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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
KERRY McGOVERN, Investigator 1

SUBJECT: FERNCLIFF CEMETERY ASS'N, NO. 60-006

RE: COMMINGLING OF CREMATED REMAINS AND INSPECTION

DATE: MARCH 14, 2025

As we have previously presented to the Board, the above-referenced cemetery (the Cemetery) inadvertently commingled two sets of cremated remains in late August 2024, as a result of an operator moving paperwork from a cremation to a location that is not readily visible to other operators, in violation of the Cemetery's then-current operating plan for the crematory.

We inspected the crematory on September 4, 2024, and identified two additional violations: a bone fragment that ended up together with metal to be recycled and excessive levels of bone dust on the Cemetery's processor. As a result, we issued a notice of non-compliance on October 8, 2024, listing violations of statutes and regulations. The Cemetery provided a response dated November 5, 2024, and has also submitted a revised operating plan for the crematory.

The Division has reviewed the response and revised operating plan and made several suggestions as to the latter. The Division believes that the revised operating plan and other corrective action adequately address the instances of non-compliance and make their recurrence unlikely.

However, the commingling of cremated remains and loss of a bone fragment are significant violations. The purpose of the section of the statute addressing crematory operations and our implementing regulations is to ensure, in blunt terms, that the family who brought their loved one for cremation returns home with as much of their loved one, and only their loved one, as is possible. Consequently, even though the Cemetery is consistently well run and has addressed deficiencies in its operating plan, we believe some form of penalty is appropriate.

The statute provides for a penalty of up to $1,000 for each statutory or regulatory violation. We identified 24 possible statutory and regulatory violations in connection with these occurrences (commingling of two sets of remains, the bone fragment, and the dust from processing). However, the various statutory and regulatory violations we have identified really boil down to four things:

1. Remains of one person were commingled with those of a second person;
2. Remains of the second person were commingled with those of the first person;
3. There was a bone fragment in a bin of metal recycling; and
4. There was excessive bone dust on the processor.

We propose to offer to the Cemetery that we resolve any possible sanction under Article 15 of the Not-for-Profit Corporation Law and 19 NYCRR Part 203 via a payment of $4,000 in penalties, imposing only one $1,000 per the four occurrences listed above. We believe that a $4,000 penalty achieves a proper balance of signaling the seriousness of the violations and the Cemetery's efforts to address these violations.

The Cemetery has agreed in principle to this proposed resolution of this matter.