



MARINE CONTRACTORS LICENSING BOARD

c/o Maryland Department of the Environment

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MARINE CONTRACTORS LICENSING BOARD

DRAFT Meeting Minutes – April 8, 2024

Location: Virtual via Google Meet

BOARD MEMBERS PRESENT

Milton Rehbein, Chairman, Northern MD Rep
Tammy Roberson, MDE Rep
Kelly Wright, DNR Rep
Doug Sues, At Large Rep
Dani Racine, At Large Rep
Daniel Lerian, Eastern Shore Rep.

OTHERS PRESENT

Matthew Standeven, Board Counsel
Mike Eisner, Board Administrator
Brandon Weems, Director/President of the
Maryland Marine Contractors Association
(MMCA)

CALL TO ORDER

The meeting was called to order by the Board's Chairman at 10:04 am. Six Board members as well as the Board's Counsel, Administrator, and Brandon Weems, Director of the Maryland Marine Contractors Association were in attendance.

AGENDA REVIEW

The Board reviewed and approved the agenda for the meeting which included: a review and approval of minutes from the Board's March 11, 2024 meeting, an update of licensing activities and finances, a Baltimore County referred complaint, an update on regulations, a discussion of license Category criteria, a discussion on Category fees, a DNR inquiry regarding watermen, and other new business requested by Board members.

REVIEW OF PRIOR MEETING MINUTES

Board Members approved the minutes from the March 11, 2024 Board meeting.

OLD BUSINESS

Board Activities and Financial/Budget Report

Licensing Activities: In 2024 there are 25 licenses up for renewal that have expiration dates throughout calendar year 2024. To date, 14 have been notified of their need for renewal. Of these, six licenses have been renewed and information has been received from three others. One contractor will not renew their license. 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 last update on the Board's finances for FY24 was through January 31, 2024. Fiscal Year 2024 began July 1, 2023 and ends June 30, 2024. This update can be found in the minutes from in March 11, 2024 Board meeting.

The Administrator gave an update on FY24 funding remaining available for maintenance by MES for our online training courses. Of the \$5000 allocated, \$4,870 was remaining at the end of February 2024. MES is working on transitioning the Board's two online training classes from MES to MDE servers. It is not known how much this transition will cost. In addition, there is a FY25 allocation of \$5000 to support the continued development of technical training for marine contractors. This is aimed at providing additional opportunities for licensed contractors to acquire the 12 hours of continuing education required for license renewal.

Baltimore County Complaint

The Board Administrator received a referral from Baltimore County Department of Environmental Protection and Sustainability (DEPS). The complaint alleged that marine contractor work was being done at Rocky Point Park by Ecotone, and that Ecotone no longer has a licensed representative. Baltimore County confirmed that it was Ecotone doing the marine contractor work but did not confirm that they lost their licensed representative. The Board's Administrator referred this complaint to MDE Compliance. Compliance, similar to Baltimore County DEPS, confirmed that Ecotone did the work, but did not confirm that they no longer have a licensed representative as an employee of their company. The Board's Administrator conferred with the Board Chairman, Counsel, and MDE representative. The decision was to send a certified letter to Ecotone inquiring of the status of their representative. In the letter reference was made to the Statute and recently issued Regulations. A response was requested within 15 days. They were told if they indeed did not have a Representative currently employed, that their license was no longer in effect and to continue doing marine contractor services would require submission of a new application with an individual who could meet the licensing minimum requirements.

Regulation Update

The new Marine Contractor regulations became effective March 18, 2024, A letter was sent by email March 29, 2024 informing licensed marine contractors of this and 250 letters were also sent by US mail with this information to make sure contractors were informed. Since becoming effective, the Board's Administrator has received follow-up feedback from several licensed contractors. The Board's Counsel stated that now that the comment period, that was a part of the process of issuing these regulations has passed and these regulations are effective, there is no longer a formal comment period. Counsel stated that we do want to keep a record of comments received and that these should be written. Counsel stated that we don't want to create steps that create challenges for public input. With this, comments via letter or email is fine. MDE's Board Representative concurred and stated that in the Wetlands Program they give equal consideration whether comments received are via letter or email. It was also stated by a Board member that comments in writing in some form – compared with the Board's Administrator fielding comments via phone - will yield more transparency of the Board's functioning. However, Counsel stated that since the regulations did go through a comment period and the regulations are now effective, a response from the Board is not mandated.

The Board's Administrator shared several of these questions/comments received from licensed contractors. The following were shared at the meeting:

- I want to get a Category 1 license when I renew my license in 2 years – What do I have to do?
- How do I know what Category I'm in?
- How is Category 1 distinguished from Category 2?
- These regulations were issued to give more power to larger marine contracting firms.

Board Counsel summarized the reasons these regulations were promulgated and the difference between Statute and Regulation. In sum, Statutes don't explain everything. Statutes typically set the goal of a State Program, but there are gaps in the Statutes for effectively implementing the goals of the Statute. Regulations are common for a State entity such as MDE, to fill in gaps in the Statute and provide details for implementation. With regard specifically to the Marine Contractor Statute, there has been a long term push to issue regulations for the Board, i.e, provide details for program implementation such as defining terms. In addition, there was a Statute that enabled developing categories of marine contractor licenses. Counsel stated one impetus for license categories was also to provide clarity to consumers on the specific expertise of marine contractors.

Counsel stated that in our regulations all reference to categories relate to the application and Category applied for by a potential new licensee, and a marine contractor renewing their license. There is no regulatory trigger for marine contractors that *currently* have a marine contractor license to apply for a Category license until their license needs to be renewed. However, new applicants for a license must be given a license Category.

Counsel stated at this point it's the Board's role to decide what documentation is needed, and have procedures for renewing and issuing a new license in an appropriate category. Board members agreed that good documentation and procedures for category determination and approval are essential. The goal is solid criteria which will be good for the Board and contractors applying for a new license or renewing their license.

NEW BUSINESS

License Categories Criteria

As stated above, the Board has the task of developing the process and criteria for Category review and determination. At the Board's March meeting, two subcommittees were going to develop criteria to distinguish Category 1 from Category 2, and Category 2 from Category 3. This work has yet to be done. It was stated that the catastrophic collapse of the Francis Scott Key Bridge has delayed subcommittee work on this task.

It was agreed that since these criteria have yet to be established, at this time contractors up for license renewal won't be required to submit a Category selection with their renewal application.

Category Fees

A comment received verbally by the Board's Administrator was that license fees should be different for the different Category licenses. Counsel reminded that the Statute requirement is that the Board 'set reasonable fee for the issuance and renewal of licenses...to produce funds to approximate the costs of maintaining the Board.' Counsel stated the Board does have the option to set the fee structure via policy to be the same or different, for the license categories. However, the Board agreed not to address fees at this time. With this the fees are the same for all Categories of licenses.

Boat Salvage

The Board's Administrator spoke with a licensed Marine Contractor about the issue of boat salvage, and how to distinguish boat salvage from boat towing. This contractor shared with the Administrator a power point from BoatUS insurance which included their operational definition of salvage vs. towing. The Administrator shared some information from this document. If a vessel is slightly aground, it is defined as towing. Further, they define a boat as slightly aground - if one boat can free or pull the vessel back afloat. They also refer to this as recovery. This is contrasted to salvage, which is when the vessel is hard aground. Their operational definition of hard aground is if more than one boat is needed to free the vessel. Several Board members shared that this seems like a reasonable approach and could be a policy the Board could consider using. Further, using these criteria as policy would get towing/recovery 'off the table,' i.e. towing/recovery would not be salvage and therefore a marine contractor's license would not be required for this activity. The Administrator will share this document with the Board.

The Board was reminded that at one point the operational definition of boat salvage was if a tidal wetlands license was required, then it was considered salvage. A tidal wetlands license is required if dredging is needed to free a vessel. The term salvage is included in the definition of marine contractor services in Statute, and now regulations. But Counsel reminded the Board that salvage is not defined in either Statute or Regulations. Based on this, it was agreed that salvage of a vessel coming off the bottom requires a marine contractor license independent of whether a tidal wetlands license is required.

DNR Inquiry Regarding Watermen

The Administrator shared information on a DNR issue. This came to the Administrator via MDEs Tidal Wetlands Program. Chris Judy, DNR's Shellfish Division Director stated that DNR was using watermen in Talbot County to lay shell and shared that they not licensed. DNR's question was: Does this activity require marine contractor licensure? The Administrator on behalf of the Board informed DNR that, 'yes' this is a marine contractor activity and therefore a license is required. Counsel reminded this is because if DNR is hiring independent watermen, these watermen do not have the exemption that applies for State employees doing marine contractor activities. There was a DNR follow-up with MDE Tidal Wetlands to see if an exemption was possible for this specific activity.

The Board's MDE representative shared that historically MDE has remained silent on certain activities such as community wetlands planting that is considered de minimis. A discussion ensued on whether to exempt, via policy, this specific activity, i.e. to not require watermen to have a marine contractor's license to return shell to tidal waters. A Board member reminded that watermen do have a commercial license to do shellfish harvesting.

The MMCA representative stated their perspective is that this activity should not be a part of the marine contractor licensure program, i.e. this activity should be exempted. A Board member agreed and stated this is a DNR project and thinks laying shell should be exempt.

Counsel followed up and stated there could be some definitional wiggle room. This is because Marine contractor services typically revolve around some form of construction and the laying of shell is not construction. The MMCA representative stated that since watermen need a commercial license to fish, this would be requiring double licensure.

Counsel stated the Board could identify the laying of shell as an activity not contemplated to be included in marine contractor services. In addition, the main focus of the definition of marine

contractor services is about capturing construction activity of structures, and erosion and sediment control, i.e. interaction of activities with the tidal water bottom. With this Counsel stated that the if laying of spat involves digging up soil on bottom then maybe it should be included, but if one is just throwing shell overboard, then probably it is not a marine contractor activity. Counsel stated that based on the definition of marine contractor services in Title 17-101 f (1), the laying of shell is not ‘construction, demolition, installation, alteration, repair, or salvage activities.’

Board members were in agreement it was not the intention to include this activity in the definition of marine contractor services. The MMCA representative agreed and stated that laying spat on the bottom is a fishery activity, not a marine contractor activity. Counsel stated that the Board could develop a policy that carves out a small policy exemption for this specific activity along with the goal of being consistent. Counsel stated that without a Board policy determination this activity would need a license.

Counsel stated that policy doesn’t become or have the force of law. There is no formal process to develop a policy. With this, if the Board agrees this is the way they want to go, they can initiate this policy today. In addition, any policy developed can later be revisited, expanded and/or modified.

A Motion was made and seconded that said: *‘The dropping of shell is not a marine contractor service as currently defined in Statute and this activity does not require a Marine Contractor License.’*

All six Board members in attendance were in favor of this motion.

MDE’s Representative proposed that the Board follow-up on this Motion by working with DNR to learn about and understand the full scope of reef creation activities in tidal waters in Maryland. Based on this, the Board could create a larger policy about reef creation activities, and whether marine contractor licensing should be required. In addition and based on this, it was suggested an exemption for reef creation activities could be introduced at the next legislative session.

No other new business brought up.

ADJOURNMENT

The Board voted and approved adjournment at 11:14 am. The next monthly Board meeting is scheduled for April 8, 2024 at 10 AM and will be Virtual.