

Notice of Adoption

State, Department of
(SUBMITTING AGENCY)

- This adoption will amend the NYCRR.
 This adoption will not amend the NYCRR.

NOTE: Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms will be cause for rejection of this notice. change in text

1. Action taken:

Renumber sections 204.1 to 204.14 of title 19 NYCRR to 203.15 to 203.28 of Title 19; add sections 204.1 to 204.22 to title 19 NYCRR. Rename Part 204 of title 19 NYCRR to "Natural Organic Reduction."

"X" box if the rule was originally proposed as a consensus rule making.

2. Effective date of rule:

Date this notice is published in the *State Register*.

This is a "rate making" as defined in SAPA §102(2)(a)(ii), and, is effective as follows:

Date of filing.

Other date (*specify*):

Other date (*specify*):

_____ days after filing.

3. Statutory authority under which the rule was adopted:

Executive Law section 91; Not-for-Profit Corporation Law sections 1504(c) and 1518(k).

4. Subject of the rule:

Rules for natural organic reduction operations, facilities, and certification of operators.

5. Purpose of the rule:

To provide rules for natural organic reduction operations, facilities, and certification of operators.

6. Terms and identification of rule :

A. I.D. No. of original notice of **proposed** or **emergency/proposed** rule making: DOS-34-23-00010 - P

B. Comparison of the proposed rule to the adopted rule (CHECK ALL THAT APPLY):

No changes were made to the proposed rule.

● *Text/Summary does not need to be republished in the State Register. If the last previously published RIS, RFA, RAFA or JIS remain adequate and do not require correction, SKIP ITEMS 9-12 and do NOT attach any such statements. If any of the most recently published statements were deemed inadequate or required correction, complete Item 9, 10, 11, or 12 as applicable, do NOT attach previously published statements. Be sure to complete C (if applicable), and D, as well as remaining Items 7-8 and 13-14.*

Nonsubstantive changes were made in [Parts, sections, subdivisions or paragraphs]:

see attached

● *Text/Summary is required to be republished in the State Register. Attach the original of the text as adopted (if proposed as full text, submit full text; if proposed as a summary, submit a summary) typed in scannable format. Do not skip Items 9-12; revised statements or explanatory statements are required.*

Text attached.

Summary attached.

This is a "rate making" as defined in SAPA §102(2)(a)(ii) and, pursuant to SAPA §202(7)(b), the agency elected to submit an original copy of a description of the substance. Substantial revisions were made in the following Parts, sections, subdivisions or paragraphs:

[Redacted]

C. List the publication date and I.D. No. of any previously published notice(s) of **revised** rule making:

Publication date: _____, I.D. No. _____ -

Publication date: _____, I.D. No. _____ -

D. Signed certification of adoption and full text of the rule are attached:

Signed certification of adoption (scanned pdf).

Full text of the rule (MS Word).

7. The text of the final rule and any required statements and analyses may be obtained from:

Agency contact Robert Vanderbles

Agency name Department of State

Office address One Commerce Plaza, 99 Washington Ave, Suite 1120

Albany, NY 12231-0001

Telephone (518) 486-7055 E-mail: Robert.Vanderbles@dos.ny.gov

8. Additional matter required by statute:

Yes (include below material required by statute).

[Redacted]

No additional material required by statute.

9. Revised Regulatory Impact Statement (RIS)

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised RIS contains:

The full text of the Revised RIS.

A summary of the Revised RIS.

B. A **statement is attached** explaining why a revised RIS is not required (check one box):

Changes made to the last published rule do not necessitate revision to the previously published RIS.

This is a technical amendment exempt from SAPA §202-a.

C. A revised RIS is **not** attached because this rule is a “rate making” as defined in SAPA §102(2)(a)(ii).

A revised RIS is **not** attached because this rule was proposed as a consensus rule as defined in SAPA

10. **Revised Regulatory Flexibility Analysis (RFA) for small businesses and local governments**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised RFA contains:

The full text of the Revised RFA.

A summary of the Revised RFA.

B. A **statement is attached** explaining why a revised RFA is not required (check one box):

Changes made to the last published rule do not necessitate revision to the previously published RFA.

The changes will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The attached statement sets forth this agency’s findings and the reason(s) upon which the findings were made, including what measures were used to determine those findings.

C. A revised RFA is **not** attached because this rule is a “rate making” as defined in SAPA §102(2)(a)(ii).

A revised RFA is **not** attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

11. **Revised Rural Area Flexibility Analysis (RAFA)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised RAFA contains:

The full text of the Revised RAFA.

A summary of the Revised RAFA.

B. A **statement is attached** explaining why a revised RAFA is not required (check one box):

Changes made to the last published rule do not necessitate revision to the previously published RAFA.

The changes will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The attached statement sets forth this agency’s findings and the reason(s) upon which the findings were made, including what measures were used to determine those findings.

C. A revised RAFA is not attached because this rule is a “rate making” as defined in SAPA §102(2)(a)(ii).

A revised RAFA is **not** attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

12. **Revised Job Impact Statement (JIS)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised JIS contains:

The full text of the Revised JIS.

A summary of the Revised JIS.

B. A **statement is attached** explaining why a revised JIS is not required (check one box):

Changes made to the last published rule do not necessitate revision to the previously published JIS.

The changes will not impose a substantial impact on jobs and employment opportunities. The attached statement sets forth this agency’s findings that the rule will have a positive impact or no impact on jobs and employment opportunities; except when it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, the statement shall include a summary of the information and methodology underlying that determination.

C. A revised JIS is **not** attached because:

This rule is a “rate making” as defined in SAPA §102(2)(a)(ii).

This rule was proposed by the State Comptroller or Attorney General.

13. **Assessment of Public Comment** (includes legislative comments)

(COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

- Attached is an assessment of public comment.
No particular form is required, and it need **only** include comments not addressed in any previously published assessment for this rule. However, the assessment must be based on any written comments received by the agency or any comments presented at any public hearing held by the agency about this rule (include legislative comment). It must contain a summary and an analysis of the issues raised and significant alternatives suggested, a statement of the reason(s) why any significant alternatives were not incorporated, and a description of any changes made as a result of such comments.
- An assessment is not attached because no comments were received.
- An assessment is not required because this action is for a “rate making” as defined in SAPA §102(2)(a)(ii).

14. **Referenced material** (check one box):

- No information is being incorporated by reference in this rule.
- This rule contains referenced material in the following Parts, sections, subdivisions or paragraphs:

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15. **Initial Review of Rule** (SAPA §207)

(SELECT AND COMPLETE ONE)

- A. As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2027, which is no later than the 3rd year after the year in which this rule is being adopted.
- B. As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year _____ which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:
 - Attached is an assessment of public comment on the issue of the 4 or 5-year initial review period; or
 - An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.
- C. As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year _____ which is no later than the 5th year after the year in which this rule is being adopted.
- D. Not Applicable. This is a “rate making” or a “consensus rule,” or a repeal of a rule.

AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice)

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

Name Robert Vanderbles Signature _____

Address One Commerce Plaza, 99 Washington, Suite 1120 Albany NY 12231-0001

Telephone (518) 486-7055 E-mail Robert.Vanderbles@dos.ny.gov

Date 12/21/2023

Please read before submitting this notice:

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State's *Register* procedures manual, *Rule Making in New York*.
2. Rule making notices, with any necessary attachments (in MS Word unless otherwise specified), should be e-filed via the Department of State website.

RULE TEXT

19 NYCRR Part 204

Natural Organic Reduction

Sections 204.1 to 204.14 of Title 19 are renumbered to sections 203.15 to 203.28.

The name of the renumbered section 203.15 is changed from “Purpose” to “Cremation certification course.”

The name of the renumbered section 203.16 is changed from “General requirements” to “Crematory operator course general requirements.”

The name of the renumbered section 203.17 is changed from “Approved entities” to “Organizations approved to offer crematory operator courses.”

The name of the renumbered section 203.18 is changed from “Request for approval of course of study” to “Request for approval of crematory operator course of study.”

The name of the renumbered section 203.19 is changed from “Subjects of study for crematory operator certification course” to “Subjects of study for crematory operator course.”

The name of the renumbered section 203.20 is changed from “Computation of instruction time” to “Crematory operator course computation of instruction time.”

The name of the renumbered section 203.21 is changed from “Attendance and examinations” to “Crematory operator course attendance and examinations.”

The name of the renumbered section 203.22 is changed from “Facilities” to “Crematory operator course facilities.”

The name of the renumbered section 203.23 is changed from “Examination requirement and record retention” to “Crematory operator course examination requirement and record retention.”

The name of the renumbered section 203.24 is changed from “Change in approved course of study” to “Change in approved crematory operator course of study.”

The name of the renumbered section 203.25 is changed from “Auditing” to “Crematory operator course auditing.”

The name of the renumbered section 203.26 is changed from “Suspensions and denials of course approval” to “Crematory operator course approvals and denials.”

The name of the renumbered section 203.27 is changed from “Certificate of completion” to “Crematory operator course certificate of completion” and amended as follows:

Evidence of successful completion of the course must be furnished to each crematory employee in certificate form. The certificate must indicate the following: name of the cemetery corporation; crematory operator certification course; a statement that the employee, who shall be named, has satisfactorily completed a course of study in the cremation subjects approved by the Division of Cemeteries in accordance with ~~the provisions of chapter 579 of the Laws of 2006~~ section 1517(j) of the N-PCL, and that his or her attendance record was satisfactory and in conformity with the law, and that such course was completed on a stated date. The certificate

must be signed by the approved organization and dated, and must have affixed thereto the official seal of the approved organization. Copies of such certification shall be filed with the Division of Cemeteries at ~~[41 State Street, Albany, New York]~~ its principal office.

The name of the renumbered section 203.28 is changed from “Fees” to “Crematory operator course fees.”

The name of Part 204 of Title 19 is changed from “Cremation Certification Course” to “Natural Organic Reduction.”

New sections 204.1 to 204.22 of Title 19 are added to read as follows:

Section 204.1. Definitions

As used in this Part, the following terms have the following meanings:

- (a) *Aerobic* means the biochemical decomposition of organic matter primarily into stabilized solids and carbon dioxide by microorganisms in the presence of air.
- (b) *Bulking agent* means a material added to remains to increase porosity and facilitate aeration during composting.
- (c) *Cemetery board* means the New York State Cemetery Board.
- (d) *Cemetery corporation* shall have the same meaning set out in section 1502(a) of the N-PCL, including, pursuant to section 1503(a) of the N-PCL, religious corporations, municipal corporations, cemetery corporations owning cemeteries operated, supervised or controlled by or in connection with a religious corporation, and cemeteries belonging to a religious or municipal corporation or operated, supervised or controlled by or in connection with a religious corporation.
- (e) *Certified laboratory* means a laboratory certified by the Department of Health to conduct analysis under this Part, or an alternate laboratory authorized by the division to conduct such analysis. A laboratory that is itself, or whose owners, officers, directors and key employees are related parties, as defined in section 102(a)(23) of the N-PCL, to the natural organic reduction facility or its officers, directors and key employees, shall not be considered a certified laboratory.
- (f) *Non-reduced container* means a casket or other container which is not intended to be naturally organically reduced with human remains.
- (g) *Composting* means aerobic, thermophilic decomposition to produce a stable, humus-like material.
- (h) *Construction and demolition debris* means waste resulting from construction, remodeling, repair and demolition of structures, buildings and roads, including excavated material, demolition wastes, and construction wastes.
- (i) *Division* means the New York State Division of Cemeteries.
- (j) *Dry weight basis* means calculated on the basis of having been dried until reaching a constant mass.

- (k) *Funeral entity* means a person, partnership, corporation, limited liability company or other form of business organization providing funeral home services, or owning, controlling, conducting or affiliated with a funeral home, any subsidiary thereof or an officer, director or stockholder having a ten per centum or greater proprietary, beneficial, equitable or credit interest in a funeral home.
- (l) *Humus* means stable, degraded organic matter.
- (m) *Leak-proof* means designed and maintained to prevent the escape of liquids or other materials when a container is appropriately closed.
- (n) *Mature* means the characteristics of a soil conditioning material that render it harmless to plant growth when used as a topsoil or soil supplement and make it sufficiently stable that it will not generate nuisance odors during storage, handling, or ultimate use, as determined by the division.
- (o) *Natural organic reduction* means the contained, accelerated conversion of human remains to soil as a stable, humus like material. Natural organic reduction shall not include alkaline hydrolysis, promession, or other, similar processes that do not result in the conversion of human remains to soil. Natural organic reduction shall include the pulverization of bones and processing of other residue.
- (p) *Natural organic reduction facility* means a structure, room, or other space in a building or real property where natural organic reduction of a human body occurs and shall also mean the business or entity operating the facility, or both, as the context requires.
- (q) *Natural organic reduction identification number* means the identification number associated with the remains and used to track the remains throughout the natural organic reduction process.
- (r) *Natural organic reduction container* means an outer container or covering of the remains which is opaque and made of material which can be naturally organically reduced, or can be removed as the remains are covered with materials permitted by section 204.6 of this Part without exposing the remains.
- (s) *Naturally organically reduced remains* means the soil recovered after the completion of natural organic reduction process.
- (t) *Organic* means derived from living matter and is readily biodegradable.
- (u) *Pathogenic organisms* means disease-causing organisms including, but not limited to bacteria, viruses, protozoa and viable helminth ova.
- (v) *Person in control of disposition* means the person or persons who have the right to control the disposition of the remains of a decedent pursuant to section 4201 of the Public Health Law.

- (w) *Temporary storage facility* means a separately enclosed room, or a separately enclosed area within a room, that is designated for and used exclusively for the retention of human remains prior to natural organic reduction, the interior of which is not visible from any area accessible to the general public.
- (x) *Vector* means a carrier organism that is capable of transmitting a pathogen to another organism and includes, but is not limited to, flies and other insects, rodents, birds and vermin.
- (y) *Vector attraction* means the characteristic of materials that attracts rodents, flies, mosquitoes, vermin, or other organisms capable of transporting infectious agents.
- (z) *Vessel* means the chamber, container, or pod into which the remains are placed for natural organic reduction.

Section 204.2. Approval to operate a natural organic reduction facility

- (a) *Application*. Only cemetery corporations are eligible to apply for approval to operate a natural organic reduction facility. A cemetery corporation seeking such approval must apply to the cemetery board and submit the following:
 - (1) a list of the directors, officers, employees, and certificate holders of the cemetery corporation;
 - (2) a certified survey of the site of the proposed natural organic reduction facility;
 - (3) the location within the county in which it will be situated, including street address and city or town or village, [and the location of any potable water wells, surface waters, wetlands, residences and businesses other than the cemetery itself within 200 feet of the natural organic reduction facility;](#)
 - (4) a business plan for the operation of the natural organic reduction facility to include:
 - (i) the number of expected natural organic reductions per year;
 - (ii) the number of natural organic reductions per year the facility is designed to complete;
 - (iii) the number of vessels;
 - (iv) the manufacturer of the vessels;
 - (v) capital costs;
 - (vi) financing;
 - (vii) anticipated insurance and costs;
 - (viii) anticipated natural organic reduction operator certificate course provider to be utilized and timeline for certification;
 - (ix) anticipated timeline to construct or retrofit facilities and begin operations;
 - (x) anticipated number of employees;
 - (xi) types of services provided;
 - (xii) anticipated pricing of services;
 - (xiii) for existing cemeteries, a report of past income, expenses, and fund balances; and
 - (xiv) such further information requested by the division or cemetery board.
 - (5) a description of the impact of the proposed natural organic reduction facility on other natural organic reduction facilities, if any, within the county or impact on the surrounding community;

- (6) plans, designs, and costs of any structures to be erected or retrofitted for the natural organic reduction facility use;
 - (7) a description of any approvals or permits required by state or local law. No natural organic reduction facility shall be approved until such other approvals or permits have been obtained by the facility; and
 - (8) a draft plan of operations as set forth in section 204.3 of this Part.
- (b) *Further information.* Within 35 days following receipt of the information required by subdivision (a) of this section, the cemetery board or the division may request from the cemetery corporation any additional information or documentation and technical assistance deemed necessary to review such information. Such information shall not be deemed complete until the requested additional information has been received. If no such request is made, the submission shall be deemed complete on the thirty-fifth day after its receipt by the division.
- (c) *Determination.* The cemetery board shall approve or deny the proposed natural organic reduction facility within the timeframe set forth in section 1505-b of the N-PCL.
- (d) *Notification.* The cemetery board shall provide written notice of its determination to the cemetery corporation. If a negative determination is made, such notice shall state the reasons therefor. Notice shall be made by registered or certified mail addressed to the cemetery corporation at its principal office unless the cemetery corporation has opted to receive electronic notification.

Section 204.3. Facility operations

- (a) *Plan of operations.* Every natural organic reduction facility shall maintain a written plan describing the process it uses for natural organic reduction and shall follow that plan. The plan shall specify and describe:
- (1) the procedures to ensure the accurate identification of remains, including assigning a unique natural organic reduction identification number to the remains, accurately and legibly labelling the outside of each container or vessel, and placing a non-compostable identification tag, [or similar identification materials](#), with the remains in each container or vessel, bearing the decedent's name and natural organic reduction identification number, throughout the natural organic reduction process;
 - (2) a process flow diagram of the entire process, including all major equipment and flow streams;
 - (3) the processing duration, including the time period from acceptance of remains to completion of the natural organic reduction process and delivery of the naturally organically reduced remains;
 - (4) vessel specifications and dimensions, including width, length, height, and materials;
 - (5) the bulking agents added to the vessel to be used in the process of natural organic reduction;
 - (6) the storage facilities used for bulking agents;
 - (7) the procedure for reducing (including composting, turning, and adding additional air, water, or other materials) and processing remains;
 - (8) the procedures for pathogen reduction and vector attraction reduction;
 - (9) the procedures for accurately measuring and recording the temperature and any other necessary data of the remains;
 - (10) procedures to be followed if the resulting reduced remains do not satisfy the pathogen or pollutant testing requirements in section 204.8 of this Part;

(11) the methods that will be used to prevent run-on from entering and run-off from leaving the site and preventing the movement of organic matter into the soil under the site;

~~(12)~~ the method that will be used to determine product maturity, including proposed standards for maturity and the monitoring methods or other means that will be used to measure maturity;

~~(13)~~ ~~(12)~~ ~~how the natural organic reduction facility will comply with article 15 of the N-PCL and this Part;~~

~~(14)~~ ~~(13)~~ the removal, storage, and receiving facility, and method of disposition for recyclables (if applicable), residue, or other inorganic material removed from remains;

~~(15)~~ ~~(14)~~ a description of the air emission collection and control equipment, if used;

~~(16)~~ ~~(15)~~ a description of the method used to prevent surface water run-off and to prevent the escape of leachate;

~~(17)~~ ~~(16)~~ a spill plan that describes how an accidental release of remains or leachate will be minimized and addressed;

~~(18)~~ ~~(17)~~ an odor control and response plan that describes how odors will be controlled and monitored, and how any odor problems will be addressed;

~~(19)~~ ~~(18)~~ the method for removing naturally organically reduced remains from the natural organic reduction facility, including a description of how the reduced remains will be managed; and

~~(20)~~ ~~(19)~~ a sampling and analysis plan that describes how representative samples will be taken, how samples will be managed prior to acceptance at the laboratory, and the laboratories that will be used for analysis.

(b) *No delays in processing.* Every natural organic reduction facility shall use its best efforts to begin the process of natural organic reduction of remains within 24 hours of accepting delivery of such remains. Absent good cause, such as the need to confirm the identity of the deceased human being, natural organic reduction of remains will commence within 48 hours after delivery is accepted. The natural organic reduction facility must document within the natural organic reduction log an explanation for the delay if natural organic reduction commences 48 hours after delivery of the remains is accepted.

(c) *Odors.* Notwithstanding the foregoing, if any remains exhibit an objectionable odor either at delivery or at any time thereafter, natural organic reduction of such remains shall commence as soon as possible after they have been accepted by the natural organic reduction facility or as soon as possible after the objectionable odor is first detected.

(d) *Remains to be rejected.* Natural organic reduction facilities shall not accept for natural organic reduction remains:

(1) that have been embalmed;

(2) that contain a battery, battery pack, power cell, or radioactive implant;

(3) of a person whose cause of death, including the immediate cause or as a consequence of, as recorded on the decedent's death certificate, was active tuberculosis, Ebola, or a prion disease such as Creutzfeldt-Jakob Disease;

(4) of a person who is known or suspected to have been, at the time of their death, infected with any contagious disease which the New York State Department of Health has determined renders the remains unsuitable for natural organic reduction; or

(5) of a person who perished in or as a result of a radiologic incident or accident, unless a written release is provided by the New York State or local Department of Health or other state or federal agency in charge of the response to the radiological incident or accident.

(e) *Removal of container.* Remains must be placed within the vessel in a natural organic

reduction container. Once the remains are in the vessel, the natural organic reduction facility operator may remove the container so long as the remains are covered with bulking agents or other organic material for natural organic reduction as the container is removed, to prevent exposing the remains.

- (f) *Weight.* No natural organic reduction facility may impose a charge for the natural organic reduction of the remains of a deceased human being based solely on the combined weight of the remains and any outer wrapper, container, bulking agents, vessel, or permitted incidental material. A natural organic reduction facility may refuse to accept remains that are too large, either by weight, volume, or height, for its vessels.

Section 204.4. Facility use, maintenance, design

- (a) *Use of natural organic reduction facility.* A natural organic reduction facility shall be used exclusively for the natural organic reduction of human remains.
- (b) *Cleanliness.* A natural organic reduction facility shall be maintained in a clean, orderly and sanitary manner, with adequate ventilation.
- (c) *Privacy.* The area in which natural organic reductions occur and the temporary storage facility shall be separately enclosed areas and when fully closed, the interior of one area shall not be visible from within the other area.
- (d) *Temporary Storage Facility.* Every natural organic reduction facility shall have a temporary storage facility. Such temporary storage facility shall be adequately ventilated; shall comply with all applicable public health laws regarding the proper handling and storage of human remains and body fluids; shall be operated and maintained in a manner which protects the health and safety of natural organic reduction facility personnel; and shall be secure from access by anyone other than authorized persons.

Section 204.5. Facility privacy and access

- (a) *Privacy.* Entrances and exterior windows of the natural organic reduction facility shall be maintained at all times to secure privacy, including:
 - (1) doors shall be tight closing and rigid;
 - (2) windows shall be covered;
 - (3) entrances other than to the office or ceremony room shall be marked “private” or “authorized entry only” to preclude entry by unauthorized persons; and
 - (4) entrances shall be locked and secured when not actively attended by one or more authorized persons.
- (b) *Access.* No persons except authorized persons shall be admitted into the temporary storage facility while human remains are being stored and no persons except authorized persons shall be admitted into the area containing vessels for natural organic reduction while the remains of deceased human beings are being naturally organically reduced. Authorized persons shall enter and remain in the temporary storage facility or vessel area only as necessary to perform or assist with the performance of natural organic reduction facility business and operations. On admittance, authorized persons shall comply with all rules of the natural organic reduction facility and not infringe upon the privacy and dignity of the remains of deceased human beings.
- (c) *Dignity of ceremony room.* A natural organic reduction facility may also have a ceremony room available for viewings and ceremonies. The ceremony room shall be separated from the temporary storage facility. The temporary storage facility interior shall not be visible from the ceremony room. No persons except authorized persons shall be admitted into the ceremony room during the commencement of natural organic reductions of the remains.

- (d) *Authorized persons.* The following are authorized persons:
- (1) registered funeral directors, undertakers, registered residents, and enrolled students of mortuary science;
 - (2) officers and directors of the natural organic reduction facility;
 - (3) authorized employees or agents of the natural organic reduction facility;
 - (4) public officers acting in the discharge of their duties;
 - (5) authorized instructors of funeral directing schools;
 - (6) the person or persons in control of disposition;
 - (7) members of the immediate family of the deceased and their authorized agents and designated representatives; and
 - (8) other individuals authorized by the person or persons in control of disposition.

Section 204.6. Facility process requirements

- (a) *Permitted additions to vessel.* Natural organic reduction facilities may add the following, and only the following, to the remains within the vessel:
- (1) Water, oxygen or air, and bulking agents (such as tree and shrub parts that have been chipped or shredded, similar woody vegetation that has been chipped or shredded, alfalfa, or straw).
 - (2) A non-compostable tag, [or similar identification materials](#), bearing the name of the decedent and natural organic reduction identification number.
 - (3) With the signed authorization of the person in control of disposition and with the permission of the natural organic reduction facility, other items may be added to the vessel provided that the items do not violate this Part, inhibit the natural organic reduction process, or create a risk to health or safety.
- (b) *Prohibited additions to vessel.* The following items and materials shall not be used as bulking agents and shall not be placed inside the vessel:
- (1) Wood or other organic material that has been painted, glued, or chemically or pressure treated (without regard to whether such wood or other organic material shall or shall not have been chipped or shredded).
 - (2) Dimensional lumber (without regard to whether such lumber shall or shall not have been chipped or shredded).
 - (4) Construction and demolition debris (without regard to whether such debris shall or shall not have been chipped or shredded).
 - (5) Acids, alkaline agents, or other solvents.
 - (6) Insects, worms, or other animals.
 - (7) Materials that will not compost (other than a non-compostable tag [or similar identification materials](#) as described in paragraph 2 of subdivision (a) of this section or a non-compostable item authorized and permitted pursuant to paragraph 3 of subdivision (a) of this section).
 - (8) Materials which, if present inside the vessel during all or part of the natural organic reduction process, would create a risk to health or safety.
 - (9) Any other material which the division may designate as inappropriate for use as a bulking agent [because the materials create a risk to health and safety, inhibit natural organic reduction, will not compost, or violate this Part](#).

- (c) Vessel requirements. The vessel shall:

- (1) be leak-proof and capable of withstanding heating to the required temperature for the required period;
- (2) enable accurate testing of temperature designed to measure from the coldest part of the interior of the vessel and the accurate collection of any other data required by the natural organic process used by the natural organic reduction facility;
- (3) prevent vectors from entering the vessel; and
- (4) control odor and emit air only in accordance with Part 201 of Title 6 NYCRR.

Section 204.7. Facility operating and siting requirements

- (a) *Public health.* Every natural organic reduction facility must at all times follow accepted policies and procedures with respect to infection control, including standard precautions developed by the Centers for Disease Control and Prevention and New York State Department of Health.
- (b) *Processing time.* The maximum processing time, from acceptance of the remains to distribution of the naturally organically reduced remains, is nine months. The division may approve a longer processing time for good cause, such as additional time necessary to satisfy the requirements of section 204.8 of this Part.
- (c) *Method of reduction.* The natural organic reduction facility must maintain the remains under aerobic conditions during the composting process to convert them to naturally organically reduced remains. Methods of natural organic reduction that result in a mature humus product must be followed.
- (d) *Run-off prevention.* The natural organic reduction facility must be constructed to prevent any ponding or discharge, prevent waste and leachate [from natural organic reductions](#) from being discharged into sewers, surface waters or groundwater; and must be operated in a manner that minimizes the generation of leachate and that does not drain, dump or discharge leachate [from natural organic reductions](#).
- (e) *Siting requirements.* The natural organic reduction facility must be at least 200 feet from the nearest: surface water body such as lakes, rivers, and streams, potable water well, state-regulated wetland, residence, or place of business other than the cemetery itself. These minimum distance requirements may be reduced if means acceptable to the division are used to reduce the potential for odor transmission and accidental leachate run-off.
- (f) *Odor prevention.* The natural organic reduction facility must not produce odors that unreasonably impact sensitive receptors, such as residences, schools, or nursing homes, as determined by the division. The division can require additional action to address odor issues.

Section 204.8. Pathogen and vector attraction reduction; testing

- (a) *Pathogen reduction.* Natural organic reduction facilities must use one of the methods (and, where applicable, achieve the results) specified in this subdivision to reduce pathogen content before the naturally organically reduced remains leave the facility:
 - (1) maintain the temperature of the remains at 55° C or higher for at least 72 consecutive hours; or
 - (2) other methods or operating conditions as may be approved by the division if the division determines that pathogens are reduced to an extent equivalent to the reduction achieved by a method/result specified in this subdivision.

- (b) *Vector attraction reduction.* One of the vector attraction reduction methods or results specified in this subdivision must be used or achieved before the naturally organically reduced remains leave the natural organic reduction facility. Such a vector attraction reduction result must be achieved either after meeting the pathogen reduction requirements or at the same time as meeting the pathogen reduction requirements:
- (1) treat the remains by an aerobic process for a minimum of 14 days. Throughout such treatment time, the temperature of the remains must remain higher than 40° C and the average temperature of the remains must be higher than 45° C; or
 - (2) other methods or operating conditions as may be approved by the division if the division determines that vector attraction is reduced to an extent equivalent to the reduction achieved by a method/result specified in this subdivision.
- (c) *Pathogen Testing.* Prior to removal of the naturally organically reduced remains from the natural organic reduction facility, either the density of fecal coliform in the naturally organically reduced remains shall be less than 1,000 most probable number per gram of total solids (dry weight basis) or the density of salmonella sp. bacteria in the product must be less than 3 most probable number per 4 grams of total solids (dry weight basis). This analysis must be performed by a certified laboratory.
- (d) *Failure of Pathogen Testing.* If, after completion of the pathogen or vector attraction reduction methods described in subdivisions (a) and (b) of this section, a laboratory determines the naturally organically reduced remains do not meet the specified standards for pathogens in subdivision (c) of this section, then the natural organic reduction facility shall repeat a pathogen and vector reduction method described in this section, and have the naturally organically reduced remains retested for pathogens in accordance with subdivision (c) of this section.
- (e) *Pollutant Testing.* Prior to removal of the naturally organically reduced remains from the natural organic reduction facility, the naturally organically reduced remains shall be tested for pollutants. This analysis must be performed by a certified laboratory. Naturally organically reduced remains shall not contain pollutants that exceed the following thresholds, per maximum concentration mg/kg, dry weight:

- (1) Arsenic (As) 41
- (2) Cadmium (Cd) 10
- (3) Chromium (Cr-total) 1,000
- (4) Copper (Cu) 1,500
- (5) Lead (Pb) 300
- (6) Mercury (Hg) 10
- (7) Molybdenum (Mo) 40
- (8) Nickel (Ni) 200
- (9) Selenium (Se) 100
- (10) Zinc (Zn) 2,500

(f) *Failure of Pollutant Testing.* If a certified laboratory determines the naturally organically reduced remains exceed any of the pollutant thresholds set forth in subdivision (e) of this section, then the natural organic reduction facility shall repeat the natural organic reduction process with additional bulking agents sufficient to reduce the concentration of pollutants to acceptable levels. Upon completion of the natural organic reduction process, the natural organic reduction facility shall have a certified laboratory retest the naturally organically reduced remains for pollutants in accordance with subdivision (e) of this section.

(g) *Repeated Failures of Pathogen or Pollutant Testing.*

(1) If the naturally organically reduced remains have failed the pathogen testing requirements of subdivision (c) of this section, the natural organic reduction facility followed the procedures of subdivision (d) of this section and, upon retesting by a certified laboratory the naturally organically reduced remains again failed the pathogen testing requirements, the natural organic reduction facility shall:

- (i) promptly notify the division and provide the division with the certified laboratory test results, its analysis of why the naturally organically reduced remains failed the pathogen testing requirements, and, if necessary, proposed adjustments to its operating procedures to mitigate future failures;
- (ii) promptly notify the person in control of disposition; and
- (iii) follow the procedure provided in its plan of operations under section 204.3(a) of this Part.

(2) If the naturally organically reduced remains have failed the pollutant testing requirements of subdivision (e) of this section and the natural organic reduction facility followed the procedures of subdivision (f) of this section and, upon retesting by a certified laboratory the naturally organically reduced remains again failed the pollutant testing requirements, the natural organic reduction facility shall:

- (i) promptly notify the division and provide the division with the laboratory test results, its analysis of why the naturally organically reduced remains failed the pollutant testing requirements, and, if necessary, proposed adjustments to its operating procedures to mitigate future failures;
- (ii) promptly notify the person in control of disposition; and
- (iii) follow the procedure provided in its plan of operations under section 204.3(a) of this Part.

(3) The natural organic reduction facility shall not impose additional charges for having to repeat methods or testing described in this section or having to perform additional methods or testing in order to comply with this section.

(h) Original copies of all laboratory testing results obtained pursuant to this section and documentation of all pathogen reduction and vector attraction results achieved pursuant to this section must be retained by the natural organic reduction facility and promptly provided to the person in control of disposition.

Section 204.9. Natural organic reduction log, authorization form, facility records

(a) *Natural organic reduction log.* Every natural organic reduction facility shall maintain a

natural organic reduction log which shall set forth for each delivery of human remains received by the natural organic reduction facility:

- (1) the name of the deceased;
- (2) the place of death and the estimated combined weight of the remains and the container;
- (3) the date and time the remains arrived at the natural organic reduction facility;
- (4) the natural organic reduction identification number;
- (5) the name of the funeral director, undertaker or registered resident delivering the human remains and the name and address of the funeral entity which the funeral director, undertaker or registered resident represents;
- (6) the date and time the remains were:
 - (i) placed in the vessel for natural organic reduction;
 - (ii) checked for temperature in accordance with section 204.6(c)(2) of this Part, including the temperature reading, and any other data necessary for the natural organic reduction process used by the natural organic reduction facility;
 - (iii) tested for pathogens and pollutants;
 - (iv) removed from the vessel;
 - (v) processed to pulverize any remaining skeletal remains; and
 - (vi) removed from the facility for scattering, burial, entombment or inurnment in a cemetery corporation as required under section 1518(i) of the N-PCL.
- (7) if the natural organic reduction process commenced more than 48 hours from the time the natural organic reduction facility accepted delivery of the remains, a detailed explanation for the delay;
- (8) the vessel number in which the remains were naturally organically reduced;
- (9) the type of container in which the remains were received and in which the remains were placed into the vessel for natural organic reduction. If the remains were received in a non-reduced container, the time of disclosure made by the person in charge of disposition, the name of the person authorizing the opening of the non-reduced container, the name of licensed funeral director or registered resident who transferred the remains to a natural organic reduction container, and name of the witness;
- (10) the name and contact information of the individual who received the naturally organically reduced remains from the facility; and
- (11) the name and address of the cemetery corporation where the naturally organically reduced remains shall be scattered, buried, entombed or inurned.

(b) The natural organic reduction log shall be retained in the permanent file of the natural organic reduction facility.

(c) *Natural organic reduction permit and natural organic reduction authorization form.* No natural organic reduction facility shall naturally organically reduce the remains of any deceased human being without first receiving the natural organic reduction permit, as required pursuant to section 4145 of the Public Health Law, and the natural organic reduction authorization form, as required by section 1518(c)(1) of the N-PCL. The natural organic reduction authorization form shall satisfy the requirements of subdivision (d) of this section. In addition, all natural organic reduction facilities situated outside the City of New York must comply with section 4145(2)(b) of the Public Health Law pertaining to the receipt for the deceased human being.

(d) Each natural organic reduction facility shall develop a natural organic reduction authorization form which, when properly filled in and signed, will be accepted by such natural organic reduction facility. Such form shall be [in a form established by the director of the division; substantially similar to the template as established by the division](#); shall be

not more than three pages, single sided, in length, each such page to be not larger than 8 ½ inches by 11 inches; shall be printed in font not less than 6 points; and shall contain the following information (or, where applicable, shall contain spaces where the following information can be inserted by the person completing the form):

- (1) the name and address of the natural organic reduction facility;
- (2) a clear, concise description of the natural organic reduction process to be used by the natural organic reduction facility (including but not limited to identification of the amendments or bulking agents used in the vessel in natural organic reduction), a statement that natural organic reduction is an irreversible and final process, a statement that the process of natural organic reduction may take between 30 and 60 days, a statement that the resulting product is, on average, between one-half and one cubic yard of compost for a deceased adult, a statement that skeletal remains must be pulverized until no single fragment is recognizable as skeletal tissue as part of the natural organic reduction process, and a statement that natural organic reduction is not green burial of intact human remains;
- (3) the name of the deceased as it appears on the natural organic reduction permit, the date and place of death;
- (4) the last address, age, sex and approximate weight of the deceased, [any proposed additions to the vessel](#), and type of container in which the remains of the deceased were delivered;
- (5) the name of the funeral director and funeral entity that provided the natural organic reduction authorization to the natural organic reduction facility, and the funeral director's registration number;
- (6) the name of the person in control of disposition of the remains of the deceased who signed the natural organic reduction authorization form, and the relationship between said person and the deceased;
- (7) a statement attesting that the person in control of disposition who signed the natural organic reduction authorization form has the right to authorize the natural organic reduction of the remains of the deceased pursuant to section 4201 of the Public Health Law;
- (8) authorization for the natural organic reduction facility to naturally organically reduce the remains of the deceased;
- (9) a statement that the cause of death, including the immediate cause or as a consequence of, as recorded on the decedent's death certificate, was not active tuberculosis, Ebola, or a prion disease such as Creutzfeldt-Jakob Disease, the decedent did not perish in a radiological incident, the body of the deceased does not contain a battery, battery pack, power cell, radioactive implant, or radioactive device, and that any such materials were removed prior to the execution of the natural organic reduction authorization form;
- (10) the name of the person authorized to retrieve the naturally organically reduced remains and deliver them to the cemetery corporation for scattering, burial, entombment or inurnment;
- (11) the name of the cemetery corporation authorized to receive the naturally organically reduced remains from the natural organic reduction facility for scattering, burial, entombment or inurnment;
- (12) the signature of the person in control of disposition attesting to the accuracy and completeness of the information and representations contained in the natural organic reduction authorization form and attesting to the authorization of and grant of permission for the natural organic reduction of the deceased; and
- (13) the signature of the licensed, registered funeral director who obtained the natural

organic reduction authorization as a witness to the execution of the natural organic reduction authorization form.

- (e) The completed natural organic reduction authorization form shall be retained in the permanent file of the natural organic reduction facility. Upon receipt of the natural organic reduction authorization form the natural organic reduction facility shall promptly send or transmit copies to the cemetery corporation authorized to receive the naturally organically reduced remains from the natural organic reduction facility, if it is a different cemetery corporation than the natural organic reduction facility, and to the division at its principal office.
- (f) Upon receipt of the naturally organically reduced remains for scattering, burial, entombment or inurnment, the cemetery corporation, if it is a different cemetery corporation than the natural organic reduction facility, shall provide a receipt to the natural organic reduction facility. The receipt shall include the name of the deceased, the date the naturally organically reduced remains were received, and the anticipated date of scattering, burial, entombment or inurnment. The receipt shall be retained in the permanent file of the natural organic reduction facility.
- (g) All natural organic reduction facility records, including but not limited to records required by any federal, state or local government law or agency, as well as price lists, authorizations, pathogen reduction testing records, vector attraction reduction testing records, certified laboratory testing results, rules and regulations and other documents related to the practice of natural organic reduction, shall be open and available for inspection and copying during regular business hours by the division or its authorized representatives, in the discharge of their official duties.

Section 204.10. Certification requirements

- (a) All natural organic reduction facility employees, officers and directors whose function is to operate natural organic reduction equipment or handle naturally organically reduced remains within the natural organic reduction facility must be certified within one year of employment or any reclassification as a natural organic reduction facility operator. Any natural organic reduction facility employee, officer or director whose function is to operate natural organic reduction equipment or handle naturally organically reduced remains within the natural organic reduction facility and who is retained prior to June 28, 2023, must be certified by June 28, 2024. A natural organic reduction facility shall ensure that all employees, officers and directors operating natural organic reduction facility equipment or handling naturally organically reduced remains within the natural organic reduction facility have attended natural organic reduction classes and obtained the certificate required by this Part. Proof of certification under section 204.21 of this Part must be posted in the natural organic reduction facility and available for inspection at any time.
- (b) No certificate or renewal certificate to operate a natural organic reduction facility shall be issued to any employee, officer or director unless such employee, officer or director completes a certification class approved by the division of at least eight hours, except if otherwise approved by the division, and passes a written examination.
- (c) No offering of a course of study in the field of natural organic reduction operation for purposes of compliance with this Part shall be acceptable for credit unless such course of study has been approved by the division.

- (d) After the timeframes specified in subdivision (a) of this section, no employee, officer or director shall be allowed to conduct the daily operations of the natural organic reduction process or handle naturally organically reduced remains within the natural organic reduction facility until they have completed the certification course, passed the written examination, and possess a certificate of completion. Renewal of such certification shall be completed every five years from the date of certification.

Section 204.11. Organizations prohibited from offering facility operator certification courses

No course provider seeking the approval of a natural organic reduction certification course shall be affiliated or associated with, owned, operated or controlled by a funeral entity.

Section 204.12. Request for approval of facility operator course of study

- (a) Applications for approval of a natural organic reduction certification course of study satisfying the requirements of this Part shall be made at least 90 days before the proposed course is to be conducted. The application shall be prescribed by the division to include, but not limited to, the following:
- (1) the name and business address of the course provider that will present the course;
 - (2) if the course provider is a partnership, the names and home addresses of all the partners of the entity;
 - (3) if the course provider is a corporation, the names and home addresses of persons who own five percent or more of the stock of the entity;
 - (4) the name, business address, telephone number, resume and qualifications of each educational provider who will be teaching and grading the course for the course provider;
 - (5) regional, geographic or virtual locations where classes will be conducted;
 - (6) description of materials that will be distributed;
 - (7) final examination to be presented for the certification course, including the answer key;
 - (8) procedure for taking attendance, including entering codes to validate attendance and active listening for virtual courses; and
 - (9) an outline of the course content and the number of hours devoted to each subject.
- (b) *Educational provider qualification.* Each educational provider must:
- (1) be 18 years of age or over and of good moral character;
 - (2) hold a high school diploma or equivalent;
 - (3) possess instructional experience, academic achievement, and specialty or technical

experience in the fields of natural organic reduction, cremation, mortuary science, cemetery operations, composting, public health, or environmental science; and

- (4) be capable of administering and grading written examinations following the natural organic reduction certification course.

Section 204.13. Subjects of study for facility operator certification course

The certification course under this Part shall be divided into two subject matter areas. One subject matter area will address applicable New York State statutes and regulations. Such statutes shall include all applicable sections of article 15 of the N-PCL relating to natural organic reduction with an emphasis on N-PCL, section 1518 and the New York State Public Health Law, sections 3441, 4144, 4145, 4200, 4201, 4202, 4210(a), 4216, and 4218. Such regulations shall include this Part and Part 201 of Title 6 NYCRR, the New York State Department of Environmental Conservation Air Quality Regulations. The course provider shall devote between 20 and 40 percent of the total time allotted for the course to the New York State statutes and regulations. The other subject matter area of the course shall address the general and technical aspects of natural organic reduction facility operations. The subject matter area shall include but not be limited to the natural organic reduction facility process, natural organic reduction equipment, operation of the vessel, taking accurate measurements, testing requirements, natural organic reduction terminology, natural organic reduction operator safety, and the identification and tracking of human remains. The course provider shall devote between 60 and 80 percent of the total time allotted for the course to the general and technical aspects of natural organic reduction facility operations.

Section 204.14. Certification course computation of instruction time

The certification course under this Part for natural organic reduction facility employees, officers and directors shall have a minimum of eight hours of instruction, unless otherwise approved by the division, to be provided by the course provider.

Section 204.15. Certification course attendance and examinations

- (a) An applicant to receive certification as a natural organic reduction facility operator shall not receive certification if they are absent from the classroom, whether physical or online, for a period totaling more than 10 percent of the time during any instructional period. No applicant shall be absent from the classroom except for a reasonable and unavoidable cause.
- (b) Any applicant who fails to attend the required scheduled class hours may, at the discretion of the course provider, make up the missed subject matter during subsequent courses presented by the course provider.
- (c) Final examinations may only be taken by an applicant who has satisfied the attendance requirements of this section.
- (d) Each applicant must attain a minimum score of 70 percent on the final examination, which may be in-person, take home, or online, as approved by the division, in order to obtain certification as a natural organic reduction facility operator. A failing grade on the final exam shall constitute failure of the course. All final exams are to be reviewed and graded by the course provider, and a copy of all tests with scores shall be provided to the division.

- (e) Individuals who complete a course of study that has not been approved by the division may file a request to the division for review and evaluation. Evidence of satisfactory course completion must be submitted by the applicant.

Section 204.16. Certification course facilities

Each course shall be presented in such premises or such facilities, whether physical or virtual, as shall be necessary to properly present the course. Such premises or facilities shall be pre-approved by the division.

Section 204.17. Certification course examination requirement and record retention

- (a) All course providers shall retain the attendance records, the final examinations and a list of natural organic reduction facility employees, officers or directors who successfully complete each certification course for a period of five years after completion of each course. All such documents shall be available during normal business hours for inspection by authorized representatives of the division.
- (b) All examinations required for certification shall be returned to the course provider within two weeks after distribution if take home or online; they shall be returned immediately after completion if in person.

Section 204.18. Change in approved course of study

There shall be no change or alteration in any approved course of study, of any subject, in any instruction staff or course provider without prior written notice and approval by the division.

Section 204.19. Certification course auditing

A duly authorized representative of the division may audit any course offered and may verify attendance and inspect the records of attendance of the course at any time during its presentation or thereafter.

Section 204.20. Certification course approvals, denials, suspensions and revocations

Within 30 days after the receipt of an application for approval of a course offering, the division shall inform the course provider as to whether the certification course has been approved or whether additional information is needed to determine the acceptability of the certification course. The division may deny, suspend, or revoke the approval of a certification course of a course provider if the division determines that the course provider is not in compliance with the applicable law and rules, or if the certification course does not adequately reflect, present, or test current relevant knowledge regarding natural organic reduction practices. Anyone who objects to such denial, suspension or revocation shall have the opportunity to appeal to the Secretary of State or appointed designee within 30 days.

Section 204.21. Certificate of course completion

Evidence of successful completion of the course must be furnished to each natural organic reduction facility employee, officer or director in certificate form. The certificate must indicate the following: name of the cemetery corporation; operator certification course; a statement that the employee, who shall be named, has satisfactorily completed a course of study and final

examination in the natural organic reduction subjects approved by the division; that the individual's attendance record was satisfactory and in conformity with the law; and that such course was completed on a stated date. The certificate must be signed by the course provider, dated, and have affixed thereto the official seal of the course provider. Copies of such certification shall be filed with the division at its principal office.

Section 204.22. Certification course Fees

Each course provider shall establish the registration fee for the certification course offered.

ASSESSMENT OF PUBLIC COMMENTS

Rule I.D. No.: DOS-34-23-00010-P

New York State Register publication of Notice of Proposed Rulemaking: August 23, 2023

Comment subject: Rules proposed for natural organic reduction operations, facilities, and certification of operators

Impacted rule sections: 19 NYCRR Parts 204 and 203

The Department of State (DOS) received 56 comments during the public comment period for rules proposed for natural organic reduction (NOR). In responding to those comments, DOS has grouped those comments and responses together thematically where possible. Many comments fell into two broad categories. One group of comments concerned natural burials and issues relating to groundwater. Another group of comments concerned the role funeral directors play in the NOR process. DOS also received comments from various parties regarding different detailed aspects of the rules.

The New York State Cemetery Board (“Cemetery Board”) reviewed and considered the received comments. Consequently, the Cemetery Board has made several editorial clarifications and minor technical changes to the proposed rules, none of which materially alter the purpose, meaning or effect of the rules. The following is a summary and analysis of issues raised, significant alternatives suggested by the comments, and the Cemetery Board’s consideration of those alternatives.

COMMENT #1: Commenters suggested regulation of natural burials in all New York State cemeteries, including cemeteries operated by religious corporations, that are near water sources and rivers via the new NOR statute, including a suggestion to incorporate requirements for hydrogeologic, water quality, and soil analyses before interment of remains. Relatedly, one commenter suggested additional hydrological testing requirements and greater setbacks from groundwater sources than those contained in the proposed rules.

RESPONSE TO COMMENT #1: The Cemetery Board has considered these comments and made a technical change to the proposed rules. To clarify and ensure compliance with the siting requirements set forth in the proposed rule at 19 NYCRR section 204.7(e), the Cemetery Board has revised proposed 19 NYCRR 204.2(a)(3) to require a cemetery seeking approval to operate a NOR facility to identify the location of any potable water wells, surface waters, wetlands, residences and businesses (other than the cemetery) within 200 feet of the proposed facility.

Second, the Cemetery Board has concluded it cannot by rule making expand its jurisdiction to regulate all New York State cemeteries in the way suggested by the commenters. See Not-for-Profit Corporation Law (N-PCL) section 1503.

Third, the subject of natural burial is outside the scope of this rule making and the NOR statute. Natural organic reduction is “the contained, accelerated conversion of human remains to soil.” N-PCL section 1502(t). New York law does not specifically define natural burial, but it generally involves the burial of intact human remains and includes neither acceleration of decomposition nor the transformation into soil.

Finally, the Cemetery Board has considered the suggestion of amending the proposed rule to require all cemeteries to perform hydrogeologic, water quality and soil analyses prior to the

interment of remains. 10 NYCRR Part 5, Subpart 5-1 regulates New York State drinking water supplies and contains minimum setback requirements that are applicable to cemeteries. Neither N-PCL section 1518 nor the proposed regulations purport to exempt either NOR facilities or cemeteries performing natural burials from application of 10 NYCRR Part 5, Subpart 5-1, to the extent that Subpart would otherwise apply. The proposed rules at 19 NYCRR section 204.7(e) also address issues related to the proximity of NOR facilities to water sources, prohibiting NOR facilities within 200 feet of water bodies unless the facility can demonstrate acceptable means of reducing the potential for accidental leachate run-off and odor transmission.

COMMENT #2: One commenter suggested that the rule should address the possibility of NOR vessels remaining and degrading in the cemetery, in order to address related potential environmental concerns.

RESPONSE TO COMMENT #2: At present, NOR vessels are typically sealed metal containers and are, like cremation retorts, designed for multiple uses over many years. The proposed rule at 19 NYCRR section 204.6(c) requires, among other features, that the vessel be leak-proof and capable of withstanding heating. The Cemetery Board anticipates that staff of the Division of Cemeteries (the division) will regularly inspect NOR facilities; checking for leaks in vessels will form part of this inspection process. On this basis, the Cemetery Board determined that the existing proposed regulations are adequate to address these concerns.

COMMENT #3: One commenter asked that the regulations require the application for approval of a NOR facility to project the number of NOR and/or natural burials per acre and the rate of estimated burials per year.

RESPONSE TO COMMENT #3: The proposed rule at 19 NYCRR section 204.2(a)(4)(i) requires an applicant cemetery corporation to develop a business plan that specifies the anticipated number of NORs per year. NOR facilities will not typically inter naturally organically reduced remains within the NOR facility and those remains may be interred in other cemeteries. Thus, NOR facilities will be unable to make the requested predictions. Also, as previously noted, natural burial is not a form of NOR.

COMMENT #4: One commenter suggested that the proposed rule concerning possible run-off (proposed 19 NYCRR section 204.3(a)(11)) be modified to add additional restrictions concerning possible impact on local groundwater. Addressing the same proposed section, another commenter suggested that the requirements of this section should vary depending on whether the facility is fully enclosed or sited in an area that is less industrial. Relatedly, another commenter suggested that the proposed regulations regarding site run-off would require NOR facilities to be located in industrial areas and to have higher carbon footprints. The commenter also suggested that New York should allow NOR facilities that are private and secure, but not fully enclosed.

RESPONSE TO COMMENT #4: The Cemetery Board considered adding additional elements concerning groundwater flow and wells to the proposed rule, but ultimately declined to do so. The proposed regulations (19 NYCRR section 204.3(a)(16)), as drafted, require a cemetery applying to operate a NOR facility to include in its plan of operations “a description of the method used to prevent surface water run-off and to prevent the escape of leachate,” and recognize that different plans will address this issue differently, depending on the circumstances; this current requirement is adequate to address issues related to run-on and run-

off and leachate. Finally, the NOR statute prohibits outdoor facilities by including requirements that: 1. the interior of such facilities "shall not be accessible to the general public"; 2. doors and windows must be covered, locked, and secured; and 3. the natural organic reduction process shall be conducted in privacy. N-PCL section 1518(a-b).

COMMENT #5: One commenter suggested that the proposed section concerning prevention and remediation of leachate (proposed 19 NYCRR section 204.3(a)(16)) should require that phytoremediation/ intentional plantings be established around the proposed NOR/cemetery as part of its initial development. On the other hand, another commenter suggested that proposed 19 NYCRR section 204.3(a)(16) is overly broad, should apply only if there are multiple types of structures, and should not apply to bathrooms at the facilities, any approved rainwater plans, or construction area mitigation. This commenter makes a similar comment as to proposed 19 NYCRR section 204.7(d).

RESPONSE TO COMMENT #5: The Cemetery Board has revised the proposed rule at 204.7(d) to clarify that it only applies to leachate from natural organic reductions. The Cemetery Board considered and declined the suggestion that the proposed leachate prevention rules should apply only if there were multiple types of structures. Regardless of the type of facility, the proposed rules require a plan for run-off, accidental spills, and leachate prevention.

The Cemetery Board considered these comments, and decided not to specify, by example or otherwise, the methods of prevention and remediation of leachate, in order to promote flexibility and innovation. Additionally, the proposed rule at 19 NYCRR section 204.7(e) facilitates the review of these and other potential concerns, should a cemetery seek to site a NOR facility closer than 200 feet to water sources, residences, or businesses.

COMMENT #6: Comments related to the role of funeral directors in NOR were focused on several areas: 1) the proposed NOR regulations should make the role of funeral directors similar to the role they play in cremation; 2) the regulations should specify a role for funeral directors in the natural organic reduction process, including filing paperwork, removing prohibited materials such as battery packs and removal, preparation, and transportation of remains to NOR facilities; 3) funeral directors would benefit from more information about the anticipated duration of natural organic reduction and volume of naturally organically reduced remains; 4) proposed 19 NYCRR sections 204.3(a)(3-4) should indicate that variances in processing time and volume of bulking agents will occur due to specific cases, including the size of the remains; and 5) the regulations should provide a minimum processing time and that the maximum processing time should be based on appropriate standards.

RESPONSE TO COMMENT #6: Generally, the Cemetery Board agrees with comments indicating that the role of funeral directors in NOR should be similar to the role they play in cremation (e.g., making final arrangements, removal, body preparation, funeral home services, transportation, and delivery). The proposed regulations are substantially similar to the regulations for crematories vis-à-vis the role of funeral directors. It is often the case that funeral directors serve as the point of contact with a crematory and retrieve remains, but neither the crematory regulations nor the proposed NOR regulations require funeral directors to play this role in all cases. N-PCL section 1518(d-e) provides the legal requirements for delivery of remains to NOR facilities and details the role of funeral directors. N-PCL section 1518(b)(2) and the proposed regulations at 19 NYCRR section 204.5(d) include licensed, registered funeral directors, registered residents and enrolled students of mortuary science as authorized individuals permitted in NOR facilities. The proposed regulations state the rules for paperwork,

permits, removal of battery packs and similar prohibited materials. Finally, funeral directors performing funeral directing services in connection with NOR are, as with any other form of final disposition, regulated under the Public Health Law and New York State Department of Health (DOH) regulations.

As for duration and volume, the Cemetery Board agrees that there may be variances in the time for processing individual remains and the amount of bulking agents needed, and anticipates that plans of operation will provide both a target range for completion of processing and outer anticipated periods of time for cases that will take longer; the proposed regulations already take this into account. See sections 204.3(a)(4) (requiring that the operating plan state vessel specifications and materials used) and 204.3(a)(5) (requiring the operating plan to describe the bulking agents to be used). The proposed rules, at 19 NYCRR section 204.7(b), sets a maximum processing time of nine months unless the division approves a longer period for good cause. The regulations also require a minimum processing time: the remains must reach 40 degrees Celsius for 14 days or functional equivalent. In addition, N-PCL section 1518(i) requires the NOR facility to notify the funeral firm and authorizing person when the NOR process is complete. Finally, the Cemetery Board understands that the amount of soil resulting from NOR can be between a half cubic yard to a cubic yard.

COMMENT #7: Commenters suggested that the State should require NOR operators to have a professional license, rather than a certification after training.

RESPONSE TO COMMENT #7: The certification protocol for NOR operators is statutory under N-PCL section 1518(j). The length of training proposed by regulation is commensurate with that of crematory operators and should be adequate for NOR operators.

COMMENT #8: Commenters suggested that the regulations should include a standard NOR authorization form.

RESPONSE TO COMMENT #8: In response to these comments, the Cemetery Board has amended the proposed rule to mirror the language found in the cremation regulations. Rather than requiring NOR facilities to use a form merely substantially similar to the template established by the division, the proposed rule will require NOR facilities to use a document in a form established by the director of the division. As with cremation, DOS intends to develop and make available a standard NOR authorization form, as set forth in the proposed rule at 19 NYCRR section 204.9(d). As with cremation, the form itself is not included in the regulations in order to allow for greater flexibility; DOS anticipates soliciting informal comments on the form, as it has done with its cremation authorization form.

COMMENT #9: Several commenters questioned the basis for the pathogen and vector attraction standards in the proposed regulations, including the treatment of remains that fail these standards multiple times. Another commenter suggested that DOS make clear that the proposed regulations require testing of each set of remains. One commenter suggested that DOS amend proposed 19 NYCRR section 204.8(h) to require merely that the testing results be available, not provided, to the person in control of disposition based upon the practical implications of the process. Finally, another commenter expressed concern that there would not be sufficient certified laboratories to perform the testing required under proposed 19 NYCRR section 204.1(e) and objects to this proposed section prohibiting cemeteries themselves from creating a laboratory to provide such testing.

RESPONSE TO COMMENT #9: The Cemetery Board considered the alternatives suggested by the commenters but declined to adopt these suggestions. The proposed regulations for pathogen, vector attraction, and pollutant requirements are based on existing standards for composting of organic material under 6 NYCRR Part and are broadly consistent with Washington State's standards for naturally organically reduced remains. The proposed rules ensure consumer confidence through testing standards commensurate with commercially produced compost, mitigate the potential for infections that could result from handling soil that may contain pathogens, and mitigate the potential for adverse consequences that could result from soil that may contain high levels of pollutants. Proposed 19 NYCRR section 204.8 makes clear that the facility must test each set of remains.

As for treatment of remains that fail multiple times, based on experience in Washington, this is anticipated to be a very rare occurrence. In the unlikely event that remains fail testing requirements twice, the regulations require notification to the person in control of disposition, and the NOR facility must address this circumstance in their plan of operations at proposed 19 NYCRR section 204.3(a)(10). The handling and final placement of such remains should be in accordance with that plan of operations. Providing the person in control of disposition the pathogen, vector attraction, and pollutant testing results helps to ensure consumer confidence in the NOR process and adherence to the standards in the proposed rules.

Finally, DOH's website indicates that approximately 150 laboratories are certified for solid and hazardous waste testing under its Environmental Laboratory Approval Program; the proposed regulations empower the division to authorize additional laboratories. This requirement is similar to the requirement for composting of organic material. The comment is correct that a laboratory cannot be a related party to the NOR facility. The purpose of this regulation is to provide for independent testing which may not occur, or may not appear to occur, if the cemetery is a related party to the laboratory; accordingly, the Cemetery Board declines to adopt the comment's suggestion to permit NOR facilities and laboratories to be related parties.

COMMENT #10: Commenters asked why the proposed regulations prohibit an additional charge based on the weight of the remains.

RESPONSE TO COMMENT #10: The regulations merely prohibit an additional charge based on the weight of the remains combined with the weight of other materials. The rule is meant to prevent an operator from unnecessarily adding heavy additions, such as bulking agents, to increase the fee. If the NOR facility can demonstrate that its reasonable expenses are higher for a category of NOR cases, based on such considerations as the dimensions or weight of the remains themselves, this provision would not prevent it from seeking approval of a charge appropriate to such cases. The Cemetery Board has revised the proposed rule to clarify the prohibition is on charges based solely upon combined weight and additions to the vessel.

COMMENT #11: Commenters suggested that NOR not be treated as a form of final disposition.

RESPONSE TO COMMENT #11: Public Health Law section 4201(1)(b) defines natural organic reduction as a means of disposition, like burial or cremation.

COMMENT #12: Commenters asked whether operating plans should be standardized and how the operating plan and its requirements differ from other cemeteries and crematories.

RESPONSE TO COMMENT #12: Processes may differ at each NOR facility; NOR is less standardized than cremation. As a result, operating plans will necessarily differ from facility to facility, as they do for crematories. There is no statutory or regulatory requirement for cemeteries offering only burial or entombment to have an operating plan, as required for crematories and NOR facilities. The requirements for NOR facilities' operating plans differ from those for crematories in order to reflect the differences in the duration and nature of the process.

COMMENT #13: Commenters expressed concern regarding potential lack of refrigerated storage capacity; one added that when the New York City Office of the Chief Medical Examiner claims a case (because of questions of cause of death or other reasons), there can be a significantly delay in final disposition.

RESPONSE TO COMMENT #13: N-PCL section 1518(a)(1) requires NOR facilities to have temporary storage facilities. The regulations at 19 NYCRR section 240.4(d) mirror this requirement. It is not anticipated that NOR facilities will be primarily responsible for storing remains for long periods of time before commencement of NOR. The proposed regulations (19 NYCRR section 204.3(b)) anticipate that normally natural organic reduction (like cremation) will begin within 48 hours of delivery of the remains. The Cemetery Board does not regulate the NYC Office of the Medical Examiner and cannot require it to increase its refrigerated storage capacity or expedite its handling of remains.

COMMENT #14: One commenter asked who determines the timing of pulverization of bones and whether that will be done individually.

RESPONSE TO COMMENT #14: N-PCL section 1518(g) requires remains to be naturally organically reduced individually unless the person in control of disposition and NOR facility agree otherwise. N-PCL section 1518(h)(4) requires bones to be pulverized. Based on the division's research into facilities in other states, the precise timing of processing bones during the NOR process may vary from facility to facility.

COMMENT #15: One commenter asked what, if any, clothing will consumers of the NOR process be allowed to provide for loved ones, and must such clothing be made from natural fibers. Another asked that the regulations specifically allow for biodegradable shrouds.

RESPONSE TO COMMENT #15: The Cemetery Board has added clarifying language to proposed 19 NYCRR section 204.9(a)(4) to include space on the NOR authorization form for the person in control of disposition to specify any intended additions to the vessel, which may include clothing. N-PCL section 1518(d) permits remains to be delivered in a wrapping that will decompose during NOR. Neither the statute nor the proposed regulations prohibit natural organic reduction of clothed remains so long as such clothing, or other objects permitted to be placed in the vessel, do not inhibit the natural organic reduction process or violate the proposed rules, and the person in control of disposition and NOR facility agree, as set forth in the proposed rule at 19 NYCRR section 204.6(a)(3).

COMMENT #16: One commenter asked whether variables such as body weight, certain causes of death, and implanted devices/medical equipment disqualify a deceased person from the NOR process, suggested that crematories currently accept remains with limited efforts to secure additional information about remains, and wondered whether refusal to accept such remains constitute discrimination.

RESPONSE TO COMMENT #16: 19 NYCRR section 204.3(d) addresses this concern as to causes of death and other implants or medical devices that would render remains ineligible for NOR. Other, practical reasons may dictate that a facility physically cannot accept remains for natural organic reduction. These reasons may include that the remains will not fit in a vessel or would not leave enough room for sufficient amounts of bulking agents. Finally, regarding the extent of information collected about remains by crematories, all cremation authorizations must affirm the absence of battery packs or radiological treatments and crematories may reject remains where the container is leaking or when the remains are too large for the retort.

COMMENT #17: One commenter asked several questions about vessels: are they re-used? Must a funeral home transport remain in the vessel? Does the NOR facility dispose of vessels after use?

RESPONSE TO COMMENT #17: The Cemetery Board proposed regulations based on current practices and technology, in which NOR vessels, like cremation retorts, are multi-use fixed items that remain at the facility. N-PCL sections 1518(d) and (e) specify the requirements for delivery of remains to the NOR facility.

COMMENT #18: One commenter asked whether there will be a process for the family regarding transporting the compost.

RESPONSE TO COMMENT #18: N-PCL section 1518(i) requires the NOR facility to notify the authorizing agent and funeral firm when the NOR process is complete. Similar to cremation, the person in control of disposition may authorize anyone to retrieve the soil resulting from NOR. Unlike cremation, N-PCL section 1518(i) requires that the naturally organically reduced remains be placed in a cemetery. The proposed rules, at 19 NYCRR 204.9(d), require the NOR authorization form to list the person authorized to receive the remains and the name of the cemetery corporation where the remains will be interred.

COMMENT #19: One commenter asked whether guidelines will be issued on where the compost can be disposed or used, and whether consumers will be permitted to put compost in vegetable gardens.

RESPONSE TO COMMENT #19: N-PCL section 1518(i) requires deposit of the remains at a cemetery corporation.

COMMENT #20: One commenter asked whether allowing viewing at the NOR facility will violate the anti-combination law (chapter 560 of the Laws of 1998).

RESPONSE TO COMMENT #20: N-PCL section 1518(d) restricts the opening of containers with remains at NOR facilities before natural organic reduction. Currently, committal services and viewings take place at crematories. Whether such practices violate the anti-combination law must be analyzed on a case-by-case basis; the analysis will be similar to such services at crematories.

COMMENT #21: One commenter asked if the Environmental Protection Agency, OSHA, and the DEC are aware of NOR and approve?

RESPONSE TO COMMENT #21: As the Cemetery Board indicated when it published its Notice of Proposed Rule Making, the Cemetery Board consulted DEC and DOH in drafting the proposed regulations.

COMMENT #22: One commenter objected to NOR as a moral choice for final disposition and asserts that it does not give families an opportunity for a healthy grieving process.

RESPONSE TO COMMENT #22: Families who object to NOR may choose to select from other methods of disposition.

COMMENT #23: One commenter noted that the proposed regulations do not address pre-need sales of NOR services.

RESPONSE TO COMMENT #23: The proposed NOR facility regulations do not address service charges. N-PCL section 1509 governs review and approval of charges for these services, as it would any other cemetery services; there is no need to address such charges here.

COMMENT #24: One commenter stated that in 2024 there will be a modular, self-contained system that will have individual identification per vessel, computer-controlled processes, and data to detail case progress, and that proposed 19 NYCRR section 204.3(a) (1-12, 15-18) should be amended to include such advances in technology.

RESPONSE TO COMMENT #24: An applicant seeking to use this technology may include its details for the Cemetery Board to consider during the application process. That said, the referenced provision merely requires that an NOR facility prepare and follow a plan of operations.

COMMENT #25: One commenter stated that the purpose and applicability of proposed 19 NYCRR section 204.3(a)(13) is unclear.

RESPONSE TO COMMENT #25: The Cemetery Board agrees that other aspects of the proposed regulations and the statute itself already cover the subject of this section (general compliance with N-PCL Article 15) and has deleted this paragraph from the proposed regulations.

COMMENT #26: One commenter suggested that 19 NYCRR section 204.3(a)(14) include a requirement that the residual material or soil blend should be screened for any inorganic or foreign material prior to the delivery of the remains, re-use, or scattering.

RESPONSE TO COMMENT #26: N-PCL section 1518(h) requires NOR facilities to screen out incidental materials. The Cemetery Board agrees that each NOR facility's plan of operations should address this issue. Consequently, the Cemetery Board has clarified proposed 19 NYCRR section 204.3(c)(14) to include this step.

COMMENT #27: One commenter suggested that facilities should be allowed to store remains for longer periods and stated that the requirement of commencing NOR within 48 hours of delivery is challenging. The same commenter suggested that facilities should be allowed to choose not to have a storage area for remains if they accept remains solely by pre-scheduling a specific time for placing the remains in a vessel.

RESPONSE TO COMMENT #27: N-PCL section 1518(a) requires NOR facilities to have a temporary storage facility; the Cemetery Board cannot change that statutory provision by regulation. Naturally organically reduced remains are necessarily un-embalmed. It is entirely appropriate to set a presumption that NOR will commence within 48 hours of receipt of remains. If there is good cause to wait longer, the proposed regulations may permit a longer delay.

COMMENT #28: One commenter objected to proposed 19 NYCRR section 204.4(a)'s requirement that a NOR facility be used exclusively for NOR and suggested that existing crematories or cemetery buildings should be allowed to include NOR facilities.

RESPONSE TO COMMENT #28: Allowing the combination of NOR and cremation facilities presents a risk that remains to be naturally organically reduced might inadvertently be cremated (or vice-versa). However, this provision means simply that the NOR facility must be used exclusively for NOR. A building could contain a crematory and a NOR facility, as long as they are completely separated within the building.

COMMENT #29: One commenter suggested that DOS amend proposed 19 NYCRR section 204.5(c) to allow individuals in the ceremony room while NOR operations are ongoing in an adjacent and separate area.

RESPONSE TO COMMENT #29: The Cemetery Board considered this proposal and believes the proposed regulation, as drafted, permits such individuals to be in a ceremony room while NOR operations are ongoing, as long as the individuals are not able to see other remains being placed in other vessels.

COMMENT #30: One commenter suggested that proposed 19 NYCRR 204.6(a)(1) is too restrictive as to permissible natural agents and asked that the regulation be revised to specify that NOR facilities may use any other material which the division may designate as appropriate for use as a bulking agent. Another commenter objected to proposed 19 NYCRR section 204.6(b)(9) because it prohibits any other material which the division may designate as inappropriate for use as a bulking agent without specifying criteria for such a designation or an appeal process.

RESPONSE TO COMMENT #30: Proposed 19 NYCRR section 204.6(a)(1) provides examples of permitted bulking agents; as drafted, it allows for use of other materials, other than those specifically listed as prohibited.

The Cemetery Board agrees with the comment concerning the division's authority to prohibit other bulking agents and has revised the proposed rule to prohibit any other material that creates a risk to health and safety, inhibits NOR, will not naturally organically reduce, or otherwise violates 19 NYCRR Part 204. These factors already appeared within the proposed rules as reasons to prohibit additions to the vessel; the Cemetery Board has amended this subparagraph to specify that these are the reasons DOS may designate additional prohibited materials. As with any other administrative determination, New York law provides for methods of challenging an agency's determinations and those procedures would apply here.

COMMENT #31: One commenter suggested that proposed 19 NYCRR section 204.6(b)(7) should be amended to include other NOR facility identification materials, and not be limited to non-compostable tags.

RESPONSE TO COMMENT #31: The Cemetery Board agrees with this comment and has revised the proposed regulation to permit other identification methods similar to non-compostable tags.

COMMENT #32: One commenter opined that 19 NYCRR section 204.7(f) does not set a clear standard for odor remediation and suggested that remediation should be based on available equipment or data and/or reports related to effective measures for such instances.

RESPONSE TO COMMENT #32: N-PCL section 1518(a) requires NOR facilities to have adequate ventilation. The proposed rule establishes a standard by prohibiting odors that unreasonably impact locations such as residences, schools and nursing homes. This standard is as specific as DEC's standard for composting facilities. See 6 NYCRR section 360.19(i).

COMMENT #33: One commenter suggested that DOS should require that the remains maintain a temperature of 55-65 degrees Celsius for 14 days, rather than maintaining a temperature of 55 degrees Celsius for three days and at least 40 degrees Celsius (with an average of 45 degrees Celsius) for 14 days (or equivalent), as required in the proposed regulations. The same commenter refers to unspecified, more conservative standards for biosolids in Canada and research performed for the New York State Department of Transportation (DOT) concerning mortality composting, as cited in <https://cwmi.css.cornell.edu/tirc.htm>

RESPONSE TO COMMENT #33: As the commenter notes, the standards included in the proposed regulations are consistent with DEC standards for composting of organic material and Washington State's rules for naturally organically reduced remains. The research the commenter cites studied a very different methodology (mass composting of deer carcasses in an outside windrow, rather than individual composting of remains indoors in a small, contained vessel with temperature monitoring and the ability to add water, air, or bulking agents to maintain temperatures), and in any event does not support imposition of a longer, higher temperature requirement. The rule does not prohibit NOR facilities from maintaining the temperatures suggested by the comment.

COMMENT #34: One commenter objected to the requirement of proposed 19 NYCRR section 204.9(e) that NOR facilities must transmit copies of NOR authorizations to the division.

RESPONSE TO COMMENT #34: Because the statute does not limit retrieval of naturally organically reduced remains to death care professionals, and because the statute also requires such remains to be deposited in cemeteries, the Cemetery Board will require receipt of copies of authorizations to ensure that such remains are properly brought to a cemetery.

COMMENT #35: One commenter objected that proposed 19 NYCRR section 204.9(e) requires permanent storage of the outlined forms, stating that the statute sets a four-year retention period.

RESPONSE TO COMMENT #35: N-PCL Article 15 does not set a four-year period for retention of NOR authorizations; N-PCL section 1518 contains no time limit. The requirement to retain documents is designed primarily to protect NOR facilities from claims that they lacked authorization to naturally organically reduce remains. NOR facilities may choose to retain such forms in electronic (scanned) format rather than on paper.

COMMENT #36: One commenter stated that proposed 19 NYCRR section 204.9 requires that remains be scattered, buried, entombed, or inurned and believes that the regulations should explicitly state that the remains do not need to be kept together and could be used for multiple purposes or locations within a cemetery.

RESPONSE TO COMMENT #36: The Cemetery Board does not intend the regulation to preclude cemeteries from submitting rules and regulations to the division for review and approval providing for different forms of deposit of naturally organically reduced remains at a cemetery.

COMMENT #37: One commenter stated that proposed 19 NYCRR section 204.9(g) is overly broad and exceeds the requirement of the statute.

RESPONSE TO COMMENT #37: The proposed rule lends specificity to the statutory requirements set forth in N-PCL sections 1503(b), 1510(c) and 1518 by including in the list documents those that are a result of the proposed rules, such as the proposed rule specifying laboratory testing results. This requirement is substantially similar to the existing requirement for crematories.

COMMENT #38: One commenter suggested that DOS modify proposed 19 NYCRR section 204.10 to delay implementation of operator certification until 2024.

RESPONSE TO COMMENT #38: The timing of this requirement is contained in N-PCL section 1518(j); in any event, the regulation gives operators retained before June 28, 2023, until June 28, 2024, to become certified.

COMMENT #39: One commenter questioned the basis for requiring eight hours of instruction.

RESPONSE TO COMMENT #39: The commenter did not suggest an alternative for the Cemetery Board to consider. The Cemetery Board believes that this material will require a full day course of instruction but should be able to be completed without requiring multiple days. Although DOS intends to develop a robust certification course, it anticipates that additional learning will occur in on-the-job training and other courses and seminars provided outside the operator certification course.

COMMENT #40: One commenter suggested that DOS prohibit any for-profit entity from applying to provide the required certification course.

RESPONSE TO COMMENT #40: NOR is a new process. The Cemetery Board does not believe it makes sense to narrow to this extent the categories of potential providers of training.

DESCRIPTION OF CHANGES MADE TO THE RULE

The rule renumbers sections 204.1 to 204.14 of Title 19 and adds new sections 204.1 through 204.22 to Title 19 of the Official Compilation of the Rules and Regulations of the State of New York, concerning natural organic reduction facilities. The rule now being adopted makes the following non-substantive changes to the rule as proposed in the Notice of Proposed Rule Making, all in response to comments received:

1. §203.27: amends statutory reference from session laws to consolidated laws.
2. §204.2(a)(3): revises this paragraph to require a cemetery seeking approval to operate an NOR facility to disclose in its application “the location of any potable water wells, surface waters, wetlands, residences and businesses other than the cemetery itself within two hundred feet of the natural organic reduction facility.”
3. §204.3(a)(1): revises this paragraph to permit an NOR facility to add “similar identification materials” as an alternative to non-compostable identification tags to NOR vessels.
4. §204.3(a)(11): corrects typographical error.
5. §204.3(a)(13): deletes a proposed paragraph requiring a natural organic reduction facility’s plan of operation to state “how the natural organic reduction facility will comply with article 15 of the N-PCL and this Part,” and renumbers the following subdivisions to reflect this deletion.
6. §204.3(a)(14): revises this paragraph (now renumbered as §204.3(a)(13)) to clarify that a plan of operations should address “the removal, storage, receiving facility, and method of disposition for recyclables (if applicable), residue, or other inorganic material removed from remains.”
7. §204.3(f): clarifies that the regulations prohibit additional service charges “being based solely on the combined weight of the remains and any outer wrapper, container, bulking agents or permitted incidental material.”
8. §204.6(a)(2): revises this paragraph to permit an NOR facility to add “similar identification materials” as an alternative to non-compostable identification tags to NOR vessels.
9. §204.6(b)(7): revises this subparagraph to permit “similar identification materials” in addition to non-compostable identification tags as materials that are exempt from the subparagraph’s prohibitions on adding materials that will not compost to the vessel.
10. §204.6(b)(9): revises this subparagraph to add specificity to the reasons the division may designate materials as inappropriate as bulking agents by adding “because the materials create a risk to health and safety, inhibit natural organic reduction, will not compost, or violate this Part.”
11. §204.7(d): clarifies that the restrictions on ponding, draining or discharge of waste and leachate applies to any such waste or leachate “from natural organic reductions.”
12. §204.9(d): clarifies that the natural organic reduction authorization form “shall be in a form established by the director of the Division of Cemeteries,” and not merely substantially similar to such a template.
13. §204.9(d)(4): revises this subparagraph to permit the person in control of disposition to list any desired additional materials to the vessel on the NOR authorization form by adding “any proposed additions to the vessel.”

SUMMARY OF RULE TEXT

This rule making would renumber sections 204.1 to 204.14 of Title 19 of the NYCRR and add sections 204.1 to 204.22 of Title 19. The name of Part 204 of Title 19 of the NYCRR is changed from “Cremation Certification Course” to “Natural Organic Reduction.” Sections 204.1 to 204.14 of Title 19 of the NYCRR are renumbered to sections 203.15 to 203.28.

19 NYCRR Part 204

Natural Organic Reduction

Sections 204.1 to 204.14 of Title 19 are renumbered to sections 203.15 to 203.28.

The name of the renumbered section 203.15 is changed from “Purpose” to “Cremation certification course.”

The name of the renumbered section 203.16 is changed from “General requirements” to “Crematory operator course general requirements.”

The name of the renumbered section 203.17 is changed from “Approved entities” to “Organizations approved to offer crematory operator courses.”

The name of the renumbered section 203.18 is changed from “Request for approval of course of study” to “Request for approval of crematory operator course of study.”

The name of the renumbered section 203.19 is changed from “Subjects of study for crematory operator certification course” to “Subjects of study for crematory operator course.”

The name of the renumbered section 203.20 is changed from “Computation of instruction time” to “Crematory operator course computation of instruction time.”

The name of the renumbered section 203.21 is changed from “Attendance and examinations” to “Crematory operator course attendance and examinations.”

The name of the renumbered section 203.22 is changed from “Facilities” to “Crematory operator course facilities.”

The name of the renumbered section 203.23 is changed from “Examination requirement and record retention” to “Crematory operator course examination requirement and record retention.”

The name of the renumbered section 203.24 is changed from “Change in approved course of study” to “Change in approved crematory operator course of study.”

The name of the renumbered section 203.25 is changed from “Auditing” to “Crematory operator course auditing.”

The name of the renumbered section 203.26 is changed from “Suspensions and denials of course approval” to “Crematory operator course approvals and denials.”

The name of the renumbered section 203.27 is changed from “Certificate of completion” to “Crematory operator course certificate of completion” and is amended to change the statutory reference from the session laws to consolidated laws and require filing at the division’s principal office.

The name of the renumbered section 203.28 is changed from “Fees” to “Crematory operator course fees.”

The name of Part 204 of Title 19 is changed from “Cremation Certification Course” to “Natural Organic Reduction.”

New sections 204.1 to 204.23 of Title 19 are added to read as follows:

Part 204 Natural Organic Reduction

Section 204.1. Definitions

Sets forth the definitions of terms as used in Part 204.

Section 204.2. Approval to operate a natural organic reduction facility

Sets forth materials to be submitted by a cemetery to the cemetery board for an application for approval to operate a natural organic reduction facility and the procedure for the cemetery board to notify the cemetery of its determination.

Section 204.3. Facility operations

Sets forth requirements for a cemetery’s written plan of operations, timeframes to begin the natural organic reduction process, remains that must be rejected by the facility, and weight.

Section 204.4. Facility use, maintenance, design

Specifies that a natural organic reduction facility shall be clean, private, used exclusively for the natural organic reduction of human remains and include a temporary storage facility.

Section 204.5. Facility privacy and access

Sets forth privacy and access requirements, a list of authorized persons who may enter the facility and permits a natural organic reduction facility to include a room for ceremonies or viewings.

Section 204.6. Facility process requirements

Sets forth requirements for the vessel in which natural organic reduction shall occur and those materials which may be and shall not be added to the vessel.

Section 204.7. Facility operating and siting requirements

Sets forth requirements for the infection control, processing time, method of natural organic reduction, run-off and odor prevention, and facility siting.

Section 204.8. Pathogen and vector attraction reduction; testing

Sets forth methods of and requirements for pathogen and vector attraction reduction, maximum pathogen and pollutant contents, and laboratory testing requirements for pathogen and pollutant content.

Section 204.9. Natural organic reduction log, authorization form, facility records

Specifies the information and records that must be maintained by the natural organic reduction facility in a log, required information in the natural organic reduction authorization form, receipt requirements for a cemetery to provide to the natural organic reduction facility upon receiving

naturally organically reduced remains; requires that the log, natural organic reduction authorization form and receipt shall be retained in the permanent file of the cemetery and that records shall be available for inspection.

Section 204.10. Certification requirements

Requires that natural organic reduction facility personnel who operate equipment or handle naturally organically reduced remains must be certified within specified timeframes.

Section 204.11. Organizations prohibited from offering facility operator certification courses

Prohibits funeral entity involvement in course providers that will offer natural organic reduction certification courses.

Section 204.12. Request for approval of facility operator course of study

Requires entities seeking approval of natural organic reduction certification courses to provide materials and information to the division and for education providers to meet certain qualifications.

Section 204.13. Subjects of study for facility operator certification course

Sets forth required topics for natural organic reduction certification courses.

Section 204.14. Certification course computation of instruction time

Sets forth how long natural organic reduction certification courses must be.

Section 204.15. Certification course attendance and examinations

Sets forth minimum attendance and final examination performance requirements in order to receive a natural organic reduction facility operator certification.

Section 204.16. Certification course facilities

Requires that courses are provided in facilities, whether physical or virtual, that facilitate the proper presentation of the course and are subject to division approval.

Section 204.17. Certification course examination requirement and record retention

Sets forth requirements for natural organic reduction certification course providers to retain records and make them available for inspection, and timeframes in which to return completed exams.

Section 204.18. Change in approved course of study

Requires that any changes to an approved certification course must be approved by the division.

Section 204.19. Certification course auditing

Permits the division to audit any course offered by a natural organic reduction certification course provider, verify attendance, and inspect records.

Section 204.20. Certification course approvals, denials, suspensions and revocations

Sets forth procedures for the division to approve, deny, suspend or revoke natural organic reduction facility certification courses.

Section 204.21. Certificate of course completion

Sets forth required information in the certification of completion and that copies must be

provided to natural organic reduction facility personnel who successfully complete the requirements and to the division.

Section 204.22. Certification course fees

Specifies that each natural organic reduction certification course provider shall establish the fee for the certification course.

SUMMARY OF ASSESSMENT OF PUBLIC COMMENTS

On August 23, 2023, the New York State Department of State (DOS) proposed amendments to 19 NYCRR Parts 204 and 203. The proposed rule would: renumber current sections 204.1 through 204.14 to sections 203.15 to 203.28; add new sections 204.1 through 204.22; and rename Part 204 from “Cremation Certification Course” to “Natural Organic Reduction.”

As such, DOS proposes to: renumber existing rules regarding cremation certification courses; add rules to Part 204 pertaining to natural organic reduction (NOR) operations, facilities, and certification of operators; and rename Part 204 accordingly. New sections 204.1 through 204.22 would contain rules to: clarify technical steps in the process, ensure consumer disclosures, establish recordkeeping requirements, provide for the certification of NOR course providers, establish procedures to reduce pathogens and reduce the attraction of disease-causing vectors, and provide laboratory testing standards for pathogens and heavy metals.

DOS received 56 comments during the public comment period on the proposed rule, which was open from August 23, 2023, until October 23, 2023. Major areas of comment included: facility siting; water and soil quality; leachate; the role of funeral directors in the NOR process; recordkeeping, storage, pathogen reduction and laboratory testing requirements; the timing and duration of the NOR process and operation of the NOR vessel. DOS merged similar comments in order to provide combined responses as practicable, and responded individually to 40 unique comments.

Having reviewed the public comments, DOS made minor, clarifying changes to Parts 203 and 204 to better effectuate the rule’s original intent. None of the changes materially alter the purpose, meaning or effect of the rule. DOS has provided detailed responses to the public comments in its full Assessment of Public Comment document, available on the DOS website, at <https://dos.ny.gov/cemeteries>.

STATEMENT REGARDING REVISED REGULATORY IMPACT STATEMENT

Modification of the Regulatory Impact Statement that was published as a part of the Notice of Proposed Rule Making is unnecessary. The rule does not contain any substantial revisions, and non-substantial revisions to the rule text do not render the Regulatory Impact Statement inadequate or incomplete.

STATEMENT REGARDING REVISED REGULATORY FLEXIBILITY ANALYSIS

Modification of the Regulatory Flexibility Analysis that was published as a part of the Notice of Proposed Rule Making is unnecessary. The rule does not contain any substantial revisions, and non-substantial revisions to the rule text do not render the Regulatory Flexibility Analysis inadequate or incomplete.

STATEMENT REGARDING REVISED RURAL AREA FLEXIBILITY ANALYSIS

Modification of the Rural Area Flexibility Analysis that was published as a part of the Notice of Proposed Rule Making is unnecessary. The rule does not contain any substantial revisions, and non-substantial revisions to the rule text do not render the Rural Area Flexibility Analysis inadequate or incomplete.

STATE OF NEW YORK
DEPARTMENT OF STATE

ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001
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KATHY HOCHUL
GOVERNOR

WALTER T. MOSLEY
SECRETARY OF STATE

CERTIFICATION

Parts 203 and 204 of Title 19 NYCRR

I, Walter T. Mosley, as Secretary of State and Chairperson of the New York State Cemetery Board, hereby certify that the attached rule renumbering sections 204.1 through 204.14 to 203.15 through 203.28 of Title 19, and adding new sections 204.1 through 204.22 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) was duly adopted by an affirmative vote of a majority of the members of the New York State Cemetery Board at the July 15, 2024, meeting held in Albany.

Sections 204.1 through 204.22 are added to Part 204 to: clarify technical steps in the process of natural organic reduction, ensure consumer disclosures, establish recordkeeping requirements, provide for the certification of natural organic reduction course providers, establish procedures to reduce pathogens and reduce the attraction of disease-causing vectors, and provide laboratory testing standards for pathogens and heavy metals. These sections were adopted pursuant to authority provided in § 91 of the Executive Law, and §§ 1504(c)(1) and 1518(k) of the Not-for-Profit Corporation Law.

In addition, as Secretary of State, I hereby certify that, as of the date indicated below, I have adopted the re-naming of Part 204 of Title 19 NYCRR from “Cremation Certification Course” to “Natural Organic Reduction.” The statutory authority for this re-naming is provided by Executive Law § 91.

A Notice of Proposed Rule Making, with assigned I.D. No.: DOS-34-23-00010-P, was published in the *State Register* on August 23, 2023. No additional prior notice is required by statute. This rule shall become effective upon publication of the Notice of Adoption in the *State Register*.

Dated: Albany, New York
[MONTH and DAY] , 2024

Walter T. Mosley
Secretary of State and
Chairperson of the Cemetery Board



**Department
of State**

1. 19 NYCRR §203.27
2. 19 NYCRR §204.2(a)(3)
3. 19 NYCRR §204.3(a)(1)
4. 19 NYCRR §204.3(a)(11)
5. 19 NYCRR §204.3(a)(13)
6. 19 NYCRR §204.3(a)(14)
7. 19 NYCRR §204.3(f)
8. 19 NYCRR §204.6(a)(2)
9. 19 NYCRR §204.6(b)(7)
10. 19 NYCRR §204.6(b)(9)
11. 19 NYCRR §204.7(d)
12. 19 NYCRR §204.9(d)
13. 19 NYCRR §204.9(d)(4)

STATEMENT REGARDING REVISED JOB IMPACT STATEMENT

Modification of the Job Impact Statement that was published as a part of the Notice of Proposed Rule Making is unnecessary. The rule does not contain any substantial revisions, and non-substantial revisions to the rule text do not render the Job Impact Statement inadequate or incomplete.

RULE TEXT

19 NYCRR Part 204

Natural Organic Reduction

Sections 204.1 to 204.14 of Title 19 are renumbered to sections 203.15 to 203.28.

The name of the renumbered section 203.15 is changed from "Purpose" to "Cremation certification course."

The name of the renumbered section 203.16 is changed from "General requirements" to "Crematory operator course general requirements."

The name of the renumbered section 203.17 is changed from "Approved entities" to "Organizations approved to offer crematory operator courses."

The name of the renumbered section 203.18 is changed from "Request for approval of course of study" to "Request for approval of crematory operator course of study."

The name of the renumbered section 203.19 is changed from "Subjects of study for crematory operator certification course" to "Subjects of study for crematory operator course."

The name of the renumbered section 203.20 is changed from "Computation of instruction time" to "Crematory operator course computation of instruction time."

The name of the renumbered section 203.21 is changed from "Attendance and examinations" to "Crematory operator course attendance and examinations."

The name of the renumbered section 203.22 is changed from "Facilities" to "Crematory operator course facilities."

The name of the renumbered section 203.23 is changed from "Examination requirement and record retention" to "Crematory operator course examination requirement and record retention."

The name of the renumbered section 203.24 is changed from "Change in approved course of study" to "Change in approved crematory operator course of study."

The name of the renumbered section 203.25 is changed from "Auditing" to "Crematory operator course auditing."

The name of the renumbered section 203.26 is changed from "Suspensions and denials of course approval" to "Crematory operator course approvals and denials."

The name of the renumbered section 203.27 is changed from "Certificate of completion" to "Crematory operator course certificate of completion" and amended as follows:

Evidence of successful completion of the course must be furnished to each crematory employee in certificate form. The certificate must indicate the following: name of the cemetery corporation; crematory operator certification course; a statement that the employee, who shall be named, has satisfactorily completed a course of study in the cremation subjects approved by the Division of Cemeteries in accordance with ~~[the provisions of chapter 579 of the Laws of 2006]~~ section 1517(j) of the N-PCL, and that his or her attendance record was satisfactory and in conformity with the law, and that such course was completed on a stated date. The certificate

must be signed by the approved organization and dated, and must have affixed thereto the official seal of the approved organization. Copies of such certification shall be filed with the Division of Cemeteries at [~~41 State Street, Albany, New York~~] its principal office.

The name of the renumbered section 203.28 is changed from “Fees” to “Crematory operator course fees.”

The name of Part 204 of Title 19 is changed from “Cremation Certification Course” to “Natural Organic Reduction.”

New sections 204.1 to 204.22 of Title 19 are added to read as follows:

Section 204.1. Definitions

As used in this Part, the following terms have the following meanings:

- (a) *Aerobic* means the biochemical decomposition of organic matter primarily into stabilized solids and carbon dioxide by microorganisms in the presence of air.
- (b) *Bulking agent* means a material added to remains to increase porosity and facilitate aeration during composting.
- (c) *Cemetery board* means the New York State Cemetery Board.
- (d) *Cemetery corporation* shall have the same meaning set out in section 1502(a) of the N-PCL, including, pursuant to section 1503(a) of the N-PCL, religious corporations, municipal corporations, cemetery corporations owning cemeteries operated, supervised or controlled by or in connection with a religious corporation, and cemeteries belonging to a religious or municipal corporation or operated, supervised or controlled by or in connection with a religious corporation.
- (e) *Certified laboratory* means a laboratory certified by the Department of Health to conduct analysis under this Part, or an alternate laboratory authorized by the division to conduct such analysis. A laboratory that is itself, or whose owners, officers, directors and key employees are related parties, as defined in section 102(a)(23) of the N-PCL, to the natural organic reduction facility or its officers, directors and key employees, shall not be considered a certified laboratory.
- (f) *Non-reduced container* means a casket or other container which is not intended to be naturally organically reduced with human remains.
- (g) *Composting* means aerobic, thermophilic decomposition to produce a stable, humus-like material.
- (h) *Construction and demolition debris* means waste resulting from construction, remodeling, repair and demolition of structures, buildings and roads, including excavated material, demolition wastes, and construction wastes.
- (i) *Division* means the New York State Division of Cemeteries.
- (j) *Dry weight basis* means calculated on the basis of having been dried until reaching a constant mass.

- (k) *Funeral entity* means a person, partnership, corporation, limited liability company or other form of business organization providing funeral home services, or owning, controlling, conducting or affiliated with a funeral home, any subsidiary thereof or an officer, director or stockholder having a ten per centum or greater proprietary, beneficial, equitable or credit interest in a funeral home.
- (l) *Humus* means stable, degraded organic matter.
- (m) *Leak-proof* means designed and maintained to prevent the escape of liquids or other materials when a container is appropriately closed.
- (n) *Mature* means the characteristics of a soil conditioning material that render it harmless to plant growth when used as a topsoil or soil supplement and make it sufficiently stable that it will not generate nuisance odors during storage, handling, or ultimate use, as determined by the division.
- (o) *Natural organic reduction* means the contained, accelerated conversion of human remains to soil as a stable, humus like material. Natural organic reduction shall not include alkaline hydrolysis, promession, or other, similar processes that do not result in the conversion of human remains to soil. Natural organic reduction shall include the pulverization of bones and processing of other residue.
- (p) *Natural organic reduction facility* means a structure, room, or other space in a building or real property where natural organic reduction of a human body occurs and shall also mean the business or entity operating the facility, or both, as the context requires.
- (q) *Natural organic reduction identification number* means the identification number associated with the remains and used to track the remains throughout the natural organic reduction process.
- (r) *Natural organic reduction container* means an outer container or covering of the remains which is opaque and made of material which can be naturally organically reduced, or can be removed as the remains are covered with materials permitted by section 204.6 of this Part without exposing the remains.
- (s) *Naturally organically reduced remains* means the soil recovered after the completion of natural organic reduction process.
- (t) *Organic* means derived from living matter and is readily biodegradable.
- (u) *Pathogenic organisms* means disease-causing organisms including, but not limited to bacteria, viruses, protozoa and viable helminth ova.
- (v) *Person in control of disposition* means the person or persons who have the right to control the disposition of the remains of a decedent pursuant to section 4201 of the Public Health Law.

- (w) *Temporary storage facility* means a separately enclosed room, or a separately enclosed area within a room, that is designated for and used exclusively for the retention of human remains prior to natural organic reduction, the interior of which is not visible from any area accessible to the general public.
- (x) *Vector* means a carrier organism that is capable of transmitting a pathogen to another organism and includes, but is not limited to, flies and other insects, rodents, birds and vermin.
- (y) *Vector attraction* means the characteristic of materials that attracts rodents, flies, mosquitoes, vermin, or other organisms capable of transporting infectious agents.
- (z) *Vessel* means the chamber, container, or pod into which the remains are placed for natural organic reduction.

Section 204.2. Approval to operate a natural organic reduction facility

- (a) *Application*. Only cemetery corporations are eligible to apply for approval to operate a natural organic reduction facility. A cemetery corporation seeking such approval must apply to the cemetery board and submit the following:
 - (1) a list of the directors, officers, employees, and certificate holders of the cemetery corporation;
 - (2) a certified survey of the site of the proposed natural organic reduction facility;
 - (3) the location within the county in which it will be situated, including street address and city or town or village, and the location of any potable water wells, surface waters, wetlands, residences and businesses other than the cemetery itself within 200 feet of the natural organic reduction facility;
 - (4) a business plan for the operation of the natural organic reduction facility to include:
 - (i) the number of expected natural organic reductions per year;
 - (ii) the number of natural organic reductions per year the facility is designed to complete;
 - (iii) the number of vessels;
 - (iv) the manufacturer of the vessels;
 - (v) capital costs;
 - (vi) financing;
 - (vii) anticipated insurance and costs;
 - (viii) anticipated natural organic reduction operator certificate course provider to be utilized and timeline for certification;
 - (ix) anticipated timeline to construct or retrofit facilities and begin operations;
 - (x) anticipated number of employees;
 - (xi) types of services provided;
 - (xii) anticipated pricing of services;
 - (xiii) for existing cemeteries, a report of past income, expenses, and fund balances; and
 - (xiv) such further information requested by the division or cemetery board.
 - (5) a description of the impact of the proposed natural organic reduction facility on other natural organic reduction facilities, if any, within the county or impact on the surrounding community;

- (6) plans, designs, and costs of any structures to be erected or retrofitted for the natural organic reduction facility use;
 - (7) a description of any approvals or permits required by state or local law. No natural organic reduction facility shall be approved until such other approvals or permits have been obtained by the facility; and
 - (8) a draft plan of operations as set forth in section 204.3 of this Part.
- (b) *Further information.* Within 35 days following receipt of the information required by subdivision (a) of this section, the cemetery board or the division may request from the cemetery corporation any additional information or documentation and technical assistance deemed necessary to review such information. Such information shall not be deemed complete until the requested additional information has been received. If no such request is made, the submission shall be deemed complete on the thirty-fifth day after its receipt by the division.
- (c) *Determination.* The cemetery board shall approve or deny the proposed natural organic reduction facility within the timeframe set forth in section 1505-b of the N-PCL.
- (d) *Notification.* The cemetery board shall provide written notice of its determination to the cemetery corporation. If a negative determination is made, such notice shall state the reasons therefor. Notice shall be made by registered or certified mail addressed to the cemetery corporation at its principal office unless the cemetery corporation has opted to receive electronic notification.

Section 204.3. Facility operations

- (a) *Plan of operations.* Every natural organic reduction facility shall maintain a written plan describing the process it uses for natural organic reduction and shall follow that plan. The plan shall specify and describe:
- (1) the procedures to ensure the accurate identification of remains, including assigning a unique natural organic reduction identification number to the remains, accurately and legibly labelling the outside of each container or vessel, and placing a non-compostable identification tag, or similar identification materials, with the remains in each container or vessel, bearing the decedent's name and natural organic reduction identification number, throughout the natural organic reduction process;
 - (2) a process flow diagram of the entire process, including all major equipment and flow streams;
 - (3) the processing duration, including the time period from acceptance of remains to completion of the natural organic reduction process and delivery of the naturally organically reduced remains;
 - (4) vessel specifications and dimensions, including width, length, height, and materials;
 - (5) the bulking agents added to the vessel to be used in the process of natural organic reduction;
 - (6) the storage facilities used for bulking agents;
 - (7) the procedure for reducing (including composting, turning, and adding additional air, water, or other materials) and processing remains;
 - (8) the procedures for pathogen reduction and vector attraction reduction;
 - (9) the procedures for accurately measuring and recording the temperature and any other necessary data of the remains;
 - (10) procedures to be followed if the resulting reduced remains do not satisfy the pathogen or pollutant testing requirements in section 204.8 of this Part;

- (11) the methods that will be used to prevent run-on from entering and run-off from leaving the site and prevent the movement of organic matter into the soil under the site;
 - (12) the method that will be used to determine product maturity, including proposed standards for maturity and the monitoring methods or other means that will be used to measure maturity;
 - (13) the removal, storage, receiving facility, and method of disposition for recyclables (if applicable), residue, or other inorganic material removed from remains;
 - (14) a description of the air emission collection and control equipment, if used;
 - (15) a description of the method used to prevent surface water run-off and to prevent the escape of leachate;
 - (16) a spill plan that describes how an accidental release of remains or leachate will be minimized and addressed;
 - (17) an odor control and response plan that describes how odors will be controlled and monitored, and how any odor problems will be addressed;
 - (18) the method for removing naturally organically reduced remains from the natural organic reduction facility, including a description of how the reduced remains will be managed; and
 - (19) a sampling and analysis plan that describes how representative samples will be taken, how samples will be managed prior to acceptance at the laboratory, and the laboratories that will be used for analysis.
- (b) *No delays in processing.* Every natural organic reduction facility shall use its best efforts to begin the process of natural organic reduction of remains within 24 hours of accepting delivery of such remains. Absent good cause, such as the need to confirm the identity of the deceased human being, natural organic reduction of remains will commence within 48 hours after delivery is accepted. The natural organic reduction facility must document within the natural organic reduction log an explanation for the delay if natural organic reduction commences 48 hours after delivery of the remains is accepted.
- (c) *Odors.* Notwithstanding the foregoing, if any remains exhibit an objectionable odor either at delivery or at any time thereafter, natural organic reduction of such remains shall commence as soon as possible after they have been accepted by the natural organic reduction facility or as soon as possible after the objectionable odor is first detected.
- (d) *Remains to be rejected.* Natural organic reduction facilities shall not accept for natural organic reduction remains:
- (1) that have been embalmed;
 - (2) that contain a battery, battery pack, power cell, or radioactive implant;
 - (3) of a person whose cause of death, including the immediate cause or as a consequence of, as recorded on the decedent's death certificate, was active tuberculosis, Ebola, or a prion disease such as Creutzfeldt-Jakob Disease;
 - (4) of a person who is known or suspected to have been, at the time of their death, infected with any contagious disease which the New York State Department of Health has determined renders the remains unsuitable for natural organic reduction; or
 - (5) of a person who perished in or as a result of a radiologic incident or accident, unless a written release is provided by the New York State or local Department of Health or other state or federal agency in charge of the response to the radiological incident or accident.
- (e) *Removal of container.* Remains must be placed within the vessel in a natural organic reduction container. Once the remains are in the vessel, the natural organic reduction facility operator may remove the container so long as the remains are covered with bulking agents or other organic material for natural organic reduction as the container is removed, to prevent exposing the remains.

- (f) *Weight.* No natural organic reduction facility may impose a charge for the natural organic reduction of the remains of a deceased human being based solely on the combined weight of the remains and any outer wrapper, container, bulking agents, vessel, or permitted incidental material. A natural organic reduction facility may refuse to accept remains that are too large, either by weight, volume, or height, for its vessels.

Section 204.4. Facility use, maintenance, design

- (a) *Use of natural organic reduction facility.* A natural organic reduction facility shall be used exclusively for the natural organic reduction of human remains.
- (b) *Cleanliness.* A natural organic reduction facility shall be maintained in a clean, orderly and sanitary manner, with adequate ventilation.
- (c) *Privacy.* The area in which natural organic reductions occur and the temporary storage facility shall be separately enclosed areas and when fully closed, the interior of one area shall not be visible from within the other area.
- (d) *Temporary Storage Facility.* Every natural organic reduction facility shall have a temporary storage facility. Such temporary storage facility shall be adequately ventilated; shall comply with all applicable public health laws regarding the proper handling and storage of human remains and body fluids; shall be operated and maintained in a manner which protects the health and safety of natural organic reduction facility personnel; and shall be secure from access by anyone other than authorized persons.

Section 204.5. Facility privacy and access

- (a) *Privacy.* Entrances and exterior windows of the natural organic reduction facility shall be maintained at all times to secure privacy, including:
 - (1) doors shall be tight closing and rigid;
 - (2) windows shall be covered;
 - (3) entrances other than to the office or ceremony room shall be marked “private” or “authorized entry only” to preclude entry by unauthorized persons; and
 - (4) entrances shall be locked and secured when not actively attended by one or more authorized persons.
- (b) *Access.* No persons except authorized persons shall be admitted into the temporary storage facility while human remains are being stored and no persons except authorized persons shall be admitted into the area containing vessels for natural organic reduction while the remains of deceased human beings are being naturally organically reduced. Authorized persons shall enter and remain in the temporary storage facility or vessel area only as necessary to perform or assist with the performance of natural organic reduction facility business and operations. On admittance, authorized persons shall comply with all rules of the natural organic reduction facility and not infringe upon the privacy and dignity of the remains of deceased human beings.
- (c) *Dignity of ceremony room.* A natural organic reduction facility may also have a ceremony room available for viewings and ceremonies. The ceremony room shall be separated from the temporary storage facility. The temporary storage facility interior shall not be visible from the ceremony room. No persons except authorized persons shall be admitted into the ceremony room during the commencement of natural organic reductions of the remains.
- (d) *Authorized persons.* The following are authorized persons:
 - (1) registered funeral directors, undertakers, registered residents, and enrolled students of mortuary science;
 - (2) officers and directors of the natural organic reduction facility;

- (3) authorized employees or agents of the natural organic reduction facility;
- (4) public officers acting in the discharge of their duties;
- (5) authorized instructors of funeral directing schools;
- (6) the person or persons in control of disposition;
- (7) members of the immediate family of the deceased and their authorized agents and designated representatives; and
- (8) other individuals authorized by the person or persons in control of disposition.

Section 204.6. Facility process requirements

- (a) *Permitted additions to vessel.* Natural organic reduction facilities may add the following, and only the following, to the remains within the vessel:
 - (1) Water, oxygen or air, and bulking agents (such as tree and shrub parts that have been chipped or shredded, similar woody vegetation that has been chipped or shredded, alfalfa, or straw).
 - (2) A non-compostable tag, or similar identification materials, bearing the name of the decedent and natural organic reduction identification number.
 - (3) With the signed authorization of the person in control of disposition and with the permission of the natural organic reduction facility, other items may be added to the vessel provided that the items do not violate this Part, inhibit the natural organic reduction process, or create a risk to health or safety.
- (b) *Prohibited additions to vessel.* The following items and materials shall not be used as bulking agents and shall not be placed inside the vessel:
 - (1) Wood or other organic material that has been painted, glued, or chemically or pressure treated (without regard to whether such wood or other organic material shall or shall not have been chipped or shredded).
 - (2) Dimensional lumber (without regard to whether such lumber shall or shall not have been chipped or shredded).
 - (4) Construction and demolition debris (without regard to whether such debris shall or shall not have been chipped or shredded).
 - (5) Acids, alkaline agents, or other solvents.
 - (6) Insects, worms, or other animals.
 - (7) Materials that will not compost (other than a non-compostable tag or similar identification materials as described in paragraph 2 of subdivision (a) of this section or a non-compostable item authorized and permitted pursuant to paragraph 3 of subdivision (a) of this section).
 - (8) Materials which, if present inside the vessel during all or part of the natural organic reduction process, would create a risk to health or safety.
 - (9) Any other material which the division may designate as inappropriate for use as a bulking agent because the materials create a risk to health and safety, inhibit natural organic reduction, will not compost, or violate this Part.
- (c) *Vessel requirements.* The vessel shall:
 - (1) be leak-proof and capable of withstanding heating to the required temperature for the required period;

- (2) enable accurate testing of temperature designed to measure from the coldest part of the interior of the vessel and the accurate collection of any other data required by the natural organic process used by the natural organic reduction facility;
- (3) prevent vectors from entering the vessel; and
- (4) control odor and emit air only in accordance with Part 201 of Title 6 NYCRR.

Section 204.7. Facility operating and siting requirements

- (a) *Public health.* Every natural organic reduction facility must at all times follow accepted policies and procedures with respect to infection control, including standard precautions developed by the Centers for Disease Control and Prevention and New York State Department of Health.
- (b) *Processing time.* The maximum processing time, from acceptance of the remains to distribution of the naturally organically reduced remains, is nine months. The division may approve a longer processing time for good cause, such as additional time necessary to satisfy the requirements of section 204.8 of this Part.
- (c) *Method of reduction.* The natural organic reduction facility must maintain the remains under aerobic conditions during the composting process to convert them to naturally organically reduced remains. Methods of natural organic reduction that result in a mature humus product must be followed.
- (d) *Run-off prevention.* The natural organic reduction facility must be constructed to prevent any ponding or discharge, prevent waste and leachate from natural organic reductions from being discharged into sewers, surface waters or groundwater; and must be operated in a manner that minimizes the generation of leachate and that does not drain, dump or discharge leachate from natural organic reductions.
- (e) *Siting requirements.* The natural organic reduction facility must be at least 200 feet from the nearest: surface water body such as lakes, rivers, and streams, potable water well, state-regulated wetland, residence, or place of business other than the cemetery itself. These minimum distance requirements may be reduced if means acceptable to the division are used to reduce the potential for odor transmission and accidental leachate run-off.
- (f) *Odor prevention.* The natural organic reduction facility must not produce odors that unreasonably impact sensitive receptors, such as residences, schools, or nursing homes, as determined by the division. The division can require additional action to address odor issues.

Section 204.8. Pathogen and vector attraction reduction; testing

- (a) *Pathogen reduction.* Natural organic reduction facilities must use one of the methods (and, where applicable, achieve the results) specified in this subdivision to reduce pathogen content before the naturally organically reduced remains leave the facility:
 - (1) maintain the temperature of the remains at 55° C or higher for at least 72 consecutive hours; or
 - (2) other methods or operating conditions as may be approved by the division if the division determines that pathogens are reduced to an extent equivalent to the reduction achieved by a method/result specified in this subdivision.
- (b) *Vector attraction reduction.* One of the vector attraction reduction methods or results specified in this subdivision must be used or achieved before the naturally organically reduced remains leave the natural organic reduction facility. Such a vector attraction

reduction result must be achieved either after meeting the pathogen reduction requirements or at the same time as meeting the pathogen reduction requirements:

- (1) treat the remains by an aerobic process for a minimum of 14 days. Throughout such treatment time, the temperature of the remains must remain higher than 40° C and the average temperature of the remains must be higher than 45° C; or
 - (2) other methods or operating conditions as may be approved by the division if the division determines that vector attraction is reduced to an extent equivalent to the reduction achieved by a method/result specified in this subdivision.
- (c) *Pathogen Testing.* Prior to removal of the naturally organically reduced remains from the natural organic reduction facility, either the density of fecal coliform in the naturally organically reduced remains shall be less than 1,000 most probable number per gram of total solids (dry weight basis) or the density of salmonella sp. bacteria in the product must be less than 3 most probable number per 4 grams of total solids (dry weight basis). This analysis must be performed by a certified laboratory.
- (d) *Failure of Pathogen Testing.* If, after completion of the pathogen or vector attraction reduction methods described in subdivisions (a) and (b) of this section, a laboratory determines the naturally organically reduced remains do not meet the specified standards for pathogens in subdivision (c) of this section, then the natural organic reduction facility shall repeat a pathogen and vector reduction method described in this section, and have the naturally organically reduced remains retested for pathogens in accordance with subdivision (c) of this section.
- (e) *Pollutant Testing.* Prior to removal of the naturally organically reduced remains from the natural organic reduction facility, the naturally organically reduced remains shall be tested for pollutants. This analysis must be performed by a certified laboratory. Naturally organically reduced remains shall not contain pollutants that exceed the following thresholds, per maximum concentration mg/kg, dry weight:
- (1) Arsenic (As) 41
 - (2) Cadmium (Cd) 10
 - (3) Chromium (Cr-total) 1,000
 - (4) Copper (Cu) 1,500
 - (5) Lead (Pb) 300
 - (6) Mercury (Hg) 10
 - (7) Molybdenum (Mo) 40
 - (8) Nickel (Ni) 200
 - (9) Selenium (Se) 100
 - (10) Zinc (Zn) 2,500
- (f) *Failure of Pollutant Testing.* If a certified laboratory determines the naturally organically reduced remains exceed any of the pollutant thresholds set forth in subdivision (e) of this

section, then the natural organic reduction facility shall repeat the natural organic reduction process with additional bulking agents sufficient to reduce the concentration of pollutants to acceptable levels. Upon completion of the natural organic reduction process, the natural organic reduction facility shall have a certified laboratory retest the naturally organically reduced remains for pollutants in accordance with subdivision (e) of this section.

(g) *Repeated Failures of Pathogen or Pollutant Testing.*

- (1) If the naturally organically reduced remains have failed the pathogen testing requirements of subdivision (c) of this section, the natural organic reduction facility followed the procedures of subdivision (d) of this section and, upon retesting by a certified laboratory the naturally organically reduced remains again failed the pathogen testing requirements, the natural organic reduction facility shall:
 - (i) promptly notify the division and provide the division with the certified laboratory test results, its analysis of why the naturally organically reduced remains failed the pathogen testing requirements, and, if necessary, proposed adjustments to its operating procedures to mitigate future failures;
 - (ii) promptly notify the person in control of disposition; and
 - (iii) follow the procedure provided in its plan of operations under section 204.3(a) of this Part.
 - (2) If the naturally organically reduced remains have failed the pollutant testing requirements of subdivision (e) of this section and the natural organic reduction facility followed the procedures of subdivision (f) of this section and, upon retesting by a certified laboratory the naturally organically reduced remains again failed the pollutant testing requirements, the natural organic reduction facility shall:
 - (i) promptly notify the division and provide the division with the laboratory test results, its analysis of why the naturally organically reduced remains failed the pollutant testing requirements, and, if necessary, proposed adjustments to its operating procedures to mitigate future failures;
 - (ii) promptly notify the person in control of disposition; and
 - (iii) follow the procedure provided in its plan of operations under section 204.3(a) of this Part.
 - (3) The natural organic reduction facility shall not impose additional charges for having to repeat methods or testing described in this section or having to perform additional methods or testing in order to comply with this section.
- (h) Original copies of all laboratory testing results obtained pursuant to this section and documentation of all pathogen reduction and vector attraction results achieved pursuant to this section must be retained by the natural organic reduction facility and promptly provided to the person in control of disposition.

Section 204.9. Natural organic reduction log, authorization form, facility records

- (a) *Natural organic reduction log.* Every natural organic reduction facility shall maintain a natural organic reduction log which shall set forth for each delivery of human remains received by the natural organic reduction facility:
- (1) the name of the deceased;
 - (2) the place of death and the estimated combined weight of the remains and the

- container;
- (3) the date and time the remains arrived at the natural organic reduction facility;
 - (4) the natural organic reduction identification number;
 - (5) the name of the funeral director, undertaker or registered resident delivering the human remains and the name and address of the funeral entity which the funeral director, undertaker or registered resident represents;
 - (6) the date and time the remains were:
 - (i) placed in the vessel for natural organic reduction;
 - (ii) checked for temperature in accordance with section 204.6(c)(2) of this Part, including the temperature reading, and any other data necessary for the natural organic reduction process used by the natural organic reduction facility;
 - (iii) tested for pathogens and pollutants;
 - (iv) removed from the vessel;
 - (v) processed to pulverize any remaining skeletal remains; and
 - (vi) removed from the facility for scattering, burial, entombment or inurnment in a cemetery corporation as required under section 1518(i) of the N-PCL.
 - (7) if the natural organic reduction process commenced more than 48 hours from the time the natural organic reduction facility accepted delivery of the remains, a detailed explanation for the delay;
 - (8) the vessel number in which the remains were naturally organically reduced;
 - (9) the type of container in which the remains were received and in which the remains were placed into the vessel for natural organic reduction. If the remains were received in a non-reduced container, the time of disclosure made by the person in charge of disposition, the name of the person authorizing the opening of the non-reduced container, the name of licensed funeral director or registered resident who transferred the remains to a natural organic reduction container, and name of the witness;
 - (10) the name and contact information of the individual who received the naturally organically reduced remains from the facility; and
 - (11) the name and address of the cemetery corporation where the naturally organically reduced remains shall be scattered, buried, entombed or inurned.
- (b) The natural organic reduction log shall be retained in the permanent file of the natural organic reduction facility.
- (c) *Natural organic reduction permit and natural organic reduction authorization form.* No natural organic reduction facility shall naturally organically reduce the remains of any deceased human being without first receiving the natural organic reduction permit, as required pursuant to section 4145 of the Public Health Law, and the natural organic reduction authorization form, as required by section 1518(c)(1) of the N-PCL. The natural organic reduction authorization form shall satisfy the requirements of subdivision (d) of this section. In addition, all natural organic reduction facilities situated outside the City of New York must comply with section 4145(2)(b) of the Public Health Law pertaining to the receipt for the deceased human being.
- (d) Each natural organic reduction facility shall develop a natural organic reduction authorization form which, when properly filled in and signed, will be accepted by such natural organic reduction facility. Such form shall be in a form established by the director of the division; ; shall be not more than three pages, single sided, in length, each such page to be not larger than 8 ½ inches by 11 inches; shall be printed in font not less than 6 points; and shall contain the following information (or, where applicable, shall contain spaces where the following information can be inserted by the person completing the form):

- (1) the name and address of the natural organic reduction facility;
- (2) a clear, concise description of the natural organic reduction process to be used by the natural organic reduction facility (including but not limited to identification of the amendments or bulking agents used in the vessel in natural organic reduction), a statement that natural organic reduction is an irreversible and final process, a statement that the process of natural organic reduction may take between 30 and 60 days, a statement that the resulting product is, on average, between one-half and one cubic yard of compost for a deceased adult, a statement that skeletal remains must be pulverized until no single fragment is recognizable as skeletal tissue as part of the natural organic reduction process, and a statement that natural organic reduction is not green burial of intact human remains;
- (3) the name of the deceased as it appears on the natural organic reduction permit, the date and place of death;
- (4) the last address, age, sex and approximate weight of the deceased, any proposed additions to the vessel, and type of container in which the remains of the deceased were delivered;
- (5) the name of the funeral director and funeral entity that provided the natural organic reduction authorization to the natural organic reduction facility, and the funeral director's registration number;
- (6) the name of the person in control of disposition of the remains of the deceased who signed the natural organic reduction authorization form, and the relationship between said person and the deceased;
- (7) a statement attesting that the person in control of disposition who signed the natural organic reduction authorization form has the right to authorize the natural organic reduction of the remains of the deceased pursuant to section 4201 of the Public Health Law;
- (8) authorization for the natural organic reduction facility to naturally organically reduce the remains of the deceased;
- (9) a statement that the cause of death, including the immediate cause or as a consequence of, as recorded on the decedent's death certificate, was not active tuberculosis, Ebola, or a prion disease such as Creutzfeldt-Jakob Disease, the decedent did not perish in a radiological incident, the body of the deceased does not contain a battery, battery pack, power cell, radioactive implant, or radioactive device, and that any such materials were removed prior to the execution of the natural organic reduction authorization form;
- (10) the name of the person authorized to retrieve the naturally organically reduced remains and deliver them to the cemetery corporation for scattering, burial, entombment or inurnment;
- (11) the name of the cemetery corporation authorized to receive the naturally organically reduced remains from the natural organic reduction facility for scattering, burial, entombment or inurnment;
- (12) the signature of the person in control of disposition attesting to the accuracy and completeness of the information and representations contained in the natural organic reduction authorization form and attesting to the authorization of and grant of permission for the natural organic reduction of the deceased; and
- (13) the signature of the licensed, registered funeral director who obtained the natural organic reduction authorization as a witness to the execution of the natural organic reduction authorization form.

(e) The completed natural organic reduction authorization form shall be retained in the

permanent file of the natural organic reduction facility. Upon receipt of the natural organic reduction authorization form the natural organic reduction facility shall promptly send or transmit copies to the cemetery corporation authorized to receive the naturally organically reduced remains from the natural organic reduction facility, if it is a different cemetery corporation than the natural organic reduction facility, and to the division at its principal office.

- (f) Upon receipt of the naturally organically reduced remains for scattering, burial, entombment or inurnment, the cemetery corporation, if it is a different cemetery corporation than the natural organic reduction facility, shall provide a receipt to the natural organic reduction facility. The receipt shall include the name of the deceased, the date the naturally organically reduced remains were received, and the anticipated date of scattering, burial, entombment or inurnment. The receipt shall be retained in the permanent file of the natural organic reduction facility.
- (g) All natural organic reduction facility records, including but not limited to records required by any federal, state or local government law or agency, as well as price lists, authorizations, pathogen reduction testing records, vector attraction reduction testing records, certified laboratory testing results, rules and regulations and other documents related to the practice of natural organic reduction, shall be open and available for inspection and copying during regular business hours by the division or its authorized representatives, in the discharge of their official duties.

Section 204.10. Certification requirements

- (a) All natural organic reduction facility employees, officers and directors whose function is to operate natural organic reduction equipment or handle naturally organically reduced remains within the natural organic reduction facility must be certified within one year of employment or any reclassification as a natural organic reduction facility operator. Any natural organic reduction facility employee, officer or director whose function is to operate natural organic reduction equipment or handle naturally organically reduced remains within the natural organic reduction facility and who is retained prior to June 28, 2023, must be certified by June 28, 2024. A natural organic reduction facility shall ensure that all employees, officers and directors operating natural organic reduction facility equipment or handling naturally organically reduced remains within the natural organic reduction facility have attended natural organic reduction classes and obtained the certificate required by this Part. Proof of certification under section 204.21 of this Part must be posted in the natural organic reduction facility and available for inspection at any time.
- (b) No certificate or renewal certificate to operate a natural organic reduction facility shall be issued to any employee, officer or director unless such employee, officer or director completes a certification class approved by the division of at least eight hours, except if otherwise approved by the division, and passes a written examination.
- (c) No offering of a course of study in the field of natural organic reduction operation for purposes of compliance with this Part shall be acceptable for credit unless such course of study has been approved by the division.
- (d) After the timeframes specified in subdivision (a) of this section, no employee, officer or director shall be allowed to conduct the daily operations of the natural organic reduction process or handle naturally organically reduced remains within the natural organic reduction facility until they have completed the certification course, passed the written

examination, and possess a certificate of completion. Renewal of such certification shall be completed every five years from the date of certification.

Section 204.11. Organizations prohibited from offering facility operator certification courses

No course provider seeking the approval of a natural organic reduction certification course shall be affiliated or associated with, owned, operated or controlled by a funeral entity.

Section 204.12. Request for approval of facility operator course of study

(a) Applications for approval of a natural organic reduction certification course of study satisfying the requirements of this Part shall be made at least 90 days before the proposed course is to be conducted. The application shall be prescribed by the division to include, but not limited to, the following:

- (1) the name and business address of the course provider that will present the course;
- (2) if the course provider is a partnership, the names and home addresses of all the partners of the entity;
- (3) if the course provider is a corporation, the names and home addresses of persons who own five percent or more of the stock of the entity;
- (4) the name, business address, telephone number, resume and qualifications of each educational provider who will be teaching and grading the course for the course provider;
- (5) regional, geographic or virtual locations where classes will be conducted;
- (6) description of materials that will be distributed;
- (7) final examination to be presented for the certification course, including the answer key;
- (8) procedure for taking attendance, including entering codes to validate attendance and active listening for virtual courses; and
- (9) an outline of the course content and the number of hours devoted to each subject.

(b) *Educational provider qualification.* Each educational provider must:

- (1) be 18 years of age or over and of good moral character;
- (2) hold a high school diploma or equivalent;
- (3) possess instructional experience, academic achievement, and specialty or technical experience in the fields of natural organic reduction, cremation, mortuary science, cemetery operations, composting, public health, or environmental science; and
- (4) be capable of administering and grading written examinations following the natural

organic reduction certification course.

Section 204.13. Subjects of study for facility operator certification course

The certification course under this Part shall be divided into two subject matter areas. One subject matter area will address applicable New York State statutes and regulations. Such statutes shall include all applicable sections of article 15 of the N-PCL relating to natural organic reduction with an emphasis on N-PCL, section 1518 and the New York State Public Health Law, sections 3441, 4144, 4145, 4200, 4201, 4202, 4210(a), 4216, and 4218. Such regulations shall include this Part and Part 201 of Title 6 NYCRR, the New York State Department of Environmental Conservation Air Quality Regulations. The course provider shall devote between 20 and 40 percent of the total time allotted for the course to the New York State statutes and regulations. The other subject matter area of the course shall address the general and technical aspects of natural organic reduction facility operations. The subject matter area shall include but not be limited to the natural organic reduction facility process, natural organic reduction equipment, operation of the vessel, taking accurate measurements, testing requirements, natural organic reduction terminology, natural organic reduction operator safety, and the identification and tracking of human remains. The course provider shall devote between 60 and 80 percent of the total time allotted for the course to the general and technical aspects of natural organic reduction facility operations.

Section 204.14. Certification course computation of instruction time

The certification course under this Part for natural organic reduction facility employees, officers and directors shall have a minimum of eight hours of instruction, unless otherwise approved by the division, to be provided by the course provider.

Section 204.15. Certification course attendance and examinations

- (a) An applicant to receive certification as a natural organic reduction facility operator shall not receive certification if they are absent from the classroom, whether physical or online, for a period totaling more than 10 percent of the time during any instructional period. No applicant shall be absent from the classroom except for a reasonable and unavoidable cause.
- (b) Any applicant who fails to attend the required scheduled class hours may, at the discretion of the course provider, make up the missed subject matter during subsequent courses presented by the course provider.
- (c) Final examinations may only be taken by an applicant who has satisfied the attendance requirements of this section.
- (d) Each applicant must attain a minimum score of 70 percent on the final examination, which may be in-person, take home, or online, as approved by the division, in order to obtain certification as a natural organic reduction facility operator. A failing grade on the final exam shall constitute failure of the course. All final exams are to be reviewed and graded by the course provider, and a copy of all tests with scores shall be provided to the division.
- (e) Individuals who complete a course of study that has not been approved by the division may file a request to the division for review and evaluation. Evidence of satisfactory course completion must be submitted by the applicant.

Section 204.16. Certification course facilities

Each course shall be presented in such premises or such facilities, whether physical or virtual, as shall be necessary to properly present the course. Such premises or facilities shall be pre-approved by the division.

Section 204.17. Certification course examination requirement and record retention

- (a) All course providers shall retain the attendance records, the final examinations and a list of natural organic reduction facility employees, officers or directors who successfully complete each certification course for a period of five years after completion of each course. All such documents shall be available during normal business hours for inspection by authorized representatives of the division.
- (b) All examinations required for certification shall be returned to the course provider within two weeks after distribution if take home or online; they shall be returned immediately after completion if in person.

Section 204.18. Change in approved course of study

There shall be no change or alteration in any approved course of study, of any subject, in any instruction staff or course provider without prior written notice and approval by the division.

Section 204.19. Certification course auditing

A duly authorized representative of the division may audit any course offered and may verify attendance and inspect the records of attendance of the course at any time during its presentation or thereafter.

Section 204.20. Certification course approvals, denials, suspensions and revocations

Within 30 days after the receipt of an application for approval of a course offering, the division shall inform the course provider as to whether the certification course has been approved or whether additional information is needed to determine the acceptability of the certification course. The division may deny, suspend, or revoke the approval of a certification course of a course provider if the division determines that the course provider is not in compliance with the applicable law and rules, or if the certification course does not adequately reflect, present, or test current relevant knowledge regarding natural organic reduction practices. Anyone who objects to such denial, suspension or revocation shall have the opportunity to appeal to the Secretary of State or appointed designee within 30 days.

Section 204.21. Certificate of course completion

Evidence of successful completion of the course must be furnished to each natural organic reduction facility employee, officer or director in certificate form. The certificate must indicate the following: name of the cemetery corporation; operator certification course; a statement that the employee, who shall be named, has satisfactorily completed a course of study and final examination in the natural organic reduction subjects approved by the division; that the individual's attendance record was satisfactory and in conformity with the law; and that such course was completed on a stated date. The certificate must be signed by the course provider, dated, and have affixed thereto the official seal of the course provider. Copies of such certification

shall be filed with the division at its principal office.

Section 204.22. Certification course Fees

Each course provider shall establish the registration fee for the certification course offered.