

IN THE COURT OF APPEALS  
FOR THE STATE OF NEW MEXICO

COURT OF APPEALS OF NEW MEXICO  
FILED

JUL 11 2011



Southwest Energy Efficiency Project,  
Environment New Mexico, Sundancer  
Creations Custom Builders, LLC,  
eSolved, Inc., the Sierra Club, Tammy  
Fiebelkorn, Faren Dancer, Sanders Moore,  
Erika Wolf, and Sommer Batterson,

Appellants,

v.

No.

the New Mexico Construction Industries  
Commission, the New Mexico Construction  
Industries Division, and Richard W. Tavelli,  
Director of the New Mexico Construction  
Industries Division,

Appellees.

NOTICE OF APPEAL

Southwest Energy Efficiency Project, Environment New Mexico, Sundancer Creations Custom Builders, LLC, eSolved, Inc., the Sierra Club, Tammy Fiebelkorn, Faren Dancer, Sanders Moore, Erika Wolf, and Sommer Batterson (referred to as “the Appellants”) hereby appeal to the New Mexico Court of Appeals from the June 10, 2011 decision of the New Mexico Construction Industries Commission, the New Mexico Construction Industries Division, and Richard W. Tavelli, the Director of the New Mexico Construction Industries Division (referred to as “the Appellees”) to repeal the New Mexico Electrical Code promulgated in 2010 and to replace it with a different New Mexico Electrical Code (NMAC §§14.10.4.1, *et seq.*) (referred to as “the replacement New Mexico Electrical Code”).

This appeal is filed pursuant to Rule 12-601 of the Rules of Appellate Procedure.

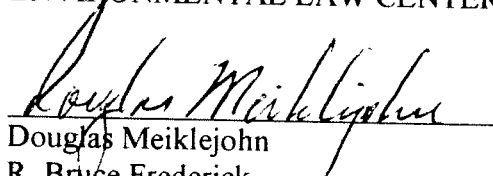
This appeal is also filed pursuant to NMSA 1978 §61-1-31 of the Uniform Licensing Act. In accordance with NMSA 1978 §61-1-31.B, the Appellants hereby certify that they have made satisfactory arrangements with the Appellees for preparation of the record at the Appellants' expense. Also in accordance with NMSA 1978 §61-1-31.B, the Appellants have attached to this Notice of Appeal two exhibits.

Exhibit 1 is the three cover sheet pages with which the replacement New Mexico Electrical Code (NMAC §§14.10.4.1, *et seq.*) was filed with the State Records and Archives Center on June 15, 2011.

Exhibit 2 is the replacement New Mexico Electrical Code (NMAC §§14.10.4.1, *et seq.*).

Dated: July 11, 2011.

NEW MEXICO  
ENVIRONMENTAL LAW CENTER



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Attorneys for the Appellants

Certificate of Service

I certify that on July 11, 2011 copies of this Notice of Appeal were mailed to:

Richard W. Tavelli, Director  
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c/o Construction Industries Division  
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Attorney for the New Mexico  
Construction Industries Commission

  
Douglas Meiklejohn

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**NMAC TRANSMITTAL FORM**

1.24.10 NMAC

*Vol. XXII No. 12 6-30-11 Historical* [Sequence # 3.35] H

<b>1. Issuing Agency</b> REGULATION AND LICENSING DEPARTMENT Construction Industries Division		<b>2. Agency Code (DFA)</b> 4200
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<b>3. Agency Address</b> 2550 Cerrillos Road Santa Fe, New Mexico 87505
-------------------------------------------------------------------------------

<b>4. Contact Person</b>			
Name	Jose Rudy Romero	Phone #	(505)476-4598 FAX 505-476-4619
E-mail	joser.romero@state.nm.us		

<b>5. Type of Rule Action</b>									
New	<input type="checkbox"/>	Amendment	<input type="checkbox"/>	Renumber	<input type="checkbox"/>	Repeal	<input checked="" type="checkbox"/>	Emergency	<input type="checkbox"/>

<b>6. Total number of pages:</b>	1	<b>7. Hearing date:</b>	06-14-11	<b>8. Effective date:</b>	08-01-2011
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9. NMAC Number		
Title	Chapter	Part
14	10	4

10. NMAC Name		
Title	Chapter	Part
Housing and Construction	Electrical Codes	2008 New Mexico Electrical Code

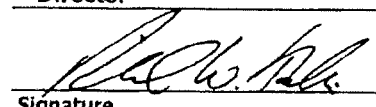
<b>11. Amendment Description</b>	<b>12. Amendment's NMAC Citation</b>

<b>13. Most recent filing date (if applicable)</b> 12 / 28 / 2010
----------------------------------------------------------------------

<b>14. Are there any materials incorporated by reference?</b>	
No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>	<b>Reference / Internet site</b>
<i>Please list attachments and Internet site(s) if applicable</i>	1.
	2.
	3.

<b>15. If materials are attached, has copyright permission been received?</b>		
No <input type="checkbox"/>	Yes <input type="checkbox"/>	Public domain <input type="checkbox"/>

<b>16. Legal citation(s) that allows the Issuing Agency to regulate and the Issuing Authority to promulgate regulations on this subject (provide all that apply).</b> Section 60-13-9 Construction Industries Licensing Act, NMSA 1978
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<b>17. Signature &amp; Title of Issuing Authority (Delegated authority must be on file)</b>	
Name: <u>Richard W. Tavelli</u>	Check if delegated authority <input type="checkbox"/>
Title: <u>Director</u>	
 Signature	<u>6-14-11</u> Date Signed



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STATE RECORDS CENTER

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14.10.4 NMAC, 2008 New Mexico Electrical Code (filed 12-28-2010) repealed and replaced by 14:10.4 NMAC,  
2008 New Mexico Electrical Code, effective 8-1-11.

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### NMAC TRANSMITTAL FORM

1.24.10 NMAC

*Vol. 4411 No. 12 6-30-11 Historical*

[Sequence # 336 ] C

<b>1. Issuing Agency</b>		<b>2. Agency Code (DFA)</b>	
REGULATION AND LICENSING DEPARTMENT Construction Industries Division		4200	

**3. Agency Address**  
2550 Cerrillos Road  
Santa Fe, New Mexico 87505

**4. Contact Person**

Name	Jose Rudy Romero	Phone #	(505)476-4598	FAX	505-476-4619
E-mail	joser.romero@state.nm.us				

**5. Type of Rule Action**

New  Amendment  Renumber  Repeal  Emergency

<b>6. Total number of pages:</b>	7	<b>7. Hearing date:</b>	06-14-11	<b>8. Effective date:</b>	08-01-2011
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**14. Are there any materials incorporated by reference?**

No  Yes  *Please list attachments and Internet site(s) if applicable*

Reference / Internet site
1.
2.
3.

**15. If materials are attached, has copyright permission been received?**

No  Yes  Public domain

**16. Legal citation(s) that allows the Issuing Agency to regulate and the Issuing Authority to promulgate regulations on this subject (provide all that apply)**  
Section 60-13-9 Construction Industries Licensing Act, NMSA 1978

**17. Signature & Title of Issuing Authority (Delegated authority must be on file)**

Name: Richard W. Tavelli Check if delegated authority

Title: Director

*[Signature]*  
Signature

6-14-11  
Date Signed

↑

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**TITLE 14 HOUSING AND CONSTRUCTION**  
**CHAPTER 10 ELECTRICAL CODES**  
**PART 4 2008 NEW MEXICO ELECTRICAL CODE**

**14.10.4.1 ISSUING AGENCY:** The Construction Industries Division of the Regulation and Licensing Department.  
[14.10.4.1 NMAC - Rp 14.10.4.1 NMAC, 8-1-11]

**14.10.4.2 SCOPE:** This rule applies to all contracting work performed in New Mexico on or after July 1, 2008, that is subject to the jurisdiction of CID, unless performed pursuant to a permit for which an application was received by CID before that date.  
[14.10.4.2 NMAC - Rp, 14.10.4.2 NMAC, 8-1-11]

**14.10.4.3 STATUTORY AUTHORITY:** NMSA 1978 Section 60-13-9.  
[14.10.4.3 NMAC - Rp, 14.10.4.3 NMAC, 8-1-11]

**14.10.4.4 DURATION:** Permanent.  
[14.10.4.4 NMAC - Rp, 14.10.4.4 NMAC, 8-1-11]

**14.10.4.5 EFFECTIVE DATE:** August 1, 2011, unless a later date is cited at the end of a section.  
[14.10.4.5 NMAC - Rp, 14.10.4.5 NMAC, 8-1-11]

**14.10.4.6 OBJECTIVE:** The purpose of this rule is to establish minimum standards for electrical wiring, as defined in CILA Section 60-13-32, in New Mexico.  
[14.10.4.6 NMAC - Rp, 14.10.4.6 NMAC, 8-1-11]

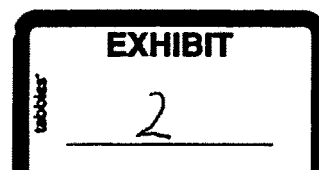
**14.10.4.7 DEFINITIONS:** [Reserved]

**14.10.4.8 ADOPTION OF THE 2008 NATIONAL ELECTRICAL CODE:**  
A. This rule adopts by reference the 2008 national electrical code (NEC), as amended by this rule.  
B. In this rule, each provision is numbered to correspond with the numbering of the 2008 national electrical code.  
C. This rule is to be applied in conjunction with 14.7.6 NMAC, the 2009 New Mexico Energy Conservation Code.  
[14.10.4.8 NMAC - Rp, 14.10.3.8 NMAC, 8-1-11]

**14.10.4.9 ADMINISTRATION AND ENFORCEMENT:**  
A. **Inspectors.** See 14.6.5 NMAC, Inspectors.  
B. **Disconnect orders.** See CILA Section 60-13-42.  
C. **Stop orders.** See 14.5.3 NMAC, Inspections.  
D. **Unsafe wiring.** See 14.5.1 NMAC, General Provisions.  
E. **Electrical plan review.** See 14.5.2 NMAC, Permits.  
F. **Electrical permit.** See 14.5.2 NMAC, Permits.  
G. **Electrical inspections.**  
(1) **Inspections required:** See 14.5.3 NMAC, Inspections.  
(2) **Electrical customer-owned distribution system requirements.** See 14.5.3 NMAC, Inspections.  
[14.10.4.9 NMAC - Rp, 14.10.4.9 NMAC, 8-1-11]

**14.10.4.10 ARTICLE 90 INTRODUCTION.** See this article of the NEC.  
[14.10.4.10 NMAC - Rp 14.10.4.10 NMAC, 8-1-11]

**14.10.4.11 CHAPTER 1 General.**  
A. **Article 100 - Definitions.** See this article of the NEC  
B. **Article 110 - Requirements for Electrical Installations.** See this article of the NEC except as provided below.  
(1) **Section 110.2 Approval.** See this section of the NEC and add the following:



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(a) product listing and labeling - electrical wiring, equipment or material approval shall be based on listing and labeling by a nationally recognized testing laboratory recognized by the federal occupational safety and health administration;

(b) field evaluation - electrical wiring, equipment or material that is not listed and labeled, but for which a (UL) safety standard exists may be approved upon certification by a nationally recognized testing laboratory recognized by the federal occupational safety and health administration or by a field evaluation body accredited by the international accreditation service, inc.

(c) engineer certification - electrical wiring, equipment or material for which a (UL) safety standard does not exist may be approved upon certification by an electrical engineer licensed to practice in New Mexico; such a certification will not be valid unless based on a verification of the manufacturer's safety and performance test data for the product.

(2) **Section 110.21. Marking.** See this section of the NEC and add: all equipment used on circuits over 300 volts between conductors shall have a warning sign either on or adjacent to the equipment. Warning signs shall be made in accordance with ANSI Z535 environmental and safety signs. The language shall read:

(a) for voltages over 300 volts but less than 600 volts: "480 VOLTS". (Label dimensions shall be 1" x 4"); and

(b) for voltages over 600 volts and there are exposed parts: "DANGER - HIGH VOLTAGE - KEEP OUT".

(3) **Section 110.26 Spaces about electrical equipment.**

(a) **110.26 (A) Working space.** See this section of the NEC and add: Disconnects that do not provide over-current, overload, short circuit, or ground fault protection are not required to maintain the dimensions of 110.26(A)(1), (A)(2) and (A)(3) where adequate space is not readily available and the disconnect is permanently labeled "INADEQUATE WORKING SPACE-DO NOT WORK ON WHILE ENERGIZED".

(b) **110.26 (E) Headroom.** See this section of the NEC and add: Exception No. 2: In underground water well pump enclosures, service equipment or panel boards that do not exceed 200 amperes, operating at 250 volts or less and only feeding equipment associated with the water well enclosure, shall be permitted in spaces where the headroom is less than six and one half feet (6 1/2 ft.) but greater than five feet (5 ft.) provided the enclosure is supplied with a removable lid, that when removed would allow a minimum of six and one half feet (6 1/2 ft.) headroom.

C. **Article 210. Branch circuits.** See this article of the NEC except as provided below.

(1) **Section 210.11.**

(a) **210.11 (A) Number of branch circuits.** See this section of the NEC and add: In dwelling occupancies, circuits for general purpose receptacles shall be limited to a maximum of ten (10) current consuming outlets. Single and duplex receptacle outlets are considered to be one current consuming outlet. Exception: Circuits serving only lighting loads may be calculated per article 220 of the national electrical code.

(b) **210.11 (B) Load evenly proportioned among branch circuits.** See this article of the NEC.

(c) **210.11 (C) Dwelling units.** See this section of the NEC except as provided below.

(i) **Small appliance branch circuits.** See this section of the NEC and add: not more than four (4) current consuming outlets shall be connected to these circuits. Single and duplex receptacle outlets are considered to be one current consuming outlet. Exception: small appliance circuits that supply only dining area receptacles may serve not more than six (6) receptacle outlets.

(ii) **Laundry branch circuits.** Delete the text of this section of the NEC and substitute: in addition to the number of branch circuits required by other parts of this section, at least one additional 20-ampere branch circuit shall be provided to supply the laundry receptacle outlet. Such circuits shall have no other outlets.

(2) **Section 210.19 Conductors - Minimum ampacity and size.** See this section of the NEC and add the following to subsection (A) Branch circuits not more than 600 volts. (1) General: see this section of the NEC and add: conductors for branch circuits shall be sized to prevent excessive voltage drop. Conductors of 15 ampere 120V branch circuits supplying general-purpose receptacle outlets shall be not less than 12 AWG.

(3) **Section 210.52 Dwelling unit receptacle outlets.**

(a) **210.52 (A) General provisions. (2) Wall space.** See this section of the NEC and add: exception: free-standing cabinets designed to be used as an eating or drinking bar where stools or chairs are pulled up to a counter top which extends at least one (1) foot from the front of the cabinet, shall not be considered as wall space.

(b) **210.52 (G) Basement and garages.** See this section of the NEC and add: receptacle outlets must be installed a minimum of eighteen (18) inches above finished floor, in attached or detached garages.

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**(4) Section 210.70 Lighting outlets required.**

**(a) 210.70 (A) (2) Dwelling units - Additional locations.** See this section of the NEC and add a new subsection as follows: (d) on single family dwellings at least one wall switch, located within five (5) feet from each entrance or exit or automatic lighting control such as a motion detector shall be installed to control exterior illumination.

**(b) 210.70 (A) (3) Dwelling units - Storage or equipment spaces.** See this section of the NEC and add: at least one (1) switched lighting outlet shall be installed in all accessible attics and crawl spaces adjacent to the usual point of entry.

**(c) 210.70 (C) Other than dwelling units.** See this section of the NEC and add: at least one (1) switched lighting outlet shall be installed in all accessible attics and crawl spaces adjacent to the usual point of entry.

**D. Article 215. Feeders. Section 215.1. Scope.** See this section of the NEC and add: approved wiring methods for feeders: nonmetallic-sheathed cable types NM, NMC and NMS (Article 334), and service entrance cable type SER (Article 338), shall be permitted to be used for feeders in dwelling units providing that the cables shall not pass through or under any other dwelling unit(s). Underground feeder and branch circuit cable type UF cable (Article 340) shall be permitted to be used underground for any occupancy, and indoors only in accordance with nonmetallic-sheathed cable (Article 334) providing that the cable shall not pass through or under any other dwelling unit(s).

**E. Article 225. Outside branch circuits and feeders.** See this article of the NEC except as follows.

**(1) Section 225.19 Clearance from buildings for conductors of not over 600 volts nominal-above roofs. (A) Above roofs.** See this section of the NEC but delete exception no. 2 in its entirety.

**(2) Section 225.32 Location.** See this section of the NEC except as follows.

**(a)** Add the following provision: the disconnecting means shall be installed at a readily accessible location. Where the disconnecting means is located outside the building or structure served, the disconnecting means enclosure shall be installed within ten (10) feet from the building or structure and visible, or on the exterior wall of the building or structure served. Where the disconnecting means is installed inside the building or structure served, the disconnecting means enclosure shall be located within forty eight (48) inches from where the feeder conductor raceway enters the building or structure.

**(b)** Delete the text of exception no. 1 and substitute: for industrial installations under single management, where documented safe switching procedures are established and maintained for disconnection, the disconnecting means shall be permitted to be located elsewhere on the premises.

**F. Article 230. Services.** See this article of the NEC except as provided below.

**(1) Section 230.24 Clearances. (A) Above roofs.** Delete exception no. 2 in its entirety.

**(2) Section 230.28. Service masts as supports.** See this section of the NEC and add: where a service mast is used for the support of service drop conductors, it shall be a minimum two inch (2") rigid metal conduit, intermediate metal conduit or comply with local utility requirements.

**(3) Section 230.31 Size and rating. (A) General.** See this section of the NEC and add: where the underground service lateral is customer owned, the service lateral conductors shall be sized to prevent excessive voltage drop. The maximum voltage drop on the service lateral conductors shall not exceed five percent (5%). For the purpose of this calculation, the ampacity shall be based on the calculated demand load of the building or structure served. Customer owned includes all non-utility owned or operated service lateral conductors.

**(4) Section 230.43. Wiring methods for 600 volts, nominal, or less.** See this section of the NEC but delete subsection (1) open wiring on insulators, and subsection (6), Electrical nonmetallic tubing (ENT).

**(5) Section 230.54 Overhead service locations.** See this section of the NEC and add a new section as follows: (H) overhead service support shall comply with the serving utility requirements or be at least six inch by six inch (6" x 6") pressure-treated timber or equivalent round poles (minimum 6" diameter crown) installed to a depth not less than four (4) feet below finish grade.

**(6) Section 230.70 Service equipment - disconnecting means.**

**(a) 230.70 General. (A) Location.** See this section of the NEC and add: the disconnecting means for each occupant of a multiple occupancy building shall be grouped at a common location.

**(b) 230.70 General. (A) Location. (1) Readily accessible location.** Delete the text of this section of the NEC and substitute: the service disconnecting means shall be installed at a readily accessible location. Where the disconnecting means is located outside the building or structure, the disconnecting means enclosure shall be located immediately adjacent to the meter enclosure. Where the disconnecting means enclosure is located outside the building or structure and within ten (10) feet from the building or structure, it shall not be considered a separate structure. Where the meter enclosure is located on the exterior wall of the building or structure, the service

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disconnecting means enclosure shall be installed at a readily accessible location and within forty eight (48) inches from the meter enclosure. Where the disconnecting means is located inside the building, the disconnecting means enclosure shall be installed at a readily accessible location within forty eight (48) inches from where the service conductor raceway enters the building or structure. Exception: bushing current transformer meter installations that are associated with the utility transformer are not required to be located in close proximity to the disconnecting means enclosure.

(7) **Section 230.72 Grouping of service disconnects. (A) General.** See this section of the NEC and add: all building or structure disconnects of each service shall be grouped at one location and shall be separated by the least practical distance, not to exceed an overall distance of twenty (20) feet.

G. **Article 250 - Grounding and bonding.** See this article of the NEC except as provided below:

(1) **Section 250.50 Grounding electrode system.** See this section of the NEC and add: on new construction a concrete encased electrode shall be considered available and installed in compliance with NEC 250.52(A) (3). If a concrete encased electrode is not present, then at least 20 feet of No. 2 bare copper in direct contact with the earth at a depth below the earth's surface of not less than thirty (30) inches shall be installed in a continuous trench that is at least twenty (20) feet in length, augmented with a minimum of two (2), eight (8) foot grounds rods spaced a minimum of six (6) feet apart.

(2) **Section 250.52 (A) Grounding electrodes. (5) Rod and pipe electrodes.** See this section of the NEC but delete subsection (a) in its entirety.

(3) **Section 250.52 Grounding electrodes. (B) (1) Not permitted for use as grounding electrodes.** Delete the text of this section of the NEC and substitute: Gas piping shall not be used as a grounding conductor or electrode. This does not preclude the bonding of metallic piping to a grounding system.

(4) **Section 250.53 Grounding electrode system installation. (C) Bonding jumper.** See this section of the NEC and add: Grounding electrode bonding jumpers shall be protected from physical damage. When a bonding jumper conductor is buried to provide physical protection, a minimum cover of 24 inches shall be provided in accordance with NEC Table 300.5 column 1 all locations not specified below.

(5) **Section 250.56 Resistance of rod, pipe and plate electrodes.** Delete the text of this section of the NEC and substitute: a single electrode consisting of a rod or plate shall be augmented by one additional electrode of any of the types specified by 250.52 (A) (2) through (A) (7). Where multiple rod or plate electrodes are installed to meet the requirements of this section, they shall be not less than six (6) feet apart. Exception: A single electrode consisting of a rod or plate may be used on temporary construction services rated 200 amperes or less.

(6) **Section 250.66 Size of alternating-current grounding electrode conductor. (B) Connections to concrete-encased electrodes.** See this section of the NEC and add: the grounding electrode conductor shall not be smaller than #4 AWG copper.

(7) **Section 250.104. Bonding of piping systems and exposed structural steel. (B) Other metal piping.** See this section of the NEC and add: CSST gas piping systems shall be bonded to the electrical service grounding electrode system at the point where the gas service enters the building. The bonding jumper shall not be smaller than (6) AWG copper wire.

(8) **Section 250.106. Lightning protection systems.** See this section of the NEC and add: Where a lightning protection system is installed, the bonding of the gas piping system shall be in accordance with NFPA 780, standard for installation of lightning protection systems.

(9) **Section 250.118. Types of equipment grounding conductors.** See this section of the NEC and add the following new subsection: (15) an equipment grounding conductor shall be installed in all branch circuit and feeder raceways on or above a roof. The equipment grounding conductor shall be sized in accordance with table 250.122.

H. **Article 300. Wiring methods.** See this article of the NEC except as provided below.

(1) **Section 300.11 Securing and supporting.** See this section of the NEC except as provided below.

(a) **300.11(A) Secured in place.** See this section of the NEC and add: independent support wires shall be limited to support of flexible wiring methods from the last means of support or junction box for connections within an accessible ceiling to luminaire(s) or equipment served.

(b) **300.11 (A) (1). Fire rated assemblies.** Delete the text of this section of the NEC and substitute: the ceiling support system shall be permitted to support listed junction boxes and/or support brackets that have been tested as part of a fire-rated assembly.

(c) **300.11 (A) (2). Non-fire rated assemblies.** Delete the text of the exception and substitute: the ceiling support system shall be permitted to support listed junction boxes and/or support brackets where installed in accordance with the ceiling system manufacturer's instructions.

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(2) **Section 300.14. Length of free conductors at outlets, junctions and switch points.** Delete the text of this section of the NEC and substitute: at least six (6) inches of free conductor, measured from the point in the box where it emerges from its raceway or cable sheath, shall be left at each outlet, junction, and switch point for splices or the connection of luminaire (fixtures) or devices. Where the opening of an outlet, junction, or switch point is less than eight (8) inches in any dimension, each conductor shall be long enough to extend at least six (6) inches outside of the opening.

**I. Article 310. Conductors for general wiring.** See this article of the NEC and add the following provision to section 310.2 (B). Conductor material: the use of aluminum current carrying conductors shall be of the AA-8000 series or equivalent and shall be limited to size 8 AWG or larger. Exception: the equipment-grounding conductor shall be limited to size 10 AWG or larger if in a listed cable assembly.

**J. Article 314. Outlet, device, pull, and junction boxes; conduit bodies; fittings; and handhole enclosures.** See this article of the NEC except delete the exception from subsection 314.27(a) outlet boxes-boxes at luminaire (lighting fixture) outlets.

**K. Article 334. Nonmetallic-Sheathed Cable: Types NM, NMC and NMS.**

(1) **Section 334.10 Uses permitted.** See this section of the NEC but delete subsection (3) in its entirety.

(2) **Section 334.12 Uses not permitted. (A) Types NM, NMC, and NMS.** See this section of the NEC and add the following subsection: (11) type NM, NMC, or NMS shall not be installed in buildings, or structures such as stores, professional offices, motels, hotels, and other occupancies classified as commercial or industrial. Exception: apartment houses classified as R-2.

**L. Article 340. Underground feeder and branch circuit cable: type UF.** See this article of the NEC except as provided below.

(1) **Section 340.10 Installation - Uses permitted.** See this section of the NEC and add the following new subsections:

(a) (8) type UF cable shall be permitted to be imbedded in adobe construction;

(b) (9) type UF cable, or an approved electrical raceway shall be installed on straw bale residential construction.

(2) **Section 340.12 Installation - Uses not permitted.** See this section of the NEC and add the following new subsection: (12) Type UF cable shall not be installed in buildings or structures such as stores, professional offices, motels, hotels, or other occupancies classified as commercial or industrial.

**M. Article 352 Rigid Polyvinyl Chloride Conduit: Type PVC.** See this article of the NEC and add the following to section 352.10 uses permitted. (F) Exposed: PVC conduit, type schedule 40 shall not be used where the raceway is exposed and under eight (8) feet from finished floor or grade.

**N. Article 358 Electrical Metallic Tubing: Type EMT.** See this article of the NEC and add the following section to 358.12 uses not permitted: (7) electrical metallic tubing shall not be permitted to be installed underground or in concrete slabs or walls which are in contact with the earth.

**O. Article 394 Concealed knob and tube wiring.** See this article of the NEC and add the following to section 394.12 uses not permitted: concealed knob and tube wiring shall not be permitted to be installed except by special written permission from the electrical bureau.

**P. Article 422. Appliances.** See this article of the NEC and add the following to section 422.19. evaporative cooling units: where an evaporative cooler is installed, a listed raceway shall be installed during rough-in from the control point to the evaporative cooler location. The raceway shall contain an equipment-grounding conductor from the control point outlet box to the junction box at the unit. The equipment grounding conductor shall be sized in accordance with table 250.122.

**Q. Article 550. Mobile Homes, Manufactured Homes and Mobile Home Parks.** See this article of the NEC except as provided below.

(1) **Section 550.32 Service equipment. (A) Mobile home service equipment.** Delete the text of this section of the NEC and substitute the following: the mobile home service equipment shall be located adjacent to the mobile home and not mounted in or on the mobile home. The service equipment shall be located in sight from and not more than one hundred (100) feet from the exterior wall of the mobile home it serves. The service equipment shall be permitted to be located elsewhere on the premises, provided that a disconnecting means marked "suitable for use as service equipment" is located in sight from and not more than thirty (30) feet from the exterior wall of the mobile home it serves. Grounding at the disconnecting means shall be in accordance with 250.32.

(2) **Section 550.32 Service equipment.** See this section of the NEC and add the following new subsections.

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(a) (H) **Required receptacle.** A 125 volt 15 or 20 amp receptacle outlet shall be installed with ground fault circuit interruption protection at each remote mobile home or manufactured home service equipment, or the local external disconnecting means permitted in 550.32 (A).

(b) (I) **Overhead services.** Overhead service support shall comply with the serving utility requirements or be at least six inch by six inch (6" x 6") pressure-treated timber or equivalent round poles (minimum 6" diameter crown) installed to a depth not less than four (4) feet below finish grade.

R. **Article 800: Communications Circuits.** See this article of the NEC and add the following to Section 800:154: applications of listed communications wires and cables and communication raceways: (H) dwelling unit communications circuits: Dwelling unit communications cable assemblies shall be a minimum of 4-pair No. 24 AWG conductors. Each 4 pair cable shall serve not more than three telephone outlets. Conductors shall terminate in a listed box or on a terminal block near the electrical service or location of telephone service. Any exterior wall penetration shall be installed in a listed raceway.

[14.10.4.11 NMAC - Rp, 14.10.4.11 NMAC, 8-1-11]

**14.10.4.12 SMOKE DETECTORS.** For smoke detectors, refer to the latest adopted edition of the building code. Smoke detectors installed in new single family dwellings shall be served by a single source. When two (2) or more smoke detectors are required in a dwelling unit, they shall be interconnected with a multi-conductor cable assembly. Location and power back-up requirement shall be in accordance with the latest adopted edition of the building code.

[14.10.4.12 NMAC - Rp, 14.10.4.12 NMAC, 8-1-11]

**14.10.4.13 ACCESSIBILITY REQUIREMENTS FOR PERSONS WITH DISABILITIES.** Add: Electrical device installation shall comply with accessibility codes adopted for New Mexico.

[14.10.4.13 NMAC - Rp, 14.10.4.13 NMAC, 8-1-11]

**14.10.4.14 NIGHT SKY PROTECTION ACT.** Outdoor lighting shall comply with the Night Sky Protection Act.

[14.10.4.14 NMAC - Rp, 14.10.4.15 NMAC, 8-1-11]

**14.10.4.15 RESIDENTIAL ENERGY EFFICIENCY.** See Chapter 4 of 14.7.6 NMAC, the 2009 New Mexico Energy Conservation Code.

[14.10.4.15 NMAC - Rp, 14.10.4.14 NMAC, 8-1-11]

**14.10.4.16 COMMERCIAL ENERGY EFFICIENCY.** See chapter 5 of 14.7.6 NMAC, the 2009 New Mexico Energy Conservation Code.

[14.10.4.16 NMAC - Rp, 14.10.4.15 NMAC, 8-1-11]

#### **HISTORY OF 14.10.4 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records, state records center and archives under:

CIC 71-1, 1971 National Electrical Code, filed 12-01-71

CIC71-2, 1972 New Mexico Electrical Code, filed 12-1-71

CID 78-1, 1978 New Mexico Electrical Code, filed 01-31-78

CID EB 81-3, State of New Mexico Electrical Code Revised to July 24, 1981, Technical Provision based on the 1981 National Electrical Code and Related Codes and Standards, filed 11-24-81

CID EB 84-1, State of New Mexico Electrical Code, filed 05-11-84

CID NMEB 93-1, State of New Mexico Electrical Code 1993, filed 02-25-93.

#### **History of Repealed Material:**

14 NMAC 10.4, Housing and Construction, Electrical Codes, State of New Mexico Electric Code (filed 01-15-97), repealed 07-01-99.

14 NMAC 10.4, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 06-01-99), repealed 12-01-00.

14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 10-16-2000), repealed 7-30-02.

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14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 7-30-02) repealed 7-1-04.

14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 05-27-04) - part name later changed to 2002 State of New Mexico Electrical Code (filed 10-18-04) both repealed 07-01-05.

14.10.4 NMAC, Housing and Construction, Electrical Codes, 2005 New Mexico Electrical Code (filed 05-04-2005) repealed 7-1-08.

14.10.4 NMAC, Housing and Construction, Electrical Codes, 2008 New Mexico Electrical Code (filed 1-24-2008) repealed 8-1-11.

**Other History:**

CID NMEB, State of New Mexico Electric Code (filed 2-25-93) replaced by 14 NMAC 10.4, Housing and Construction, Electrical Codes, State of New Mexico Electric Code, effective 01-31-97.

14 NMAC 10.4, Housing and Construction, Electrical Codes, State of New Mexico Electric Code (filed 01-15-97) replaced by 14 NMAC 10.4, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code, effective 07-01-99.

14 NMAC 10.4, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 06-01-99) replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code, effective 12-01-00.

14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 10-16-2000) replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code, effective 07-30-02.

14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 07-01-02) replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code, effective 07-01-04.

14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 05-27-04) and part name later changed to "2002 State of New Mexico Electrical Code" (filed 10-18-04) replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, 2005 New Mexico Electrical Code, effective 07-01-05.

14.10.4 NMAC, Housing and Construction, Electrical Codes, 2005 New Mexico Electrical Code (filed 05-04-2005) was replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, 2008 New Mexico Electrical Code, effective 7-1-08.

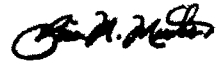
14.10.4 NMAC, Housing and Construction, Electrical Codes, 2008 New Mexico Electrical Code (filed 1-24-2008) was replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, 2008 New Mexico Electrical Code, effective 8-1-11.

IN THE COURT OF APPEALS  
FOR THE STATE OF NEW MEXICO

Southwest Energy Efficiency Project,  
Environment New Mexico, Sundancer  
Creations Custom Builders, LLC,  
eSolved, Inc., the Sierra Club, Tammy  
Fiebelkorn, Faren Dancer, Sanders Moore,  
Erika Wolf, and Sommer Batterson,

COURT OF APPEALS OF NEW MEXICO  
FILED

JUL 11 2011



Appellants,

v.

No.

the New Mexico Construction Industries  
Commission, the New Mexico Construction  
Industries Division, and Richard W. Tavelli,  
Director of the New Mexico Construction  
Industries Division,

Appellees.

NOTICE OF APPEAL

Southwest Energy Efficiency Project, Environment New Mexico, Sundancer Creations Custom Builders, LLC, eSolved, Inc., the Sierra Club, Tammy Fiebelkorn, Faren Dancer, Sanders Moore, Erika Wolf, and Sommer Batterson (referred to as “the Appellants”) hereby appeal to the New Mexico Court of Appeals from the June 10, 2011 decision of the New Mexico Construction Industries Commission, the New Mexico Construction Industries Division, and Richard W. Tavelli, the Director of the New Mexico Construction Industries Division (referred to as “the Appellees”) to repeal the New Mexico Energy Conservation Code promulgated in 2010 and to replace that Code with a different New Mexico Energy Conservation Code (NMAC §§14.7.6.1, *et seq.*) (referred to as “the replacement New Mexico Energy Conservation Code”).

This appeal is filed pursuant to Rule 12-601 of the Rules of Appellate Procedure.

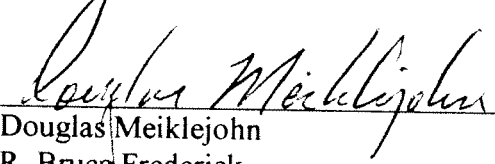
This appeal is also filed pursuant to NMSA 1978 §61-1-31 of the Uniform Licensing Act. In accordance with NMSA 1978 §61-1-31.B, the Appellants hereby certify that they have made satisfactory arrangements with the Appellees for preparation of the record at the Appellants' expense. Also in accordance with NMSA 1978 §61-1-31.B, the Appellants have attached to this Notice of Appeal two exhibits.

Exhibit 1 is the three cover sheet pages with which the replacement New Mexico Energy Conservation Code (NMAC §§14.7.6.1, *et seq.*) was filed with the State Records and Archives Center on June 15, 2011.

Exhibit 2 is the replacement New Mexico Energy Conservation Code (NMAC §§14.7.6.1, *et seq.*).

Dated: July 11, 2011.

NEW MEXICO  
ENVIRONMENTAL LAW CENTER



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Attorneys for the Appellants

Certificate of Service

I certify that on July 11, 2011 copies of this Notice of Appeal were mailed to:

Richard W. Tavelli, Director  
Construction Industries Division  
State of New Mexico  
2550 Cerrillos Road  
Santa Fe, N.M. 87505

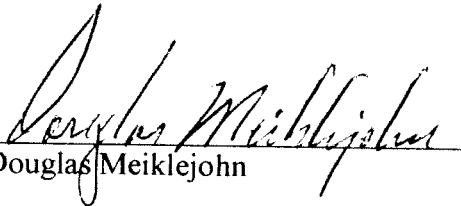
John McKay  
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Jason Wolf  
Assistant Attorney General  
Office of the Attorney General  
State of New Mexico  
P.O. Drawer 1508  
Santa Fe, N.M. 87504-1508

Attorney for the New Mexico Construction  
Industries Division

Construction Industries Commission  
c/o Construction Industries Division  
2550 Cerrillos Road  
Santa Fe, N.M. 87505

Attorney for the New Mexico  
Construction Industries Commission

  
Douglas Meiklejohn

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**NMAC TRANSMITTAL FORM**

1.24.10 NMAC

Vol. XXII No. 12 6-30-11 Historical [Sequence # 56.6 ] #

<b>1. Issuing Agency</b> REGULATION AND LICENSING DEPARTMENT Construction Industries Division	<b>2. Agency Code (DFA)</b> 4200
-----------------------------------------------------------------------------------------------------	-------------------------------------

**3. Agency Address**  
2550 Cerrillos Road  
Santa Fe, New Mexico 87505

**4. Contact Person**

Name	Jose Rudy Romero	Phone #	(505)476 -4598	FAX	505-476-4619
E-mail	joser.romero@state.nm.us				

**5. Type of Rule Action**

New  Amendment  Renumber  Repeal  Emergency

**6. Total number of pages:** 1      **7. Hearing date:** 06-14-11      **8. Effective date:** 08-01-2011

**9. NMAC Number**

Title	Chapter	Part
14	7	6

**10. NMAC Name**

Title	Chapter	Part
Housing and Construction	Building Codes General	2009 New Mexico Energy Conservation Code

**11. Amendment Description**      **12. Amendment's NMAC Citation**

**13. Most recent filing date (if applicable)**  
12 / 28 / 2010

**14. Are there any materials incorporated by reference?**

No  Yes       *Please list attachments and Internet site(s) if applicable*

Reference / Internet site
1.
2.
3.

**15. If materials are attached, has copyright permission been received?**

No  Yes       Public domain

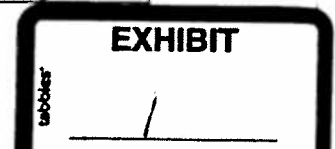
**16. Legal citation(s) that allows the Issuing Agency to regulate and the Issuing Authority to promulgate regulations on this subject (provide all that apply)**  
Section 60-13-9 (F) Construction Industries Licensing Act, NMSA 1978

**17. Signature & Title of Issuing Authority (Delegated authority must be on file)**

Name: Richard W. Tavelli      Check if delegated authority

Title: Director

*Richard W. Tavelli*  
Signature      6-14-11  
Date Signed



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14.7.6 NMAC, 2009 New Mexico Energy Conservation Code (filed 12-28-2010) repealed and replaced by 14.7.6  
NMAC, 2009 New Mexico Energy Conservation Code, effective 8-1-11.

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**NMAC TRANSMITTAL FORM**

1.24.10 NMAC

Vol. XXII No. 12 6-30-11 Historical [Sequence # 56.7] C

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Name	Jose Rudy Romero	Phone #	(505)476-4598 FAX 505-476-4619
E-mail	joser.romero@state.nm.us		

<b>5. Type of Rule Action</b>									
New	<input checked="" type="checkbox"/>	Amendment	<input type="checkbox"/>	Renumber	<input type="checkbox"/>	Repeal	<input type="checkbox"/>	Emergency	<input type="checkbox"/>

<b>6. Total number of pages:</b>	3	<b>7. Hearing date:</b>	06-14-11	<b>8. Effective date:</b>	08-01-2011
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9. NMAC Number		
Title	Chapter	Part
14	7	6

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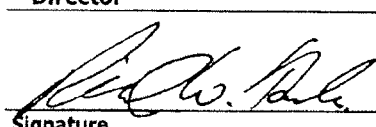
<b>11. Amendment Description</b>	<b>12. Amendment's NMAC Citation</b>

<b>13. Most recent filing date (if applicable)</b>

<b>14. Are there any materials incorporated by reference?</b>	
No <input type="checkbox"/> Yes <input checked="" type="checkbox"/>	<b>Reference / Internet site</b>
<i>Please list attachments and Internet site(s) if applicable</i>	1. 2009 International Energy Conservation Code
	2.
	3.

<b>15. If materials are attached, has copyright permission been received?</b>		
No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/>	Public domain <input type="checkbox"/>

<b>16. Legal citation(s) that allows the Issuing Agency to regulate and the Issuing Authority to promulgate regulations on this subject (provide all that apply)</b>
Section 60-13-9 (F) Construction Industries Licensing Act, NMSA 1978

<b>17. Signature &amp; Title of Issuing Authority (Delegated authority, must be on file)</b>	
Name: Richard W. Tavelli	Check if delegated authority <input type="checkbox"/>
Title: Director	
	6-14-11
Signature	Date Signed

2011 JUN 15 AM 8:37

**TITLE 14 HOUSING AND CONSTRUCTION**  
**CHAPTER 7 BUILDING CODES GENERAL**  
**PART 6 2009 NEW MEXICO ENERGY CONSERVATION CODE**

**14.7.6.1 ISSUING AGENCY:** Construction Industries Division (CID) of the Regulation and Licensing Department.

[14.7.6.1 NMAC - Rp, 14.7.6.1 NMAC, 8-1-11]

**14.7.6.2 SCOPE:** This rule applies to all contracting work performed in New Mexico on or after August 1, 2011, that is subject to the jurisdiction of CID, unless performed pursuant to a permit for which an application was received by CID before that date.

[14.7.6.2 NMAC - Rp, 14.7.6.2 NMAC, 8-1-11]

**14.7.6.3 STATUTORY AUTHORITY:** NMSA 1978 sections 60-13-9 and 60-13-44.

[14.7.6.3 NMAC - Rp, 14.7.6.3 NMAC, 8-1-11]

**14.7.6.4 DURATION:** Permanent.

[14.7.6.4 NMAC - Rp, 14.7.6.4 NMAC, 8-1-11]

**14.7.6.5 EFFECTIVE DATE:** August 1, 2011 unless a later date is cited at the end of a section.

[14.7.6.5 NMAC - Rp, 14.7.6.5 NMAC, 8-1-11]

**14.7.6.6 OBJECTIVE:** The purpose of this rule is to establish minimum standards for energy conservation in construction in New Mexico.

[14.7.6.6 NMAC - Rp, 14.7.6.6 NMAC, 8-1-11]

**14.7.6.7 DEFINITIONS:** See 14.5.1 NMAC, General Provisions and chapter 2 of the IECC as amended in 14.7.6.10 NMAC.

[14.7.6.7 NMAC - Rp, 14.7.6.7 NMAC, 8-1-11]

**14.7.6.8 ADOPTION OF THE 2009 NEW MEXICO ENERGY CONSERVATION CODE:**

**A.** This rule adopts by reference the 2009 international energy conservation code (IECC), as amended by this rule.

**B.** In this rule, each provision is numbered to correspond with the numbering of the 2009 international energy conservation code.

**C.** This rule is to be applied in conjunction with each of the other 2009 New Mexico building codes, including the NMCBC, NMRBC, NMPC, NMMC and the NMEC.

[14.7.6.8 NMAC - Rp, 14.7.6.8 NMAC, 8-1-11]

**14.7.6.9 CHAPTER 1 - ADMINISTRATION:**

**A. Section 101 - General.**

(1) **101.1 Title.** Delete this section of the IECC and substitute: this rule shall be known as 14.7.6 NMAC, the 2009 New Mexico Energy Conservation Code (NMECC).

(2) **101.2 Scope.** Delete this section of the IECC and see 14.7.6.2 NMAC, Scope.

(3) **101.3 Intent.** Delete this section of the IECC and see 14.7.6.6 NMAC, Objective.

(4) **101.4 Applicability.** See this section of the IECC.

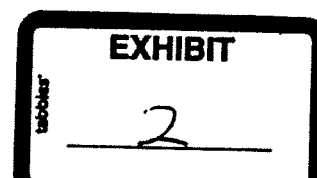
(5) **101.5.1 Compliance materials.** Delete this section of the IECC and substitute the following: the code official shall be permitted to approve specific computer software, worksheets, compliance manuals and other similar materials that meet the intent of this code, such as ComCheck, ResCheck, and worksheet or trade-off sheets from the *New Mexico energy conservation code residential applications manual*.

**B. Section 102 Alternate Materials-Method of Construction, Design for Insulating Systems.** See this section of the IECC.

**C. Section 103 - Construction Documents.** Delete this section of the IECC and see 14.5.2 NMAC, Permits.

**D. Section 104 Inspections.** Delete this section of the IECC and see 14.5.3 NMAC, Inspections.

**E. Section 105 Validity.** Delete this section of the IECC and see 14.5.1 NMAC, General



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Provisions.

**F. Section 106 Reference Standards.** All references in the IECC to the international building code shall be deemed references to 14.7.2 NMAC, the 2009 New Mexico Commercial Building Code (NMCBC). All references to the international residential code shall be deemed references to 14.7.3 NMAC, the 2009 New Mexico Residential Building Code (NMRBC). All references to the international plumbing code shall be deemed references to 14.8.2 NMAC, the 2009 New Mexico Plumbing Code (NMPC). All references to the international mechanical code shall be deemed references to 14.9.2 NMAC, the 2009 New Mexico Mechanical Code (NMMC). All references to the ICC or international electrical code shall be deemed references to 14.10.4 NMAC, the 2008 New Mexico Electrical Code (NMEC). All references to the international energy conservation code shall be deemed references to 14.7.6 NMAC, the 2009 New Mexico Energy Conservation Code (NMECC). All references to the international fuel gas code are deemed references to the NMMC or the LP gas standards found at 19.15.40 NMAC, and NMSA 1978 70-5-1 et seq.

**G. Section 107 Fees.**

(1) **107.1 Fees.** Delete this section of the IECC and see 14.5.5 NMAC Fees.

(2) **107.2 Schedule of Permit Fees.** Delete this section of the IECC and see 14.5.5.10 NMAC Permit

Fees.

(3) **107.3 Work Commencing Before a Permit Issuance.** Delete this section of the IECC and see 14.5.2.16 NMAC Failure to Obtain Permit.

(4) **107.4 Related Fees.** Delete this section of the IECC and see 14.5.5 NMAC Fees.

(5) **107.5 Refunds.** Delete this section of the IECC and See 14.5.5 NMAC Fees.

**H. 108 Stop Work Order.** Delete this section of the IECC and see 14.5.3 Inspections.

**I. 109 Board of Appeals.** Delete this section of the IECC and See 14.5.1 General Provisions.

[14.7.6.9 NMAC - Rp, 14.7.6.9 NMAC, 8-1-11]

**14.7.6.10 CHAPTER 2 - DEFINITIONS:** See this chapter of the IECC except as provided below.

**A. Section 201.1 Scope.** See this section of the IECC and add the following: If the same term is defined in the New Mexico construction codes and in the IECC, the term shall have the meaning given it in the New Mexico construction codes.

**B. Section 201.2 Interchangeability.** See this chapter of the IECC.

**C. Section 201.3 Terms defined in other codes.** Delete this section of the IECC and substitute with the following: if a term is not defined in this code but is defined in a New Mexico construction code, the term shall have the meaning given it in the New Mexico construction code.

**D. Section 201.4 Terms not defined.** See this chapter of the IECC.

**E. Section 202 General Definitions.** See this section of the IECC except as provided below.

(1) **Conditioned space.** Delete the text of this definition and replace with the following: An area, room or space within a building that is provided with heating, cooling, or combined heating and cooling by equipment or systems capable of maintaining, through design or heat loss/gain, 50 degrees fahrenheit (10 degrees celsius) during the heating season and 85 degrees fahrenheit (29 degrees celsius) during the cooling season, or an area, room or space that communicates directly with a conditioned space.

(2) **Duct installation.** Ducts shall be installed in accordance with Chapter 6 and Chapter 17 of the New Mexico Mechanical Code and current applicable standards.

(3) **Indirectly conditioned space.** Add the following definition. Enclosed space within a building thermal envelope that is not mechanically heated or cooled.

(4) **Multi scene controls.** Systems for controlling power to multiple groups of lights requiring only a few controls.

(5) **Residential building.** Delete the text of this definition and replace with the following: For this code, includes detached one- and two-family dwellings and townhouses not more than three stories above grade plane in height with a separate means of egress and their accessory structures and R-3 buildings, as well as R-2 and R-4 buildings three stories or less in height above grade.

(6) **Unconditioned space.** Add the following definition: Space within a building that is not mechanically heated or cooled and is outside the building thermal envelope.

(7) **Vapor retarder class.** Add the following definition: a measure of a material or assembly's ability to limit the amount of moisture that passes through that material or assembly. Vapor retarder class shall be defined using the desiccant method of ASTM E96 as follows:

(a) class I: 0.1 perm or less;

(b) class II: > 0.1 perm < 1.0 perm;

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(c) class III: > 1.0 perm <10 perm.

[14.7.6.10 NMAC - Rp, 14.7.6.10 NMAC, 8-1-11]

**14.7.6.11 CHAPTER 3 - CLIMATE ZONES:** See this Chapter of the IECC

[14.7.6.11 NMAC - Rp, 14.7.6.11 NMAC, 8-1-11]

**14.7.6.12 CHAPTER 4 - RESIDENTIAL ENERGY EFFICIENCY.** See this Chapter of the IECC.

[14.7.6.12 NMAC - Rp, 14.7.6.12 NMAC, 8-1-11]

**14.7.6.13 CHAPTER 5 - COMMERCIAL ENERGY EFFICIENCY:** See this Chapter of the IECC.

[14.7.6.13 NMAC - Rp 14.7.6.19 NMAC, 8-1-11]

**14.7.6.14 CHAPTER 6 - REFERENCED STANDARDS:** See this Chapter of the IECC.

[14.7.6.14 NMAC - Rp 14.7.6.25 NMAC, 8-1-11]

**HISTORY OF 14.7.6 NMAC:**

Pre NMAC History: None.

**History of Repealed Material:**

14.7.6 NMAC, 2003 New Mexico Energy Conservation Code (filed 5-27-04) repealed 1-7-04.

14.7.6 NMAC, 2006 New Mexico Energy Conservation Code (filed 8-16-2007) repealed 1-28-11.

14.7.6 NMAC, 2009 New Mexico Energy Conservation Code (filed 12-28-2010) repealed 8-1-11.

**NMAC History:**

14.7.6 NMAC, 2003 New Mexico Energy Conservation Code (filed 5-27-04) replaced by 14.7.6 NMAC, 2006 New Mexico Energy Conservation Code, effective 1-1-08.

14.7.6 NMAC, 2006 New Mexico Energy Conservation Code (filed 8-16-2007) replaced by 14.7.6 NMAC, 2009 New Mexico New Mexico Energy Conservation Code, effective 1-28-11.

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IN THE COURT OF APPEALS  
FOR THE STATE OF NEW MEXICO

COURT OF APPEALS OF NEW MEXICO  
FILED

JUL 11 2011



Southwest Energy Efficiency Project,  
Environment New Mexico, Sundancer  
Creations Custom Builders, LLC,  
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This appeal is filed pursuant to Rule 12-601 of the Rules of Appellate Procedure.

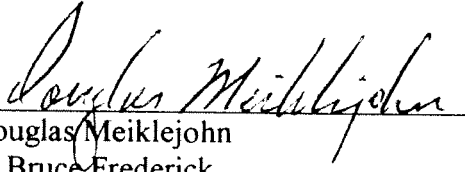
This appeal is also filed pursuant to NMSA 1978 §61-1-31 of the Uniform Licensing Act. In accordance with NMSA 1978 §61-1-31.B, the Appellants hereby certify that they have made satisfactory arrangements with the Appellees for preparation of the record at the Appellants' expense. Also in accordance with NMSA 1978 §61-1-31.B, the Appellants have attached to this Notice of Appeal two exhibits.

Exhibit 1 is the three cover sheet pages with which the replacement New Mexico Mechanical Code (NMAC §§14.9.2.1, *et seq.*) was filed with the State Records and Archives Center on June 15, 2011.

Exhibit 2 is the replacement New Mexico Mechanical Code (NMAC §§14.9.2.1, *et seq.*).

Dated: July 11, 2011.

NEW MEXICO  
ENVIRONMENTAL LAW CENTER

  
\_\_\_\_\_  
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Attorneys for the Appellants

Certificate of Service

I certify that on July 11, 2011 copies of this Notice of Appeal were mailed to:

Richard W. Tavelli, Director  
Construction Industries Division  
State of New Mexico  
2550 Cerrillos Road  
Santa Fe, N.M. 87505

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Industries Division

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Attorney for the New Mexico  
Construction Industries Commission

  
Douglas Meiklejohn

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### NMAC TRANSMITTAL FORM

1.24.10 NMAC

*Vol. XXII No. 6 6-30-11 Historical*

[Sequence # 29.13 ] H

<b>1. Issuing Agency</b> REGULATION AND LICENSING DEPARTMENT Construction Industries Division	<b>2. Agency Code (DFA)</b> 4200
-----------------------------------------------------------------------------------------------------	-------------------------------------

<b>3. Agency Address</b> 2550 Cerrillos Road Santa Fe, New Mexico 87505
-------------------------------------------------------------------------------

<b>4. Contact Person</b>			
Name	Jose Rudy Romero	Phone #	(505)476-4598
FAX	505-476-4619		
E-mail	joser.romero@state.nm.us		

<b>5. Type of Rule Action</b>					
New	<input type="checkbox"/>	Amendment	<input type="checkbox"/>	Renumber	<input type="checkbox"/>
Repeal	<input checked="" type="checkbox"/>	Emergency	<input type="checkbox"/>		

<b>6. Total number of pages:</b>	1	<b>7. Hearing date:</b>	06-14-10	<b>8. Effective date:</b>	08-01-2011
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<b>9. NMAC Number</b>		
Title	Chapter	Part
14	9	2

<b>10. NMAC Name</b>		
Title	Chapter	Part
Housing and Construction	Mechanical Codes	2009 New Mexico Mechanical Code

<b>11. Amendment Description</b>	<b>12. Amendment's NMAC Citation</b>

<b>13. Most recent filing date (if applicable)</b>
12 / 28 / 2010

<b>14. Are there any materials incorporated by reference?</b>	
No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>	<b>Reference / Internet site</b>
<i>Please list attachments and Internet site(s) if applicable</i>	1. _____
	2. _____
	3. _____

<b>15. If materials are attached, has copyright permission been received?</b>		
No <input type="checkbox"/>	Yes <input type="checkbox"/>	Public domain <input type="checkbox"/>

<b>16. Legal citation(s) that allows the Issuing Agency to regulate and the Issuing Authority to promulgate regulations on this subject (provide all that apply).</b>
Section 60-13-9 and 60-13-44 Construction Industries Licensing Act, NMSA 1978

<b>17. Signature &amp; Title of Issuing Authority (Delegated authority must be on file)</b>	
Name: <u>Richard W. Tavelli</u>	Check if delegated authority <input type="checkbox"/>
Title: <u>Director</u>	
<i>Richard W. Tavelli</i> Signature	<u>6-14-11</u> Date Signed



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STATE RECORDS CENTER

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14.9.2 NMAC, 2009 New Mexico Mechanical Code (filed 12-28-2010) repealed and replaced by 14.9.2 NMAC,  
2009 New Mexico Mechanical Code, effective 8-1-11.

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### NMAC TRANSMITTAL FORM

1.24.10 NMAC

*Vol. XXII No. 12 6-30-11 Historical*

[Sequence # 29,14] C

<b>1. Issuing Agency</b> REGULATION AND LICENSING DEPARTMENT Construction Industries Division	<b>2. Agency Code (DFA)</b> 4200
-----------------------------------------------------------------------------------------------------	-------------------------------------

**3. Agency Address**  
2550 Cerrillos Road  
Santa Fe, New Mexico 87505

**4. Contact Person**

Name	Jose Rudy Romero	Phone #	(505)476-4598	FAX	505-476-4619
E-mail	joser.romero@state.nm.us				

**5. Type of Rule Action**

New  Amendment  Renumber  Repeal  Emergency

<b>6. Total number of pages</b>	6	<b>7. Hearing date</b>	06-14-11	<b>8. Effective date</b>	08-01-2011
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**9. NMAC Number**

Title	Chapter	Part
14	9	2

**10. NMAC Name**

Title	Chapter	Part
Housing and Construction	Mechanical Codes	2009 New Mexico Mechanical Code

<b>11. Amendment Description</b>	<b>12. Amendment's NMAC Citation</b>
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**13. Most recent filing date (if applicable)**  
/ /

**14. Are there any materials incorporated by reference?**

No <input type="checkbox"/> Yes <input checked="" type="checkbox"/>	Please list attachments and Internet site(s) if applicable	Reference / Internet site
		1. 2009 Uniform Mechanical Code
		2.
		3.

**15. If materials are attached, has copyright permission been received?**

No  Yes  Public domain

**16. Legal citation(s) that allows the Issuing Agency to regulate and the Issuing Authority to promulgate regulations on this subject (provide all that apply):**

Section 60-13-9 and 60-13-44 Construction Industries Licensing Act, NMSA 1978

**17. Signature & Title of Issuing Authority (Delegated authority must be on file)**

Name: Richard W. Tavelli Check if delegated authority

Title: Director

*Richard W. Tavelli*  
Signature

6-14-11  
Date Signed

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**TITLE 14 HOUSING AND CONSTRUCTION**  
**CHAPTER 9 MECHANICAL CODES**  
**PART 2 2009 NEW MEXICO MECHANICAL CODE**

**14.9.2.1 ISSUING AGENCY:** Construction Industries Division (CID) of the Regulation and Licensing Department.  
[14.9.2.1 NMAC - Rp, 14.9.2.1 NMAC, 8-1-11]

**14.9.2.2 SCOPE:** This rule applies to all contracting work performed in New Mexico on or after August 1, 2011, that is subject to the jurisdiction of CID, unless performed pursuant to a permit for which an application was received by CID before that date.  
[14.9.2.2 NMAC - Rp, 14.9.2.2 NMAC, 8-1-11]

**14.9.2.3 STATUTORY AUTHORITY:** NMSA 1978 Sections 60-13-9 and 60-13-44.  
[14.9.2.3 NMAC - Rp, 14.9.2.3 NMAC, 8-1-11]

**14.9.2.4 DURATION:** Permanent.  
[14.9.2.4 NMAC - Rp, 14.9.2.4 NMAC, 8-1-11]

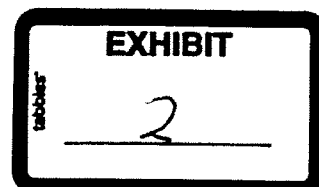
**14.9.2.5 EFFECTIVE DATE:** August 1, 2011, unless a later date is cited at the end of a section.  
[14.9.2.5 NMAC - Rp, 14.9.2.5 NMAC, 8-1-11]

**14.9.2.6 OBJECTIVE:** The purpose of this rule is to establish minimum standards for the installation, repair, and replacement of mechanical systems including equipment, appliances, fixtures, fittings and appurtenances including ventilating, heating, cooling, air conditioning, and refrigeration systems, incinerators, and other energy related systems in New Mexico.  
[14.9.2.6 NMAC - Rp, 14.9.2.6 NMAC, 8-1-11]

**14.9.2.7 DEFINITIONS:** See 14.5.1 NMAC, General Provisions and chapter 2 of the 2009 uniform mechanical code (UMC) as amended in 14.9.2.10 NMAC.  
[14.9.2.7 NMAC - Rp, 14.9.2.7 NMAC, 8-1-11]

**14.9.2.8 ADOPTION OF THE 2009 UNIFORM MECHANICAL CODE:**  
A. This rule adopts by reference the 2009 uniform mechanical code, as amended by this rule.  
B. In this rule, each provision is numbered to correspond with the numbering of the 2009 uniform mechanical code.  
C. This rule is to be applied in conjunction with 14.7.6 NMAC, the 2009 New Mexico Energy Conservation Code.  
[14.9.2.8 NMAC - Rp, 14.9.2.8 NMAC, 8-1-11]

**14.9.2.9 CHAPTER 1 ADMINISTRATION.**  
A. **Part I - General.**  
(1) **101.0 Title.** Delete this section of the UMC and substitute: This code shall be known as 14.9.2 NMAC, the 2009 New Mexico Mechanical Code (NMMC).  
(2) **102.0 Purpose.** Delete this section of the UMC and see 14.9.2.6 NMAC.  
(3) **103.0 Scope.** Delete this section of the UMC and see 14.9.2.2 NMAC.  
(4) **104.0 Application to existing mechanical systems.** See this section of the UMC.  
(5) **105.0 Alternate materials and methods of construction.** Delete this section of the UMC and see 14.5.1 NMAC, General Provisions.  
(6) **106.0 Modifications.** Delete this section of the UMC and see 14.5.1 NMAC, General Provisions.  
(7) **107.0 Tests.** See this section of the UMC.  
B. **Part II - Organization and enforcement.**  
(1) **108.0 Powers and duties of the authority having jurisdiction.**  
(a) **108.1 General.** Delete this section of the UMC and see CILA.  
(b) **108.2 Deputies.** Delete this section of the UMC and see CILA Sections 60-13-8 and 60-



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13-41 and NMSA 1978 Section 9-16-7.

- (c) **108.3 Right of entry.** Delete this section of the UMC and see CILA Section 60-13-42.
- (d) **108.4 Stop orders.** Delete this section of the UMC and see 14.5.2 NMAC, Permits.
- (e) **108.5 Authority to disconnect utilities in emergencies.** Delete this section of the UMC and see CILA Section 60-13-42.
- (f) **108.6 Authority to condemn equipment.** Delete this section of the UMC and see 14.5.1 NMAC, General Provisions.
- (g) **108.7 Connection after order to disconnect.** Delete this section of the UMC and see 14.5.1 NMAC, General Provisions.
- (h) **108.8 Liability.** Delete this section of the UMC and see CILA Section 60-13-26.
- (i) **108.9 Cooperation of other officials and officers.** Delete this section of the UMC.
- (2) **109.0 Unsafe equipment.** Delete this section of the UMC and see 14.5.1 NMAC, General Provisions.
- (3) **110.0 Board of appeals.** Delete this section of the UMC and see 14.5.1 NMAC, General Provisions.
- (4) **111.0 Violations.** Delete this section of the UMC and see CILA Section 60-13-1 et seq., and 14.5.3 NMAC, Inspections.
- C. **Part III - Permits and inspections.**
  - (1) **112.0 Permits.** See 14.5.2 NMAC, Permits.
  - (2) **113.0 Application for permit.** Delete this section of the UMC and see 14.5.2 NMAC, Permits.
  - (3) **114.0 Permit issuance.** Delete this section of the UMC and see 14.5.2 NMAC, Permits.
  - (4) **115.0 Fees.** Delete this section of the UMC and see 14.5.5 NMAC, Fees.
  - (5) **116.0 Inspections.** Delete this section of the UMC and see 14.5.3 NMAC, Inspections.
  - (6) **117.0 Connection approval.** Delete this section of the UMC and see 14.5.2 NMAC, Permits.
  - (7) **Table 1.1 Mechanical permit fees.** Delete this table from the UMC and see 14.5.5 NMAC, Fees.

Fees.

- D. **116.6 Reinspection.** Delete this section of the UMC and see 14.5.5.14 (G) NMAC. [14.9.2.9 NMAC - Rp, 14.9.2.9 NMAC, 8-1-11]

**14.9.2.10 CHAPTER 2 DEFINITIONS:** See this chapter of the UMC except as provided below.

A. **203.0 Authority having jurisdiction.** Delete the text of this definition and substitute: The authority having jurisdiction is the construction industries division (CID) and the bureau chief of the mechanical and plumbing bureau of CID.

B. **214.0 Listed and listing.** See this definition in the UPC and add the following provision at the end of the definition: A manufacturer may select the independent certification organization of its choice to certify its products, provided that the certification organization has been accredited by the American national standards institute (ANSI), or another certification organization that CID has approved in writing. [14.9.2.10 NMAC - Rp, 14.9.2.10 NMAC, 8-1-11]

**14.9.2.11 CHAPTER 3 GENERAL REQUIREMENTS:** See this chapter of the UMC except as provided below.

A. **305.0 Automatic control devices.** See this section of the UMC and 14.7.6 NMAC.

B. **311.0 Heating and cooling air system.** See this section of the UMC except as provided below.

(1) **311.1 Source.** See this section of the UMC

(2) **311.2 Air filters.** See this section of the UMC except delete the exception.

(3) **311.3 Prohibited source.** See this section of the UMC except delete the text of location (5) and replace with the following: a closet, bathroom, laundry room, toilet room or kitchen and add location (7) to read as follows: where it will pick up objectionable odors, fumes, or flammable vapors.

[14.9.2.11 NMAC - Rp, 14.9.2.11 NMAC, 8-1-11]

**14.9.2.12 CHAPTER 4 VENTILATION AIR SUPPLY:** See this chapter of the UMC and add the following material to section 405.0 Evaporative cooling systems: "Barometric relief dampers shall be installed on all new residential evaporative cooling systems to allow conditioned air from occupied spaces to exit the occupied space through a discreet opening in the ceiling, allowing the required air change to pass through the attic space to the outdoors. The authority having jurisdiction shall determine whether relief dampers shall be required on retrofits. Barometric relief dampers shall not be required on flat roof construction. Water saving or water management pumps

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shall be installed on all new and replaced evaporative coolers.”  
[14.9.2.12 NMAC - Rp, 14.9.2.12 NMAC, 8-1-11]

**14.9.2.13 CHAPTER 5 EXHAUST SYSTEMS:** See this chapter of the UMC except as provided below.  
**511.3 Replacement air.** See this section of the UMC except add the following: windows and doors shall not be used for the purpose of providing replacement air. The exhaust and replacement air systems shall be connected by an electrical interlocking switch. When using equipment that is not listed for make-up air, a device to sense continued air movement within the replacement air plenum shall be installed initiating a complete system shut-down if air-flow is interrupted.  
[14.9.2.13 NMAC - Rp, 14.9.2.13 NMAC, 8-1-11]

**14.9.2.14 CHAPTER 6 DUCT SYSTEMS:** See this chapter of the UMC except as follows.  
**A. Section 604.7. Location of ducts.** Duct work shall not be installed in exterior walls or exterior to the thermal envelope unless the insulation of the duct work meets or exceeds the insulation requirement applicable to the exterior walls of the building.

**B. Section 604.3 Factory-made air ducts.** See this section of the UMC and add the following text to the end of the third paragraph: The use of flexible duct shall be limited to supply- and return-air run-outs of not more than 12 feet in length. Flexible duct shall not be used for the main supply or return-air plenum.

**C. Section 605.0 Insulation of ducts.** See this section of the UMC except as follows: Delete Tables 6, 6A, and 6B. Minimum duct insulation R values, and replace with the following:

(1) **Residential duct:**

- (a) Supply ducts in attics shall be insulated to a minimum of R-8.
- (b) All other ducts shall be insulated to a minimum R-6.

(2) **Commercial duct:**

- (a) All supply and return air ducts and plenums located in unconditioned spaces shall be insulated to a minimum of R-5.
- (b) All supply and return air ducts and plenums located outside the building shall be insulated to a minimum of R-8.
- (c) All supply and return air ducts and plenums located within a building envelope assembly shall be separated from the building exterior or unconditioned or exempt spaces by a minimum of R-8 insulation.

(3) **Exceptions:**

- (a) Buried ducts for combination systems will be required to be insulated to a minimum of R-3.5.
- (b) On commercial ducts: when located within the equipment.
- (c) On commercial ducts: when the design temperature difference between the interior and exterior of the duct or plenum does not exceed 15 degrees F (8C).

**D. Section 604.2. Metal ducts.** See this section of the UMC and add the following to the last sentence of the second paragraph, “and be installed so as to support the weight of the concrete during encasement.”

**E. Section 609.0 Automatic shutoffs:** See this section of the UMC and add the following to the exception: (6) Automatic shutoffs are not required on evaporative coolers that derive all of their air from outside the building.

[14.9.2.14 NMAC - Rp, 14.9.2.14 NMAC, 8-1-11]

**14.9.2.15 CHAPTER 7 COMBUSTION AIR:** See this chapter of the UMC.  
[14.9.2.15 NMAC - Rp, 14.9.2.15 NMAC, 8-1-11]

**14.9.2.16 CHAPTER 8 CHIMNEYS AND VENTS:** See this chapter of the UMC.  
[14.9.2.16 NMAC - Rp, 14.9.2.16 NMAC, 8-1-11]

**14.9.2.17 CHAPTER 9 INSTALLATION OF SPECIFIC EQUIPMENT:** See this chapter of the UMC except as provided below.

**A. Section 904.10.3 Access to equipment on roofs.**

- (1) 904.10.1 See this section of the UMC.
- (2) 904.10.2 See this section of the UMC except after the words “in height” add the following: except those designated as R-3 occupancies.

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B. **907.2 Installation.** See this section of the UMC except add the following: Installation of gas logs in solid fuel burning fireplaces. Approved gas logs may be installed in solid fuel burning fireplaces, provided:

- (1) The gas log is installed in accordance with the manufacturer's installation instructions.
- (2) If the fireplace is equipped with a damper, it shall be permanently blocked open by welding or by cutting a hole of sufficient size to prevent spillage of combustion products into the room. On eight (8) inch and smaller flues, the damper shall be removed.
- (3) The minimum flue passageway shall not be less than 1 square inch per 2000 Btu/h input.
- (4) Gas logs shall be equipped with a pilot and listed safety shutoff valve.
- (5) The use of flexible gas connections shall not be permitted within a firebox, unless it is part of the listed gas log assembly.
- (6) Factory built fireplaces shall be approved for installation of gas logs and provided with a means of installing the gas piping.
- (7) All gas outlets located in a barbecue or fireplace shall be controlled by an approved separating valve located in the same room and outside the hearth, but not less than six (6) feet from such outlets.

C. **Section 928.2 Location.** See this section of the UMC except add the following to the end: unlisted wall furnaces shall be installed with clearances to combustible material of not less than eighteen (18) inches (460 mm).

[14.9.2.17 NMAC - Rp, 14.9.2.17 NMAC, 8-1-11]

**14.9.2.18 CHAPTER 10 STEAM AND HOT WATER BOILERS:** See this chapter of the UMC.

[14.9.2.18 NMAC - Rp, 14.9.2.18 NMAC, 8-1-11]

**14.9.2.19 CHAPTER 11 REFRIGERATION:** See this chapter of the UMC.

[14.9.2.19 NMAC - Rp, 14.9.2.19 NMAC, 8-1-11]

**14.9.2.20 CHAPTER 12 HYDRONICS:** See this chapter of the UMC except as provided below.

A. **1201.2.8.3 Pressure test.** See this section of the UMC except delete the first sentence and substitute: piping shall be tested with a hydrostatic pressure or an air test of not less than 1.5 times operating pressure.

B. **1201.3.1.1. PEX tubing.** See this section of the UMC except add the following: tubing shall be manufactured with an approved oxygen diffusion barrier.

[14.9.2.20 NMAC - Rp, 14.9.2.20 NMAC, 8-1-11]

**14.9.2.21 CHAPTER 13 FUEL PIPING:** See this chapter of the UMC except as provided below.

A. **1309.5.2.3 Copper and brass pipe** shall not be used. Aluminum alloy pipe shall not be used with gases corrosive to such material.

B. **1312.1.2 Protection against damage.** Delete the text of subsection (A) of this section of the UMC, cover requirements, and substitute: Underground piping systems shall be installed with a minimum of 18 inches (460 mm) of cover. Where 18 inches (460 mm) of cover cannot be provided, the pipe shall be installed in conduit or bridged (shielded).

C. **1312.9.3 Emergency shutoff valves.** See this section of the UMC except delete the following: the emergency shutoff valves shall be plainly marked as such and their locations posted as required by the authority having jurisdiction. See this section of the UMC except add the following to the end: For purposes of isolation and safety, an additional gas shut off shall be installed downstream of the serving supplier gas meter prior to any distribution of gas into the gas piping system

D. **1312.13 Electrical bonding and grounding.** Delete this section of the UMC and see the New Mexico Electrical Code (NMEC).

E. **1315.0 Liquefied petroleum gas facilities and piping.** Delete this section of the UMC and substitute the following: Liquefied petroleum gas facilities shall comply with 19.15.40 NMAC, liquefied petroleum gas standards, and NMSA 1978 70-5-1 et seq., liquefied and compressed gasses.

[14.9.2.21 NMAC - Rp, 14.9.2.21 NMAC, 8-1-11]

**14.9.2.22 CHAPTER 14 PROCESS PIPING:** See this chapter of the UMC.

[14.9.2.22 NMAC - Rp, 14.9.2.22 NMAC, 8-1-11]

**14.9.2.23 CHAPTER 15 SOLAR SYSTEMS:** See this chapter of the UMC.

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[14.9.2.23 NMAC - Rp, 14.9.2.23 NMAC, 8-1-11]

**14.9.2.24 CHAPTER 16 STATIONARY POWER PLANTS:** See this chapter of the UMC.  
[14.9.2.24 NMAC - Rp, 14.9.2.24 NMAC, 8-1-11]

**14.9.2.25 RESIDENTIAL ENERGY EFFICIENCY.** See this Chapter of the 2009 IECC.  
[14.9.2.25 NMAC - Rp, 14.9.2.25 NMAC, 8-1-11]

**14.9.2.26 COMMERCIAL ENERGY EFFICIENCY:** See this Chapter of the 2009 IECC.  
[14.9.2.26 NMAC - Rp, 14.9.2.26 NMAC, 8-1-11]

**14.9.2.27 CHAPTER 17 STANDARDS:** See this chapter of the UMC and add the following: ACCA manual S - 2003.  
[14.9.2.27 NMAC - Rp, 14.9.2.27 NMAC, 8-1-11]

**14.9.2.28 APPENDICIES:** See this section of the UMC.  
[14.9.2.28 NMAC - Rp, 14.9.2.28 NMAC, 8-1-11]

**HISTORY OF 14.9.2 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with state records center and archives under:

CIC MB 68-2, 1964 New Mexico Plumbing Code, filed 1/23/68.  
CIC MB 70-8, 1970 Plumbing Code of New Mexico, filed 4/29/70.  
CIC MB 71-4, 1970 Plumbing Code of New Mexico, filed 6/8/71.  
CIC MB 74-9, 1973 Uniform Plumbing Code, filed 11/20/74.  
CIC 76-1, 1976 Uniform Plumbing Code, filed 5/4/76.  
CIC MB 80-5, 1979 Uniform Plumbing Code, filed 4/24/80.  
MB-UPC-82-1, 1982 Uniform Plumbing Code, filed 11/4/82.  
MB-UPC-85-1, 1985 Uniform Plumbing Code, filed 10/1/85.  
MB-UPC-88-1, 1988 Uniform Plumbing Code, filed 12/15/88.  
MB-UPC-91-1, 1991 Uniform Plumbing Code, filed 7/28/92.  
CIC MB 68-3, 1966 New Mexico Gas Code, filed 1/23/68.  
CIC MB 70-7, 1970 Natural Gas Code of New Mexico, filed 4/29/70.  
CIC MB 71-3, 1970 Natural Gas Code of New Mexico, filed 6/8/71.  
CIC-74-8, 1973 Uniform Mechanical Code, filed 11/20/74.  
CIC 76-4, 1976 Uniform Mechanical Code, filed 11/24/76.  
CID MB 80-3, 1979 Uniform Mechanical Code, filed 4/23/80.  
MB-UMC-82-1, 1982 Uniform Mechanical Code, filed 11/4/82.  
MB-UMC-85-1, 1985 Uniform Mechanical Code, filed 10/1/85.  
MB-UMC-88-1, 1988 Uniform Mechanical Code, filed 12/15/88.  
MB-UMC-91-1, 1991 Uniform Mechanical Code, filed 7/28/92.  
CIC 77-3, 1976 New Mexico Uniform Solar Energy Code, 2/26/77.  
CID MB-80-6, 1979 Uniform Solar Energy Code, 4/24/80.  
MB-USEC-82-1, 1982 Uniform Solar Energy Code, filed 11/4/82.  
MB-USEC-85-1, 1985 Uniform Solar Energy Code, 12/23/85.  
MB-USEC-88-1, 1988 Uniform Solar Energy Code, 12/15/88.  
MB-USEC-91-1, 1991 Uniform Solar Energy Code, 7/28/92.  
CIC-75-1, 1973 Uniform Swimming Pool Code, Section 1.7, 10/31/75.  
CIC-76-3, 1976 Uniform Swimming Pool Code, 7/27/76.  
CIC MB 80-4, 1979 Uniform Swimming Pool Code, filed 4/23/80.  
MB-USPC-82-1, 1982 Uniform Swimming Pool Code, 11/4/82.  
MB-USPS and HTC-85-1, 1985 Uniform Swimming Pool, Spa and Hot Tub Code, 12/23/85.  
MB-USPS and HTC-88-1; 1988 Uniform Swimming Pool, Spa and Hot Tub Code, 12/15/88.  
MB-USPS and HTC-91-1, 1991 Uniform Swimming Pool, Spa and Hot Tub Code, 7/28/92.  
CID-MB-NMP&M 91-1, 1991 New Mexico Plumbing and Mechanical Code, 7/7/92.

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**History of Repealed Material:** 14 NMAC 9.2, 1997 New Mexico Plumbing and Mechanical Code (filed 10/30/98), repealed 7/1/04.

14.9.2 NMAC, 2003 New Mexico Mechanical Code (filed 5/27/04), repealed 1/7/04.

14.9.2 NMAC, 2006 New Mexico Mechanical Code (filed 08/16/07), repealed 1/28/11.

14.9.2 NMAC, 2009 New Mexico Mechanical Code (filed 12/28/10), repealed 8/1/11.

**Other History:**

CID-MB-NMP&M 91-1, 1991 New Mexico Plumbing and Mechanical Code, (filed 7/7/92), replaced by 14 NMAC 9.2, 1997 New Mexico Plumbing and Mechanical Code, effective 12-31-98.

14 NMAC 9.2, 1997 New Mexico Plumbing and Mechanical Code (filed 10-30-98) (that applicable portion) replaced by 14.9.2 NMAC, 2003 New Mexico Mechanical Code, effective 7/1/04.

14.9.2 NMAC, 2003 New Mexico Mechanical Code (filed 5/27/04) replaced by 14.9.2 NMAC, 2006 New Mexico Mechanical Code, effective 1/1/08.

14.9.2 NMAC, 2006 New Mexico Mechanical Code (filed 08/16/07) replaced by 14.9.2 NMAC, 2009 New Mexico Mechanical Code, effective 1/28/11.

14.9.2 NMAC, 2009 New Mexico Mechanical Code (filed 12/28/10) replaced by 14.9.2 NMAC, 2009 New Mexico Mechanical Code, effective 8/1/11.

IN THE COURT OF APPEALS  
FOR THE STATE OF NEW MEXICO

Southwest Energy Efficiency Project,  
Environment New Mexico, Sundancer  
Creations Custom Builders, LLC,  
eSolved, Inc., the Sierra Club, Tammy  
Fiebelkorn, Faren Dancer, Sanders Moore,  
Erika Wolf, and Sommer Batterson,

Appellants,

v.

the New Mexico Construction Industries  
Commission, the New Mexico Construction  
Industries Division, and Richard W. Tavelli,  
Director of the New Mexico Construction  
Industries Division,

Appellees.

No.

COURT OF APPEALS OF NEW MEXICO  
FILED

JUL 11 2011



NOTICE OF APPEAL

Southwest Energy Efficiency Project, Environment New Mexico, Sundancer Creations Custom Builders, LLC, eSolved, Inc., the Sierra Club, Tammy Fiebelkorn, Faren Dancer, Sanders Moore, Erika Wolf, and Sommer Batterson (referred to as “the Appellants”) hereby appeal to the New Mexico Court of Appeals from the June 10, 2011 decision of the New Mexico Construction Industries Commission, the New Mexico Construction Industries Division, and Richard W. Tavelli, the Director of the New Mexico Construction Industries Division (referred to as “the Appellees”) to amend the 2009 New Mexico Plumbing Code (NMAC §§14.8.2.1, *et seq.*).

This appeal is filed pursuant to Rule 12-601 of the Rules of Appellate Procedure.

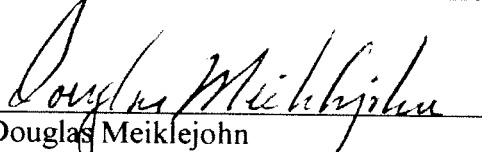
This appeal is also filed pursuant to NMSA 1978 §61-1-31 of the Uniform Licensing Act. In accordance with NMSA 1978 §61-1-31.B, the Appellants hereby certify that they have made satisfactory arrangements with the Appellees for preparation of the record at the Appellants' expense. Also in accordance with NMSA 1978 §61-1-31.B, the Appellants have attached to this Notice of Appeal two exhibits.

Exhibit 1 is the one page cover sheet with which the amendments to the 2009 New Mexico Plumbing Code (NMAC §§14.8.2.1, *et seq.*) were filed with the State Records and Archives Center on June 15, 2011.

Exhibit 2 is the amended 2009 New Mexico Plumbing Code (NMAC §§14.8.2.1, *et seq.*).

Dated: July 11, 2011.

NEW MEXICO  
ENVIRONMENTAL LAW CENTER



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Attorneys for the Appellants

Certificate of Service

I certify that on July 11, 2011 copies of this Notice of Appeal were mailed to:

Richard W. Tavelli, Director  
Construction Industries Division  
State of New Mexico  
2550 Cerrillos Road  
Santa Fe, N.M. 87505

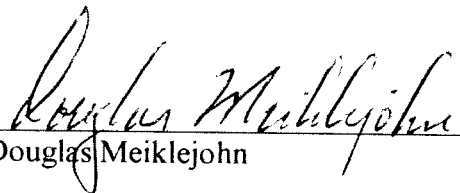
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Douglas Meiklejohn

2011 JUN 15 AM 8:38

**NMAC TRANSMITTAL FORM**

1.24.10 NMAC

*Vol. XIV No. 12 6-30-11 Historical*

[Sequence # *58.6* 1C

1. Issuing Agency REGULATION AND LICENSING DEPARTMENT Construction Industries Division		2. Agency Code (DFA) 4200
----------------------------------------------------------------------------------------------	--	------------------------------

3. Agency Address  
2550 Cerrillos Road  
Santa Fe, New Mexico 87505

4. Contact Person  
Name Jose Rudy Romero Phone # (505)476-4598 FAX 505-476-4619  
E-mail joser.romero@state.nm.us

5. Type of Rule Action  
New  Amendment  Renumber  Repeal  Emergency

6. Total number of pages: 1 7. Hearing date: 06-14-11 8. Effective date: 08-01-2011

9. NMAC Number		
Title	Chapter	Part
14	8	2

10. NMAC Name		
Title	Chapter	Part
Housing and Construction	Plumbing Codes	2009 New Mexico Plumbing Code

11. Amendment Description Amend one (1) section	12. Amendment NMAC Citation 14.8.2 NMAC, Section 11
----------------------------------------------------	--------------------------------------------------------

13. Most recent filing date (if applicable):  
12 / 28 / 2010

14. Are there any materials incorporated by reference?  
No  Yes  *Please list attachments and Internet site(s) if applicable*

Reference / Internet site
1. 2009 Uniform Plumbing Code
2.
3.

15. If materials are attached, has copyright permission been received?  
No  Yes  Public domain

16. Legal citation(s) that allows the Issuing Agency to regulate and the Issuing Authority to promulgate regulations on this subject (provide all that apply):  
Section 60-13-9 and 60-13-44 Construction Industries Licensing Act, NMSA 1978

17. Signature & Title of Issuing Authority (Delegated authority must be on file):

Name: Richard W. Tavelli Check if delegated authority   
Title: Director

*Richard W. Tavelli*  
Signature 6-14-11  
Date Signed



2011 JUN 15 AM 8:38

This is an amendment to 14.8.2 NMAC, Section 11, effective 08-01-11.

14.8.2.11 CHAPTER 3 GENERAL REGULATIONS: See this chapter of the UPC except as provided below.

A. 301.2 Alternate materials and methods of construction equivalency. Delete this section of the UPC and see 14.5.1 NMAC.

B. 301.3 Flood hazard resistance. See this section of the UPC.

C. 301.4 Alternative engineered design. See this section of the UPC except as provided below.

(1) 301.4.1 Design criteria. See this section of the UPC and 14.5.2 NMAC permits.

(2) 301.4.2 Permit application. Delete this section of the UPC and see 14.5.2 NMAC permits.

(3) 301.4.3 Technical data. See this section of the UPC.

(4) 301.4.4 Design documents. See this section of the UPC and 14.5.2 NMAC permits.

(5) 301.4.5 Design approval. Delete this section of the UPC and see 14.5.2 NMAC permits.

(6) 301.4.6 Design review. Delete this section of the UPC and see 14.5.2 NMAC permits.

(7) 301.4.7 Inspection and testing. Delete this section of the UPC and see 14.5.2 NMAC permits and 14.5.3 NMAC inspections.

D. 313. Protection of piping, materials and structures. See this section of the UPC except [as provided below] add the following section:

~~(1) 313.6. All residential hot water piping, including circulating supply and return piping shall be insulated to a minimum R-2. All commercial hot water piping, including circulating supply and return piping shall be insulated to a minimum R-4. A means of manual shut off must be installed on all circulating pumps.~~

(2) 313.13 Protection against damage. Plastic materials for water service piping outside underground shall have a blue insulated copper tracer wire or other approved conductor installed adjacent to the piping. Access shall be provided to the tracer wire or the tracer wire shall terminate above ground at each end of the nonmetallic piping. The tracer wire shall be not less than 18 AWG and the insulation type shall be suitable for direct burial.

[14.8.2.11 NMAC - Rp, 14.8.2.11 NMAC, 1-28-11, A, 8-1-11]

