

**BOARD FOR PROFESSIONAL SOIL SCIENTISTS,
WETLAND PROFESSIONALS and GEOLOGISTS MEETING
December 1, 2022
10:00 a.m. – Board Room 2 – 2nd Floor
Department of Professional & Occupational Regulation
9960 Mayland Drive
Richmond, Virginia 23233
(804) 367-8514**

1. Call to Order
2. Emergency Evacuation Procedures
3. Announcements
4. Approval of Agenda
5. Approval of Minutes:
 - June 28, 2022
6. Public Comment Period*
7. 2023 ASBOG Meeting Dates
8. Regulatory Review 101 PowerPoint
9. Regulatory Review Matrix Flowchart
10. Licensed and Certified Population
11. Financial Statements
12. Other Business
13. Conflict of Interest / Travel Vouchers
14. Adjourn

NEXT MEETING SCHEDULED FOR March 28, 2022

Agenda materials available to the public do not include disciplinary case files or application files pursuant to §54.1-108 of the Code of Virginia.

*Five minute public comment, per person, with the exception of any open disciplinary or application files. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the Department at (804) 367-8514 at least ten days prior to the meeting so that suitable arrangements can be made for an appropriate accommodation. The Department fully complies with the Americans with Disabilities Act.

- **Call to Order**
- **Emergency Evacuation**
- **Announcements**

BOARD FOR PROFESSIONAL SOIL SCIENTISTS, WETLAND PROFESSIONALS and
GEOLOGISTS MEETING MINUTES

The Board for Professional Soil Scientists, Wetland Professionals and Geologists met on June 28, 2022 at the Department of Professional and Occupational Regulation (DPOR), 9960 Mayland Drive, Richmond, Virginia, with the following members present for all or part of the meeting:

Citizens

Robin Jones

Geologists

Michael Lawless
Drew Thomas
David Spears

Soil Scientists

David Hall
Alexis Jones

Wetland Delineators

Robin Bedenbaugh
Justin Brown

Board members Warren “Ted” Dean, Bennette Burks, Larry Giannasi, Molly Parker, and Doug DeBerry were not present at the meeting with regrets.

Staff present for all or part of the meeting were:

Demetrios Melis, Director
Kishore Thota, Chief Deputy Director
Kathleen (Kate) R. Nosbisch, Executive Director
Breanne Henshaw, Administrative Coordinator

Elizabeth Peay, Assistant Attorney General, was present from the office of the Attorney General.

Mr. Thomas, Vice Chair, called the meeting to order at 10:03 a.m.

Call to Order

Mr. Thomas advised the Board of the emergency evacuation procedures.

**Emergency
Evacuation**

Ms. Nosbisch stated that Mr. DeBerry, Ms. Parker, Mr. Giannasi, Mr. Burks, and Mr. Dean send their regrets. Ms. Nosbisch introduced Mr. Melis, DPOR Director, to the Board. Mr. Melis informed the Board of current initiatives being taken on by DPOR, including upgrading technology and, therefore, efficiency by better meeting customer service needs. Ms. Nosbisch also introduced Jennifer Sayegh, DPOR’s new Policy and Legislative Affairs Manager, and Shannon Webster, Director of Examinations and Workforce Development Director.

Announcements

Mr. Lawless moved to approve the agenda. Ms. A. Jones seconded the motion, which was unanimously approved by members: Bedenbaugh, Brown, Hall, A. Jones, R. Jones, Lawless, Spears, and Thomas.

**Approval of
Agenda**

Ms. R. Jones moved to approve the minutes from the February 19, 2020, Board

Approval of

for Professional Soil Scientists, Wetland Professionals, and Geologists meeting. Mr. Bedenbaugh seconded the motion, which was approved by members: Bedenbaugh, Brown, Hall, A. Jones, R. Jones, Lawless, and Spears. Mr. Thomas abstained.

Minutes

Mr. Spears moved to approve the minutes from the March 29, 2022, Board for Professional Soil Scientists, Wetland Professionals, and Geologists meeting. Mr. Bedenbaugh seconded the motion, which was unanimously approved by members: Bedenbaugh, Brown, Hall, A. Jones, R. Jones, Lawless, Spears, and Thomas.

There was no public comment.

Public Comment Period

Ms. Nosbisch informed the Board that nominations for the ASBOG Executive Committee were due on May 31, 2022. Ms. Nosbisch congratulated Mr. Thomas on his appointment to the ASBOG Ethics Committee.

ASBOG Executive Committee Nominations – Email sent May 9, 2022

Mr. Brown submitted an email on June 7, 2022 with an inquiry from DEQ regarding guidance and clarification needed on the qualifying experience for their employees who are in the Virginia Water Protection Program. DEQ would like to know what type of documentation of the 30 delineations required by 18VAC145-30-50.2. would be acceptable. Mr. Brown stated the Wetland Delineators have not yet received an applicant who is applying based on this information, but it would be helpful to gain insight from the Board on this inquiry. The Board discussed the broadly written regulation, 18VAC145-30-50.2., and how this would not prevent DEQ’s staff from applying based on their wetland delineation determination experience. The Board discussed the fact that not all DEQ permit writers will conduct a site visit in the field and it would be important for them to have this experience if they were to leave DEQ after having obtained the wetland delineator certification. The Board concluded that Ms. Nosbisch will submit a response to DEQ on behalf of the Board, which states any professional documentation on any surface water determination done within the last two years will be reviewed based on 18VAC145-30-50.2. Ms. Nosbisch will send a draft of the response to Mr. Bedenbaugh and Mr. Brown for review before forwarding the information on to DEQ.

Virginia DEQ Inquiry – Wetland Delineation

Mr. Brown offered draft language for the DPOR website in regards to the Wetland Delineation Training. The Board discussed this language and concluded that they will list the following question and answer under the FAQ page: “Does the course in state and federal wetland delineation methods need to contain an instructor led field component? The course must have a field component. It is strongly recommended that a course with an instructor led field component is

Wetland Delineation Training – Draft Language for the DPOR Website

taken to ensure appropriate procedures are learned.”

Ms. Nosbisch informed the Board that according to the usual rotation, the vice chair can assume the position of chair and then a board member from the next position/seat is elected vice chair to ensure each seat on the Board has an opportunity to be represented. **Election of Officers**

Ms. Nosbisch opened the floor for nominations for Board Chair. Mr. Bedenbaugh nominated Mr. Thomas, current vice chair, for the position of Chair. As there were no other nominations from the floor, Ms. Nosbisch closed the nominations. Mr. Spears seconded the motion. The motion was unanimously approved by members: Bedenbaugh, Brown, Hall, A. Jones, R. Jones, Lawless, Spears, and Thomas.

Ms. Nosbisch opened the floor for nominations for Board Vice Chair. Mr. Bedenbaugh nominated Ms. R. Jones for the position of Vice Chair. As there were no other nominations from the floor, Ms. Nosbisch closed the nominations. Mr. Spears seconded the motion. The motion was unanimously approved by members: Bedenbaugh, Brown, Hall, A. Jones, R. Jones, Lawless, Spears, and Thomas.

Ms. Nosbisch informed the Board that the 2022 meeting dates are on the agenda as tentative meeting dates if the Board has business. Mr. Bedenbaugh informed the Board of Mr. DeBerry’s scheduling conflict with Tuesdays and asked Ms. Nosbisch to provide the dates to Mr. DeBerry for review as well. Ms. Nosbisch confirmed that she will discuss the dates with Mr. DeBerry. Ms. A. Jones moved to approve the 2022 meeting dates. Mr. Bedenbaugh seconded the motion, which was unanimously approved by members: Bedenbaugh, Brown, Hall, A. Jones, R. Jones, Lawless, Spears, and Thomas. **Consideration of 2022 Meeting Dates**

The Board reviewed the 2023 meeting dates. Ms. A. Jones moved to approve the 2023 meeting dates. Mr. Lawless seconded the motion, which was unanimously approved by members: Bedenbaugh, Brown, Hall, A. Jones, R. Jones, Lawless, Spears, and Thomas. **Consideration of 2023 Meeting Dates**

Ms. Nosbisch informed the Board that there were no public comments received during the public comment period for the fee increase regulatory action previously approved by the Board. The Board was presented with the draft language for the fee increase for submission to the Registrar’s Office as it moves to the second (proposed) phase of the process. Ms. A. Jones moved to approve the fee increase action. Mr. Lawless seconded the motion, which was unanimously approved by members: Bedenbaugh, Brown, Hall, A. Jones, R. Jones, Lawless, Spears, and Thomas. **Fee Increase**

Ms. Nosbisch informed the Board of the upcoming Board Member Training **Board Member**

Conference, which will take place in Williamsburg, VA. Ms. Nosbisch asked the Board members that were present at the previous conference to speak on their experience. Mr. Spears indicated it was time well spent at the previous conference. Mr. Spears continued by stating he learned a lot about how the government worked and how the Board's regulations fit into that. Mr. Lawless concurred with Mr. Spears' assessment of the previous conference and added that it was great meeting members of other regulatory boards in order to understand how they operate. Mr. Thomas and Mr. Brown shared the same sentiment as those shared by Mr. Spears and Mr. Lawless.

**Conference –
October 13 –
October 14, 2022**

Ms. Nosbisch reviewed the licensee counts as of June 1, 2022: Soil Scientists – 80; Wetland Delineators – 117; Geologists – 909.

**Licensed and
Certified
Population**

Ms. Nosbisch informed the Board that the financial statements were included for informational purposes.

**Financial
Statements**

Ms. Nosbisch informed the Board that Mr. Dean will conclude his second term with the Board on June 30, 2022. Ms. Nosbisch stated Board members are to serve until a new Board member is appointed. Mr. Brown's first term will expire on June 30, 2022 and he will be eligible for reappointment.

Other Business

Conflict of Interest forms and travel vouchers were completed by all board members present.

**Conflict of Interest
Forms/Travel
Vouchers**

There being no further business, the meeting was adjourned at 10:47 a.m.

Adjournment

R. Drew Thomas, Chair

Demetrious Melis, Secretary

➤ **Public Comment**

- **2023 Spring COE Workshop: Greenville, South Carolina**
 - **April 13-14, 2023 - COE Workshop**
 - **April 15, 2023 - Field Trip**

- **2023 Fall Administrators Workshop, Annual Meeting, and COE Workshop: Spokane, Washington**
 - **October 23, 2023 - Administrator's Workshop**
 - **October 24, 2023 - Annual Meeting**
 - **October 25, 2023 - Field Trip**
 - **October 26 - 27, 2023 - COE Workshop**









Difference Between Regulation and Statute

Statute/Law	Regulation
In the <i>Code of Virginia</i>	In the <i>Virginia Administrative Code</i>
Adopted by the General Assembly	Adopted by a state government agency
Can only be enacted, amended, and repealed by the General Assembly	Can be enacted, amended, and repealed by the agency
Legislative actions only take place during the General Assembly session (once per year)	Regulatory review process can take place at any time
Usually effective within months of passage and signature by Governor	The standard regulatory review process usually takes a minimum of 18-24 months
Scope of legislative authority only limited by the State Constitution	Scope of regulatory authority limited by General Assembly (through law)

A regulation has the **binding effect of law**. Therefore, it affects our lives as much as a statute passed by the legislature.

Regulation Writing DO's

- ▶ **DO** draft regulations with the protection of the health, safety, and welfare of the public as the primary goal
- ▶ **DO** draft regulations to ensure minimum competency
- ▶ **DO** draft regulations to achieve intended objective in the most efficient, cost effective manner
- ▶ **DO** draft regulations based on reasonably available data
- ▶ **DO** draft regulations to be clearly written and easily understandable by the average person
- ▶ **DO** draft regulations in accordance with the statute
- ▶ **DO** expect the draft regulations to be scrutinized by the public, regulators, other state agencies, etc.

Regulation Writing DO NOT's

- ▶ **DO NOT** draft regulations that are ambiguous and difficult to understand
- ▶ **DO NOT** draft regulations to advance a particular group, profession, or issue
- ▶ **DO NOT** draft regulations in order to limit entry into a given profession
- ▶ **DO NOT** draft regulations that are overly burdensome or cost-prohibitive
- ▶ **DO NOT** expect that the regulations you adopt to stay the same after Board-review, policy-review, economic-review, and public comment

Federal Trade Commission v. The North Carolina State Board of Dentistry

Public Protection or Anti-competition

- ▶ Short summary of case: dental board composed of practicing dentists sought to exclude non-dentist teeth whiteners from the market
- ▶ Supreme Court: Active supervision of regulatory board composed of market participants is required to ensure anticompetitive conduct promotes state policy and not individual interests

When establishing regulations, REMEMBER:

- ▶ Regulation must be necessary to protect the health, welfare, and safety of the public
- ▶ Defense of regulation must be supported by data and evidence
- ▶ Regulations establish minimum competency not "raise the bar of the profession"
- ▶ Staff will question you because we will be questioned (public, executive branch, etc.)

Steps in the Regulatory Review process
AN OVERVIEW



- ### Types of Regulatory Actions
- ▶ Standard (Three Stage Process)
 - ▶ Emergency
 - ▶ Fast-Track
 - ▶ Exempt

- ### Stages
- ▶ NOIRA – Notice of Intended Regulatory Action
 - ▶ Proposed
 - ▶ Final

NOIRA

- ▶ Board makes determination to begin regulatory review process
- ▶ Staff prepares NOIRA documentation
- ▶ Executive Branch Review
 - ▶ Dept. of Planning and Budget
 - ▶ Secretary of Labor
 - ▶ Governor




NOIRA

- ▶ NOIRA published in Virginia Register of Regulations
- ▶ 30-day public comment period
 - ▶ Typically comments consist of suggested areas for review, as there is no text at this point in the process
 - ▶ Board considers comments during the development/drafting of regulations

Proposed Stage

- ▶ Board adopts proposed regulations
- ▶ Staff prepares proposed documentation
- ▶ Letter of assurance – Attorney General



Proposed Stage

- ▶ Executive Branch Review
 - ▶ Dept. of Planning and Budget (DPB)
 - ▶ Complete Economic Impact Analysis in 45 days
 - ▶ Secretary of Labor
 - ▶ 14 days
 - ▶ Governor
 - ▶ no deadline

Proposed Stage
DPB Economic Impact Analysis

- ▶ Purpose
- ▶ Basis - Legal Authority
- ▶ Substance - Health, Safety Welfare
- ▶ Issues - Advantages and Disadvantages to the Public and the Agency
- ▶ Alternatives - Least Burdensome
- ▶ Fiscal Impact - State, Localities, Regulators


Proposed Stage
DPB Economic Impact Analysis

- ▶ Additional Analysis
- ▶ Businesses and Entities Affected
- ▶ Localities Particularly Affected
- ▶ Projected Impact on Employment
- ▶ Effects on the Use and Value of Private Property
- ▶ Small Businesses: Costs and Other Effects
- ▶ Small Businesses: Alternative Method That Minimizes Adverse Impact

Proposed Stage

- Proposed Regulations published in Register of Regulations
- 60-Day Public Comment Period
 - Written Comments
 - Regulatory Town Hall Website
 - Public Hearing held

Final Stage



Final Stage

- Staff summarizes public comments received; prepares proposed response
- Board adopts response to public comment and final regulations
- Staff prepares final documentation
- Letter of assurance – Attorney General

Final Stage

- Executive Branch Review (submission must be made as expeditiously as the subject matter allows)
 - Dept. of Planning and Budget
 - 14 days
 - Secretary of Labor
 - 14 days
 - Governor


Final Stage

- Final Regulations published in Virginia Register of Regulations
- Effective 30 days (or more) after publication

Regulatory Town Hall

www.townhall.virginia.gov

And last but not least . . .



VIRGINIA REGISTER OF REGULATIONS

Form, Style and Procedure Manual for Publication of Virginia Regulations

TABLE OF CONTENTS

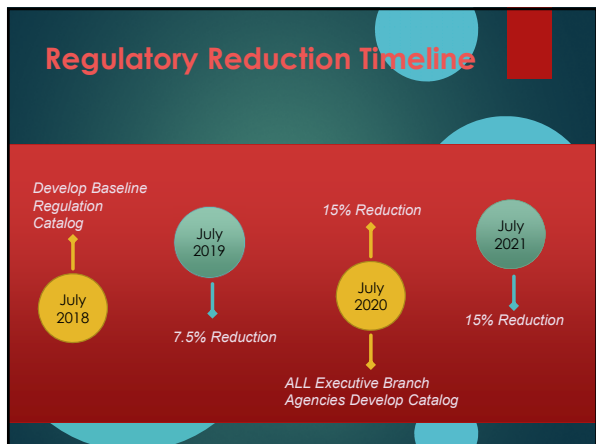
Part 1. General Provisions	1
Article 1. Purpose and Applicability; Additional Requirements; Definitions	1
1.1. Purpose and applicability	1
1.2. Additional requirements	1
1.3. Definitions	1
Article 2. Virginia Register of Regulations	2
1.4. Description; obtaining print or electronic copies of the Register	2
1.5. Using the Virginia Register Online	2
1.6. Using the searchable database of the Virginia Register	2

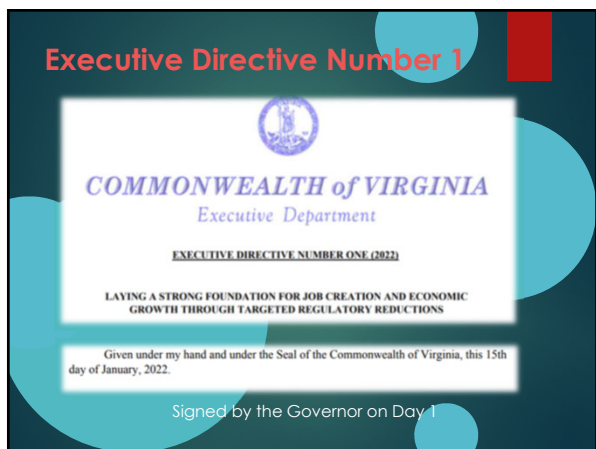
BUT WAIT

THERE'S MORE

Regulatory Reduction Pilot Program (2018)

- ▶ 2018 General Assembly Session (HB883)
- ▶ DPOR & Department of Criminal Justice Services
- ▶ 3-year Regulatory Reduction Program from 7/1/2018 to 7/1/2021 to reduce regulations by 25%
- ▶ Report Annually on Progress
- ▶ Unable to Achieve Goal by 2021? Secretary of Finance reports on feasibility of implementing a 2-for-1 regulatory reduction program
 - ▶ For every **one** new regulation, **two** streamlined, repealed, or replaced





- ### Executive Directive 1 Overview
- ▶ Excessive regulation imposes significant burden on economy
 - ▶ Regulatory burden growth requires businesses' and individuals' time, money, and energy for compliance
 - ▶ Inhibits job creation and economic growth
 - ▶ Directive requires executive branch agencies to initiate actions to reduce regulations not mandated by state or federal law by 25%
 - ▶ Secretary of Finance reports to Governor

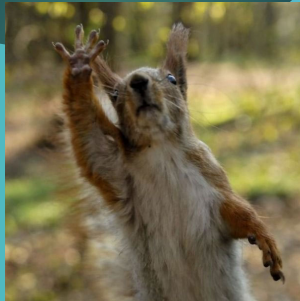
- Recommendations for ensuring complete documentation of any specific legislative mandates directing agencies to promulgate regulatory requirements;
- An inventory of all exemptions from the Administrative Process Act and analysis of whether continuing these exemptions is in the best interests of the citizens of the Commonwealth. Such analysis shall also provide recommendations for legislative action to implement these recommendations;
- Recommendations on additional efforts needed to ensure consistency across agencies in the approach to regulatory development and review;
- Recommendations for improvements to the existing periodic review process, including documenting the statutory authority and certifying the number of regulatory requirements in the regulation at the time of review;
- The feasibility and effectiveness of expanding the regulatory reduction pilot program to other agencies; and
- The feasibility and effectiveness of implementing a 2-for-1 regulatory budget.

Last but not least . . .

§ 54.1-100. Regulations of professions and occupations.

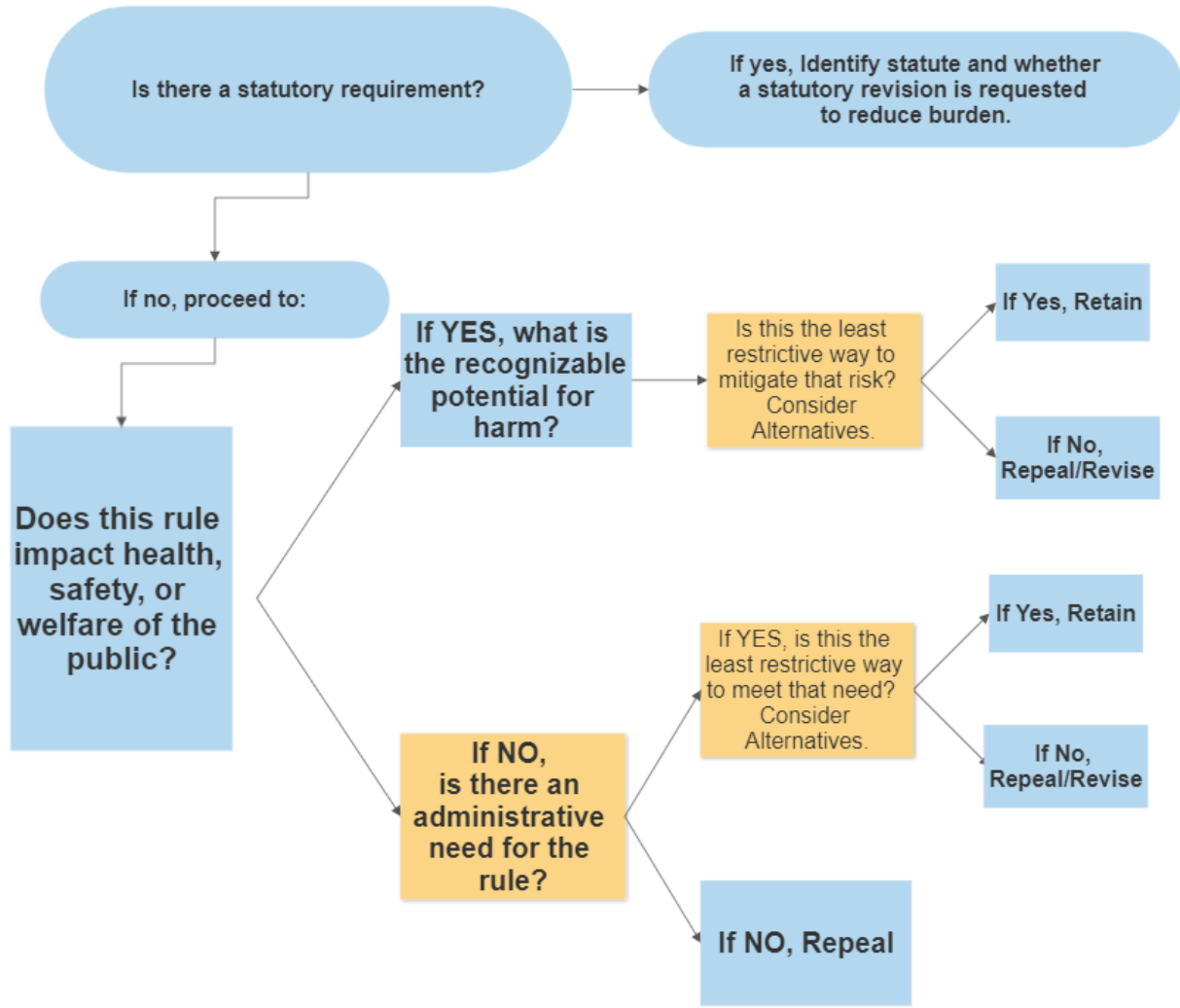
The **right of every person** to engage in any lawful profession, trade, or occupation of his choice is clearly **protected by both the Constitution of the United States and the Constitution of the Commonwealth of Virginia**. The Commonwealth cannot abridge such rights except as a reasonable exercise of its police powers when (i) it is clearly found that such abridgment is necessary for the **protection or preservation of the health, safety, and welfare** of the public and (ii) any such abridgment is **no greater than necessary** to protect or preserve the public health, safety, and welfare.

Any Questions?



Regulatory Review Framework

Matrix Flowchart



Licensed and Certified Population

As of November 1, 2022

Soil Scientists	83
Wetland Delineators	118
Geologists	920

Department of Professional and Occupational Regulation
Statement of Financial Activity

**Board for Professional Soil Scientists, Wetland Professionals, and Geologists
954180**

2022-2024 Biennium

October 2022

	October 2022 Activity	Biennium-to-Date Comparison	
		July 2020 - October 2020	July 2022 - October 2022
Cash/Revenue Balance Brought Forward			16,455
Revenues	(435)	5,815	5,420
Cumulative Revenues			21,875
Cost Categories:			
Board Expenditures	1,652	4,885	7,480
Board Administration	801	6,212	6,090
Administration of Exams	20	953	153
Enforcement	1	3	4
Legal Services	0	14	0
Information Systems	541	3,596	2,885
Facilities and Support Services	260	1,444	1,130
Agency Administration	787	2,848	4,290
Other / Transfers	0	0	0
Total Expenses	4,061	19,955	22,033
Transfer To/(From) Cash Reserves	0	0	(7,459)
Ending Cash/Revenue Balance			7,300

Cash Reserve Beginning Balance	37,197	0	44,655
Change in Cash Reserve	0	0	(7,459)
Cash Reserve Ending Balance	37,197	0	37,197

Number of Regulants	
Current Month	1,202
Previous Biennium-to-Date	1,170

Department of Professional and Occupational Regulation
Supporting Statement of Year-to-Date Activity
Board for Professional Soil Scientists, Wetland Professionals, and Geologists - 954180
Fiscal Year 2023

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Fiscal YTD Charges	Planned Annual Charges	Current Balance	Projected Charges at 6/30	Projected Variance Favorable (Unfavorable)	
																	Amount	%
Board Expenditures	5,639	132	57	1,652	0	0	0	0	0	0	0	0	7,480	22,108	14,628	22,357	-249	-1.1%
Board Administration	2,247	1,541	1,501	801	0	0	0	0	0	0	0	0	6,090	23,526	17,435	15,479	8,047	34.2%
Administration of Exams	55	38	40	20	0	0	0	0	0	0	0	0	153	3,400	3,247	46	3,354	98.6%
Enforcement	2	1	1	1	0	0	0	0	0	0	0	0	4	16	12	11	5	30.8%
Legal Services	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Information Systems	613	976	754	541	0	0	0	0	0	0	0	0	2,885	12,850	9,965	7,945	4,905	38.2%
Facilities / Support Svcs	198	374	299	260	0	0	0	0	0	0	0	0	1,130	4,385	3,254	3,207	1,178	26.9%
Agency Administration	1,119	794	1,590	787	0	0	0	0	0	0	0	0	4,290	13,603	9,313	11,573	2,030	14.9%
Other / Transfers	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Charges	9,874	3,856	4,243	4,061	0	0	0	0	0	0	0	0	22,033	79,887	57,854	60,619	19,269	24.1%

- **Other Business**
- **Conflict of Interest Forms /
Travel Vouchers**
- **Adjourn**