

REGISTRAR'S DIRECTIVE

BAO LICENSING EXPECTATIONS

APPLICATION OF THE FUNERAL, BURIAL AND CREMATION SERVICES ACT, 2002, (FBCSA) TO ESTABLISHMENTS THAT PROVIDE ALTERNATIVE PROCESSES OR METHODS OF DISPOSING OF HUMAN REMAINS

Subsection 1.1 (2) of the Funeral, Burial and Cremation Services Act, 2002 (FBCSA) provides that the provisions of the statute and its regulations apply to operators of establishments that provide alternative processes or methods of disposing of human remains as well as to operators of flame-based crematoriums:

“Subject to the regulations, the provisions of this Act dealing with crematoriums, cremation and crematorium services apply, with necessary modifications, to establishments that provide alternative processes or methods of disposing of human remains and to those processes or methods. 2006, c. 34, Sched. D, s. 2.”

LICENSING REQUIREMENTS

Any person who intends to operate an establishment that provides an alternative process or method of disposing of human remains e.g. using Alkaline Hydrolysis, must be licensed.

Pursuant to section 16 of the FBCSA, all licences to operate such an establishment will be subject to the following conditions (additional conditions may also apply to individual applicants):

1. To ensure the safe and respectful handling of human remains from the time of receiving the remains to commencing the chemical reduction of the human remains, only a Funeral Director – Class 1 or a funeral director intern under the supervision of a Funeral Director – Class 1, may carry out the disposition of human remains using alternative processes or methods, e.g., Alkaline Hydrolysis.
2. An accurate and complete description of the process must be provided by the operator to the person contracting the service. Characterizing the process only as “green cremation”, “flameless cremation” or “dissolving in water” is not sufficient
3. The licensee acknowledges that as knowledge of the process, equipment or technology evolves, the conditions accompanying this licence may be amended from time to time, which

may add additional obligations and documentation requirements

It is an offence under the FBCSA to operate such a facility without a licence. If convicted, an individual is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than two years less a day, or both and a corporation is liable to a fine of not more than \$250,000.

APPLICATION PROCESS

An applicant for a licence to operate an establishment that provides flame-based cremation or an alternative process or method of disposing of human remains must provide the registrar with:

1. Application form: A completed application form (available on line at: www.bereavementauthorityontario.ca or the Bereavement Authority of Ontario (BAO) at the address listed above);
2. Licence fee: Licence fee in the amount of \$500, payable to the Bereavement Authority of Ontario;
3. Copy of business registration documents: If the applicant is a business or corporation, a copy of the business registration document, articles of incorporation or letters patent, outlining all Officers/Directors of the business/corporation;
4. Municipal Approval: Evidence of municipal approval to establish the facility (a building permit issued by the municipality is evidence of approval by the municipality; approval may also be by letter, order in council or by-law issued by the municipality);
5. Published notice of municipal approval: A copy of the published notice of the municipality's approval (the tear sheet from a local newspaper showing the content, the name of the paper and the date of publication);
6. Plans & drawings: Two (2) copies of plans or drawings (architectural drawings with an engineer's/architect's seal) of the site, building, location of retorts, processing areas, and body storage areas;
7. Proof of Environmental Compliance:

(a) For a flame-based crematorium:

An Environmental Compliance Approval ("ECA") from the Ministry of the Environment and Climate Change (MOECC) for the discharge of contaminants (including noise) to the air outside of the facility as required by section 9 of the Environmental Protection Act (EPA).

(b) For an alkaline hydrolysis crematorium:

A statement (from the applicant) indicating that they have obtained any ECA required by section 9 of the EPA or section 53 of the Ontario Water Resources Act (copy of any ECA(s) needs to be provided) and/or an

explanation of how they have determined one or both types of ECAs are not required. Such determination would need to be supported by:

- i) for air/noise, verification of no discharge of contaminants into the air because either: no part of the alternative disposal process machinery is vented to the atmosphere outside the building; or, source testing performed by a qualified individual at the facility or a similar facility indicates any connection

to the atmosphere outside the building does not release air, or if air is released, no contaminants are contained in the air being released;

- ii) for wastewater, verification from the municipality that wastewater produced by the alkaline hydrolysis process machinery will be discharged to a municipal sanitary sewer.

Note – Any wastewater not discharged to municipal sanitary sewer or dealt with by a wastewater ECA, would need to be managed in accordance with Ontario Regulation 347 – General Waste Management.

Notes: The MOECC does not provide letters indicating that ECAs are not required. No waste ECA needs to be obtained for handling skeletal remains from either type of crematorium.

8. By-laws: Two (2) copies of the proposed crematorium by-laws; and

9. Education: Evidence that the crematorium operator and/or crematorium staff have completed or intend to complete a formal crematorium operator training program (this may be a letter of undertaking from the operator or a copy of a certificate issued by the training facility or organization).

In accordance with the service standards published on the BAO website, the BAO will:

- acknowledge receipt of the application and follow up regarding any deficiencies by telephone, fax, or e-mail within 15 business days; and
- process complete applications within 45 business days.

Note: Prior to applying for a licence the applicant should ensure that any and all required and relevant Government, Regional or Municipal approvals have been obtained. The Registrar may refuse to issue a licence for a number of reasons including if an applicant is in contravention of the FBCSA or its regulations or an applicant would be in contravention of the FBCSA, its regulations, another Act or a municipal by-law if the applicant were issued a licence. A licence may also be refused if an applicant's past conduct affords reasonable grounds for belief that that applicant will not carry on business in accordance with the law and with integrity and honesty.

Examples of conduct on the part of an applicant that could be grounds for the Registrar deciding to refuse to issue a licence include:

- previous incidents of misrepresentation to authorities and consumers;
- refusal to comply with direction to cease carrying on business when not licensed;
- operating a facility without a licence when the applicant knew or ought to have known that a licence was required; and
- previous charges or convictions with respect to offences under the FBCSA or similar legislation.

Municipal approvals

The FBCSA provides that the municipality shall permit the applicant to establish a crematorium if, in the municipality's opinion, it is in the public interest to do so. Municipal approval to establish a crematorium will be determined in accordance with the municipal planning process. A municipality may, but is not required to,

hold public meetings or hearings to determine if approval to establish the crematorium or facility that provides alternative processes or methods to dispose of human remains is in the public interest. Once a decision is made to approve or refuse a request, a municipality must send a copy of the decision together with the reasons for it to the Registrar and the applicant, and publish notice of its decision in a local newspaper. The applicant, Registrar, and persons with an interest in the decision of the municipality may appeal the decision to the Ontario Municipal Board (OMB).

Ministry of Environment and Climate Change (MOECC) approvals

MOECC has guidelines that assist municipalities in determining appropriate policies for land use and set strict emission standards and limits to ensure that the environment is not adversely impacted. The Registrar will continue to require compliance with MOECC requirements for flame-based and alkaline hydrolysis crematoriums, as outlined in Item 7 on page 2 of this directive. If an applicant determines their proposal may emit contaminants and has specific questions regarding an air/noise and/or wastewater ECA for which they need to apply, they can contact the local MOECC District Office or the MOECC Environmental Approvals Access and Service Integration Branch through the Manager of Service Integration and Program Support at (416) 314-7004. Note that Municipal or MOECC approval does not necessarily guarantee licensure by BAO.

KEY LEGISLATIVE PROVISIONS

Relevant sections of the Funeral, Burial and Cremation Services Act, 2002 (FBCSA) and Ontario Regulation 30/11, the Environmental Protection Act, 1990, and the Ontario Water Resources Act, 1990.

Funeral, Burial and Cremation Services Act, 2002

Definitions

“crematorium” means a building that is fitted with appliances for the purpose of cremating human remains and that has been approved as a crematorium or established as a crematorium in accordance with the requirements of this Act or a predecessor of it and includes everything necessarily incidental and ancillary to that purpose; (“crématoire”)

“crematorium services” means services provided in respect of the cremation of dead human bodies and includes such services as may be prescribed; (“services de crématoire”)

Application

- 1.1** This Act applies to all transactions relating to licensed supplies and services even if the purchaser in the transaction or the person engaging in the transaction with the purchaser is located outside of Ontario when the transaction takes place. 2006, c. 34, Sched. D, s. 2.

Alternative dispositions of human remains

(2) Subject to the regulations, the provisions of this Act dealing with crematoriums, cremation and crematorium services apply, with necessary modifications, to establishments that provide alternative processes or methods of disposing of human remains and to those processes or methods. 2006, c. 34, Sched. D, s. 2.

Prohibitions respecting crematoriums

Operating crematoriums

6. (1) No person shall operate a crematorium, or hold themselves out as the operator of a crematorium, unless the person is licensed to do so. 2002, c. 33, s. 6 (1).

Selling services

(2) No person shall sell or offer to sell crematorium services to the public, or hold themselves out as available to sell crematorium services to the public, unless,

(a) the person holds a prescribed licence and is acting on behalf of a crematorium operator; or

(b) the person is licensed as a crematorium operator. 2002, c. 33, s. 6 (2); 2006, c. 34, Sched. D, s. 5.

Cremating remains

(3) No person shall cremate a human body at a place other than a crematorium operated by a person licensed under subsection (1). 2002, c. 33, s. 6 (3).

Duties in operating crematoriums

Operator's duties

7. (1) A crematorium operator shall ensure that the crematorium is operated in accordance with this Act and the regulations and shall ensure that all cremations in the crematorium are carried out in a decent and orderly manner and that quiet and good order are maintained in the crematorium at all times. 2002, c. 33, s. 7 (1).

Same re: employees, etc.

(2) A crematorium operator shall ensure that, (a) every licensee that the operator employs carries out his or her duties in compliance with this Act and the regulations; and (b) every other person to whom the operator delegates responsibility carries out that responsibility in compliance with this Act and the regulations. 2002, c. 33, s. 7 (2); 2006, c. 34, Sched. D, s. 6.

Requirements for licences

14. (1) An applicant is entitled to a licence or to a renewal of the licence unless,

(a) the applicant or an interested person in respect of the applicant,

(i) is in contravention of this Act or the regulations, or

(ii) would be in contravention of this Act, the regulations, another Act or a municipal by-law if the applicant were issued a licence;

(b) the applicant is not a corporation and,

(i) having regard to the applicant's financial position or the financial position of an interested person in respect of the applicant, the applicant cannot reasonably be expected to be financially responsible in the conduct of business,

(ii) the past conduct of the applicant or of an interested person in respect of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with the law and with integrity and honesty, or

(iii) the applicant or an employee or agent of the applicant makes a false statement or provides a false statement in an application for a licence or for renewal of a licence; (c) the applicant is a corporation and, (i) the past conduct of officers or directors of the applicant or of an interested person in respect of the applicant affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty, or (ii) an officer, director, employee or agent of the applicant makes a false statement or provides a false statement in an application for a licence or for renewal of a licence;

Establishing a Crematorium

83. (3) No person shall establish a crematorium without,

(a) the approval of the local municipality in which the crematorium is to be located; or

(b) the approval of the Minister of Natural Resources if the crematorium is to be located on Crown land in territory without municipal organization. 2006, c. 34, Sched. D, s. 56.

84. (1.1) A local municipality that receives a request for an approval to establish a crematorium in the municipality shall grant the approval if, in the municipality's opinion, it is in the public interest. 2006, c. 34, Sched. D, s. 57 (1).

Public hearing

(2) A local municipality may hold a public hearing to determine if the approval is in the public interest. 2002, c. 33, s. 84 (2); 2006, c. 34, Sched. D, s. 57 (2).

Timing of decision

(3) A local municipality shall give or refuse its approval within a reasonable time after receiving a request for an approval. 2002, c. 33, s. 84 (3); 2006, c. 34, Sched. D, s. 57 (2).

Notice of decision

(4) Upon deciding to approve or refuse a request for an approval, a local municipality shall,

(a) send a copy of the decision together with the reasons for it to the registrar and to the person making the request; and

(b) publish notice of the decision in a local newspaper. 2002, c. 33, s. 84 (4); 2006, c. 34, Sched. D, s. 57 (2).

Appeal to Municipal Board

85. (1) The applicant, registrar or any person with an interest in a decision of a local municipality under s section 84 may appeal the decision to the Ontario Municipal Board within,

(a) 15 days after the day of publication in a local newspaper; or

(b) if the appeal is brought by the applicant or registrar and that person receives a copy of the municipality's decision after the day it was published in a local newspaper, 15 days after the day the applicant or registrar, as the case may be, receives a copy of the decision. 2002, c. 33, s. 85 (1); 2006, c. 34, Sched. D, s. 58.

Ontario Regulation 30/11 under the FBCSA

Subsection 9. (1-5) and particularly 9. (7)

Application for licence

9. An application for a licence shall meet the following requirements:

1. The application shall be in a form and manner approved by the registrar.

2. The application shall include information for which a notice of change would be required under section 103 or 104.

3. The application shall contain the additional information that the registrar requires.

4. The application shall be accompanied by the fee established under section 108 of the Act.

5. In the case of a licence to operate a cemetery, crematorium, funeral establishment or transfer service, the application shall be accompanied by confirmation from the local municipality that the proposed use is a permitted use and is in accordance with applicable municipal by-laws and that the plans have been approved by the local municipality.

7. In the case of a licence to operate a crematorium, the application shall be accompanied by,

i. a copy of the environmental compliance approval required under section 9 of the Environmental Protection Act, and

ii. plans or drawings of the site, building, location of retorts, processing area, and body storage areas.

Crematorium Operator Licence

31. (1) This section sets out conditions of a Crematorium Operator licence. O. Reg. 30/11, s. 31 (1).

(2) The crematorium operator shall not permit the cremation of a dead human body if,

(a) the operator has not received a certificate issued by the coroner authorizing the cremation; or

(b) the body has a pacemaker or radioactive implant, is in a casket that consists of or has on or in it material made of or containing non-flammable or hazardous material or chlorinated or fibreglass reinforced plastic, other than incidental metal used in the construction of the casket or accompanying material. O. Reg. 30/11, s. 31 (2).

(3) The crematorium operator may contract out or arrange for the removal of a pacemaker or radioactive implant from a dead human body if the person carrying out the removal is a person described in section 52. O. Reg. 30/11, s. 31 (3).

Environmental Protection Act, 1990

Section 1 – Interpretation

“adverse effect” means one or more of,

- (a) impairment of the quality of the natural environment for any use that can be made of it,
- (b) injury or damage to property or to plant or animal life,
- (c) harm or material discomfort to any person,
- (d) an adverse effect on the health of any person,
- (e) impairment of the safety of any person,
- (f) rendering any property or plant or animal life unfit for human use,
- (g) loss of enjoyment of normal use of property, and
- (h) interference with the normal conduct of business; (“conséquence préjudiciable”)

“contaminant” means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that causes or may cause an adverse effect; (“contaminant”)

“discharge”, when used as a verb, includes add, deposit, leak or emit and, when used as a noun, includes addition, deposit, emission or leak; (“rejet”, “rejeter”)

Section 9 - Approval, plant or production process

9. (1) No person shall, except under and in accordance with an environmental compliance approval,

(a) use, operate, construct, alter, extend or replace any plant, structure, equipment, apparatus, mechanism or thing that may discharge or from which may be discharged a contaminant into any part of the natural environment other than water; or

(b) alter a process or rate of production with the result that a contaminant may be discharged into any part of the natural environment other than water or the rate or manner of discharge of a contaminant into any part of the natural environment other than water may be altered. R.S.O. 1990, c. E.19, s. 9 (1); 2010, c. 16, Sched. 7, s. 2 (4).

Ontario Water Resources Act, 1990

Section 1 – Interpretation

“sewage” includes drainage, storm water, commercial wastes and industrial wastes and such other matter or substance as specified by the regulations; (“eaux d’égout”)

“sewage works” means any works for the collection, transmission, treatment and disposal of sewage or any part of such works but does not include plumbing to which the Building Code Act, 1992, applies; (“station d’épuration des eaux d’égout”)

“waters” means a well, lake, river, pond, spring, stream, reservoir, artificial watercourse, intermittent watercourse, ground water or other water or watercourse; (“eaux”)

Section 53 – Approval, Sewage Works

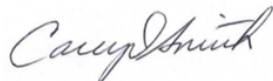
53. (1) Subject to subject 47.3 of the Environmental Protection Act, no person shall operate, establish, alter, extend, replace new or existing sewage works except under and in accordance with an environmental compliance approval. 2010, c. 16, Sched. 7, s. 3 (9).

Exception

(6) This section does not apply,

(a) to sewage works from which sewage is not to drain or be discharged directly or indirectly into a ditch, drain or storm sewer or a well, lake, river, pond, spring, stream, reservoir or other water or watercourse;

(b) to a privately-owned sewage works designed for the partial treatment of sewage that is to drain or be discharged into a sanitary sewer



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