



MARINE CONTRACTORS LICENSING BOARD

c/o Maryland Department of the Environment

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MARINE CONTRACTORS LICENSING BOARD

DRAFT Meeting Minutes – March 11, 2024

Location: Virtual via Google Meet

BOARD MEMBERS PRESENT

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

OTHERS PRESENT

Matthew Standeven, Board Counsel
Mike Eisner, Board Administrator
Brandon Weems, Director/President of the
Maryland Marine Contractors Association
(MMCA)
Sharon Zhang, Chesapeake Conservation &
Climate Corps

CALL TO ORDER`

The meeting was called to order by the Board's Chairman at 10:04 am. Seven Board members as well as the Board's Counsel and Administrator, and Brandon Weems, Director of the Maryland Marine Contractors Association were in attendance. In addition, Sharon Zhang of the Chesapeake Conservation & Climate Corps attended to give a presentation.

AGENDA REVIEW

The Board reviewed and approved the agenda for the meeting which included: a review and approval of minutes from the Board's November 13, 2023 meeting, an update of licensing activities and finances, an update on regulations, an update on the compliance/enforcement review of licenses expiring December 31, 2023, an update on the Gene Benton litigation, discussion of apprenticeships, a discussion of license Category implementation, salvage, and other new business requested by Board members.

REVIEW OF PRIOR MEETING MINUTES

Board Members approved the minutes from the November 13, 2023 Board meeting.

Guest Presentation: Sharon Zhang

The Board's MDE representative introduced Sharon Zhang. Sharon is with Chesapeake Bay Conservation and Climate Corps (CCCC). The Chesapeake Bay Trust provides funding for the CCCC to give hands on opportunities for young adults in green careers with a one-year term of service with nonprofits and governmental organizations in the Chesapeake Bay region. MDE's Tidal Wetlands Division has hosted participants in the past. Past projects included accessing success rates of living shorelines projects. Sharon's one year term of service ends in July 2024.

Sharon is a recent graduate from the University of Maryland in economics. Her purpose was to share about her project on shoreline erosion protection measures and to invite marine contractors to contribute to her economic analysis via a survey. Sharon hopes that marine contractors can help on her project by sharing their experience and importantly by sharing economic information.

Sharon's year-long 'Capstone' project is an economic cost benefit analysis of shoreline erosion protection activities. Her focus is comparing living shorelines and revetments. She will look at quantitative aspects of living shorelines including the costs to homeowners for installation, as well as the benefits for erosion protection. Sharon also intends to investigate the potential impacts to local economies. Qualitative aspects will be included such as aesthetic value and equity concerns.

Sharon shared further about her intent to reach out to marine contractors with a survey to collect information on this topic. The report will highlight costs primarily for homeowners and other private projects interested in protecting their shoreline. Questions she'll investigate include how much does a typical living shoreline cost in low vs high energy wave environments. She will look at the range of costs which will then be averaged for the presentation. The second component of her project is a breakdown of costs for living shorelines including design, materials, and installation. Maintenance costs will also be considered in her economic analysis. Sharon will also be looking at past studies. A Board member suggested that reaching out to property owners to survey their experience with living shorelines would be informative. Sharon plans to create a report for homeowners that will present potential impacts of these different types of shoreline erosion control structures.

The Board's Chairman and MDE Representative said it made sense for the Board to reach out to license holders with this survey. The MMCA Director stated they think this project is worthwhile and believes his members would also like to participate. He stated his intent to share the survey with their members. Sharon does not plan to publish her study, but the MDE Representative stated that it will be posted online to share and will be happy to share the completed study with the Board and MMCA.

One Board member shared that in comparing costs of, for example, a three-foot-high revetment with a three-foot high living shoreline sill - that the living shoreline sill will likely cost twice as much in materials and installation as the revetment. This is partially since a revetment in cross section is a triangle and a sill living shoreline is a trapezoid. It is this difference in geometry that fundamentally increases the material costs.

OLD BUSINESS

Board Activities and Financial/Budget Report

Licensing Activities: The Board Administrator gave an overview of licensing activities. There were 93 licenses that expired December 31, 2023, our so-called Annual renewals. Of these, 80 have been renewed, 6 are choosing not to renew, and 6 are overdue. Of the 6 that are overdue, partial information was received from 2 of these. One renewal application was on hold due to compliance issues. In 2024 there are 25 licenses up for renewal that have expiration dates throughout calendar year 2024. To date, 14 have been notified of the need for renewal. Of these 14, one license has been renewed and information has been received from 5 others. 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 finances for FY24 through January 31, 2024. Fiscal Year 2024 began July 1, 2023 and ends on June 30, 2024. Our beginning fund balance on July 1 is \$155,390. The revenues received were \$60,275. Expenses incurred by the Board are primarily the Administrator's salary, postage, legal fees and indirect costs to the Board of 17.3%. It was stated that this fiscal year legal fees have increased due to the significant work done by the Board's Counsel in support of the regulation drafting process along with litigation fees incurred by the Gene Benton/Encompass Enterprises litigation. The total adjusted fund balance as of January 31, 2024 is \$138,688. In addition, there is a FY24 allocation of \$5000 for services provided by MES for maintenance MCLB online training courses. One task on the agenda is moving the Board's two training modules from MES to MDE servers. To date, only \$43 has been charged.

Regulation Update. The Notice of Final Action was published in the March 8, 2024 issue of the Maryland Register. With this, the regulations become effective March 18, 2024, ten days after publication. One non-substantive change was made. The title of Category 4 was changed from Incidental Marine Construction to Incidental Marine Contractor Services. This change was catalyzed by a conversation the Board's Administrator had with a license holder. There has been agreement in the Board that Category 4 is not traditional marine construction. A license is required for these activities such as directional drilling and wetland planting due to the language of the governing Environmental Article Title 17 Marine Contractors.

Update of Compliance review of December 31, 2023 Licenses up for renewal.

The Board's Administrator summarized the results of work with MDE's Compliance Program to determine if there were existing compliance issues with licenses requiring renewal at the end of 2023. Two licensees were identified by the Compliance Program with alleged outstanding compliance issues. A letter from the Board's Administrator was sent to each of these contractors stating the alleged compliance issues and providing an opportunity for the licensee to dispute these allegations. These contractors were told their renewal was being put on hold until resolution of these issues. One contractor complied, corrected the violations, and his license was renewed. The other contractor did not comply and their license was not renewed and has expired. (*Update: Since this March 11, 2024 meeting, this contractor has reached out to the Board to address outstanding issues.*)

In conclusion, this was the first time the Board has worked proactively with MDE's Compliance Program to identify contractors with alleged compliance issues – that had licenses up for renewal. This result was deemed worthwhile by the Board and also by MDE's Compliance Program. With this, the Board's Administrator will work with MDE's Compliance Program in the future on licensed contractors with alleged compliance issues.

The Board's Counsel gave an update on the Gene Benton/Encompass Enterprises litigation. We are progressing to the end of Discovery. Next step is filing of a Motion for Summary Judgment with the hopes of resolving the case before the trial date of May 16, 2024.

Apprenticeships

Federal grant funding has become available associated with the Federal Inflation-Reduction Act. Specifically, this is through NOAA's Climate Program Office and Office of Coastal Management. The focus is to create a workforce with skills ready to address climate change impacts on the environment. DNR has taken the lead on crafting a multi-organizational partnership to apply for this funding. With this, Catherine McCall of DNR reached out to MDE and this Board. The Board decided to write a letter of support for this grant application, recognizing that marine contractors are in essence the tip of the spear in addressing the immediate effects of climate change, i.e. shoreline erosion. The goal is to access funding that could be used to create an apprenticeship program for

marine contractors. With this in mind, the Board's Administrator reached out to the Community College of Baltimore County (CCBC) which hosts apprenticeship programs in other skilled trades such as high-tech manufacturing and construction. From this, a meeting was held with Ms. McCall, this Board's Chairman, MDE representative and Administrator - and Kipp Snow of CCBC. Mr. Snow is very involved in fostering programs that develop a skilled workforce in trades such as multi-modal transportation, port administration, and recently wind energy. The grand dream is to use the potential funding available from the federal government to create an apprenticeship program for marine contracting.

Coincidentally, there is Maryland House Bill 642 that is titled the Apprenticeship in Licensed Occupations Act of 2024. This bill would authorize the Department of Labor (DOL) to establish apprenticeship programs for various occupational licenses. HB 642 could impact MDE, although not very significantly. If enacted, completion of an apprenticeship program would essentially stand in for an applicant's experiential license requirements. Board Counsel stated that if enacted, the DOL would need to consult with MDE and the Board to ensure that the apprenticeship program is not any shorter in duration than what is already required for licensure in the Statute. At this point however, HB 642 does not appear to have gotten any 'traction' in moving forward.

NEW BUSINESS

License Categories Implementation

The task is for the Board to develop the process and criteria for Category review and determination.

Counsel states the need for criteria to be transparent and defensible. For new applications, Counsel stated that the existing license exam is sufficient. Counsel stated that the regulations do not contain a deadline for initiating implementation of these Categories. With this, the timing of implementation can be up to the Board.

Counsel stated the cleanest procedure to transition a license holder to a new license Category is probably upon their renewal. And indeed, this is what was communicated to license holders when informed of the proposed draft regulations.

One Board member suggested that rather than do this incrementally, reclassify all the licensed contractors by a certain date. It was stated that to do this, the Board would have to reach out to every contractor and ask them to submit supplemental information by a certain date to document that they meet the threshold for the Category they are applying for.

Counsel stated that the Categories in the regulations are not written in broad descriptors, they identify particular activities that qualify for that Category. However, the list of activities for each Category is not exclusive and therefore allows the Board the authority to approve additional activities in a particular Category.

A suggestion was made to consider the number of employees. If a company has 50 plus employees a company is likely on the 'heavy' side of construction activities. With regard to Category 1 Heavy Marine Construction, the MMCA Director stated its essentially about the capability of a contractor to do heavy marine construction, i.e. equipment and skilled employees. It was stated that a contractor is either equipped to do heavy marine construction or not.

It was stated that different expertise is necessary for different marine contractor activities. The question/suggestion was made if bonding or needed insurance could be a defining characteristic between Categories. It was stated that general liability is based on gross receipts, and suggested this

could be a criteria for Category 1 vs. Category 2 Residential and Commercial Marine Construction. There was concern about the viability of this criteria and this concept was not discussed further.

The question was raised if a large job requires a Category 1 license, can a licensed marine contractor of a lesser Category, get a subcontract with the Category 1 contractor for specialty activities. Counsel stated this shouldn't be a problem if the worker is an employee of the licensed entity of the appropriate Category, for the task performed.

It was stated that the challenge will be developing criteria to distinguish Category 1 from Category 2 and Category 2 from Category 3 Limited Marine Construction. It was stated that if a contractor does just pile driving or just does shoreline work, they are likely a Category 3, and not a Category 2.

Counsel stated in terms of process, the details of these Category criteria must be clearly communicated to contractors, and encouraged that the process be standardized as much as possible. The Board can identify a short list of documents or proof, such as insurance or receipts or something that can be determinative, that the Board can rely on in their review for Category determination. With this the contractor will know the documents the Board is relying on, and what is required, i.e. the documentation that will be necessary and what will be acceptable? Counsel stated that the contractor will be required to state on the application (which will be revised) the license Category they are applying for and provide requisite information.

Potential Category 1 criteria were summarized that were discussed so far today. These are: is the contractor an entity, has commercial construction been performed, do they have for example, more than 50 employees, and the type of equipment they have. It was suggested that bonding and insurance could be considered not as a requirement, but as review criteria. While it was suggested that the number of employees may be a useful criteria, this was countered with the fact some companies of 'lesser' number of employees may well have the heavy equipment necessary for heavy marine construction. It was suggested that the cost of a project could be one of the criteria. It was stated that commercial work would not necessarily qualify a contractor to be a Category 1 licensee.

It was asked what category divers would qualify for. It was stated that divers do activities such underwater welding, i.e construction. It was suggested either Category 2 or 3. It was stated that divers are integral to marine construction.

It was decided that subsets of Board members will work on creating draft criteria for full Board review distinguishing Category 1 from Category 2, and Category 2 from Category 3. The intent is to have this for review by the Board's next meeting.

It was suggested that letters be sent to licensed marine contractors informing them that the regulations will be effective March 18, 2024, and provide information on the coming process of Category implementation.

It was suggested and agreed as appropriate to develop training materials to help guide contractors on the process of applying for a license Category. It was also stated that these training materials will be credit toward Continuing Education requirements for license renewal.

Boat Salvage

The question has come up about what type of salvage operations require a marine contractor's license. Counsel shared that based on the Statute, all boat salvage operations require that the

contractor be a licensed marine contractor. Salvage is explicitly listed in the Statute as a marine contractor service, however the Statute does not define salvage. It was noted that Category 1 includes 'Heavy' Salvage and Category 2 includes Salvage. It was stated the criteria for distinguishing Category 1 Heavy Salvage from Category 2 Salvage will be worked out along with other criteria for distinguishing Category 1 from Category 2.

Discussion continued on the difference between salvage and recovery. It was noted that DNR has wanted all boat removal/salvage contractors to have a marine contractors license. There was discussion of what distinguishes boat salvage from boat recovery. It was stated that this can be challenging. It was suggested that past discussions stated that if a tidal wetlands authorization was required to do salvage, then a marine contractor's license would be needed. It was suggested if insurance enables fixing a boat, then it would be 'recovery' and not 'salvage.' There was also the opinion stated to not want to require a marine contractors license for towing.

It was stated that if a boat is abandoned its salvage, but if the owner is with the boat, it is recovery. It was suggested that if a company only does salvage, then they would likely be either a Category 3 or Category 4 Incidental Marine Contractor Services.

No other new business brought up.

ADJOURNMENT

The Board voted and approved adjournment at 11:54 am. The next monthly Board meeting is scheduled for April 8, 2024 at 10 AM and will be Virtual.