



Susana Martinez
GOVERNOR

Robert "Mike" Unthank
SUPERINTENDENT

Pat McMurray
DEPUTY
SUPERINTENDENT

Paul D. Barber
GENERAL COUNSEL

Claudia Armijo
DEPUTY GENERAL
COUNSEL

Martin Romero
ACTING DIRECTOR

Sally Galanter
COUNSEL

New Mexico Regulation and Licensing Department

CONSTRUCTION INDUSTRIES DIVISION

P.O. Box 25101 □ Santa Fe, NM 87504 □ Ph. (505) 476-4675 □ Fax (505) 476-4685
5500 San Antonio Dr. NE □ Albuquerque, NM 87109 □ Ph. (505) 222-9800 □ Fax (505) 765-5670
505 S. Main St., Suite 103 □ Las Cruces, NM 88004 □ Ph (575) 524-6320 □ Fax (575) 524-6319
www.rld.state.nm.us/construction

To: CID General Construction Bureau Chief, Electrical Bureau Chief, Mechanical Bureau Chief, LP Gas Bureau Chief, Electrical Chiefs, Electrical Field Inspectors, and CIC Commissioners

From: Martin Romero, Acting Director CID

Cc: Aimee Barabe, NMOGA, Keven Groenewold, NMREC, Dan Najjar, Legal Counsel, Mike Unthank, Superintendent RLD, Pat McMurray, Deputy Superintendent RLD, Paul Barber, General Counsel, Sally Galanter, CID Legal Counsel, Ernest Archuleta, PRC, Geraldine Garduno, PRC, Cydney Beadles, PRC

Subject: Oil Field Inspection Services

Date: November 20, 2018

DIRECTIVE 2018-0001

In accordance with the policy adopted and issued by the Construction Industries Commission on May 21st 2018, this Directive is effective close of business, December 28, 2018, at which time the Construction Industries Division ("CID") of the Regulation and Licensing Department will no longer provide oil field electrical inspection services, other than for structures meant for occupancy.

A plain reading of Construction Industries Licensing Act ("CILA") specifically exempts mining, gas, and oil companies from the definition of contracting, and therefore, from CILA's requirements for CID licensing, permitting and inspections. Generally, trade bureau inspectors are responsible for conducting inspections of work performed by contractors subject to the provisions of CILA. However, based on the exemptions as stated in NMSA 1978, § 60-13-3, CID does not have jurisdiction to require mining, gas or oil companies performing work in the oil fields to obtain permits requiring CID to conduct inspections.

Always considering that the purpose of CILA, as expressed in NMSA 1978, § 60-13-1.1, is to "promote the general welfare of the people of New Mexico by providing for the protection of life and property by adopting and enforcing codes and standards for construction..." and the requirement to eliminate administrative practices that create problems with "closely related trades or

Administrative Services Division
(505) 476-4800

Alcohol and Gaming Division
(505) 476-4875

Boards and Commissions Division
(505) 476-4600

Construction Industries Division
(505) 476-4700

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(505) 476-4885

Manufactured Housing Division
(505) 476-4770

Securities Division
(505) 476-4580

occupational activities and jurisdictional conflicts’, it is equally important to heed the legislature’s mandate that a certain entity is exempt from the requirements of CILA. There are other examples of exemptions from CID licensing, permitting and inspection requirements that are not included in the CILA. Federal lands and federal projects do not come under CILA for enforcement. However, safety concerns are still addressed because there are federal agencies and federal requirements that assume that responsibility instead of the state. Additionally, a review of the Occupational Safety and Health Administration (“OSHA”) reveals that the federal OSHA places responsibility on owners and their contractors for hazards associated with electricity for the oil wells. This is evident as is revealed through its publications such as Controlling Electrical Hazards OSHA Publication 3075 (2002), 29 CFR 1926 subpart K, OSHA Safety and Health Topics Page: Electrical – Standards, OSHA Safety and Health Topics Page: Electrical and OSHA Oil and gas e Tool: Electrical Incidents.

NMSA 1978, § 60-13-3(D) (2) provides specific exemptions by stating that contracting “does not include: any person who drills, completes, tests, abandons or operates any petroleum, gas or water well; or services equipment and structures used in the production and handling of any product incident to the production of any petroleum, gas or water wells, excluding any person performing duties normally performed by electrical, mechanical or general contractors; or who performs geophysical or similar exploration for oil, gas or water.”

Additionally, § 60-13-3 (D) (8) provides an additional exemption to include: “any mining company, gas company or oil company that installs, alters or repairs its facilities, including plumbing fixtures or gas piping, where the work is an integral part of the installing or operating of a system owned or operated by the mining company, gas company or oil company; provided the construction of a building by a mining company, a gas company or an oil company is required to be done in conformity with all other provisions of the Construction Industries Licensing Act and with orders, rules, regulations, standards and codes adopted pursuant to that act;”

The following exemptions exclude CID’s jurisdiction to require obtaining permits and conduct inspections:

- (1) The drilling, completing, testing, abandoning or operating of any petroleum/oil well.
- (2) The servicing of equipment and structures used in the production and handling of any product incident to the production of such well excepting the duties normally performed by electrical, mechanical or general contractors. The exception has been determined to mean in conjunction with housing for oil field workers.
- (3) The performance of geophysical or similar exploration for oil and gas.
- (4) The installation, alteration or repair of a mining, gas, or oil company’s facilities when the work is an integral part of the installing or operating of the company’s system excepting if the company is constructing a building such must be in conformity with CILA, its regulations and codes.

It is also noted that Section 60-13-3 (D) (7) deals with pipeline companies, also providing another exemption. However, CID does have jurisdiction to require the obtaining of permits and the conducting of inspections when oil and gas companies erect buildings to be occupied by individuals and not intended for temporary use.

Based on these exemptions, CID does not have the jurisdiction to require persons performing work in the oil fields to obtain permits and thereafter require CID to conduct inspections regarding the petroleum well's creation and continuing operation. CID must fully comply with the CILA and not require contractors to obtain permits and inspections as it lacks the jurisdiction to do so.

Therefore, effective December 31, 2018, except for buildings erected for occupancy, CID will no longer conduct oil field electrical inspections as it is determined that such inspections are outside of CID's jurisdictional authority. As such, contractors may choose to immediately stop CID electrical permitting and inspections other than those required for permanent buildings erected for occupancy or, in the alternative, contractors may continue those permitting and inspection processes from the date this Directive is issued through close of business December 28, 2018, after which date CID will no longer be providing this service.