

**STATE OF NEW MEXICO
CONSTRUCTION INDUSTRIES COMMISSION
MINUTES**

**City of Las Cruces – Council Chambers
700 North Main St.
Las Cruces, NM 88001**

The Construction Industries Commission held a regular meeting on November 16, 2011.
Officially attending the meeting was:

Randy D. Baker, Representing Licensed Electrical Contractors
Lisa Fickling, Representing the LP Gas Industry
Kevin Yearout, Representing Licensed Mechanical Contractors
Patrick Casey, Representing Residential Contractors
Don Kaufman, Representing Sub-contractors
Ken Wooten, Representing General Building Contractors
Renee Edwards, Member
Vince Alvarado, Member
Justin Woolf, Assistant Attorney General
Cholla Khoury, Assistant Attorney General
Rick Tavelli, Director, Construction Industries Division (CID)
Land Clark, Deputy Director of Field Operations, CID

Absent: Dale Dekker, Representing Licensed and Practicing Architects

1. Convene, Determination of Quorum and Introductions: Commissioners and Audiences

Chairman Baker established that a quorum of the Commissioners was present convened the meeting at 9:40 a.m.

2. Approve Agenda

MOTION: Commissioner Wooten moved for the Approval of Agenda. Commissioner Casey seconded the motion. VOTE: All voted in favor of the motion. Passed

3. Director's Report – Director Tavelli reported on the following items:

- Revised and re-published three energy code amendments and held public hearings. No public comments were made.
- NM Environmental Law Center had filed an appeal to the adoption of the base 2009 IEC. Documentation has been submitted to the court and the NMELC.
- A code amendment recommendation and adoption procedure for your review and approval.
- The proposed stucco and roofing policy has been approved by the TAC, and is being submitted to you for review and approval.
- The proposed policy on dirt work in general and specifically subsidence has been approved by the TAC, and is being submitted to you for review and approval.

- The proposed procedure for making claims on a residential “code bond” has also been approved by the TAC, and is being submitted to you for review and approval.
- A revised sanction schedule has been sent to all Commissioners for review and approval.
- CID has conducted pre-project closeout meetings with Spaceport USA contractors and designers.
- Continue to meet regularly with the URENCO staff at the uranium enrichment facility.
- CID has a place on the Governor’s Procurement Task Force.
- The initial “Emergency Lighting Training Program” was conducted by CID staff for the National Guard personnel in Santa Fe.
- Continue to serve on the Public Schools Capital Outlay Committee
- Initial discussions have been conducted with a software provider for the interactive jurisdictional map.
- CID will be advertising for the LP Bureau Chief.
- The 2010 code training has been scheduled in several parts of the state.
- CID/MHD actively pursuing those engaged in contracting without a license. The program currently has 5 investigators around the State.
- Last quarter, CID reviewed approximately \$58 million worth of construction projects and issued 570 permits.
- The Green Building Coordinator has been working with the Bureau Chiefs and inspection staff to amend national energy code checklists making them specific to operations of NM CID. She has also developed the content of an Energy Conservation Code webpage which will reside on the new CID website

4. Old Business

- a. Approval of the September 21, 2011 regular meeting minutes.

MOTION: Commissioner Kaufman moved that the September 21, 2011 minutes be approved. Commissioner Yearout seconded the motion. VOTE: All voted in favor of the motion.

5. New Business

- a. Sanction Schedule – CID Compliance presents changes to the sanctions schedule approved by the previous CIC. The original schedule was based on the statute, NMSA 1978 § 60-13-23.1, Administrative Penalty in the CILA. The changes include placing a \$50K cap on violations per statute for failure to obtain a permit, aiding and abetting, using another name, and a \$100K cap on working beyond the scope. The reason for the change is to create consistent and enforceable administrative penalties. The change would also allow CID to administer the fines and process compliance cases more timely without the requirement of a CIC vote to set a % to be fined on a case by case basis.

MOTION: Commissioner moved that changes to the Sanctions Schedule with a disclaimer, based on NMSA 1978 § 60-13-23.1, be approved. Commissioner Wooten seconded the motion. VOTE: All voted in favor of the motion.

- b. Approval to Adopt:

- I. NMAC 19.15.40.24 LP Gas Standards – The Construction Industries Division, with LP Gas TAC approval, recommends that changes to the New Mexico LP Gas Standards, NMAC 19.15.40.24, which would adopt by reference the 2009 National Fuel Gas Code, NFPA 54; the 2011 Liquefied Petroleum Gas Code, NMPA 58; the 2011 Standard on Recreational

Vehicles, NFPA 1192; and the 2010 Vehicle Gaseous Fuel systems code, NFPA 52, be adopted. With approval of this commission, public hearings were held in three locations throughout New Mexico, in Albuquerque, Las Cruces, and Santa Fe. There were no comments received at these hearings.

MOTION: Commissioner Kaufman moved that changes to NMAC 19.15.40.24, New Mexico LP Gas Standards, be adopted as presented. Commissioner Fickling seconded the motion. VOTE: All voted in favor of the motion.

II. NMAC 14.7.6 New Mexico Conservation Code – The Construction Industries Division, with TAC approval, recommends that the following changes to the New Mexico Conservation Code, be adopted.

- 301.1 Degree Days – The proposed change would ensure the assigned climate Zone is appropriate for the building in New Mexico.
- 401.2 Compliance – This change would provide options for either prescriptive compliance, performance compliance through verification by specific computer software design or demonstrative compliance via a Home Energy Rating System (HERS).
- 402.4.3 Kiva Fireplace – the amendment would allow one kiva fireplace as long as additional energy conservation requirements are met.

With approval of this Commission, public hearings were held in three locations throughout New Mexico, In Albuquerque, Las Cruces, and Santa Fe. There were no comments received at these hearings.

MOTION: Commissioner Casey moved that changes to NMAC 14.7.6, 2009 New Mexico Conservation code, be adopted as presented. Commissioner Yearout seconded the motion. All voted in favor of the motion.

c. Policy Approval:

I. Code Bond Process – To clarify and to standardize the procedure for claiming on the code bond required in State Statute 60-13-49, Proof of Responsibility. The substantive clarifications to the New Mexico Administrative code, 14.6.7, are as follows:

- The policy would only allow claims on bonds after completion of the process stipulated in the Uniformed Licensing Act (ULA).
- The policy clarifies that in the case of multiple violations of differing trades, only the responsible contractor that permitted the work for that trade is subject to collection on the bond.
- Legal fees are not applicable to bond payment dispersal.
- The policy would limit payment from the surety to only repair of the cited code violation and only after completion of the work to correct the violations.
- Code violation determinations are limited to State adopted codes. Local enhancements will not be applicable.

MOTION: Commissioner Casey moved that changes to the code bond Claim Policy be adopted as presented. Commissioner Fickling seconded the motion. VOTE: All voted in favor of the motion.

II. Subsidence and Earthwork – The Construction Industries Division, with TAC approval, recommends that the Earthwork Compliance Investigation policy be adopted. CID acknowledges the impact that collapsible or expansive soils can have on a structure. However, CID does not have the technical knowledge, equipment, test facilities, time on site, or the budget to predict or verify that impact of those conditions on a structure. Therefore, CID cannot and will not investigate, inspect, report, or evaluate incidences of collapsible or expansive soils.

MOTION: Commissioner Casey moved to table this policy. Commissioner Yearout seconded the motion. VOTE: All voted in favor of the motion.

III. Roofing and Stucco – The Construction Industries Division, with TAC approval, recommends that the Roofing and Stucco policy be adopted. This policy would deviate from other code compliance investigations in cases where visual evidence of a code violation is not present; the owner would be allowed 60 days to supply the Division with results of destructive testing for review. The results will be reviewed by CID and a determination will be made: If a code violation is uncovered, and the contractor was responsible for the violation, then the complaint process would continue as any other. The policy will also limit investigations to two-years after completion. With the nature of roofing and stucco being affected by conditions and the inability to determine if required maintenance was performed, a 2-year limitation would allow for only installed code violations to manifest themselves.

MOTION: Commissioner Yearout moved that the Roofing and Stucco Compliance Investigation Policy be adopted as presented. Commissioner Casey seconded the motion. VOTE: All voted in favor of the motion.

IV. Code Amendment Adoption – The Construction Industries Division recommends that the Code Amendment policy be adopted. This policy is to formalize the protocol and assure consistency to amend codes for adoption by this Commission.

MOTION: Commissioner Casey moved that the Code Amendment Policy be adopted as presented. Commissioner Wooten seconded the motion. VOTE: All voted in favor of the motion.

d. Approval of Electrical Continuing Education courses and providers – The Construction Industries Division recommends the following continuing education courses and instructors be approved as presented:

OSHA 10	William Thompson
CPR/First Aide	Charles Humiston
Rigging/Signal Person	Andrew Rodriquez & David Hennessy
Introduction to Role of Foreman	David Burt
Electrical Safety Awareness & Electrical Safety in Workplace NFPA 70E	C. Bryan Drennan
Basic Electrical Calculations	Gregory Shaw
Understanding Project Management	Gregory Shaw
Introduction to Energy Management	Gregory Shaw
2011 NEC Code Change Part 1	Mike Pellham
2011 NEC Code change Part 2	Mike Pellham
250 Grounding and Bonding	Mike Pellham
2011 NEC code Review Workshop	Larry H. Crum
NFPA-70 E Interim code Cycle Refresher Course	Larry H. Crum
NFPA-70 B Interim code Cycle Refresher Course	Larry H. Crum
E100-NEC changes	Daniel Grijalva
E101-NEC Calculations	Daniel Grijalva

MOTION: Commissioner Casey moved that the courses and instructors submitted for electrical continuing education be approved as presented. Commissioner Yearout seconded the motion.
VOTE: All voted in favor of the motion.

e. Approval of Mechanical/Plumbing courses and providers – The Construction Industries Division recommends the following continuing education courses and instructors are approved as presented:

2009 UPC Code Review (online)	Wade Airheart
2009 UMC Code Review (Online)	Wade Airheart

MOTION: Commissioner Yearout moved that the courses and instructors submitted for mechanical/plumbing continuing education be approved as presented. Commissioner Casey seconded the motion. VOTE: All voted in favor of the motion.

f. Approval of licenses issued in September and October, 2011 – The Construction Industries Division recommends that the licenses and certifications issued in September and October, 2011 be ratified as presented.

MOTION: Commissioner Casey moved that the licenses and certifications issued by CID in September and October, 2011 be approved as presented. Commissioner Fickling seconded the motion. VOTE: All voted in favor of the motion.

g. P.R.E.P. Pilot Relight Emergency Program Presentation – In the 2011 Legislative Session, HB 652 created a program to certify Gas Pilot Relighting Technicians to restore appliance operation in the event of an emergency. This program will be referred to as “PREP” –

Pilot Relight in Emergencies Program. Only upon declaration by the Governor of an emergency disaster, similar to the gas outages we experienced last winter, a New Mexico certified journeyman gas fitter, JG or JPG, employed by and acting on behalf of a New Mexico licensed MM-2 or MM-98 contractor may supervise up to 5 gas relighting technicians to relight appliances. The Gas Relighting Technician must complete the approved training course and recertify every 5 years. The technician may not perform any repairs, maintenance, make any adjustments to any appliance or associated system or relight any appliance without prior inspection from an authorized journeyman.

MOTION: Commissioner Wooten moved that the Pilot Relight in Emergencies Program be adopted as presented. Commissioner Edwards seconded the motion. Vote: Alvarado – No, Motion passed 7-1 vote.

6. Executive Session

MOTION: Commissioner Wooten moved that the meeting adjourn to closed session. Commissioner Casey seconded the motion. VOTE: A roll call vote was taken with all commissioners voting to adjourn to executive session. The meeting adjourned to executive session at 11:24 a.m.

- a. Recommendation to close cases
- b. Request approval to proceed to issue Notices of Contemplated Actions
- c. AG Report on disciplinary actions
- d. Pending Litigation

Chairman Baker entertained a motion to open the meeting to the public. He further stated that only matters exempt from the open meeting requirement, NMSA 1978 10-15-1(H). No other matters were discussed, and no other actions were taken during executive session.

MOTION: Commissioner Kaufman moved to reconvene the meeting to open session. Commissioner Fickling seconded the motion. The meeting reconvened at 1:06 p.m.

7. Action on items discussed during Executive Session

- a. Compliance Investigations

MOTION: Commissioner Kaufman moved that compliance investigations listed on the agenda be closed as presented. Commissioner Fickling seconded the motion. VOTE: All voted in favor of the motion.

09-1329	C C Builders	Close
09-1452	Robert Wilson	Close
09-1465	Grant Co. Evacuation	Close
09-1537	Right/Quick Construction	Close
09-1554	Excel Roofing Technologies LLC	Close
09-1568	La Plaza Electric II	Close

10-1717	Orona's Stucco, Plaster and Lath	Close
10-1724	Monarch Builders Inc	Close
10-1756	ABQ Low Voltage	Close
11-1957	McComas Sales Company Inc	Close
11-1998	National Lath and Plaster Inc	Close
11-2073	Black Rock Asphalt	Close
11-2075	Leroy's Refrigeration	Close
11-2210	Homes by Joe Boyden	Close

b. NCA Recommendation

MOTION: Commissioner Kaufman moved that cases 1 -26 go to NCA:

1. 09-1417	8. 11-1951	15. 11-2000	22. 11-2065
2. 09-1581	9. 11-1960	16. 11-2002	23. 11-2066
3. 10-1658	10. 11-1964	17. 11-2006	24. 11-2072
4. 10-1691	11. 11-1967	18. 11-2012	25. 11-2130
5. 10-1744	12. 11-1972	19. 11-2026	26. 10-1819
6. 10-1814	13. 11-1992	20. 11-2041	
7. 10-1843	14. 11-1995	21. 11-2045	

Commissioner Fickling seconded the motion. VOTE: Commissioners Wooten and Yearout recused themselves on voting on case number 11-2130. VOTE: All in favor Motion passed.

c. AG Report on Disciplinary Actions:

- MOTION: Commissioner Kaufman moved to accept Settlement as presented for **La Cueva Construction – 06-0190 & 09-1519**. Commissioner Fickling seconded the motion. VOTE: All voted in favor of the motion.
- MOTION: Commissioner Kaufman moved to accept Settlement as presented for **SW Elite – 09-1218**. Commissioner Wooten seconded the motion. VOTE: Commissioner Casey recused himself from voting. All voted in favor of the motion.
- MOTION: Commissioner Kaufman moved to accept Settlement as presented for **Mike Lopez Roofing – 08-1042**. Commissioner Fickling seconded the motion. VOTE: Commissioner Wooten recused himself from voting. All voted in favor of the motion.
- MOTION: Commissioner Kaufman moved to accept Settlement as presented for **Wheeler's Fine Quality and Danny Wheeler – 09-1463**. Commissioner Fickling seconded the motion. VOTE: Commissioners Casey and Wooten recused themselves from voting. All voted in favor of the motion.
- Motion: Commissioner Kaufman moved to dismiss cases against **T-M-R Construction – 09-1398 and Electrical Services 09-1404** as presented. Commissioner Fickling seconded the motion. VOTE: All voted in favor of the motion.
- MOTION: Commissioner Kaufman moved for the revocation of **A to Z Handy Andy License and Qualifying Party – 06-0147** and a fine of \$500.

Commissioner Fickling seconded the motion. VOTE: All voted in favor of the motion.

- MOTION: Commissioner Kaufman moved to accept Settlement as presented for **Aquatic Pools – 09-1315**. Commissioner Fickling seconded the motion. VOTE: Commissioner Casey recused himself from voting. VOTE: All voted in favor of the motion.
- MOTION: Commissioner Kaufman moved for the revocation of **G&T Roofing and Stanley Griffin License and Qualifying Party - 09-1553** and a fine of \$500. Commissioner Fickling seconded the motion. VOTE: All voted in favor of the motion.
- MOTION: Commissioner Kaufman moved for the revocation of **People's Choice Construction and Stephen Ray Shearin License and Qualifying Party - 09-1546** and a fine of \$500. Commissioner Fickling seconded the motion. VOTE: All voted in favor of the motion.
- MOTION: Commissioner Kaufman moved for the revocation of **MKM Electric and William Natera License and Qualifying Party – 09-1414** and a fine of \$500. Commissioner Fickling seconded the motion. VOTE: All voted in favor of the motion.
- MOTION: Commissioner Kaufman moved for a \$300 fine against **A.G. Construction and Andy Garcia – 09-1411**. Commissioner Fickling seconded the motion. VOTE: All voted in favor of the motion.
- MOTION: Commissioner Kaufman moved for a \$500 fine against **Tee Time Construction – 09-1334**. Commissioner Fickling seconded the motion. VOTE: All voted in favor of the motion.
- MOTION: Commissioner Kaufman moved to dismiss case against **G.L. M. Constructions – 09-1397**. Commissioner Fickling seconded the motion. VOTE: All voted in favor of the motion.
- MOTION: Commissioner Kaufman moved to accept hearing officer's report and revoke license and qualifying party certificate and a \$500 fine for **Michael Long General Contracting, LLC and Michael Long – 06-0190&09-1519**. Commissioner Fickling seconded the motion. VOTE: Commissioner Yearout recused himself from voting. All voted in favor of the motion.

8. Energy Code Inspection Tools – Marie Claire Voorhees made a presentation and further discussion on this will take place at the January 11, 2012 CIC meeting.

9. Schedule next CIC meeting date and location – January 11, 2012, Albuquerque, New Mexico.

10. Public Comment

11. Adjourn

MOTION: With no additional business, Commissioner Kaufman moved to adjourn the meeting at 1:55 p.m. Commissioner Casey seconded the motion. VOTE: All voted in favor of the motion.

Randy D. Baker, Chairman

Date

ATTEST:

Richard W. Tavelli, Secretary

Date