



MARINE CONTRACTORS LICENSING BOARD

c/o Maryland Department of the Environment

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MARINE CONTRACTORS LICENSING BOARD

Meeting Minutes –September 11, 2023

Location: Virtual Meeting via Google Meet

BOARD MEMBERS PRESENT

Milton Rehbein, Chairman, Northern MD Rep
Robert Murtha, SoMD Rep
Tammy Roberson, MDE 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)

CALL TO ORDER

The meeting was called to order by the Board's Chairman at 10:08 am. Six Board members as well as the Board's Counsel and 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: review and approval of minutes from the Board's July 10, 2023 meeting, an update of licensing activities and finances, a continued discussion of license fees including inflation calculator results, review and discussion of two new applications for licensure, discussion of a citizen complaint against a licensed marine contractor, discussion of potential implementation of late fees, request for funding for Administrator training, and other new business requested by Board members.

REVIEW OF PRIOR MEETING MINUTES

Board Members approved the minutes from the July 10, 2023, Board meeting.

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 be renewed throughout 2023. To date, applications have been mailed and/or emailed to 25 licensees. Of these 22 renewals have been issued and those remaining have been notified that their renewal is due. 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 Administrator shared conversations with the Board's MDE representative, and intent to review upcoming annual license renewal applicants for MDE compliance/enforcement actions. If found, these will be brought to the attention of the Board for review and potential applicant consequences.

Board Finances: The Board's Administrator gave an update on the Board's financial status. The State 2023 fiscal year was from July 1, 2022, to June 30, 2023. Revenue received for FY2023 was \$69,975. Expenses incurred by the Board were primarily the Administrators salary, postage, legal fees, and indirect costs to the Board of 15.4%. It was stated that fiscal year 2023 legal fees increased significantly due to 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 challenge to the Board and MDEs determination that the minimum qualifications were not met by the applicant. The fund balance at the beginning of FY24 (July 1, 2023) is \$155,389.73. Revenue received so far in FY24 through August 31, 2023 is \$8,850.

The Board's Counsel gave an update on Gene Benton/Encompass Enterprises litigation status. Counsel had a scheduling conference with the parties involved, and stated that if there is a trial, it will be in May of 2024. With this there is plenty of time for discovery, which will extend into 2024.

There was continued discussion of license application and renewal fees. It was noted that specific fees are not in the Statute so they can be changed by the Board. In addition, the draft regulations do not include specific fees for either new application issuance or license renewal.

There is interest at MDE in increasing fees across all Department permits and licenses. The Board has been asked to consider if a license fee increase is appropriate. There are currently two fees. The two-year license fee is \$550 and the fee for the Marine Contractor's Licensing Manual and testing for new applicants is \$75. Note that this \$75 fee is only billed if the Board determines that the applicant meets the minimum qualifications, and the Board approves the applicant for testing. License fees were \$600 in 2016 but were decreased in 2019-2020 to \$550 based on the last administration's request to investigate the potential to lower fees. The new administration is requesting a review of current fees to determine if a fee increase is appropriate.

The Marine Contractor's Statute states that collected fees must be enough to support the functioning of the Board. There was Board agreement at its last meeting that a sufficiently funded Board could usefully dedicate monies to creating additional training opportunities for licensed contractors, including in-person training. Board members also agreed it is important to have reserve funds for unforeseen expenses such as continued and unforeseen legal fees due to litigation.

The Board's Administrator gave a summary of fee status in other Environmental Boards. All environmental boards have similar language in their respective Statutes stating that fees are to be reasonable and enough to support the Board's functioning. There is a Well Drillers licensing board and an 'Operators' licensing board. The Operator's Board is for drinking water treatment plant and wastewater treatment plant operators. However, in contrast to the Marine Contractors Board fees, both these Boards have their fees stipulated in their respective regulations.

Governor Hogan in 2016 required these licensing Board fees be cut in half. The result of this action is that the Well Drillers and Operators Boards currently don't have enough revenue to support their

functioning and are therefore not complying with their Statutes. With this, fees are being evaluated inside MDE. There is a recommendation in MDE to return fees to 2016 levels, i.e. to double the current fees. However even if the fees are doubled, due to inflation, this increase may not be enough to comply with their Statute's requirement that licensing fees pay for the functioning of these two Boards.

There is a new board for Onsite Subsurface Disposal Systems. This Board covers activities such as wastewater tank pumping and subsurface disposal (septic) system installation. This Board to date doesn't have any approved Board members. Their Statute has fees set initially at \$150 until fees are later established in regulation.

The suggestion was made at the last Board meeting to look at potential changes in fees by using an inflation calculator. The Board's Administrator was tasked with this. The results follow.

The following is based on the US Bureau of Labor Statistics CPI (Consumer Price Index) Calculator. The 2 year license fee in 2016 was \$600. The 2019 License Fee reduction was from \$600 to \$550. Based on this inflation calculator:

\$600 in December 2019 via inflation is \$712 in June 2023.

\$600 dollar initial 2-year license fee in 2016, via inflation is \$760 in June 2023.

\$550 in January 2020 via inflation is \$650 in June 2023. *This is the most conservative look at a potential fee increase based on inflation.*

At the last meeting a Motion was made and seconded to raise fees in accordance with other State fee adjustments made for inflation. All present voted in favor of this Motion. It was suggested that fee adjustments be made in time for those licenses that expire December 31, 2023. The question was asked if a fee increase needs MDE approval? It was stated that yes, the Board would need MDE approval since the Board is an entity of MDE. The Board's MDE representative stated that MDE is looking to the Board for its recommendation of any fee increase. There was Board agreement on the need to increase license fees. There was also acknowledgement that a Board proposal to MDE to increase fees has yet to be drawn up.

The Board's Administrator gave an update on promulgation of the draft regulations. The draft regulations will be posted, as required, on MDE's Small Business Impact website. These must be posted for a minimum of two weeks. Concurrent with this, the draft regulations will be going through internal MDE review for signoff. After these two required steps, the draft regulations go to the Administrative, Executive and Legislative Review (AELR) Committee for a 15-day review. Regulations are then submitted for publishing in the Maryland Register. This register is published every other Friday. Currently, the earliest potential publication date for 'our' regulations in the Maryland Register is November 17, 2023. The draft regulations go through a 30-day comment period. If this publication date is met, then the earliest adoption date for these regulations would be January 2, 2024.

NEW BUSINESS

New Applications

Entity application for JJID, Inc., Matthew Ruoff Representative. The Board first reviewed this application at its July 10, 2023, meeting. From the July 10, 2023 meeting minutes:

‘This company was originally *registered* in Maryland as a Marine Contractor but they never got licensed when that was required in late 2016. The Board’s Administrator was asked to request additional information regarding if the company had done any marine contracting work in Maryland after 2016.’

Follow-up information was requested, received and provided to the Board for review at this meeting. There were still questions about whether the work done in Maryland was done legally. The Board asked the Administrator to follow up with this company on these issues.

Entity application for Emerson Harper & Associates, Somendra Kahatapitiya Representative. A majority of Board members approved this applicant for testing.

There was next a discussion on a question received via email by the Administrator on the exemption in Title 17-301(d). In the Statute this reads:

(d) Exception – Residential or commercial property owner. – A residential or commercial property owner may perform marine contractor services on the property owner’s own property without having to obtain a license from the Board under this title.

This email was shared with the Board’s Counsel who thought this issue should be brought before the Board. The issue is if a commercial entity that owns property can have a wholly owned subsidiary do marine contracting work under this exemption, i.e. without this subsidiary having a marine contractor license. Counsel stated that there is an argument that could be made that this subsidiary may be eligible for this exemption of Title 17-301(d), but in this case the commercial entity also expressed willingness to pursue licensure for the subsidiary doing the marine contracting work. The opinion was stated that if a company owns a property, and a division of this company that wants to do the work is a wholly owned subsidiary, then this subsidiary would still be a part of the parent company that owns the property. This also suggests this exemption may apply. With this, the Board concluded that more details of the ownership relationship is necessary in order to make a determination of whether this exemption applies in this specific case.

There was a discussion of a Baltimore County resident who made complaints to this Board and to MDEs Tidal Wetlands Division against a licensed marine contractor. In this case, Tidal Wetlands Authorization was not required because it was an *In-Kind* tidal wetland activity. However, a Baltimore County Building Permit was needed. Neither the resident nor the licensed marine contractor, paid to do this work, obtained this authorization. This resident was then fined by Baltimore County. The Administrator learned via communication with Baltimore County Permits that their policy in these situations is to fine the homeowner, and not the marine contractor. The topic of discussion was what is an appropriate Board response to this situation. The Board’s Administrator stated that he has sufficient documentation to verify the residents’ complaints.

The MMCA representative stated strong support, for at minimum, sending a letter to the contractor and ‘putting him on notice’ that a licensed marine contractor must comply with all legal requirements for work in Maryland’s tidal waters. Several Board members stated the opinion that at minimum a record of this should be made. Counsel stated that it would be appropriate to put this contractor on notice that he is on the Board’s radar. The decision was made to send a certified letter from the Board to the licensed marine contractor.

The Board's Administrator opened a discussion about the possibility of having late fees for renewal applications. This was stimulated from learning that both Well Driller and Operator licenses have late fees via their respective regulations. The history of this Board's Administrator has been to be proactive in reaching out to licensees whose renewal applications are late. It was decided that at this time, with fees being paid by check and snail mail, late fees are not logistically practical. MDE is working on the goal of online payment which would enable, if so decided, to implement late fees.

The Board's Administrator asked for approval for attendance at the coming DNR/MDE Living Shorelines Training October 10-12 in Deale, Maryland. The Board approved this expenditure.

Other new business.

A Board member shared a field experience earlier in the meeting. This discussion is presented here. The Board member visited a worksite with a MDE representative to do a pre-application meeting at a tidal wetlands site. The Board member and MDE representative agreed that any work done at his site would be Living Shorelines. This Board member saw this site two months later and the wetlands had been ripped out. The owners of the property apparently hired an engineering firm that determined that this mean high waterline was just above the marsh. They then built a bulkhead above mean high water and apparently did not get MDE authorization. The Board member stated that there was no apparent enforcement. The MDE Board representative shared that scenarios similar where bulkheads are being installed just slightly above the mean high water is definitely on the Critical Area Commission's radar. In response they are doing outreach to local Critical Area programs to ensure that those situations do not occur. This type of practice is an attempt to bypass the Living Shorelines Protection Act. This has been seen across the State and some counties are more diligent than others in not approving bulkheads just above mean high water. The MDE Board representative stated that she would like to be notified of such activity. In addition, addressing this issue with the local Critical Area programs is a priority for the Critical Area Commission.

The question was raised regarding the Supreme Court decision on waters of the State and its impact in Maryland. Counsel stated that the underlying effect of this decision does not impact Maryland State authority or its jurisdiction. The reason is that Maryland derives most of its authority to regulate pollution primarily from State authority which is more expansive than the federal Clean Water Act. However, the MDE representative stated that the court decision does affect the regulation of ephemeral streams. Ephemeral streams are essentially only present from storm events. MDE will still regulate intermittent and perennial streams.

ADJOURNMENT

The Board voted and approved adjournment at 11:51 am. The next monthly Board meeting is scheduled for October 9, 2023 at 10 AM and will be Virtual via Google Meet.