



MARINE CONTRACTORS LICENSING BOARD

c/o Maryland Department of the Environment

1800 WASHINGTON BLVD., SUITE 430, BALTIMORE, MD 21230
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MARINE CONTRACTORS LICENSING BOARD

DRAFT Meeting Minutes –June 12, 2023

Location: Virtual via Google Meet

BOARD MEMBERS PRESENT

Milton Rehbein, Chairman, Northern MD Rep
Robert Murtha, SoMD Rep
Tammy Roberson, MDE Rep
Josh Schleupner, Eastern Shore Rep
Doug Seuss, At Large Rep
Dani Racine, At Large Rep

OTHERS PRESENT

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

CALL TO ORDER

The meeting was called to order by the Board's Chairman at 10:06 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 April 10 and May 8, 2023 meeting, an introduction and welcome of the Board's new member Dani Racine, an acknowledgement of service of outgoing Board member Chris McCabe, an update of licensing activities and finances, an update on the Board's maintenance contract with MES and training, a discussion of application and renewal fees, ongoing work with finalizing License categories/Tiers, proposed next steps for regulation development, and other new business requested by Board members.

REVIEW OF PRIOR MEETING MINUTES

Board Members approved the minutes from the April 10, 2023 and May 8, 2023 Board meeting.

NEW BOARD MEMBER APPOINTMENT

The Board Chairman thanked outgoing Board member Chris McCabe for his dedicated effort, time and energy serving the Board. Chris worked with the Board since 2011. Mr. McCabe was the At Large Representative for the Eastern Shore.

The Board Chairman introduced its newest Board member Dani Racine. Ms. Racine has been appointed to serve as an At Large Representative for the Eastern Shore. Ms. Racine has worked for Lane Engineering for about 10 years and has worked in marine permitting and drafting and project management. Ms. Racine expressed that she looks forward to being a part of the Board and having a voice in the marine contracting regulatory world.

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 renew throughout 2023. To date, applications have been mailed to 25 licensees. Of these 16 renewals have been issued. 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 present income/expense status. An estimate of revenue received for FY2023 is \$71,950. This revenue is based on a license two year fee of \$550 dollars and a new license processing fee of \$75. Note that the \$75 fee is only incurred if the applicant meets qualifications for licensure and is approved to take the exam. The State 2023 fiscal year is from July 1, 2022 to June 30, 2023. Expenses incurred by the Board are primarily the Administrators salary, postage, legal fees and indirect costs to the Board of 15.4%. 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 challenge to the Board and MDEs determination that the minimum qualifications were not met by the applicant.

The Board's Administrator gave an update on the Board's maintenance contract with MES and its Training Center. The Board' Administrator and MDE Representative met with MES May 23, 2023. Both training modules are up and running, and the Tidal Wetland Authorization test is working again. Approximately \$2000 remains of the \$5000 allocated in FY 23. The original vision was this money would be used for maintenance of the Board's two training modules and provide funding for further training development. This money to date to date was expended fixing the exam of the Board's new training module on Tidal Wetland Authorization, and developing and implementing a password reset for both training modules. July 1, 2023 begins State FY 2024. In FY24 there is an additional \$5000 allocated for use by the Board on maintenance and training. The decision has been made to put on hold any expenditure of this allocation for development of new training. The reason is that the two training modules are still on MES servers and need to be migrated to MDE. How much it will cost is unknown. In addition, the cost for testing after migration is unknown. Also at this time, MDE is developing a new purchase order process. Based on these factors it was decided prudent to put work on additional training module development on hold until we get a clearer projection on costs needed for these maintenance tasks.

Discussion moved to license application and renewal fees. There is interest in MDE on increasing fees across all Department permits and licenses. The Board has been asked to consider if license a fee increase is appropriate. There are currently two fees. The two year license fee is \$550 and the fee for the manual, testing and processing of 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 but were decreased in 2019-2020 to \$550 based on the last administrations 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. It was noted that specific fees are not in the Statute so they can be changed by the Board.

The Board agreed that in order to look into fees, they need to look at a projected budget over 3-5 years. With this the Board's Administrator has been tasked with developing such a budget. A wild

card recently has been legal fees. The reason is significant support the Board's Counsel on its regulation development and the ongoing litigation with Gene Benton of Encompass Enterprises.

One comment is that if the Board has sufficient funds, these monies could be dedicated to creating additional training opportunities for licensed contractors, including potential in person training. It was also stated that fees can be tied to the license Tiers that are in development.

Regulation Development – License Categories/Tiers

Discussion continued on the draft regulations with a focus on delineating the license Categories/Tiers. The Maryland Marine Contractors Association (MMCA) provided Board members its proposal for License Categories. In their proposal, Tier 1 is Heavy Marine Construction, Tier 2 is Residential & Commercial Marine Construction, Tier 3 is Subsidiary Marine Construction, and Tier 4 is Incidental Marine Construction. Both Tier 3 and Tier 4 are proposed as single/specific license endorsements. Both Tier 1 and Tier 2 licenses would endorse a contractor to do all marine activities in the respective license Tier. One significant difference from the Tiers as drafted by the MCLB is that in the Board's proposal only the 'lowest' Tier was reserved for a single/standalone license. An example of an activity that both the MMCA and the MCLA designated as appropriate for a single/standalone license is directional boring. There was agreement that this activity is not considered a marine contractor activity, hence the title given by the MMCA of 'Incidental Marine Construction.'

This MMCA document is provided as an Attachment to these minutes.

The MMCA representative stated that MMCA's focus in its Tier recommendation is on residential and light commercial size contractors. It was stated that most contractors are somewhat full service. Tier 3 is for Subsidiary or related marine contractor work such as pier construction and boat lift installation. Tier 4 is for activities like direction drilling, that are required to be licensed but the work done is not really marine contractor work. It was stated that the very large projects of Tier 1 are heavily engineered and have oversight.

It was noted by a Board member that with the MMCA proposal there is still an overlap of licensed activities between the middle two Tiers. The proposed Tiers the Board has developed have the similar challenge of how to handle marine contracting work that did not necessarily involve pile installation. The issue of boat lifts installed with or without pile installation and how to license them has been discussed in previous meetings.

A concern was raised that Shoreline Stabilization which is in MMCA's Tier 3 can represent a broad range of activities from heavy marine to smaller scale residential and commercial. It was suggested that Shoreline Stabilization be taken out of the MMCA Tier 3.

The suggestion was made to change MMCA Tier 3 to include activities of Tier 2, but have these activities be licensed as a Tier 3 single/standalone license. This proposed Tier 3 license would be for a specific activity currently in MMCA Tier 2. The concern raised is that an applicant may be qualified for one or two activities of Tier 2, but not have the qualifications to get the Tier 2 license that grants a full endorsement of performing all marine activities in Tier 2.

Following up on this suggestion, it was stated that for example, a contractor doing only moorings and helical anchors could apply for a Tier 3 standalone license for this specific activity. This approach gives someone who may be skilled to do this select Tier 2 activity opportunity to be licensed as a Tier 3 Marine Contractor.

Following up - this would dedicate the two lower MMCA Tiers for standalone license activities. MCLB had only the lowest Tier to capture single standalone activities. Tier 4 would be for the lowest/minimal impact, and as labeled 'Incidental Marine Construction.' While Statute 17 does require licensure for this activity, there was agreement that this is really not a marine contractor activity. MMCA Tier 3 standalone licenses would then be for marine construction activities that have a for bigger potential impact to tidal waters.

With this proposal to also make Tier 3 for standalone licenses, it was suggested to not name or list the activities in this Tier, i.e. don't list activities such as boat lifts or shoreline stabilization. The concept is to license single or several activities currently in Tier 2 for folks not qualified for the full endorsement Tier 2 license. Tier 3 would be left open for someone's proposed activity - they can pick out of Tier 2 what they are qualified to perform, and then get a standalone Tier 3 license for that specific activity.

Counsel stated there is nothing in Statute prohibiting this approach. Board Counsel further agreed with MMCA recommendation that Tiers be specific. With this the Tiers are easier to defend. Board counsel stated there is no exemption for very large or very small marine activities. The Board Chairman noted we can't overcomplicate this proposed Tiered licensing process because the Board's Administrator is only part-time, and the Board at times has gone without an Administrator.

MDE's representative stated that from a regulatory perspective, tidal wetland authorizations can be changed to add specificity for the type of license required for a specific tidal wetland authorization. The Board's Counsel followed up that the proposed regulations can stipulate that doing marine contractor work outside of one's license is the same as working without a license.

A question was raised about Beach Renourishment which is currently in MMCA Tier 1 'Heavy Marine.' It was suggested this may need to go under different Tier because there are smaller scale projects such as residential beach renourishment.

A question was raised of the appropriate Tier for floating platforms and docks. Some floating platforms are premade with no piles installed and therefore could be Tier 3. However some floating platforms are designed and constructed onsite out of concrete and/or timber. Related it was stated that piles are typically installed for floating docks. These could be a standalone Tier 3 license or a Tier 2 if the applicant had the appropriate qualifications.

The question was raised about opportunity for stakeholder review and comment on the draft regulations. At his point MMCA has been included, with plans for later opportunity to review and comment by the larger stakeholder universe. The Board Administrator shared built into the process are two opportunities for public comment. The draft regulations are posted for two weeks on MDE's Website for Small Business Notification per HB12124. In addition, the regulations will later be published in the Maryland Register.

There was Board member and MMCA support for this proposed modification to the MMCA proposed license Tiers. It was stated this Tiered license proposal is an improvement in customer service over the current single license that grants a contractor authority to conduct all types of marine contractor activities.

Following is a summary of this proposed change:

Tier 1 remains Heavy Marine Construction and Tier 2 remains Residential and Commercial Marine Construction. Tier 3 has been suggested changing to be a specific endorsement for an activity that

may otherwise be authorized as a Tier 2 full endorsement license. The applicant either doesn't want Tier 2 or is not qualified for a Tier 2 license. Tier 4 remains Incidental Marine Construction.

There was a discussion on order of numbering of Tiers. Counsel stated that typically the category most inclusive comes first. As proposed above, in Tier 1 Heavy Marine Construction includes authorization to do all activities in Tiers 2, 3 and 4.

A Motion was made and to take the MMCA recommendations for Tiers and incorporate them into MCLB draft regulations. This Motion was seconded with the amendment that Beach Nourishment move from Tier 1 to Tier 2, and Tier 3 be reworded to include specific standalone endorsement for Tier 2 activities.

All were in favor of the seconded and amended Motion.
There were no Abstentions and no Nays.

NEW BUSINESS

Proposed Next Steps for Regulation Development.

Counsel stated his intention to incorporate these changes to the proposed license Tiers and provide them for Board review within a week. The Board also agreed to review and finalize the license categories for the next Board meeting scheduled for July 10, 2023.

Other New Business

Board Counsel stated he would provide an update **to the** Gene Benton/Encompass Enterprises, Inc. challenge to the Board's determination and MDE's Director of the Water and Science Administrations approval of the Board's determination that Mr. Benton does not meet the minimum work experience requirements for a Marine Contractors license. The representative with the MMCA left the meeting. Counsel stated the meeting could remain open, and while closing the meeting is an option, it is not necessary. The decision was made to have the meeting remain open.

Board Counsel shared that a Civil Complaint from Encompass Enterprises, Inc. was filed against MDE seeking relief via a Writ of Mandamus to compel MDE to approve the application for a Marine Contractors License. Their complaint alleges that the applicant filed applications that were complete and all MDE requirements were met. 'Our' argument is that submitting a complete application does not entitle an applicant for a license. They must meet the necessary license qualifications and not just procedural requirements. Further, determining if an applicant is qualified is a discretionary act by public officials. In this case, this review and determination is by individual members of Board and MDE in its supervisory role.

This Civil Complaint was served May 11, 2023 to MDE and the Office of the Attorney General (OAG). With this, the OAG had 30 days to respond. OAG filed a Motion to Dismiss. At this point their attorney has 15 days to respond.

ADJOURNMENT

The Board voted and approved adjournment at 11:43 am. The next monthly Board meeting is scheduled for July 10, 2023 at 10 AM and will be Virtual.

ATTACHMENT: Maryland Marine Contractors Association License Category Recommendation

"Protecting & Promoting the Marine
Construction Industry Through Unity
& Leadership."



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info@mdmarinecontractors.org
410-822-0510 (Office of the President)

June 10, 2023

Maryland Marine Contractor Licensing Board (MCLB)
Attn: Board Members
1800 Washington Blvd.
Baltimore, Maryland 21230

Dear MCLB:

As you already know, the Maryland Marine Contractors Association (M.M.C.A.) advocated for the establishment of the licensure program back in 2009 / 2010. Our goal was to raise the professional bar within the marine construction industry and close-down the avenues in which less than scrupulous (pirate) contractors could operate. This in-turn would clear the way for legitimate marine contractors to compete on a level playing field within a highly regulated industry. With certainty, the target of the licensure was the middle level residential and light to medium commercial marine contractor, whose ability to go to work day to day is dependent on first securing a litany of tidal wetland authorizations. Bridge builders and painters, directional borers, highway workers, municipalities, aqua-culturalists, and any other group or trade that already has oversight through a different organization were not the intended focus of our initiative.

Using this background as the premise for potential licensure levels or tiers, below please find the Maryland Marine Contractors Associations (M.M.C.A.) recommended marine contractor licensure categories / tiers:

TIER 1 - HEAVY Marine Construction (Full Endorsements)

Bridge & Highways, Large Scale Commercial Development, Commercial Dredging, Cargo & Naval Wharfs, Beach Renourishment, Heavy Salvage, & Other Large Scale Engineered Marine Projects & Structures.

TIER 2 - RESIDENTIAL & COMMERCIAL Marine Construction (Full Endorsements)

Piers, Docks, Wharfs, Marinas, Boathouses, Pile Driving, Moorings, Boat Lifts, Floating Docks, Riprap Revetments, Bulkheads, Weirs, Seawalls, Boat Ramps, Living Shorelines, Duns, Dredging, Salvage, & Other Small to Medium Scale Engineered Projects.

TIER 3 - SUBSIDIARY Marine Construction (Single / Specific Endorsement)

Boat Lifts (Installer Only); Shoreline Stabilization (Only); Pier Construction (Only).

TIER 4 - Incidental Marine Construction (Single / Specific Endorsement)

Direction Boring, Aqua-Culture, SAV & Wetland Grass Planting Operations, & Other Activities Related to Marine Construction, but Not Otherwise Captured Under Heavy Marine or Residential & Commercial Marine.

In closing, we strongly encourage any pending classifications to be concise, pointed, and without ambiguity. Thank you for your collective work on this and as always, if the M.M.C.A can be of any assistance (on any topic), please do not hesitate to contact us.

Sincerely,

Maryland Marine Contractors Association

Brandon S. Weems
M.M.C.A. President

BSW/bmw