



MARINE CONTRACTORS LICENSING BOARD

c/o Maryland Department of the Environment

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MARINE CONTRACTORS LICENSING BOARD

Meeting Minutes – November 13, 2023

Location: Virtual via Google Meet

BOARD MEMBERS PRESENT

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

OTHERS PRESENT

Matthew Standeven, Board Counsel
Mike Eisner, Board Administrator
Brandon Weems, Director/President of the
Maryland Marine Contractors Association
(MMCA)
Seth Eisenstein, Administrator for Board of
Wastewater Professionals

CALL TO ORDER`

The meeting was called to order by the Board's Chairman at 10:03 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. In addition, Seth Eisenstein, the Administrator for the Board of Wastewater Professionals attended.

AGENDA REVIEW

The Board reviewed and approved the agenda for the meeting which included: required disclosures regarding a Closed Session at the October 16, 2023 Board meeting, a review and approval of minutes from the Board's September 11 and October 16, 2024 meeting, an update of licensing activities and finances, an update on the proposed fee increase, an update on regulation development, an update on a citizen complaint against a licensed contractor, an update on the Living Shorelines training, review and discussion of one new application for licensure, a report on a compliance/enforcement review of licenses expiring December 31, 2023, and other new business requested by Board members.

REVIEW OF PRIOR MEETING MINUTES

Board Members approved the minutes from the September 11 and October 16 Board meetings.

OLD BUSINESS

Note that the scheduled October 9, 2023 Board meeting fell on Columbus Day. With this, October's meeting was postponed a week and held October 16, 2023. A motion was made and approved by

all Board members present to close a portion of this meeting. The following are *Required Disclosures* associated with the Board's closed session on October 16, 2023.

The Board members attending this closed session were Milton Rehbein, Tammy Roberson, Robert Murtha, Doug Suess, Kelly Wright, Dani Racine and Daniel Racine. The Board's Counsel, Matthew Standeven and Administrator Mike Eisner were also in attendance. The topic discussed was the ongoing litigation by Encompass Enterprises/Gene Benton. The Statutory Authority to close the meeting were, 'to consult with counsel to obtain legal advice on a legal matter.' No actions were taken at this closed session.

Board Activities and Financial/Budget Report

Licensing Activities: The Board Administrator gave an overview of licensing activities. In 2023, 36 applications were sent to licensees, termed 'Periodic,' that require renewal throughout 2023. Of these 26 renewals have been issued. There are 93 licenses that will expire December 31, 2023, our so-called Annual renewals. Renewal application packages were mailed on Wednesday October 25, 2023, and in addition emailed on Thursday October 26, 2023. Note that the Statute only requires mailing or emailing, but we choose to do both to make sure our licensees are informed and meet the Statute's required 60 days notification. To date, 7 of these have 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.

Board Finances: The Board's Administrator gave an update of the Board's financial status for FY24 through September 30, 2023. This FY24 began July 1, 2023 and ends on June 30, 2024. Our beginning fund balance on July 1 is \$155,390. The revenues received were \$11,600. Expenses incurred by the Board are primarily the Administrators 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 September 30, 2023 is \$134,777. The Board has \$553 dollars remaining in its FY23 allocation to MES for maintenance of its online training modules. In addition, there is a FY24 allocation of \$5000 that has not yet been used.

The Board had agreed to an increase in the two-year license fee from \$550 to \$600. License fees were originally \$600 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 had requested 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. This proposed increase was brought before MDE, and was approved. In addition, this proposed increase was posted on the website. This increase will begin with this year's Annual renewals.

Regulation Update. The Board approved draft regulations are going through internal MDE approval. In addition, notice of these regulations were posted, as required, on MDE's Small Business Notification website. We are about a month behind our original estimated timeline. Once approved by MDE, the regulations go through Administrative, Executive and Legislative Review (AELR). After this, it goes for publication in the Maryland Register. There are required holding times for these steps and a 'blackout' period associated with Maryland's legislative session. At this point, the earliest adoption date is in early 2024.

The Administrator gave an update on a citizen complaint against a licensed contractor discussed at the last meeting. The Board decided to follow up with a draft a letter putting the licensed contractor on notice. A letter was drafted, approved by Counsel and sent to the licensed contractor informing

them of the authority the Board has in Environment Article, Title 17-301 to deny, refuse to renew, suspend or revoke a license.

DNR in cooperation with MDE hosted a Living Shorelines Training October 10-12, 2023. This was an in-person training course which included site visits. The Administrator attended and stated it was a terrific training. Nineteen licensed Marine Contractors attended this training and received continuing education credits.

NEW BUSINESS

New Applications

Individual application for Mudds Marine Contracting, LLC., with representative Jonathan Mudd was discussed. A majority of Board members approved this applicant for testing.

Compliance/Enforcement review of licenses expiring 12/31/2023. The Board's Administrator worked with MDE's Compliance Program to determine if there were existing compliance issues with licenses that require renewal at the end of this year. Three licensees were identified. Of these, Cianelli Construction (License #149E) and Freeman Marine and Mechanical (License #277E) were identified with outstanding noncompliance allegations. AAA Construction (License 347I) was also referred to by the Compliance Program, but the allegations weren't as significant. The Board's MDE Representative stated that there may be a history of AAA Construction with MDE's Office of Attorney General. It was concluded for this licensee that further inquiry with MDE's Office of the Attorney General (OAG) was appropriate.

Counsel brought to the Board's attention that its earlier position was that a compliance case would have to be finally adjudicated before the Board could take any action against a license holder. The Board's Administrator stated that the two licensees have allegations from the Compliance Program of structures that were installed without authorization. The question was raised: Is there is a possibility of taking a 'half measure' to initiate compliance. For example, sending a letter to these licensees stating that the removal of unauthorized structures would resolve these alleged compliance issues.

Counsel stated the Board has authority to take action on a license under Title 17-310 but has relied on MDE Compliance to do investigation and enforcement of underlying violations. However, Counsel stated the Board does have authority under Title 17-310, which has been delegated to OAG, to take action on a marine contractor's license based on a number of factors. One of these factors can be not complying with a Tidal Wetlands License. The Board could take first action to hold an Administrative Hearing in place of MDE. This approach could be on a case-by-case basis, but if the allegation was 'obvious, cut and dry,' like marine contracting work done without a license or failing to comply with a license that was obtained, then the Board could take action.

Title 17-310 gives the Board authority to refuse to renew a license and suspend a license. This authority is without any constraints. For example, the Board could require a probationary period for a stipulated period of time. In sum, Counsel stated the Board does have options if it wants to proceed. The Board's MDE representative suggested a letter could be sent to the license holder letting them know that the Board has been made aware of their alleged violations and inform the license holder what the laws state. This action could be a good first step and within the bounds of the Board's authority. It was further suggested that the letter could suggest action that could be taken to resolve the compliance issue.

Counsel stated that any such Board action to deny or suspend a license would not be unilateral and allow due process via an Administrative Hearing before the Office of Administrative Hearings. At such a hearing factual evidence would be presented. Counsel suggested a question to consider is: Which entity is better equipped to take action on existing information? MDE has a lot on 'their plate' and may make sense for the Board to initiate such an action. Also discussed was if removal of the unauthorized structures would be a sufficient resolution to these compliance issues.

The MMCA representative stated support of sending a letter to put the license holder on notice, and therefore creating a record of this noncompliance. It was stated that there could be a consequence with not complying with regulations.

The suggestion as made to put license renewal on hold and give the license holder an opportunity to respond to the noncompliance allegations. Counsel stated it would not be 'great optics' to renew a license and then move to suspend immediately after, although this would still be possible. Counsel furthered that the letter can put them on notice, state we are aware of alleged violations and allow them opportunity to voluntarily provide information that would help clarify the situation. It was noted that the Board recently something similar with a license holder.

It was stated that if the Board doesn't get a response or there are new violations, it would strengthen the Board's case for enforcement further down the road.

The MMCA representative suggested this is reason to send the letter now and not wait. This would be the Board stating that it is we aware of the alleged noncompliance issues and that this license holder will be monitored. This action would also give confidence to contractors doing things right.

A motion was made, generic in nature, to address the alleged violations that can be used with similar situations. Specifically a Motion was made and seconded: that if the Board becomes aware of any allegations of noncompliance of tidal wetlands authorizations, or actions that are unlawful - that a letter be sent to the license holder that future actions may be taken based on information provided or received. This motion was approved by all Board members present.

Note, this was the first time that an opportunity for open dialog was created between the Board and MDE's Compliance Program.

Counsel gave an update on the Gene Benton/Encompass Enterprise litigation. Their witness list has been updated to include Jamie Ward of Ward's Marine, Inc. and Mike Foley of Mill Creek Marine.

No other new business brought up.

ADJOURNMENT

The Board voted and approved adjournment at 11:12 am. The next monthly Board meeting is scheduled for December 11, 2023 at 10 AM and will be Virtual.