



MARINE CONTRACTORS LICENSING BOARD
c/o Maryland Department of the Environment

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MARINE CONTRACTORS LICENSING BOARD

Meeting Minutes – August 8, 2022

Location: Virtual Meeting via Google Meet

BOARD MEMBERS PRESENT

Milton Rehbein, Chairman, Northern MD Rep
 Tammy Roberson, MDE Representative
 Douglas Suess, At Large Representative
 Lester Kelly Wright, DNR Representative
 Josh Schleupner, Eastern Shore Rep
 Bob Murtha, Southern Md Rep

OTHERS PRESENT

Mike Eisner, Board Administrator
 Matt Standeven, Board Counsel

CALL TO ORDER

The meeting was called to order by Mr. Rehbein at 10:04 am using the virtual platform Google Meet. Six Board members were present, as well as the Board's administrator and Board Counsel.

AGENDA REVIEW

The Board reviewed and approved the agenda for the meeting which included: update of licensing activities, update on finances, update training module development by Maryland Environmental Services (MES), summary of April 26, 2022 MDE Tidal Wetlands Workshop, continuing discussion of policy for unlicensed work, and review of two new license applications.

REVIEW OF PRIOR MEETING MINUTES

Board Members reviewed and approved by vote the draft meeting minutes from March 14, 2022.

Board Activities and Financial/Budget Report

The Board's Administrator gave an overview of licensing activities. In Fiscal Year 2022 (July 1, 2021 – June 30, 2022) there were 21 new licenses issued, and 82 licenses renewed. There are 19 'periodic' licenses up for renewal in the year 2022. Renewal packages have been sent to all of them. Of these, 12 have already been renewed. 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.

The Board's Administrator gave an update of the Board's present income/expense status. We received a financial update dated June 6, 2022. The Board received \$63,125 in revenue in Fiscal year 2022 as of June 6, 2022. The fund balance at the beginning of Fiscal year 2022 was \$176,033.38, and as of June 6 the total adjusted fund balance is \$187,823.96. The Board's financial status is sound.

The Board's administrator gave an update on the development of Training Module 1. MES with significant assistance from the Board's MDE representative and its administrator completed the

power point and its associated voiceover script for Module 1. This has been sent out for peer review by select MDE Tidal Wetlands staff as well as offered for review to the Board and the Director of the Marine Contractors Association. Comments have been requested by August 12, and a meeting is planned with MES to finalize the product on August 17, 2022. In addition, the Board approved the development of training Module 2. This Module will be a continuation of Module 1 and will be an in-depth presentation on the Tidal Wetlands authorization process. Funding for Module 2 will be available via \$5000 dollars that has been allocated for FY2023.

The Department's Tidal Wetlands Program hosted a virtual all day Marine Contractors & Stakeholder Workshop on April 26, 2022. This workshop was well attended by over 100 people. Topics covered included updates on Bureau of Public Works regulations, Water Quality Certification, the reissuance of the Maryland State Programmatic General Permit – 6 (MDSPPG-6) and the application process, an update by this Board's Administrator on the new training Module development and marine contracting related legislation, the Expedited Pier Process (XPR) authorization process, and the new Shoreline Mapper. This workshop provided licensed Marine Contractors the opportunity to accrue 6 continuing education credits towards their renewal requirements. Sixty-four licensed contractors took advantage of this opportunity. In addition, the Board's Administrator received positive feedback from several licensed contractors on this workshop.

The Board's Counsel provided an update on draft marine contracting regulations. Counsel stated that he has yet to receive guidance from MDE's Secretary's Office on a timeline of next steps of this process. He stated he hopes to finalize the draft regulations for Board review soon.

The Board then moved to continuing its discussion on unlicensed contractors doing marine contracting work. Guidance in the past from Board Counsel has been that the Board can't take direct action on unlicensed contractors, that their only direct enforcement authority is with licensed Marine Contractors. However, Counsel stated that the Board can certainly document activity of unlicensed contractors and refer the information to MDE's Compliance Program. Counsel stated that the Board may be able to take preemptive action by preventing such a rogue contractor from applying for marine licensure in the future. The primary penalty that can be potentially levied by MDE in this case would be civil.

The Board's Administrator shared that he received a complaint from a homeowner about a contractor named Don Berry of Magothy Marine Construction. The complainant alleged that this contractor built a bulkhead that later failed. The Board's Administrator stated that there is no company by that name in Maryland with a Marine Contractors license, and no authorization from MDE's Tidal Wetlands was issued for the address of the complainant. The complainant, Mr. Paul Reinke, alleged that this same company had done other marine contracting work in his area. The Board's Administrator referred Mr. Reinke to MDE's Compliance Program, and also to the Office of the Attorney General, Consumer Protection Division. The Compliance Program followed up with an inspection, but there was no follow-up on the alleged contractor doing marine contracting work without a license.

The Board then discussed what if any action the Board could take. It was suggested by one Board member that since its inception, it has had complaints about marine contracting work being done by unlicensed contractors, but no enforcement action had ever been taken. The Board's MDE representative stated the Compliance Program receives numerous complaints, but that for enforcement action to be taken, there needs to be detailed evidence collected with specifics on sites and activities.

Board Counsel suggested referring this matter to the Environmental Crimes Unit (ECU). The ECU is not a part of MDE's Office of the Attorney General. The ECU takes referrals from other State Departments such as DNR, and has the ability to research and investigate potential environmental crimes in Maryland. Further discussion on this concluded that since the Board is now a 'part' of MDE, any potential referrals to the ECU would need to go through MDE's Office of the Secretary. The Board's MDE representative stated that in her experience, ECU would not take action over a single or first time offender.

Discussion continued on other actions the Board could take with this alleged contractor doing work without a license. The Board concluded that it would be appropriate for the Board's Administrator to follow up with the complainant and collect evidence of his allegations of marine contracting work done by this unlicensed contractor. This information/data, such as copies of contracts, could then be presented to the Board for their review and consideration of potential next steps. Such follow up action by the Board could be a referral to the Compliance Program or consideration of a referral through the Secretary's Office to the ECU.

Discussion then moved to a related issue of work done by a licensed marine contractor that is incompetent, and/or done without the proper Tidal Wetlands authorizations. A suggestion was made at the last Board meeting by the Director of the Marine Contractors Association, that the Board develop an audit process for license renewal – specific to licensed contractors with documented complaints. For example, this audit process could include required submission of Tidal Wetlands authorizations for jobs the licensed contractor performed. The Board's Counsel stated that it would be appropriate for the Board to have an internal policy/guidance for this suggested enhanced review process for renewal applicants with documented complaints. It was suggested and agreed by Board members that marine contracting regulations could address this.

On the topic of the Board's authority, the Board's Counsel referred to Title 17-10, Denial, refusal to renew, suspension or revocation of license. This section speaks to the Board's enforcement authority based on certain criteria. He highlighted Title 17-301(a)(4), which gives the Board the authority to deny, refuse to renew, suspend or revoke a license if the applicant or licensee: 'commits any gross negligence, incompetence, or misconduct while practicing marine contractor services.' He stated that the Board has the authority to develop policy clarifying the criteria by adding specificity to terms such as 'incompetence.' The Board's Counsel also stated that Title 17 is silent on the issue of... If denied or if suspended - how long such 'penalty' would last? With this, it would be the Board's decision. It was further agreed that these issues should be in any regulations promulgated. This discussion concluded with Board's Counsel stating that if the Board does go down the road of denying a license, then the applicant has the right for a hearing and potential judicial review of the Board's decision. With this, documentation would be essential.

NEW BUSINESS

Review of Current Pending License Applications

Two new applications for a license were discussed.

Frank Lowman, IV of FTL Marine Construction applied for an Entity license. The Board reached consensus that Mr. Lowman met the minimum requirements for marine licensure and should be given the opportunity to take the licensing exam. He had previously been licensed and in addition provided letters of reference for his marine contracting work, including working for a licensed marine contractor.

The Board reviewed a new 'Individual' license application submitted by Mr. Gene Benton of Encompass Enterprises, LLC. Mr. Benton had first submitted an application for an 'Entity' license which was reviewed at the November 7, 2021 meeting. Mr. Benton named himself as the application's Representative. At this meeting, the Board requested more detailed information on his marine contracting work experience. Mr. Benton updated this 'Entity' application which was reviewed at the Board's January 10, 2022 meeting. The Board concluded that Mr. Benton had not demonstrated in his updated Entity application, that he meets the required minimum qualifications to be given the opportunity to take the marine contractors licensing exam. At this time, Mr. Benton was informed that he has the option to get more marine contracting experience himself, or have Encompass Enterprises reapply, with another applicant to be their 'Representative,' and one who will meet the minimum marine contracting work experience requirements.

The application that Mr. Benton submitted this time, and that was reviewed by the Board at this meeting, was for an Individual license. The Board reached consensus that Mr. Benton has still not demonstrated in his application and supporting documents, that he has met the minimum work experience requirements of Title 17, to be given the opportunity to take the marine contracting licensing exam. The Board noted that there was no documentation or evidence that Mr. Benton had worked for, or with, a licensed marine contractor. In addition, the letters of recommendation submitted did not address or document marine contracting experience or similar contractor experience. The Board reached consensus that Mr. Benton's demonstrated work experience in his application was primarily administrative, and did not involve actual contracting experience, the Board believes is necessary to qualify for a marine contracting license. Mr. Benton will be informed that his two options remain to be getting the requisite marine contracting experience himself, or have Encompass Enterprises reapply, with another applicant to be their 'Representative,' and one who will meet the minimum marine contracting work experience requirements.

The final item on the agenda was Board member reappointments. The Board's Administrator was informed by Gabrielle Leach, from MDE's Legislative and Intergovernmental Relations Office that current Board member terms will expire September 30, 2022. However, with this being an election year, Board members will not be able to begin the reappointment process until a new Governor is elected. Current Board members will still be able to serve until reappointment. One unfortunate thing we learned, is that the Governor's Appointment Office was not able to finalize the appointment of DNR's representative. With this, DNR's selected representative can participate in meetings and discussions, but cannot vote.

Other New Business

No new business was brought up.

ADJOURNMENT

The Board voted and approved adjournment at 11:22 AM. The next monthly Board meeting is scheduled for September 12, 2022 at 10 AM. This meeting will be via Virtual via Google Meet.