

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

James Brothers, Inc. :
Attention: Daniel G. James :
3935 Boggs Road :
Zanesville, Ohio 43701 :

**Director's Final
Findings and Orders**

AND

Glen James & Sons, Inc. :
Attention: Daniel G. James :
3930 Boggs Road :
Zanesville, Ohio 43701 :

Respondents :

PREAMBLE

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to James Brothers, Inc. and Glen James & Sons, Inc. ("Respondents") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") sections 3714.12, 3734.13 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondents, and their assigns and successors in interest liable under Ohio law. No changes in ownership of the Respondents, or of the Facility, as hereinafter defined, owned by Respondent James Brothers, Inc. will in any

way alter Respondents' responsibilities under these Orders. Respondents' obligations under these Orders may be altered only by the written approval of the Director of Ohio EPA.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapters 3714 and 3734 and the rules promulgated thereunder.

IV. FINDINGS

The Director has determined the following findings:

1. The James Brothers C&D Disposal Facility (the "Facility") is located on a 5.16 acre tract of land at 3935 Boggs Road, approximately three miles from the intersection of Boggs Road and State Route 93 in the city of Zanesville, Muskingum County, Ohio.
2. The Facility is a "Construction and Demolition Debris Facility" as defined under Ohio Administrative Code (OAC) Rule 3745-400-01(G) and has been in operation since at least July 24, 1990.
3. Respondents are "owners" and/or "operators" of the Facility as those terms are defined in OAC Rule 3745-400-01(EE) and (I), respectively, and are "persons" as defined under ORC Section 3714.01(G) and OAC Rule 3745-400-01(DD).
4. On April 4, 2002, Ohio EPA approved the scrap tire beneficial use project plan number 60-STBU-242 for the Facility. This approval outlines the use and storage of shredded scrap tires as a substitute for gravel for the drainage layer in the leachate collection system at the Facility.
5. On January 17, 2002, Ohio EPA conducted an inspection at the Facility and observed the following violations:
 - a. OAC Rule 3745-400-11(B)(1) for failure to conduct all operations at the facility in strict compliance with the operational requirements of this rule.
 - b. OAC Rule 3745-400-(F)(4) for failure to designate a clearly marked unloading zone.
 - c. OAC Rule 3745-400-11(F)(4)(c) for failure to spread and compact debris on the working face and to prevent cliffing.

This inspection was documented in a letter to Respondent James Brothers C&D Disposal Facility ("Respondent James Brothers, Inc.") dated February 4, 2002.

6. On March 15, 2002, Ohio EPA conducted an inspection at the Facility and observed the following violations:
- a. OAC Rule 3745-400-11(B)(1) for failure to conduct all operations at the facility in strict compliance with the operational requirements of this rule.
 - b. OAC Rule 3745-400-11(F)(4)(c) for failure to spread and compact debris on the working face and to prevent cliffing.
 - c. OAC Rule 3745-400-11(H) for failure to operate the facility in a manner that prevents fires (weekly cover).

This inspection was documented in a letter to Respondent James Brothers, Inc. dated March 19, 2002.

7. On April 25, 2002, Ohio EPA conducted an inspection at the Facility and observed the following violations:
- a. OAC Rule 3745-400-07(C)(2)(b) for failure to have a leachate collection system.
 - b. OAC Rule 3745-400-11(B)(1) for failure to conduct all operations at the facility in strict compliance with the operational requirements of this rule.
 - c. OAC Rule 3745-400-(F)(4) for failure to designate a clearly marked unloading zone.
 - d. OAC Rule 3745-400-11(F)(4)(c) for failure to spread and compact debris on the working face and to prevent cliffing.
 - e. OAC Rule 3745-400-11(H) for failure to operate the facility in a manner that prevents fires (weekly cover).
 - f. OAC Rule 3745-400-11(Q)(1) for failure to divert surface water from the active and inactive licensed disposal areas of the facility.

This inspection was documented in a letter to Respondent James Brothers, Inc. dated April 30, 2002.

8. On July 17, 2002, Ohio EPA conducted an inspection at the Facility and observed the following violations:
- a. OAC Rule 3745-400-07(C)(2)(b) for failure to have a leachate collection system.
 - b. OAC Rule 3745-400-11(B)(1) for failure to conduct all operations at the facility in strict compliance with the operational requirements of this rule.
 - c. OAC Rule 3745-400-(F)(4) for failure to designate a clearly marked unloading zone.
 - d. OAC Rule 3745-400-11(F)(4)(c) for failure to spread and compact debris on

- e. the working face and to prevent cliffing.
OAC Rule 3745-400-11(H) for failure to operate the facility in a manner that prevents fires (weekly cover).
- f. OAC Rule 3745-400-11(Q)(1) for failure to divert surface water from the active and inactive licensed disposal areas of the facility.

This inspection was documented in a letter to Respondent James Brothers, Inc. dated July 22, 2002.

- 9. On August 31, 2002, revisions to the Construction and Demolition Debris rules found in OAC 3745-400 became effective. The effective date for the previous version of the construction and demolition debris rules was September 30, 1996.
- 10. On October 2, 18 and 30, 2002, Ohio EPA conducted three separate inspections at the Facility and observed the following violations:
 - a. OAC Rule 3745-400-07(C)(2)(b) for failure to have a leachate collection system.
 - b. OAC Rule 3745-400-11(B)(1) for failure to conduct all operations at the facility in strict compliance with the license, any orders, and other authorizing documents.
 - c. OAC Rule 3745-400-11(B)(2) for failure to dispose of debris only within the active licensed disposal area.
 - d. OAC Rule 3745-400-11(B)(12) for failure to conduct special monitoring and testing (leachate discharging into stream).
 - e. OAC Rule 3745-400-11(B)(16) for failure to prevent water pollution.
 - f. OAC Rule 3745-400-11(D) for failure to place and maintain markers defining the limits of the active licensed disposal area.
 - g. OAC Rule 3745-400-11(D)(5) for failure to apply for and receive all applicable permits and authorizations required by ORC 3704. and 6111.
 - h. OAC Rule 3745-400-11(E)(1)¹ [*sic*] for failure to maintain the integrity of, and repair any damage to, the engineered components of the facility.
 - i. OAC Rule 3745-400-11(O)(1) through (O)(3) for failure to contain, manage and dispose of the leachate and for failure to repair the leachate outbreak.
 - j. OAC Rule 3745-400-11(Q)(1) for failure to divert surface water from the active and inactive licensed disposal areas of the facility.

These inspections were documented in a letter to Respondent James Brothers, Inc. dated November 7, 2002.

¹The removal of the in-situ layer constitutes a violation of OAC 3745-400-11(B)(3).

11. On November 8, 2002, Ohio EPA conducted an inspection at the Facility and observed the following violations:
 - a. OAC Rule 3745-27-60(B)(6)(a) for failure to maintain scrap tire storage piles no greater than two thousand five hundred square feet in basal area.
 - b. OAC Rule 3745-27-60(B)(6)(b) for failure maintain scrap tire storage piles no higher than eight feet.
 - c. OAC Rule 3745-400-07(C)(2)(b) for failure to have a leachate collection system.
 - d. OAC Rule 3745-400-11(B)(1) for failure to conduct all operations at the facility in strict compliance with the license, any orders, and other authorizing documents.
 - e. OAC Rule 3745-400-11(B)(2) for failure to dispose of debris only within the active licensed disposal area.
 - f. OAC Rule 3745-400-11(B)(12) for failure to conduct special monitoring and testing (leachate discharging into stream).
 - g. OAC Rule 3745-400-11(B)(16) for failure to prevent water pollution.
 - h. OAC Rule 3745-400-11(D) for failure to place and maintain markers defining the limits of the active licensed disposal area.
 - i. OAC Rule 3745-400-11(D)(5) for failure to apply for and receive all applicable permits and authorizations required by ORC 3704. and 6111.
 - j. OAC Rule 3745-400-11(E)(1)² *[sic]* for failure to maintain the integrity of, and repair any damage to, the engineered components of the facility.
 - k. OAC Rule 3745-400-11(O)(1) through (O)(3) for failure to contain, manage and dispose of the leachate and for failure to repair the leachate outbreak.
 - l. OAC Rule 3745-400-11(Q)(1) for failure to divert surface water from the active and inactive licensed disposal areas of the facility.

This inspection was documented in a letter to Respondent James Brothers, Inc. dated November 21, 2002.

12. On November 26, 2002, Respondent Glen James & Sons replied to Ohio EPA's November 21, 2002 letter. This response was signed by Daniel G. James and was on Glen James & Sons, Inc. letterhead.
13. On November 25, 2002, Ohio EPA conducted an inspection at the Facility and observed the following violations:
 - a. OAC Rule 3745-27-60(B)(6)(a) for failure to maintain scrap tire storage piles

²See Footnote 1

- b. no greater than two thousand five hundred square feet in basal area.
- b. OAC Rule 3745-27-60(B)(6)(b) for failure to maintain scrap tire storage piles no higher than eight feet.
- c. OAC Rule 3745-400-07(C)(2)(b) for failure to have a leachate collection system.
- d. OAC Rule 3745-400-11(B)(1) for failure to conduct all operations at the facility in strict compliance with the license, any orders, and other authorizing documents.
- e. OAC Rule 3745-400-11(B)(2) for failure to dispose of debris only within the active licensed disposal area.
- f. OAC Rule 3745-400-11(B)(12) for failure to conduct special monitoring and testing (leachate discharging into stream).
- g. OAC Rule 3745-400-11(B)(16) for failure to prevent water pollution.
- h. OAC Rule 3745-400-11(D)(5) for failure to apply for and receive all applicable permits and authorizations required by ORC 3704. and 6111.
- i. OAC Rule 3745-400-11(E)(1)³ [*sic*] for failure to maintain the integrity of, and repair any damage to, the engineered components of the facility.
- j. OAC Rule 3745-400-11(O)(1) through (O)(3) for failure to contain, manage and dispose of the leachate and for failure to repair the leachate outbreak.
- k. OAC Rule 3745-400-11(Q)(1) for failure to divert surface water from the active and inactive licensed disposal areas of the facility.

This inspection was documented in a letter to Respondent James Brothers, Inc. dated December 6, 2002.

14. On March 4, 2003, Ohio EPA conducted an inspection at the Facility and observed the following violations:
- a. OAC Rule 3745-27-60(B)(6)(a) for failure to maintain scrap tire storage piles no greater than two thousand five hundred square feet in basal area.
 - b. OAC Rule 3745-27-60(B)(6)(b) for failure to maintain scrap tire storage piles no higher than eight feet.
 - c. OAC Rule 3745-400-07(C)(2)(b) for failure to have a leachate collection system.
 - d. OAC Rule 3745-400-11(B)(1) for failure to conduct all operations at the facility in strict compliance with the license, any orders, and other authorizing documents.
 - e. OAC Rule 3745-400-11(B)(2) for failure to dispose of debris only within the active licensed disposal area.

³See Footnote 1

- f. OAC Rule 3745-400-11(B)(12) for failure to conduct special monitoring and testing (leachate discharging into stream).
- g. OAC Rule 3745-400-11(B)(16) for failure to prevent water pollution.
- h. OAC Rule 3745-400-11(D)(5) for failure to apply for and receive all applicable permits and authorizations required by ORC 3704. and 6111.
- i. OAC Rule 3745-400-11(E)(1)⁴ [*sic*] for failure to maintain the integrity of, and repair any damage to, the engineered components of the facility.
- j. OAC Rule 3745-400-11(O)(1) through (O)(3) for failure to contain, manage and dispose of the leachate and for failure to repair the leachate outbreak.
- k. OAC Rule 3745-400-11(Q)(1) for failure to divert surface water from the active and inactive licensed disposal areas of the facility.

This inspection was documented in a letter to Respondent James Brothers, Inc. dated March 10, 2003.

15. On May 9, 2003, Ohio EPA conducted an inspection at the Facility and observed the following violations:
- a. OAC Rule 3745-27-60(B)(6)(a) for failure to maintain scrap tire storage piles no greater than two thousand five hundred square feet in basal area.
 - b. OAC Rule 3745-27-60(B)(6)(b) for failure to maintain scrap tire storage piles no higher than eight feet.
 - c. OAC Rule 3745-400-07(C)(2)(b) for failure to have a leachate collection system.
 - d. OAC Rule 3745-400-11(B)(1) for failure to conduct all operations at the facility in strict compliance with the license, any orders, and other authorizing documents.
 - e. OAC Rule 3745-400-11(B)(2) for failure to dispose of debris only within the active licensed disposal area.
 - f. OAC 3745-400-11(B)(12) for failure to conduct special monitoring and testing (leachate discharging into stream).
 - g. OAC Rule 3745-400-11(B)(16) for failure to prevent water pollution.
 - h. OAC Rule 3745-400-11(D)(5) for failure to apply for and receive all applicable permits and authorizations required by ORC 3704. and 6111.
 - i. OAC Rule 3745-400-11(E)(1)⁵ [*sic*] for failure to maintain the integrity of, and repair any damage to, the engineered components of the facility.
 - j. OAC Rule 3745-400-11(O)(1) through (O)(3) for failure to contain, manage and

⁴See Footnote 1

⁵See Footnote 1

- dispose of the leachate and for failure to repair the leachate outbreak.
- k. OAC Rule 3745-400-11(Q)(1) for failure to divert surface water from the active and inactive licensed disposal areas of the facility.

This inspection was documented in a letter to Respondent James Brothers, Inc. dated May 20, 2003.

V. ORDERS

The Respondents shall achieve compliance with ORC Chapters 3714 and 3734, and the rules promulgated thereunder according to the following compliance schedule:

1. Effective immediately upon the effective date of these Orders, Respondents shall cease disposing of C&DD material in all unauthorized areas of waste placement.
2. Effective immediately upon the effective date of these Orders, Respondents shall manage and dispose of leachate at the Facility in accordance with applicable regulations. Further, Respondent shall ensure that no leachate is discharged into waters of the state without authorization from Ohio EPA.
3. Within seven (7) days after the effective date of these Orders, Respondents shall divert surface water from the active and inactive licensed disposal areas of the Facility.
4. Within seven (7) days after the effective date of these Orders, Respondents shall store scrap tires, approved as a beneficial use project in plan number 60-STBU-242, in accordance with OAC Rule 3745-27-60 by storing in piles less than two thousand five hundred (2500) square feet in basal area and no greater than eight (8) feet in height. Scrap tire storage piles shall be separated from other scrap tire storage piles from buildings and structures by a fire lane width equal to or greater than fifty six (56) feet, in accordance with the fire lane chart set forth in OAC Rule 3745-27-65(F).
5. Within fourteen (14) days after the effective date of these Orders, Respondents shall sample and analyze the leachate from the leachate outbreak(s) in accordance with the parameters found in OAC Rule 3745-400-10 and provide a copy of the analytical results to Ohio EPA-SEDO.
6. Within fourteen (14) days after the effective date of these Orders, Respondents shall identify and repair any leachate outbreak seeps at the Facility.
7. Within thirty (30) days after the effective date of these Orders, Respondents shall complete a survey for the existing horizontal and vertical limits of debris placement

to determine if any approved airspace exists for the placement of waste from unauthorized areas of waste placement at the Facility. Within thirty five (35) days after the effective date of these Orders, Respondents shall provide to Ohio EPA, SEDO-DSIWM a plan sheet comparing the existing horizontal and vertical limits of debris placement to the approved horizontal and vertical limits of debris placement as displayed in Plan Sheet 7A of the approved 1998 Construction and Demolition Debris License Application. Even if adequate airspace is demonstrated by the survey, Respondent shall not place waste within any area that will cause them to be in non-compliance with the Facility's most recently approved license. At no time shall any of the Respondents' removal activities cause pollution to waters of the state.

8. Within sixty (60) days after the effective date of these Orders, Respondents shall remove all waste material from any unauthorized areas of waste placement and dispose of the exhumed material at a licensed C&DD facility, including the James C&D Disposal Facility so long as airspace is available and so long as such waste is placed in compliance with the most recently approved license, or a licensed solid waste disposal facility.
9. Within sixty (60) days after the effective date of these Orders, Respondents shall provide documentation to Ohio EPA, SEDO-DSIWM, indicating the weight, volume and name of the final disposal facility where all exhumed waste material has been properly disposed. Respondents shall obtain any required permits or authorizations prior to waste removal activities.
10. Within sixty (60) days after the effective date of these Orders, the Respondents shall meet the liner system requirements of OAC Rule 3745-400-07 at all areas of the Facility.
11. Within ninety (90) days after the effective date of these Orders, the Respondents shall meet the leachate collection system requirements of OAC Rule 3745-400-07 at all areas of the Facility.
12. Respondents shall pay Ohio EPA the amount of \$62,500.00 in settlement of Ohio EPA's claims for civil penalties which may be assessed pursuant to ORC Chapter 3714. and which will be deposited into the hazardous waste cleanup fund created under ORC Section 3734.28. Respondents shall pay this civil penalty in 8 quarterly installments of \$7,812.50 with the first installment payment due on April 1, 2005. Payment shall be made by tendering a certified check in the stated amount to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, made payable to "Treasurer, State of Ohio," and by submitting a copy of the check to Ohio EPA, DSIWM, SMU Supervisor.

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have performed all obligations under these Orders and the Chief of Ohio EPA's Division of Solid and Infectious Waste Management acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondents of the obligations that have not been performed, in which case Respondents shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "We certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondents to Ohio EPA and shall be signed by a responsible official of Respondents. For purposes of these Orders, a responsible official is a principal executive officer of at least the level of vice president, or his duly authorized representative if such representative is responsible for the overall operation of the Facility.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, the operation of Respondents' Facility.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondents.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondents pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
South East District Office
Division of Solid and Infectious Waste Management
Attn: Unit Supervisor, DSIWM
2195 Front Street
Logan, OH 43138

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondents each reserve all rights, privileges and causes of action, except as specifically waived in Section XII. of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondents consent to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein.

Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondents hereby waive any and all rights Respondents may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

IT IS SO ORDERED AND AGREED:

Christopher Jones, Director

(Signed 12/30/04)
Date

IT IS SO AGREED:

James Brothers C&DD Disposal Facility

Signature

(Signed 12/27/04)
Date

Printed or Typed Name

Title

Glen James & Sons, Inc.

Signature

(Signed 12/27/04)
Date

Printed or Typed Name

Title

