

General Business Law §§ 750, 750-a(1), 750-a(3), 750-b, Article 35-C; Public Health Law §4201(1)(a); Not-For-Profit Corporation Law § 1502(h); New York Code, Rules And Regulations 19, § 203.1(a)

Alkaline hydrolysis is a permissible means of disposal of pet remains. An entity offering pet disposal by alkaline hydrolysis for a fee must be licensed under General Business Law Article 35-C and such an entity can be licensed as a pet crematorium.

August 4, 2015

Linda M. Baldwin  
General Counsel  
New York Department of State  
One Commerce Plaza  
99 Washington Avenue  
Albany, New York 12231-0001

Formal Opinion  
No. 2015-F1

Dear Ms. Baldwin:

You have requested an opinion relating to the Secretary of State's authority under General Business Law Article 35-C, which governs the operation of pet cemeteries and pet crematoriums. Specifically, you have asked whether an entity that offers for a fee to dispose of pet remains through the process of alkaline hydrolysis comes within the licensure requirement of Article 35-C. Alkaline hydrolysis is a chemical method of reducing an organism's remains to liquid and bone; processing the bone results in a sterile, dry ash, similar to that yielded from cremation by incineration. The process of alkaline hydrolysis for disposal of remains first developed in the 1990s, but only recently is becoming available more widely as an environmentally-friendly alternative to the traditional methods of disposing of remains through burial or incineration. As explained below, we are of the opinion that an entity that offers for a fee to dispose of pet remains through alkaline hydrolysis must obtain a license under Article 35-C from the Secretary of State.

Under Article 35-C, "no person shall engage for a fee in the business of operating a pet cemetery or pet crematorium" without a license. General Business Law § 750-b. And the phrase, "to engage for a fee in the business of operating a pet cemetery or pet crematorium" is defined to refer to a person who holds him- or herself out as being able, "*by any means or method*, to dispose of pet remains by earth burial, entombment, inurnment, cremation or *other means*." General Business Law § 750-a(3) (emphasis added). Thus an entity (which is included in the statutory definition of "person," General Business Law § 750-a(1)) that offers for a

fee to dispose of pet remains through alkaline hydrolysis is “engaging in the business of operating a pet cemetery or pet crematorium” and must be licensed.

To be sure, such an entity does not operate what is commonly understood to be a cemetery or a crematorium. But the activity for which a license is required under Article 35-C is defined sufficiently broadly to encompass means of disposing of pet remains beyond those historically available. Indeed, by listing certain methods of disposing of pet remains specific to a cemetery (earth burial, entombment, inurnment) and to a typical crematorium (cremation) and then including in the statutory language the phrase “other means,” the Legislature signaled its intent not only that the list of means not be exclusive but also that the list of means not be limited to those traditionally available through cemeteries and crematoriums. And in 1992, when Article 35-C was enacted, alkaline hydrolysis, if available at all, certainly was not a well-known means of disposing of animal tissue. Within that context, the absence of alkaline hydrolysis from the statutorily-listed methods of disposal should not be read to reflect a legislative determination either that it is an impermissible method of pet remains disposal or that it need not be regulated.

Moreover, the conclusion that an entity offering for a fee disposal of pet remains through alkaline hydrolysis must be licensed by the Department of State serves the intent underlying the enactment of Article 35-C. Article 35-C was the legislative response to abuses, including consumer fraud, discovered at a pet cemetery in 1991. Among other violations, the cemetery owners conducted mass cremations and returned a portion of the resulting ashes to the grieving pet owners instead of performing the contracted-for individual pet cremations, which would have allowed the return of an individual pet’s ashes to its owner. Memorandum from James N. Baldwin, Executive Deputy Secretary of State, to Elizabeth D. Moore, Counsel to the Governor (Jul. 9, 1992), *reprinted* in Bill Jacket for ch. 526 (1992), at 24-25. As a result of this and other abuses, Article 35-C was enacted to establish a scheme of licensing and inspection of entities engaging in the pet remains disposal business, “to prevent grieving pet owners from experiencing further any emotional pain or financial manipulation.” General Business Law § 750. Grieving pet owners seeking to handle the remains of their pets through alkaline hydrolysis are as likely to be vulnerable to the abuses Article 35-C was enacted to prevent as are those seeking disposal through more conventional methods. In fact, the entity currently seeking to offer pet remains disposal through alkaline hydrolysis plans to commit to returning a pet’s ashes to its owner.

For these reasons, we are of the opinion that alkaline hydrolysis is a means of disposal of pet remains that comes within the statutory definition of “engag[ing] for a fee in the business of operating a pet cemetery or pet crematorium,” and,

consequently, that an entity offering alkaline hydrolysis for a fee must be licensed under Article 35-C.

Further, in our opinion, an entity wanting to offer disposal of pet remains through alkaline hydrolysis reasonably can be licensed as a pet crematorium under Article 35-C. Although cremation typically is understood to require heat and flame, Article 35-C itself does not contain any definition of “cremation.” In contrast, statutes governing cremation of human remains specify the meaning of “cremation,” and define it to require heat and flame. Public Health Law § 4201(1)(a); Not-for-Profit Corporation Law § 1502(h); *see also* 19 N.Y.C.R.R. § 203.1(a). But these definitions specifically relate to human remains and thus need not apply to pet cremation. And the expansive definition of “engag[ing] for a fee in the business of operating a pet cemetery or pet crematorium,” for which a license is required, argues against a limited interpretation of “cremation” in this context. Indeed, perhaps because the remains after the process resemble the ash remaining after incineration, alkaline hydrolysis is sometimes called flameless or hydro cremation. *See* Cremation Ass’n of N. Am., *Statement on Alkaline Hydrolysis* (Feb. 8, 2013) (suggested definition of “cremation” includes alkaline hydrolysis). In the absence of a statutory definition of “cremation” in Article 35-C equating it to incineration, interpreting the word’s meaning to include alkaline hydrolysis would be consistent with both the language and the purpose of the statute.

Thus, in summary, we are of the opinion that alkaline hydrolysis is a permissible means of disposal of pet remains, that an entity offering pet disposal by alkaline hydrolysis for a fee must be licensed under Article 35-C, and that such an entity can be licensed as a pet crematorium.

Very truly yours,

ERIC T. SCHNEIDERMAN  
Attorney General