



MARINE CONTRACTORS LICENSING BOARD

c/o Maryland Department of the Environment

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MARINE CONTRACTORS LICENSING BOARD

DRAFT Meeting Minutes – June 10, 2024

Location: Virtual via Google Meet

BOARD MEMBERS PRESENT

Tammy Roberson, MDE Rep
Kelly Wright, DNR Rep
Bob Murtha, Southern MD Rep
Dani Racine, At Large Rep
Daniel Larian, 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 MDE Representative at 10:07 am. Five Board members as well as the Board's Counsel, Board Administrator, and Brandon Weems, Director of the Maryland Marine Contractors Association (MMCA) 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 April 8, 2024 meeting, an acknowledgement of service to the Board by outgoing Board member Doug Sues, an introduction of the Board's new At-Large Board member Donna An, an update by the Board's Administrator of licensing activities including license Category activity and revisions to applications and license certificates, an update of finances, an update on the Baltimore County complaint about a licensed Marine Contractor, an update on the response to Sharon Zhang's living shorelines economic survey, an update on a DNR inquiry regarding watermen laying shell, an update on the Gene Benton litigation, and continued discussion on Category criteria, and other new business requested by Board members.

REVIEW OF PRIOR MEETING MINUTES

Board Members approved the minutes from the April 8, 2024 Board meeting.

NEW BOARD MEMBER APPOINTMENT

The acting Board Chair thanked outgoing Board member Doug Sues for his dedicated effort, time and energy serving the Board. Doug worked for many years and his expertise and great working relationships with Board members were always valued.

The Board Chairman introduced its newest Board member Donna An. Ms. An has been appointed to serve as the At Large Representative for the Western Shore. Ms. An is a licensed Marine Contractor. Her business is located in Prince Georges County and brings expertise in nature-based solutions, living shorelines, and brings a stream restoration perspective. We are excited to have her as a Board member

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, 20 have been notified of their need for renewal. Of these, ten licenses have been renewed. 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.

Regulation Implementation Update

The Board's Administrator updated the Board on continued work being done for Category implementation. A Supplemental Application had already been approved and shared with applicants for new licenses that are required to apply within the new Category licensing structure. This Supplemental Application form was shared with applications received after the March 18, 2024 implementation date. This was done in lieu of requiring these applicants to submit an entire new application.

There are now updated applications for Individual and Entity licenses on the Board's website. There is also updated information on the webpage that addresses Category licensing. Work was also done on updating the database to allow for Category implementation. The Administrator has reached out to MES to help create the necessary database code to allow for storage of the new license categories, and also for new fields to capture the dates of Category issuance for existing license holders. The Board's existing Maintenance contract will cover the cost of these updates.

An update on new applications received for a Marine Contractors License - that must comply with new Category regulations:

- Equix Energy Services, LLC has been approved for Category 4, Incidental Marine Contractor Services, specific for directional drilling.
- Hills Carnes lost their representative and has been proactive in reaching out to the Board to apply for approval of a new Representative under the new Category license structure. They initially applied with a selection of Category 1, Heavy Marine Construction. The Board determined that they did not meet the minimum requirements for this Category. The Board's Administrator contacted this applicant and relayed to either submit additional documentation for their Category 1 selection or consider resubmitting application with a revised Category selection. A Category 4 license, specific for geotechnical services, was suggested to this Company.

The Board Administrator updated the Board on a complaint from Baltimore County Department of Environmental Protection and Sustainability (DEPS). This complaint alleged that marine contractor work was being done at Rocky Point Park by Ecotone, and that Ecotone no longer had a licensed representative. A certified letter was sent to Ecotone inquiring of the status of their representative. Ecotone responding promptly to this letter and proceeded to submit a new application for a new

Representative for their company under a Category 2 Residential and Commercial Marine Construction license. The Board approved their application, and their license was subsequently reissued.

Board Finances:

The Board's Administrator shared that the last Marine Contractors Board financial update on FY24 finances was through January 31, 2024. Fiscal Year 2024 began July 1, 2023 and ends June 30, 2024. This update can be found in the March 11, 2024 Board meeting minutes.

The Administrator further shared that he gets regular monthly updates on 'expenditures and encumbrances.' However, this report does not include legal expenditures or revenues from license issuance. Therefore at this time we do not have an accurate update on the Board's bottom line current fund balance. The Administrator stated that he will have an End of Fiscal Year 2024 Fund Balance Reconciliation Report for the Board's next meeting. With this, we will learn what the Board's beginning balance is for the July 1, 2024 start of FY25.

The Administrator gave an update on FY24 funding remaining available for maintenance by MES. Of the \$5000 allocated for FY24, there was \$3,835 remaining at the end of April 2024. Since this contract ends June 30, 2024, application has been made to extend this contract. It is expected that this extension will be approved. In addition, there is an additional FY25 allocation of \$5000 to support the continued development of technical training for marine contractors and database management. This is aimed at providing additional opportunities for licensed contractors to acquire the 12 hours of continuing education required for license renewal. 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 the Board.

At the March 11, 2024 Board meeting, Sharon Zhang, who has been working with the Chesapeake Bay Conservation and Climate Corps (CCCC), gave a presentation about her project on shoreline erosion protection measures. In her presentation she stated her intent to invite marine contractors to contribute to her economic analysis via a survey. She was also asking for support of the Board in this endeavor. Sharon hopes that marine contractors can help on her project by sharing their experience and importantly by sharing economic information.

The Board supported this outreach to marine contractors. With this the Board's Administrator subsequently sent information and a request, to all licensed Marine Contractors, for their participation in her study. The response was essentially non-existent. With this, the Board's MDE Representative suggesting offering continuing education credits for participation in this study. This incentive worked and Sharon received 41 responses to her survey. It is Ms. Zhang's intent to eventually share the results of her study with marine contractors.

DNR Inquiry Regarding Watermen – follow up

The Administrator updated the Board on an issue brought to the Board at its April 8, 2024 meeting via MDEs Tidal Wetlands Program and Chris Judy, DNR's Shellfish Division Director. The issue was: Does the laying of shell by watermen, for DNR, require these watermen to be licensed Marine Contractors. Board members agreed 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. More information on this discussion can be found in the April 8, 2024 meeting minutes. Also, as a result of the Board's discussion and decision, the following was sent April 9, 2024 to Chris Judy.

“At its April 8, 2024 meeting, the Marine Contractors Licensing Board (MCLB) discussed your inquiry about the necessity for watermen to be licensed under Title 17 of the Environment Article before laying oyster shell for projects managed by the Department of Natural Resources (DNR).

The MCLB reached the decision that its licensing program was not intended to regulate the described activity, and that the laying of shell would not be considered a marine contractor service, pursuant to 17-101(f) of the Environment Article. As such, these watermen would not be required to obtain a license from the Board before performing shell-laying projects on behalf of DNR.

It is the MCLB's intent to craft a more broadly applicable guidance document for similar projects, including reef creation.”

The Board’s Counsel gave an update on the Gene Benton/Encompass Enterprises litigation. In late May, Board Counsel and Mr. Benton’s attorney argued before a judge MDE’s Motion for Summary Judgement. Counsel stated it went well and the judge granted the Department’s motion to dismiss the case. The argument hinged on the fact that the Board’s work in its review of applications, is not - nondiscretionary. However, this decision has been appealed. The lower court will take steps to transfer records to the Appellate Court of Maryland. Testimony will not be required because fact finding is not a part of this process.

Continued Discussion on License Category Criteria: The following summarizes this discussion.

- The experience and customer base of an applicant can dictate Category.
- The MMCA representative stated if a contractor is doing multiple marine contractor activities, then they would be a Category 2 Residential and Commercial Construction, unless they qualified for Category 1 Heavy Marine Construction.
- Is the applicant equipped to do the marine contractor activities they want licensing for? How are they equipped and what are they experienced to do *now*?
- How can a contractor advance, for example from Category 3 Limited Marine Construction to Category 2. To use an apprenticeship approach, an applicant would have to had worked under a licensed contractor getting the relevant experience. They could also reapply, if on their initial application and approval, they didn’t include experience they had, for an activity they now want to be licensed
- The MMCA representative stated that contractors qualified to be in Category 2 would likely appreciate if the review between Category 3 and 2, included meaningful criteria.
- It was stated the only way to go up, for example from Category 3 to 2 – without existing experience is to hire a representative with relevant experience for the desired Category.
- There was agreement on the above statement.*
- What is minimum documentation needed to approve an applicant for a Category? What must the applicant demonstrate or document in their application. What should the initial assessment be based on?
- It was stated that Category 4 Incidental Marine Contractor Services is unique and should therefore be straightforward.
- The concern was stated that if ‘we’ don’t have set criteria, the Board may be open to challenges. It was stated that flexibility is desired, but within a framework that creates a level playing field for applicants.
- Potential metrics were discussed. Suggested were how long have they been in business, their crew size, number of crews, revenue sources, and a contractor’s customer base.
- This was somewhat countered because Category 2 contractors can very well be smaller ‘mom and pop’ type operations. With this they may only have a single crew, but be qualified and skilled for multiple marine contractor activities within Category 2.

-A suggestion was to have people come before Board at a meeting to answer questions, This was countered as not practical for renewals. Each year about 90 licenses expire December 31 and therefore will be going through the renewal process at the same time. It was suggested this could be a viable option for a contractor's challenge to a Board's decision on their Category selection.

- Other metrics suggested was the amount of insurance held by a contractor. Also, does the contractor have Longshoremen's Insurance. This is not required in State law and regulations but may be in federal regulations governing navigable waters.

-The question was asked: Are we creating a set of guidelines or a set of requirements?

-It was suggested that the Board will learn and create precedent through doing the work of reviewing applications, both new and renewal.

-It was suggested that Category 1 and Category 4 are reasonably clear cut. With this thought, it is distinguishing a Category 2 from a Category 3 contractor, that will likely be more challenging.

-How many activities moves one, or separates a Category 3 from Category 2?

It was suggested if this can be outlined more clearly, the rest will be easier and less potential at being challenged.

It was stated it would be hard to define all potential differences and possibilities.

The MMCA representative suggested there are 2 components for contractors working in residential marine construction. *These are: 1) pier construction activities and 2) shoreline stabilization activities.* With this it was suggested that a possible criterion to distinguish between a Category 3 and Category 2 contractor is: Do they only do activities in only one of these two components of activity (pier construction or shoreline stabilization) or do they do activities in both. It was suggested it would follow that work in only one component lands a contractor in Category 3, but if a contractor does activities in both pier construction and shoreline stabilization, then they would qualify for a Category 2 license.

-It was again stated that the Category 3 compared to Category 2 license Category will be the most challenging and create potentially the most challenges to the Boards decision.

-Contractors will not want to be limited by a Category 3 license.

-It was stated that information a contractor submits may create a story of a company's experience which may give a more holistic picture of a contractor's experience and abilities. With this, going through the review process will allow for development of some criteria, and suggest specific questions to ask.

-It was suggested and there was agreement - that a practical approach is to compile a list of information that an applicant can submit if they so choose – to document/validate their Category selection. This list of optional documents will be in addition to the required submission of, at minimum, five locations where the licensed contractor performed marine contractor services

The following summarizes the suggestions on optional documents that a contractor may want to choose to submit with their renewal application. These are crew size, number of crews, years doing work, type of equipment owned, the type of work done, and more information on their Workman's Compensation policy. It was stated this insurance will vary, for example, based on activities they do such as pile driving. Insurance information could include the amount of coverage, and possible submission of an audit of their Workman's Compensation insurance policy. In addition, do they have Longshoremen's Insurance.

With these suggestions on information that a contractor may choose to submit – there is the issue of proprietary business information that may be relevant, but that a contractor does not want to share. Most contractors don't want to hand over more than have to but giving the contractor the choice of what to submit, may be the best option.

Other documents that may be 'telling' of a contractor's experience is submission of wetland authorizations.

It was stated that Category 4 is similar to Category 3 in that both these license categories will authorize a specific activity – although the authorization of several specific marine contractor activities is a possibility.

In summary and conclusion of this discussion, it was decided to let the applicant choose what they want to submit from a suggested list of optional documents. With this the burden is on the applicant to select an appropriate Category for their experience, and then decide what they want to submit to defend their selection. We will provide a list of documents they can consider providing to validate their Category choice.

The MMCA Representative agreed with this approach.

And it was again stated that with time – it will become more evident what is important, and/or determinative and/or significant

Action Item: The Administrator will compile list for Board review of documents to include on this list. And to be clear, submission (or not) of these documents will be the decision of the licensed contractor. This list will be included in the new renewal application requiring a Category selection.

NEW BUSINESS

The Board's Administrator will be given a presentation at a training hosted by the Chesapeake Bay Landscape Professionals and the Chesapeake Conservation Landscaping Council. It is being held in cooperation with MDE. The focus of this training is on Living Shorelines, but more specifically smaller scale nature-based and living shorelines type projects. The training is four days long, two virtual and two in person. The in person will include onsite activities.

Regarding the Key Bridge and its rebuilt, the Board's MDE Representative shared that in inquiry's to MDE about requirements of contractors who want to do work on this project, MDE is making it very clear that any work performed in, on, or under Tidal Wetlands must be a done by a licensed Maryland Marine Contractor. The Board's Administrator is also sharing this message when he receives inquiries. The Maryland Transportation Authority is also making this requirement for Marine Contractor licensing very clear in their bid packages.

No other new business brought up.

ADJOURNMENT

The Board voted and approved adjournment at 11:33 am. The next monthly Board meeting is scheduled for July 8, 2024, at 10 AM and will be Virtual.