

# Preliminary Evaluation of the State Board of Well Drillers

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<b>Recommendations:</b>	<b>Waive from Full Evaluation</b> <b>Extend Termination Date by 10 Years to July 1, 2031</b> <b>Require Preliminary Evaluation by December 15, 2028</b> <b>Amend statute to require board to set fees such that revenues cover expenditures</b>
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**Date Established:** 1968

**Most Recent Prior Evaluation:** Preliminary Evaluation in 2008, with an update in 2009

Waived from full evaluation and extended termination date by 10 years to July 1, 2021; required follow-up report by October 1, 2009 (submitted)

**Composition:** Seven members consisting of four licensed master well drillers from different geographic regions of the State who actively practice well drilling, one employee of the Department of the Environment, one employee of the Department of Natural Resources, and one public member who is required by law to serve as board chairman

**Regulated Entities:** Well Drillers

**Authorizing Statute:** Title 13, Environment Article

**Evaluation Completed by:** Matthew Jackson, Department of Legislative Services, 2018

## The State Board of Well Drillers

Well drillers in Maryland became regulated 50 years ago when the State Board of Well Drillers was created by Chapter 584 of 1968. Prior to passage of that legislation, only well construction had been regulated as a means of protecting the State's water resources. The board determines the circumstances under which an individual may engage in the practice of well drilling which include (1) making, altering, repairing, or sealing a well for profit or (2) installing, altering, repairing, or disconnecting well system equipment for profit. While the board was originally established under the Department of Natural Resources (DNR), it currently resides within the Maryland Department of the Environment (MDE) and is grouped with one other board (the State Board of Waterworks and Waste Systems Operators).

The board is strictly a licensing board and is charged with the responsibility of licensing well drillers working in Maryland. Qualifications for both examination and licensure are determined by the board. Properly licensed well drillers who have obtained the necessary permits may construct wells for any of the following purposes:

- to explore for groundwater;
- to obtain or monitor groundwater;
- to inject water into any underground formation from which groundwater may be produced; and
- to transfer heat from the ground or groundwater, if the hole extends more than 20 feet below the surface of the ground and is **not** a well for obtaining geothermal resources under § 5-601 of the Environment Article.

The board also administers continuing education requirements and disciplines licensees. With respect to licensing and examination, the board functions with a great deal of autonomy. However, its enforcement and disciplinary functions are affected by interaction among the board, MDE, and local health departments.

The board is composed of seven members appointed to serve two-year terms by the Governor with the advice of the Secretary of the Environment and the advice and consent of the Senate. They are:

- one licensed master well driller who actively practices well drilling and is from Caroline, Cecil, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico, or Worcester County;
- one licensed master well driller who actively practices well drilling and is from Baltimore City or Baltimore, Carroll, Harford, Howard, or Montgomery County;

- one licensed master well driller who actively practices well drilling and is from Anne Arundel, Calvert, Charles, Prince George's, or St. Mary's County;
- one licensed master well driller who actively practices well drilling and is from Allegany, Frederick, Garrett, or Washington County;
- an employee of MDE;
- an employee of DNR; and
- a public member who is required by law to serve as board chairman.

The board employs one full-time staff person (as the executive director).

## **Legislative, Regulatory, and Sunset Review History**

The most recent sunset evaluation of the board was conducted in 2008. As a result of the evaluation, Chapter 29 of 2009 was enacted to extend the termination date of the board by 10 years to July 1, 2021, and require the board to submit a report to certain committees of the General Assembly on its plans to (1) generate fee revenue sufficient to cover expenditures and (2) track consumer complaints and related disciplinary actions within a database or spreadsheet. No other legislative changes have occurred since the enactment of Chapter 29.

On October 1, 2009, the board submitted the report required by Chapter 29. The report stated that the board had conducted an analysis of the fee structure and concluded that all fees should be increased by 100%. Additionally, the board stated that it had incorporated software to capture and monitor complaints and disciplinary actions.

Regulations were adopted in 2010 that incorporated the board's conclusions in its October 1, 2009 report by doubling all but one of the board's fees. That fee structure continued until 2016 when a majority of the fees were reduced to pre-2010 levels as part of a broader effort by the Governor to reduce administrative fees. **Appendix 1** summarizes the fee structure for licenses and miscellaneous fees as adopted in 2010 and modified in 2016. There have been no changes to the fee structure for licenses and miscellaneous services since 2016.

## **Licensing**

### **Generally**

The board currently licenses well drillers in three classes: master, journeyman, and apprentice. Within these classes of license are three categories: general, geotechnical, and water supply. There are also three types of restricted licenses: water conditioner installer, water pump installer, and well rig operator. These restricted license categories also have an apprentice class. **Appendix 2** shows the number of licenses held in the State as of July 1, 2018.

### **Classes**

A “master well driller” is licensed to practice well drilling, without restriction, in a particular category. A “journeyman well driller” must practice well drilling under the supervision of a master well driller in the same category. An “apprentice” well driller is licensed to work under the direction and control of a master well driller for the specific purpose of training to practice well drilling.

### **Categories**

A master or journeyman well driller categorized as “general” is authorized to practice well drilling in all categories of the well driller license. The practice of a master or journeyman well driller categorized as “geotechnical” is limited to wells constructed for the purpose of sampling, measuring, or test pumping for scientific, engineering, or regulatory purposes, including wells constructed specifically for the removal of contaminants from an aquifer, but excluding water supply test wells. The practice of a master or journeyman well driller categorized as “water supply” is limited to wells constructed for the purpose of obtaining a water supply, including wells drilled for the purpose of installing a heat pump.

### **Restricted Licenses**

A “water conditioner installer” is licensed to practice well drilling, restricted to the selection, installation, and repair of water conditioning equipment. A “water pump installer” is licensed to practice well drilling, restricted to the selection, installation, and repair of pumps and related equipment, and the testing for well yield. A “well rig operator” is licensed to practice well drilling, restricted to the location and excavation of wells; installation of casing, grout, screens, and pumps; and development and testing of wells. An “apprentice” water conditioner installer is licensed to work under the direction and control of a water conditioner installer or master well driller for the specific purpose of training to practice well drilling restricted to water conditioner installation. An apprentice water pump installer is licensed to work under the direction and control of a water pump installer or master well driller for the specific purpose of training to practice well drilling restricted to water pump installation.

## **Process**

Before being issued a license, an individual must first apply for examination by submitting a completed application form and paying the \$75 application fee. Adequate experience for a particular classification or category of license must also be demonstrated. The requirement for experience can be met either by demonstrating a given amount of experience in the practice of well drilling or by being licensed in the next lower category for a specified amount of time. License fees, experience, performance bond, and insurance requirements for the various classifications and categories of licenses appear in **Appendix 3**.

Upon approval, the applicant must pass an examination. The licensing examination is offered six times per year and is developed and administered by the board. The exam is given in written form. Although the board has the authority to administer practical exams to supplement the written exam, the board does not do so. Instead, the board continues to revise its written exam to incorporate questions that demonstrate an applicant's ability and competency to engage in well drilling or installing well system equipment.

Over the past five years, approximately 57.6% of applicants taking a well drilling exam passed. The number of applicants taking the examination and the associated pass rates since May 2013 are shown in **Appendix 4**. The board tracks examination statistics through board meeting minutes. There are no limits to the number of times an applicant may take the exam. If an applicant, however, fails an examination two consecutive times, the applicant must obtain 20 hours of board-approved training prior to retaking the examination.

Those applicants who pass the examination must present the board with acceptable evidence that their bonding and liability requirements have been met and pay the appropriate licensing fee. License renewal occurs biennially – at which time the licensee must submit an application for renewal including satisfactory evidence of compliance with the bonding, insurance, and continuing education requirements and pay the fee required for the particular license class and category. Applicants for licensure as master well drillers and journeyman well driller licensees in the general and geotechnical categories must provide documentation that they have valid certification for hazardous waste or monitoring site operations required by the Occupational Safety and Health Administration.

## **Complaints and Enforcement**

Enforcement of the State's well drilling laws, rules, and regulations is a cooperative effort among the board, MDE, and local health departments. Any person in the State may file a complaint with the board for alleged violations committed by a licensee or an applicant for a license. On receipt of a complaint or at its own discretion, the board investigates each allegation to determine whether formal action will be taken against the licensee or applicant. The board is required to suspend or revoke a license if the licensee:

- fraudulently or deceptively obtains or attempts to obtain a license for himself or another;

- fraudulently or deceptively uses a license; or
- is guilty of gross negligence, incompetence, or misconduct while practicing well drilling.

The board also has the authority to deny a license for any of these reasons. The board may deny a license to any applicant, reprimand a licensee, or suspend or revoke a license if it finds that the applicant or licensee has violated any law, rule, or regulation that applies to the practice of well drilling.

The board is authorized, on a complaint or on its own motion, to investigate allegations of practicing well drilling without a license. The board may impose a civil penalty, in lieu of or in addition to other penalties, of up to \$1,000 per day for all violations cited on a single day. In setting the amount of the penalty the board must consider various factors. If the violator fails to pay a penalty within 30 days, the matter must be forwarded to the Central Collection Unit, located within the Department of Budget and Management, for collection.

The board receives notice of potential violations of both the well construction regulations and the well driller licensing regulations from local health departments. Notices of violations are recorded in a spreadsheet and are discussed at board meetings. They are added to the licensee's file, but the board takes relatively few disciplinary actions against licensed practitioners. It is up to the board to ultimately decide whether it addresses a notice of violation, as many violations are resolved at the county level and do not require intervention by the board. Over the past five years, only a fraction of the notices received by the board have resulted in board action. For example, since June 2013, the board received notice of 64 potential violations and suspended two licensees as a result. Civil penalties may be assessed for both unlicensed practice and well construction violations; however the board advises that it has not assessed any civil penalties since 2006.

The board also receives written complaints from consumers. Since June 2013, the board has received only five consumer complaints. For the most part, the board does not get involved in consumer complaints as they tend to deal with contract disputes between the consumer and the well driller, and the board has no statutory authority to deal with such contract disputes.

The board recently implemented a system to track notice of violations, complaints, and suspensions through a spreadsheet. Additionally, board actions can be tracked through board meeting minutes, which include correspondence related to licensure matters and well-construction problems as well as consumer complaints.

## Finances

The appropriation for the board comes from the general fund. Likewise, all revenue collected by the board is deposited into the general fund. These revenues are generated through the collection of licensing and other miscellaneous fees. Licenses are renewed biennially in odd-numbered years and make up the vast majority of board revenues. In addition, civil penalties are paid into the general fund. The various fees collected by the board are established by the board through regulation. Revenue and expenditure data from fiscal 2013 through 2018 are shown in **Exhibit 1**.

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**Exhibit 1**  
**Fiscal History of the State Board of Well Drillers**  
**Fiscal 2013-2018**

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
General Fund						
Appropriation	\$97,003	\$101,923	\$105,168	\$107,011	\$78,785	\$112,240
Revenues	206,850	27,350	192,259	39,750	108,190	21,250
Expenditures	106,255	105,992	114,397	35,740	102,737	100,267
Excess/(Gap)	100,595	-78,642	77,862	4,010	5,453	-79,017
Biennial						
Excess/(Gap)		21,953		81,872		-73,564

Note: Board expenditures typically exceed the legislative appropriation due to underfunding; in such cases, the shortfall is covered at closeout with available funding from the Water Management Administration.

Source: Maryland Department of the Environment

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As discussed above, regulations adopted in 2016 significantly reduced the board's initial, renewal, and application fees. Prior to the adoption of the 2016 regulations, the board's revenue in odd-numbered years (when license renewal fees are collected) was enough to make up for the minimal revenue in even-numbered years (when license renewal fees are not collected). For example, during the fiscal 2013 to 2014 and fiscal 2015 to 2016 biennia, board revenues exceeded total expenditures by \$21,953 and \$81,872, respectively. For the fiscal 2017 to 2018 biennium, however, after the fee reductions took effect, total revenues fell short of total expenditures by \$73,564. Because the board is supported entirely by general funds, the shortfall has no practical effect on the board's operations, as it is budgeted with sufficient funds to carry out its responsibilities. However, it means that the board is in essence subsidized by taxpayers instead of being fully supported by those who use its services.

Expenditures in fiscal 2016 were substantially below normal levels because of the departure of the board's executive director. As there was a delay in filling the position, the board

did not have to pay that salary, which is the bulk of its annual operating expenses. Had the board paid the salary, the board likely would have experienced much smaller excess revenues, or potentially a revenue gap, rather than the substantial excess revenues realized during the fiscal 2015 to 2016 biennium.

Based on a review by the Department of Legislative Services (DLS), 20 out of 23 nonhealth-related regulatory entities with fee-setting authority are required by law to set fees so as to raise sufficient funds to cover their costs, but the State Board of Well Drillers is 1 of the 3 entities that is not required to do so. The General Assembly typically has a policy of regulatory boards and commissions being self-supporting to the extent possible. The 2016 fee reductions carried out by the Governor (and approved by the board) restored the same fee structure that the board had from 1994 to 2010, which the 2008 Preliminary Sunset Review concluded was insufficient. Consequently, the current fee structure is not sufficient to cover expenses incurred by the board.

## Recommendations

The board appears to be operating within its statutory authority and meeting its mandated duties. Further, there is a continued need for regulation of well drillers. DLS is satisfied that the board is appropriately vested with this authority and that it fulfills this function in a fair and efficient manner. **Therefore, DLS recommends that the Legislative Policy Committee waive the State Board of Well Drillers from full evaluation and that legislation be enacted to extend the board's termination date by 10 years to July 1, 2031. Thus, another preliminary evaluation would be conducted in 2028.**

However, as a result of the adoption of regulations in 2016 that reduce the board's fee structure, the board does not generate sufficient revenues to cover its expenditures. **Therefore, DLS further recommends that statute be amended to require that fees be set at a level such that revenues generated by the board are sufficient to cover its expenditures; this requirement is the norm among most other regulatory bodies in the State that have fee-setting authority.**

Finally, **DLS recommends that, since the State Board of Well Drillers and the State Board of Waterworks and Waste Systems Operators are both within the Water Supply Program, the Secretary of the Environment be required to calculate the direct and, if appropriate, indirect costs attributable to each board, and that the boards be required to set fees based on those calculations. Future fee increases (after any necessary initial increase) should be capped at 12.5% of the existing fee. In order to establish fees that more equitably distribute the costs associated with each board, statute should authorize the Secretary to average the costs of each board covered by the general fund, provided both boards consent to allow the Secretary to do so.**<sup>1</sup>

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<sup>1</sup> A concurrent evaluation of the State Board of Waterworks and Waste Systems Operators includes a similar recommendation.



## Appendix 1. Fee Structure Changes by Regulation

<b><u>License Class and Category</u></b>	<b><u>Initial Fee</u></b>		<b><u>Renewal Fee</u></b>		<b><u>Temporary Fee</u></b>	
	<b><u>2010</u></b>	<b><u>2016</u></b>	<b><u>2010</u></b>	<b><u>2016</u></b>	<b><u>2010</u></b>	<b><u>2016</u></b>
Master (General, Geotechnical, or Water Supply)	\$300	<i>\$150</i>	\$400	<i>\$200</i>	\$1,200	\$1,200
Journeyman (General, Geotechnical, or Water Supply)	200	<i>100</i>	400	<i>200</i>	1,200	1,200
Well Rig Operator	200	<i>100</i>	300	<i>150</i>	900	900
Water Conditioner Installer	300	<i>150</i>	400	<i>200</i>	1,200	1,200
Water Pump Installer	300	<i>150</i>	400	<i>200</i>	1,200	1,200
Apprentice (Well Driller, Water Conditioner Installer, or Water Pump Installer)	100	<i>50</i>	200	<i>100</i>	600	600

<b><u>Miscellaneous Fees</u></b>	<b><u>Fee Amount</u></b>	
	<b><u>2010</u></b>	<b><u>2016</u></b>
Application	\$150	<i>\$75*</i>
Late Renewal	200	200
Inactive Status	50	50
Reinstatement	400	400
License or Card Replacement	50	50
Name or Address Change	0	0
Roster	75	75

Notes: Temporary licenses are rarely requested. Application fees are only assessed on new applicants and not for renewals. *Italicized* text indicates a change in fee amount that took effect in fiscal 2016.

Source: Code of Maryland Regulations (COMAR)

## Appendix 2. Active Licenses Held as of July 1, 2018

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<u>Class/Category</u>	<u>Number</u>
Apprentice Pump Installer	21
Apprentice Water Conditioner Installer	16
Apprentice Well Driller	55
Journeyman Well Driller – Geotechnical	29
Journeyman Well Driller – Water Supply	30
Journeyman Well Driller – General	23
Master Well Driller – Geotechnical	54
Master Well Driller – Water Supply	94
Master Well Driller – General	74
Pump Installer	49
Water Conditioner Installer	46
Well Rig Operator	43
<b>Total Active Licenses</b>	<b>534</b>

### Appendix 3. Class and Category Requirements

<u>Class and Category of License</u>	<u>Experience Requirement</u>	<u>License Fee</u>	<u>Written Exam</u>	<u>Performance Bond</u>	<u>Insurance</u>
<p><i>Master Well Driller:</i></p> <p>General Geotechnical Water Supply</p>	7 years practicing well drilling or 2 years as a journeyman in same category	\$150	Required	\$5,000 Aggregate	<p><b>Bodily Injury:</b> \$100,000 each person \$300,000 each occurrence <b>Property Damage:</b> \$50,000 each occurrence \$50,000 aggregate</p>
<p><i>Journeyman Well Driller:</i></p> <p>General Geotechnical Water Supply</p>	5 years practicing well drilling or 3 years as an apprentice well driller	\$100	Required	None – but must be covered under bond of Master Well Driller	<p>None – but must be covered by company policy</p>
<p><i>Pump Installer:</i></p>	3 years installing pumps or 2 years as an apprentice pump installer	\$150	Required	\$2,000 Aggregate	<p><b>Bodily Injury:</b> \$100,000 each person \$300,000 each occurrence <b>Property Damage:</b> \$50,000 each occurrence \$50,000 aggregate</p>

<b><u>Class and Category of License</u></b>	<b><u>Experience Requirement</u></b>	<b><u>License Fee</u></b>	<b><u>Written Exam</u></b>	<b><u>Performance Bond</u></b>	<b><u>Insurance</u></b>
<b><i>Water Conditioner Installer:</i></b>	3 years installing water conditioning equipment or 2 years as an apprentice water conditioner installer	\$150	Required	\$2,000 Aggregate	<b>Bodily Injury:</b> \$100,000 each person \$300,000 each occurrence <b>Property Damage:</b> \$50,000 each occurrence \$50,000 aggregate
<b><i>Apprentice:</i></b>  Well Driller Pump Installer Water Conditioner Installer	1 year related experience	\$50	Required	None – but must be covered under bond of the Master Well Driller, Pump, or Water Conditioner Installer Sponsor	None – but must be covered by Master or company policy

## Appendix 4. Examination Results (2013-2018)

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<u>Exam Date</u>	<u>Number of Candidates</u>	<u># Passed</u>	<u># Failed</u>	<u>% Passed</u>
May 2013	14	10	4	71.4%
August 2013	18	16	2	88.9%
November 2013	8	8	0	100.0%
January 2014	11	8	3	72.7%
April 2014	24	19	5	79.2%
August 2014	17	7	10	41.2%
*November 2014				
May 2015	22	10	12	45.5%
*August 2015				
*September 2015				
November 2015	21	9	12	42.9%
February 2016	23	9	14	39.1%
May 2016	22	9	13	40.9%
August 2016	23	12	11	52.2%
*November 2016				
February 2017	15	8	7	53.3%
April 2017	20	9	11	45.0%
June 2017	16	9	7	56.3%
August 2017	19	11	8	57.9%
October 2017	16	11	5	68.8%
December 2017	11	7	4	63.6%
February 2018	17	7	10	41.2%
April 2018	11	10	1	90.9%
<b>Total</b>	<b>328</b>	<b>189</b>	<b>139</b>	<b>57.6%</b>

\*Information on the examination results for November 2014, August 2015, September 2015, and November 2016 are unavailable.

Source: State Board of Well Drillers

## **Appendix 5.**

### **Written Comments of the State Board of Well Drillers**

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The commission reviewed a draft of this preliminary evaluation and provided these written comments. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect the final version of the report.



**STATE BOARD OF WELL DRILLERS**

December 7, 2018

Mr. Michael C. Rubenstein  
Principal Policy Analyst  
Department of Legislative Services  
90 State Circle  
Annapolis, MD 21401-1991

Dear Mr. Rubenstein:

Mr. Hairston, the other Board members, and I appreciate the opportunity to review and comment on the draft preliminary evaluation of the State Board of Well Drillers. We found the report to be well written, orderly and the conclusions quite favorable. All comments are of a factual clarification nature.

Comments:

- **Composition of the Board** – Clarification that the Board has one employee of the Department of the Environment and one employee of the Department of Natural Resources.

Page 1, Composition section – Delete: “two employees of the Departments of the Environment and Natural Resources”. Add: “one employee of the Department of the Environment and one employee of the department of Natural Resources”

- **Staffing of the Board** - The Board no longer shares staff with the Waterworks and Waste Systems Operators Board.

Page 3, last sentence below bullets – Amend the sentence to read: “The Board employs one full time staff person (as Executive Director).” Delete: “and shares an office secretary with the other board housed within MDE.”

Page 8, last paragraph – This paragraph mainly speaks about allocation of expenses between the two boards and is based on the incorrect premise that the boards share staff, we suggest deleting this paragraph. We recommend retaining one sentence: “Future fee increases (after any necessary initial fee increase) should be capped at 12.5% of the existing fee” and moving it to the paragraph above.

- ***Definition of the water supply category – The current definition is for “well rig operator”, not “water supply”.***

Page 4, under **Categories**, last sentence – Delete: “is limited to the location and excavation of wells; installation of casing, grout, screens, and pumps; and development and testing of wells.” (That is the definition of well rig operator.)

Replace with the correct definition: “is limited to wells constructed for the purpose of obtaining a water supply, including wells drilled for the purpose of installing a heat pump.” See COMAR 26.05.01.01B(25).

- ***Clarification of which licensees oversee apprentice water conditioner installers and water pump installers – Pump Installers cannot oversee apprentice water conditioner installers. Water conditioner installers cannot oversee apprentice pump installers.***

Page 4, under **Restricted licenses**, last sentence – Amend the text “an apprentice water conditioner installer or pump installer is licensed to work under the direction and control of a water conditioner installer or pump installer for the specific purpose of training to practice well drilling.”

A more accurate text is “An apprentice water conditioner installer is licensed to work under the direction and control of a water conditioner installer or master well driller for the specific purpose of training to practice well drilling restricted to water conditioner installation. An apprentice water pump installer is licensed to work under the direction and control of a water pump installer or master well driller for the specific purpose of training to practice well drilling restricted to water pump installation.” See COMAR 26.05.01.05B(1).

- ***Addition of process requirement for hazwoper training for general and geotechnical categories of licenses – Please add the following requirement:***

Page 5, under **Process**, add after the last sentence: “Applicants for licensure as master well drillers and journeyman well driller licensees in the general and geotechnical categories must provide documentation that they have valid certification for hazardous waste or monitoring site operations required by the Occupational Safety and Health Administration.” See COMAR 26.05.01.04B.

- ***Clarification of what violations are and how they are handled – The Board can become aware of potential unlicensed practice through either violations or complaints. There are very few but they are taken very seriously. Local health departments do not have the authority to handle unlicensed practice. They do however resolve many well construction violations.***

Page 6, second paragraph – suggested language is as follows:

“The board receives notice of violations of both the well construction regulations and the well driller licensing regulations from local health departments. Notices of violation are recorded in a spreadsheet and are discussed at board meetings. They are added to the licensee’s file but the Board takes relatively few disciplinary actions against licensed practitioners. It is up to the board to decide whether it addresses a notice of violation, as many violations are resolved at the county level and do not require action by the board. Over the past five years, only a fraction of the notices received by



Mr. Michael Rubenstein  
Page 3

the board have resulted in board action. For example, since June 2013, the board received notice of 64 potential violations and suspended two licensees as a result. Civil penalties may be assessed for both unlicensed practice and well construction violations, however the board has not assessed civil penalties since 2006.”

Please contact me with any questions at [elaine.nolen@maryland.gov](mailto:elaine.nolen@maryland.gov) or 410-537-4466.

Sincerely,



Elaine Nolen  
Executive Director

Cc: Secretary Benjamin H. Grumbles  
Mr. Hahns Hairston

