



MARINE CONTRACTORS LICENSING BOARD

c/o Maryland Department of the Environment

1800 WASHINGTON BLVD., SUITE 430, BALTIMORE, MD 21230
(800) 633-6101, EXT. 3249

MARINE CONTRACTORS LICENSING BOARD

DRAFT Meeting Minutes – April 10, 2023

Location: Annapolis, MD (1804 West Ave. 21401) and Virtual via Google Meet

BOARD MEMBERS PRESENT

Milton Rehbein, Chairman, Northern MD Rep
Tammy Roberson, MDE Rep
Bob Murtha, SoMD Rep
Josh Schleupner, Eastern Shore Rep
Doug Suess, At Large Rep

OTHERS PRESENT

Matthew Standeven, **Board Counsel**
Mike Eisner, Board Administrator

CALL TO ORDER

The meeting was called to order by the Board's Chairman at 10:06 am. Five Board members as well as the Board's Counsel and Administrator were in attendance either at the Annapolis location or virtually via Google meet.

AGENDA REVIEW

The Board reviewed and approved the agenda for the meeting which included: an update of licensing activities and finances, update on Gene Benton (Encompass Enterprises, Inc.) and discussion of draft regulations (dated March 3, 2023). Also on the Agenda was proposed next steps for regulation development.

REVIEW OF PRIOR MEETING MINUTES

Board Members reviewed and approved the draft meeting minutes from March 13, 2023.

OLD BUSINESS

Board Activities and Financial/Budget Report

The Board Administrator gave an overview of licensing activities. In 2023 there are 36 licenses, termed 'Periodic', that will renew throughout 2023. To date, applications have been mailed to 17 licensees. Of these 9 renewals have been issued. We continue to receive about 1-2 new license applications per month. Testing for new license applicants continues to be virtual. The test is emailed to the applicant on the day and at the time requested. They then have 24 hours to email their exam back to the Board's Administrator.

Board Finances: The Board's Administrator gave an update of the Board's present income/expense status. The Administrator had not received a financial update since September 30, 2022. To

summarize, the fund balance at the beginning of Fiscal year 2023 was \$187,824. The total adjusted fund balance through September 30, 2022, was \$174,138. Based on revenue accrued to date from the 2022 Annual renewals and the 2023 Periodic renewal fees - the Board's financial status is sound.

Update on problem with the new MCLB Tidal Wetlands Authorization online training. The testing part of the course was not grading the exam questions accurately. This has been fixed by MES. MES will proceed with creating a password reset for the 2 MCLB online training courses.

Board Counsel recently received an advance copy of a forthcoming Civil Complaint from Encompass Enterprises, Inc. against MDE seeking relief via a Writ of Mandamus to compel MDE to approve the application for a Marine Contractors License. The MDE hasn't officially been served yet so at this point is not compelled to respond. The Board has not been named in this Civil Complaint.

NEW BUSINESS

Review and Discussion of Draft Regulations dated March 3, 2023

1. Definitions. (26.08.01.01)

'Marine contractor services.' As now drafted, means work done 'in, on, or under State or private tidal wetlands.

Comment: a marine contractor license should be required for all residential projects above the mean high water line (MHW).

Question asked: Does Board have Title 17 jurisdiction above MHW in Private Tidal Wetlands?

Yes if:

1. State deemed transfer to private property owner, grandfathered
2. Upland has been excavated and is now functioning as tidal wetlands; MHW has been relocated
3. Vegetated area above MHW up to highest astronomical tide.

Requirement for a marine contractor license is up to MHW in State Tidal waters, and above MHW in Private Tidal waters if one of above 3 situations is met.

What about bridge painters?

This is different than a pier 'anchored' in tidal waters. Board not interested in requiring marine contractors license for strictly above-water bridge painters.

Counsel: There is discretion on what activities the Board decides needs a marine contractors license. However, some activities are in definition of 'Marine Contractor Services' in the Statute, such as piers, pier access structures- so no Board discretion allowed if the activity is listed in the definition.

'Similar contractor experience.'

There is agreement that work in saturated soils in non-tidal environments may be 'similar' to work done in tidal environments.

Counsel: There is no mandate/requirement for Board to expand definition of ‘similar.’ This is up to the Board. There is no ‘legal’ problem using non-tidal as proxy for similar. It would be OK if non-tidal was the only work activity spelled out in regulations as ‘similar.’ Some specificity in the definition may be useful to counter potential argument that ‘similar’ is arbitrary.

Suggestion: Board could be more specific in naming non-tidal activities that are similar such as stream restoration, dam construction, piers and bulkheads. One Board member thought it could be hard to get 2 years of full time experience working in non-tidal waters.

Comment: Tidal environments are unique due to stability issues of tides and currents. Limitations are needed so that new licensed contractors have the appropriate experience for construction in tidal waters.

Counsel: Reminder, once an expanded definition of similar is in regulations, it would have the ‘force of law.’ Downside with this, the Board could lose its discretion to review on a case-by-case basis

2. Exemptions. (26.08.01.02)

‘(2)’ Allows a residential or commercial property owner to do marine contractor work, on their property, without a license. Language needs to be tightened so that a property owner can’t think that a general contractor can be hired to do the work instead of a licensed marine contractor.

Counsel: This can’t be modified because it’s in Statute. While more language could be added, Counsel doesn’t think it’s necessary.

3. Qualifications and Licensure. 26.28.01.03.D

Counsel: Should the experience requirement be license category specific? Since the base threshold for licensure is set by Statute, the Board is somewhat limited in how it can modify this. Perhaps the statutory baseline of 2 years or similar experience qualifies applicants for the ‘least experience’ license Category, and regulations establish additional criteria for qualifying for Categories for more complex marine construction activities.

Counsel: Don’t have to necessarily spell it out: can have broad language that references license category and an experience standard. Worth exploring tying parts of licensing process to license Categories. Can also peg an experience requirement for specific category. For example, could reserve non-tidal as similar experience only for ‘lower’ license Category.

This concept liked by Board member, i.e. define the license pathway. Applicant selects license category and the Board accesses if they meet license Category criteria.

4. License Categories. (26.28.01.04)

Counsel: In the Board finalizing list of activities in each license Category, may be prudent to add specific activities, but at same time leave Board’s ability to access certain projects, i.e. preserve its discretion. Ultimately these decisions up to Board. There should be a ‘catchall’ in each Category to capture unnamed activities.

Question: Individual vs Entity - Should an Individual licensee be prohibited from applying for the proposed 'Heavy Marine' License Category.

Counsel: An individual vs. an entity can apply for any license Category, but there is practical implication that an 'Individual can't do Heavy Marine activities.

Board member: an Individual won't have the experience or bonding for such a project.
Board member: Individual licensees will be doing revetments, even though these currently are in the 'Heavy Marine' license Category. Some revetments are 'quite small.' Also, some public boat ramps are 'quite small,' and these are currently in the 'Heavy Marine' license Category.

Board member: The issue of customer base: typically, only municipalities and large development corporations do heavy construction.

Counsel: Could reserve the upper 'Heavy Marine' license Category for only 'biggest' and most complicated revetments and public boat ramps.

Decision to have Workgroup April 24, 2023 with three Board members to finalize/fine tune the Categories for later presentation for review by full Board.

Suggested there be a tie-in/correlation between activities in a license categories and tidal wetland authorizations.

5. Application Procedures. (26.08.02.01)

Counsel: It is agreed that specific documentation of experience is needed. Putting in regulations the types of documentation that is acceptable, such as W-2's, makes sense for transparency. Another way to address this is to include these specifics in the 'Definitions' (26.28.01.01).

Other types of potential documentation such as references from employer(s) with specifics of work performed, letters of recommendation, and evaluations from 3rd party peers, engineers - have potential challenges for an applicant, i.e. going back to an employer to gather such documentation.

College coursework and/or degrees and military experience was suggested. The Marines have work classifications called Military Occupational Specialties (MOS) that could be applied.

Counsel: Since these types of specifics are hard to pin down, the Board has the option to keep silent on this in the regulations and retain discretion.

Suggestion to require a MHIC license for marine contractor licensure.

Counsel: Doesn't think can be made a requirement because it's not in the Statute. However, can be a factor Board considers in application review. Counsel also noted MHIC has a different structure. MHIC fees go to a guarantee fund for customers of MHIC licensees, whereas MCL works to protect customers by their application approval process and continuing education requirements. MHIC has no continuing education requirements. Board has broad leeway on its application form, and this could be a question on the application.

6. Incomplete Application. 26.28.02.03.B

Note: Historically, applications haven't been terminated but maintained as 'pending.' Board thought reasonable to have a limit on how long an application remains active.

Board agreed that after 90 days an applicant would be required to refile an application if they wanted to pursue licensure.

7. Action on an Application. 26.28.02.04

This provides what happens when an application is received. If an application is incomplete then the applicant is informed. If it is complete, then the applicant is either eligible or not eligible to take the exam. Change proposed to 26.08.02.04.A: replace "Following its review..... the Board shall promptly notify...." To "...the Board shall within 90 days notify..."

8. Examination. 26.28.02.05.A

Counsel: Its appropriate to have the exam based on the license Category, however language drafted: "... take an examination for the appropriate license category..." is sufficient to give the Board authority to develop exams as it feels appropriate. Also, the draft regulations in 26.28.02.04.(2)(a), states that the application must be 'complete' and the applicant determined by the Board to be 'eligible' before the exam can be taken. The Statute requires an exam, but does not have this specificity of procedure.

A Board member stated that experience is more important than passing a test.

9. Payment of Fees. 26.28.02.10

Counsel: Statute requires that the Board 'set reasonable fees.' Based on this, fees do not have to be specified in the regulations.

The Board decided to allow flexibility in setting fees by not specifying fees in the regulations.

10. Procedures for Disciplinary Action. 26.28.04.02.A

The draft regulations reflect the Statutory change that MDE has a supervisory role for any proposed Board action under 26.28.04.01 (Denials, Reprimands, Suspensions, and Revocations).

These regulations also reflect that the Board has delegated its contested case hearing authority to the Office of Administrative Hearings. With this, contested case hearings will no longer be before the Board.

The Board's intent is to have the draft regulations ready for internal MDE review by June 15, 2023.

No new business was brought up.

ADJOURNMENT

The Board voted and approved adjournment at 11:46 am. The next monthly Board meeting is scheduled for May 8, 2023 at 10 AM.