

Issuance Date: _____

Effective Date: _____

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

James Brothers, Inc.	:	
Attn: Daniel G. James	:	Director's Final
James Brothers C&D Disposal Facility	:	Findings and Orders
3000 Dillon School Drive	:	
PO Box 1420	:	
Zanesville, Ohio 43701	:	

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to James Brothers, Inc., pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) Sections 3714.06 and 3714.10, and Ohio Administrative Code (OAC) Chapter 3745-37.

II. PARTIES BOUND

These Orders shall apply to and be binding upon James Brothers, Inc., and any successors in interest liable under Ohio law. No change in ownership of James Brothers, Inc., or of the Facility, as hereinafter defined, shall in any way alter James Brothers, Inc., obligations under these Orders.

III. DEFINITIONS

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

IV. FINDINGS

The Director of Ohio EPA (Director) has determined the following findings:

1. James Brothers, Inc., is the operator, as that term is defined in Ohio Administrative Code (OAC) Rule 3745-400-01(I), of James Brother's C&D Disposal Facility (Facility), a construction and demolition debris (C&DD) landfill on a 5.16 acre tract located at 3935 Boggs Road, approximately 3 miles from the intersection of Boggs Road and State Route 93 in Zanesville, Ohio in Muskingum County.

2. The Facility has been in operation since at least July 24, 1990.
3. On September 30, 1996, OAC Chapter 3745-400 and amendments to OAC Chapter 3745-37 (collectively the C&DD Rules) became effective. Together, these OAC Chapters regulate the design, construction, licensing, operation, and closure of C&DD landfills.
4. On August 31, 2002, amendments to OAC Chapter 3745-400 became effective. This chapter regulates the design, construction, and closure of C&DD landfills.
5. Ohio EPA is the jurisdictional licensing authority for the Facility.
6. On October 28, 2005, James Brothers, Inc., submitted to Ohio EPA an application for a 2006 C&DD license for the Facility.
7. OAC Rule 3745-37-03 sets forth the criteria for issuing C&DD facility licenses. Pursuant to OAC Rule 3745-37-03(C)(2), the licensing authority shall not issue a C&DD license unless the applicant has operated the facility in substantial compliance with all applicable provisions of ORC Chapter 3714, and OAC Chapters 3745-400 and 3745-37. Pursuant to OAC Rule 3745-37-03(C)(3), the licensing authority shall not issue a C&DD license unless the applicant, who is currently responsible for the management or operation of one or more facilities licensed under ORC Chapters 3714 or 3734, has managed or operated such facility in substantial compliance with applicable provisions of ORC Chapters 3714, 3704, 3734, and 6111, and any rules and permits issued thereunder, and has maintained compliance with any orders issued by the licensing authority, the environmental board of review, or courts having jurisdiction in accordance with OAC Chapter 3746-13.
8. An enforcement referral package for the Facility was prepared by Ohio EPA – Division of Solid and Infectious Waste Management on December 12, 2002. James Brothers, Inc. was referred for administrative enforcement for violations of OAC Rules: 3745-27-60(B)(6)(a), 3745-27-60(B)(6)(b), 3745-400-07(C)(2)(b), 3745-400-11(B)(1), 3745-400-11(B)(2), 3745-400-11(B)(3), 3745-400-11(B)(16), 3745-400-11(C)(2), 3745-400-11(D)(5), 3745-400-11(E)(1), 3745-400-11(F)(3), 3745-400-11(F)(3)(c), 3745-400-11(F)(3)(d), 3745-400-11(H), 3745-400-11(O)(1) through 3745-400-11(O)(3), and 3745-400-11(Q)(1).
9. Consensual Director's Final Findings and Orders were issued to James Brothers, Inc. and Glen James & Sons, Inc. (Respondents), signed by Daniel James, effective December 30, 2004. The Orders detailed actions to be performed by Respondents in order to remedy the noted violations of Ohio's construction and demolition debris regulations and laws.

10. Ohio EPA sent violation letters dated April 28, 2005, June 20, 2005, September 19, 2005, and November 22, 2005 due to Respondents failure to comply with the December 30, 2004 Orders.
11. Ohio EPA issued a 2005 License for the Facility; however, no waste was accepted during 2005.
12. Due to non-compliance with the signed Orders and continued non-compliance with OAC Rules 3745-400-11(O)(1) through (O)(3), 3745-400-11(Q)(1), 3745-400-11(B)(1), 3745-400-11(B)(2), 3745-400-11(B)(12), 3745-400-11(B)(16), 3745-400-11(E)(1), 3745-400-11(E)(3), 3745-400-07(C), 3745-400-09(A)(2), and 3745-27-60(B)(6)(d), Ohio EPA prepared an enforcement referral package for James Brothers, Inc. on November 23, 2005. On March 31, 2006, James Brothers, Inc., was referred to the Ohio Attorney General for outstanding violations of the December 30, 2004 Director's Consensual Orders.
13. As evidenced by the violations cited in the NOV letters, as well as other violations, the December 30, 2004 Orders, and the March 31, 2006 Ohio Attorney General referral, James Brothers, Inc., has not maintained substantial compliance with the applicable provisions of ORC Chapters 3714, 3704, 3734, and 6111, and any rules and permits issued thereunder.
14. Pursuant to OAC Rule 3745-37-03(C)(2), because James Brothers, Inc. has not maintained substantial compliance with the applicable provisions of ORC Chapters 3714, and OAC Chapters 3745-400 and 3745-37, the Director, as the licensing authority, cannot issue a C&DD facility license to James Brothers, Inc. for the Facility.
15. Pursuant to OAC Rule 3745-37-03(C)(3), because James Brothers, Inc. is not currently operating, and has not previously operated, the Facility in substantial compliance with applicable provisions of ORC Chapters 3714, 3704, 3734, and 6111, and any rules and permits issued thereunder, and any orders issued by the licensing authority, the environmental board of review, or courts having jurisdiction in accordance with OAC Chapter 3746-13, the Director, as the licensing authority, cannot issue a C&DD facility license to James Brothers, Inc. for the Facility.

V. ORDERS

1. The 2006 C&DD license for the James Brothers C&D Disposal Facility, located at 3935 Boggs Road, approximately 3 miles from the intersection of Boggs Road and State Route 93 in Zanesville, Ohio (Muskingum County) is hereby denied.

2. Pursuant to OAC Rules 3745-400-12(A)(4) and (B)(5), James Brothers, Inc. shall immediately cease acceptance of C&DD at the Facility and shall commence final closure activities in accordance with the applicable provisions of OAC Rules 3745-400-12(E) through (I).

VI. 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 James Brothers, Inc., and/or the James Brothers C&D Disposal Facility.

VII. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal, or equitable action as deemed appropriate and necessary, including seeking penalties against James Brothers, Inc. for noncompliance with these Orders.

Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require James Brothers, Inc. to perform additional activities pursuant to ORC Chapter 3714. or any other applicable law in the future. Nothing herein shall restrict the right of James Brothers, Inc. to raise any administrative, legal, or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of James Brothers, Inc. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief from James Brothers, Inc., and/or the James Brothers C&D Disposal Facility for violations which may occur at the Facility.

IT IS SO ORDERED

Joseph P. Koncelik, Director
Ohio Environmental Protection Agency