitrous oxide to install expensive back-up systems for the use of nitrous oxide. This is a relaxant used to help a patient through a dental procedure, and is not a gas that is required to maintain life. He stated that if this type of legislation is allowed, it will undermine CID's code and standards adoption process. He requested that the Commission proceed by adopting the National Fire Protection Association's (NFPA) amendment cited in Mr. Baca's memo dated February 2, 2007. Commissioner Crespín concluded, deferring the discussion pertaining to the status and effects of the pending legislation to Kate Baca.

Kate Baca, Deputy Director and General Counsel for CID, gave a brief summary on the NFPA's proposed Technical Interim Amendment (TIA), and the legislation introduced during the current legislative session. She stated that the TIA passed the technical ballot, but failed the emergency ballot which means it will not get enacted sooner than the regular code cycle. The technical argument is that there is a level one requirement in the NFPA standards for small dental offices now, even if they are not using halogenated nitrous oxide. This type of gas is different from non-halogenated nitrous oxide, for which the level one requirements should remain in place. She stated that the Senator Kraven's understanding and his argument is that there appears to be some kind of inconsistency between previous and current NFPA standards.

Ms. Baca stated that the original bill that was introduced would have required the Division to go to rulemaking. The substitute bill does not require that; however, it imposes the exact level 3 standard on the Division, and eliminates rulemaking, approval by the commission, and public hearings. The substitute bill requires all local jurisdictions to adopt a standard no more stringent than the one in the rule, which means that the jurisdictions could adopt anything, resulting in no minimum standard. Ms. Baca stated that the second replacement bill is poor legislation in terms of the kinds of building standards and technical qualities New Mexico has used and maintained. She reported that the first bill is dead, and the second bill, which is objectionable, and out of committee with a do pass recommendation, mandates a much more complicated and expensive exhaust and evacuation. Ms. Baca concluded, stating that from a procedural standpoint, the substitute bill undermines the Division's normal care in adopting building standards.

Chairman Montano asked if the 2010 NFPA code cycle will contain the language the Commission is considering today. Ms. Baca responded, stating that Dr. Fan, who sits on the NFPA committee, is expected to reintroduce this TIA in the exact form it is in now as a proposed rule change in the 2010 cycle. It is expected to reconcile any inconsistencies between the handbook and the regulation, and to make this a more reasonable standard for the lower grade and less dangerous use of this gas.

Chairman Montano asked if this proposed rule applies to all dental offices. Ms. Baca responded, stating that the rule would apply to the kind of dental office that uses this nitrous oxide as an analgesic for normal
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dental hygiene such as fillings and cleanings, and it would not be allowed, for example, in an oral surgery clinic.

Chairman Montano asked if these definitions and stipulations would be available at the public hearings. Ms. Baca responded, stating that the definitions would be available, provided that “dental office” as defined in 3.3 801 in the NFPA 99C 2002 edition is the limitation on the level three exhaust system.

Chairman Montano asked if section 3.3.801 will define which types of offices are subject to the rule. Ms. Baca responded yes, and Chairman Montano stated that the standards and definitions need to be clear to architects, who are building the system, and plan checkers, who need to know which code requirements are appropriate.

MOTION: Commissioner Crespín moved that the Division be given approval to proceed to public hearing on the proposed amendment. Commissioner Dekker seconded the Motion.

VOTE: All voted in favor of the Motion.

Commissioner Brodgen asked for clarification on the status of the bill that has come out of the Corporations and Transportation Committee.

Ms. Baca responded, stating that the bill is still living, could presumably be passed out of every committee, be voted on into law and signed by the Governor. The action the Commission has taken today puts the Division’s normal adoption procedure before this statute.

Chairman Montano stated that the second bill actually weakens the TIA by allowing home rule municipalities to adopt something less stringent, and a rule change by the Division would actually be more stringent and less ambiguous than the proposed. Ms. Baca responded, stating that is true, with respect to the home rule jurisdictions.

Ms. Baca continued, stating that the Division foresees that this action will cause Senator Kravens to pull the bill. Commissioner Brodgen asked if today’s action by the Commission renders the Senator’s bill unnecessary, and if it would cause him to pull the bill. Ms. Baca responded, stating that the Division is hopeful the bill will be pulled, but the proposed rule does not bind the City of Albuquerque. If the Senator wants to bind the Albuquerque, he could proceed with legislation. Ms. Baca stated that the Senator’s bill requires that the local jurisdictions not adopt anything more stringent than the standard that is in the bill. This means a jurisdiction could adopt a standard much lower than the proposed rule this Commission voted to take to public hearing.

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With no further business, Chairman Montano adjourned the meeting at 2:30 p.m.

Thomas A. Montano, Chairman

Attest:

Lisa Martinez, Secretary