DIVISION OF CEMETERIES
STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001
TELEPHONE: (518) 474-6226
FAX: (518) 473-0876
WWW.DOS.NY.GOV

KATHY HOCHUL
GOVERNOR

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TO: NEW YORK STATE CEMETERY BOARD

FROM: LEWIS A. POLISHOOK, Director

CC: DAVID GONZALEZ, Deputy General Counsel
MICHAEL SEELMAN, Investigator 2
CHARLES CRANE, Senior Accountant
SARAH LEVIN, Senior Accountant

SUBJECT: BUFFALO CITY CEMETERY, NO. 15-027

RE: RESOLUTION OF NON-COMPLIANCE

DATE: MARCH 17, 2025

This memorandum summarizes instances of non-compliance the Division of Cemeteries (the Division) has identified concerning the above-referenced cemetery (the Cemetery) and the Cemetery's efforts to address these issues. The Division deems the Cemetery to have adequately addressed the issues identified in its May 1, 2019, notice of non-compliance and March 22, 2024, audit report, and recommends no proposed penalties as a result of these issues. The Division will continue to monitor the Cemetery's compliance with its procurement and conflict of interest policies and the related party provisions of the Not-for-Profit Corporation Law (N-PCL).

The St. Matthews Disinterments

On April 21, 2019, the Cemetery became concerned that a portion of a cliff in its Saint Matthews Cemetery location in West Seneca, NY, had sheared off into Cayuga Creek. Out of an expressed concern that an area adjacent to that cliff containing burials would also shear off, the Cemetery, without consent of the individuals required to consent under N-PCL section 1510(e) or Supreme Court order, disinterred and reinterred the remains of 215 individuals. As a result, on May 1, 2019, the Division issued a notice of non-compliance with section 1510. Essentially, after discussions, the Division directed the Cemetery to seek Supreme Court approval or consent of all required persons nunc pro tunc as to the disinterments and requisite consents as to the location of reinterments. The Cemetery petitioned Supreme Court, and litigation, including a putative class action by families of those whose remains the Cemetery disinterred and reinterred, ensued.

After many delays, most of which were the result of the Covid 19 pandemic, Supreme Court, Erie County, issued its final ruling on the merits in the matter on November 30, 2022. Supreme Court retroactively approved the disinterment of the 215 individuals and ruled that it could not consider claims of damages by families in the context of this proceeding. Although the subsequent procedural history is complicated, this ruling essentially ended the litigation. During the litigation, many families consented retroactively to the reinterment of their relatives' remains in the location the Cemetery chose.

The Audit Findings

In an audit that concluded with an audit report dated March 22, 2024, the Division identified several areas of non-compliance with various statutory provisions. In brief, the Cemetery had:

1. deviated from its price lists published and filed with the Division by offering ad hoc discounts on some lot sales, both violating the requirement of charging filed prices and underfunding the Cemetery's Permanent Maintenance (PM) fund;
2. used income from its Perpetual Care (PC) funds for overall cemetery maintenance;
3. set charges for PC initial endowments and annual expense charges without submitting current charges for Division review and approval; and
4. not consistently followed applicable rules for related party transactions and its Request for Quotes (RFQ) process and outside vendor monitoring, leaving potential vulnerabilities.

In response, BCC agreed to deposit additional funds into its PM fund to close the deficit, discontinue ad hoc discounts, cease using PC funds for overall maintenance (even where the PC agreement stated that the Cemetery could do this if there is excess income), submitted PC charges for Division review and approval, and tightened its procurement policies and oversight of related party transactions.

Throughout this process, the Cemetery has fully cooperated with Division requests and worked collaboratively to devise solutions to more complex problems, such as addressing the proper accounting for the cost of providing perpetual care via direct and indirect inputs.

In light of the fact that the Cemetery appears to have followed all Division instructions and addressed all outstanding issues, the Division believes that it is not appropriate to propose any penalties for non-compliance pursuant to N-PCL section 1504 as a result of the above-referenced conduct. The Division will continue to monitor the Cemetery's procurement and related party transactions in an effort to ensure compliance with N-PCL section 715 and other provisions concerning potential conflicts.