Environmental Protection Agency
John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

February 22, 2011

RE: MUSKINGUM COUNTY FAC - JAMES BROTHERS C&DD FACILITY

James Brothers, Inc.
c/o Daniel G. James
3000 Dillion School Drive
P.O. Box 1420
Zanesville, Ohio 43702-1420

Daniel James
3805 Millers Lane
Duncan Falls, Ohio 43734

Glen James & Sons, Inc.
c/o Daniel G. James
3000 Dillion School Drive
P.O. Box 1420
Zanesville, Ohio 43702-1420

Dear Mr. James:

On February 15, 2011, I conducted an inspection of the James Brothers Construction and Demolition Debris (C&DD) disposal facility, located at 3935 Boggs Road, Zanesville, Ohio. The purpose of my inspection was to determine your compliance with the Director's Final Findings and Orders (DFFOs), effective December 30, 2004. The following is a summary of observations made during my inspection:

1. Order #1 of the DFFOs states that effective immediately upon the effective date of these Orders, Respondents shall cease disposing of C&DD material in all unauthorized areas of waste placement. Based on my February 15, 2011, inspection, it did not appear that any additional C&DD material had been placed in unauthorized areas since the effective date of the DFFOs.

   Therefore, at the time of my inspection, you appeared to be in compliance with Order #1.

2. Order #2 of the DFFOs states that 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, Respondents shall ensure that no leachate is discharging into waters of the state without authorization from the Ohio Environmental Protection Agency (Ohio EPA).

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During my inspection, I observed a leachate outbreak at the northeast portion of your C&DD facility. As stated in numerous previous correspondence, Ohio Administrative Code (OAC) Rule 3745-400-01(V) defines leachate as liquid that has come in contact with or been released from construction and demolition debris. OAC Rule 3745-400-11(O)(1) through (O)(3) requires you to contain, manage and dispose of the leachate in accordance with applicable regulations, and repair the outbreak.

At the time of my inspection, leachate continued to emerge from an area previously used to dispose of C&DD. Since you are not containing, managing or disposing of the leachate in accordance with OAC Rule 3745-400-11(O)(1) through (O)(3), nor have you repaired the leachate outbreak, you are in violation of Order #2, as well as, OAC Rule 3745-400-11(O)(1) through (O)(3).

3. Order #3 of the DFFOs states that within seven (7) days after the effective date of these Orders, that is, by January 6, 2005, Respondents shall divert surface water from the active and inactive licensed disposal areas of the Facility.

   At the time of my inspection, surface water diversion channels had not been maintained along the east side of the Facility. Surface water runoff from the surrounding area can flow directly into areas used to dispose of C&DD. Therefore, you are in violation of Order #3. In addition, OAC Rule 3745-400-11(Q)(1) states in part that the owner or operator shall divert surface water and ground water from the active and inactive licensed disposal areas of the facility by nonmechanical means. Therefore, you are also in violation of OAC Rule 3745-400-11(Q)(1).

4. Order #4 of the DFFOs states that within seven (7) days after the effective date of these Orders, that is, by January 6, 2005, 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 and 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).

   At the time of my inspection, it appeared that the large piles near Boggs Road and the shredded tire piles at the north end of the Facility exceeded two thousand five hundred (2500) square feet in basal area. The width of the fire lanes between the large tire piles near Boggs Road is not at least 56 feet. Therefore, you are in violation of Order #4, as well as, OAC Rules 3745-27-60(B)(6)(a) and 3745-27-60(B)(6)(d).

5. Order #5 of the DFFOs states that within fourteen (14) days after the effective date of these Orders, that is, by January 13, 2005, 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.

   During my inspection, leachate was observed discharging from a debris disposal area at the Facility. Several previous letters requested that you collect a sample of the leachate discharging from leachate seeps and have the samples analyzed for the parameters listed in the Amended Appendix of OAC Rule 3745-400-10.

   Order #5 of the DFFOs requires that the Respondents sample and analyze the leachate from the leachate outbreak(s) in accordance with the parameters found in OAC Rule 3745-400-10. OAC Rule 3745-400-10(C)(2) requires the determination of the concentrations or values in the leachate for parameters 1 to 19 listed in the appendix of this rule.

   As stated in previous letters, the leachate analysis you provided does not meet the requirements of Order #5. Therefore, you are in violation of Order #5.

   Please be advised that OAC Rule 3745-400-11(B)(12) states that the owner or operator shall conduct special monitoring and testing if the licensing authority determines that a substantial threat of pollution to surface water, ground water and/or air exists. Since the leachate data you submitted does not comply with the requested sampling data from the above referenced leachate seeps, you are also in violation of OAC Rule 3745-400-11(B)(12).

6. Order #6 of the DFFOs states that within fourteen (14) days after the effective date of these Orders, that is, by January 13, 2005, Respondents shall identify and repair any leachate outbreak seeps at the Facility. As previously stated, during my inspection, leachate was observed discharging from a debris disposal area at the Facility. You have not repaired the above referenced leachate seep. Therefore, you are in violation of Order #6, as well as, OAC Rule 3745-400-11(O)(3).

7. Order #7 of the DFFOs states that within thirty (30) days after the effective date of these Orders, that is, by January 29, 2005, Respondents shall complete a survey for the existing horizontal and vertical limits of debris placement to determine if any approved air space 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, that is, by February 2, 2005, 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, Respondents shall not place waste within any area that will cause them to be in noncompliance 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.

To date, Ohio EPA SEDO-DSIWM has not received a plan sheet comparing the existing horizontal and vertical limits of debris placement to the approved horizontal and vertical limits of debris placement, as required by Order #7. Therefore, you are in violation of Order #7.

8. Order #8 of the DFFOs states that within sixty (60) days after the effective date of these Orders, that is, by February 28, 2005, 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.

   During my inspection, it appeared that C&DD placed along the northeast side of the facility extends beyond the existing approved limits of debris placement. This portion of the facility appears to have a slope greater than 25 percent (4:1), and has a horizontal overfill. As stated in Order #8, Respondents shall remove all waste material from any unauthorized areas of waste placement. Since C&DD disposed of at the northeast Facility continues to extend beyond the existing approved limits of debris placement, you are in violation of Order #8.

9. Order #9 of the DFFOs states that within sixty (60) days after the effective date of these Orders, that is, by February 28, 2005, Respondents shall provide documentation to Ohio EPA, SEDO-DSIWM, indicating the weight, volume and the 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.

   Since, to date, no waste has been exhumed from unauthorized areas of waste placement for proper disposal, it appears that Order #9 is not yet applicable.

10. Order #10 of the DFFOs states that within sixty (60) days after the effective date of these Orders, that is, by February 28, 2005, Respondents shall meet the liner system requirements of OAC Rule 3745-400-07 at all areas of the Facility.

    OAC Rule 3745-400-07(C)(1)(a) states that the owner or operator of any facility shall construct a recompacted soil liner unless the conditions in OAC Rule 3745-400-09(A) are met. Your 1998 license application identified the in-situ material appearing in the test pit logs met the criteria of OAC Rule 374-400-09(A)(2). Therefore, a recompacted liner was not required as part of the Facility. Since the in-situ clay appearing in the test pit logs has been removed during your construction activities, the Facility no longer meets the criteria of OAC Rule 3745-400-09(A)(2).

Based on my inspection, it appears that some clay material has been placed in the area where the in-situ material was removed. However, since you have not submitted a construction certification, as required by and in accordance with OAC Rule 3745-400-08(A), you remain in violation of Order #10, as well as, OAC Rule 3745-400-09(A)(2).

OAC Rule 3745-400-11(E)(1) states in part that the owner or operator shall maintain the integrity of the engineered components of the facility and repair any damage to or failure of the components. Engineered components include the components described in rule 3745-400-07 of the Administrative Code. Since the soil barrier layer is an engineered component, as described in OAC Rule 3745-400-07, you are also in violation of OAC Rule 3745-400-11(E)(1).

11. Order #11 of the DFFOs states that within ninety (90) days after the effective date of these Orders, that is, by March 30, 2005, Respondents shall meet the leachate collection system requirements of OAC Rule 3745-400-07 at all areas of the Facility.

    OAC Rule 3745-400-07 requires that any previously unfilled areas at your facility that receive waste after January 1, 1999, contain a leachate collection system prior to any debris being placed in the area. C&DD has been placed at the north end of the facility, and in the onsite stream, in areas that did not contain waste on January 1, 1999. Based on my inspection, it appears that you have not constructed a leachate collection system in these areas, in accordance with OAC Rule 3745-400-07. Therefore, you are in violation of Order #11, as well as OAC Rule 3745-400-07.

12. OAC Rule 3745-400-11(B)(16) states that the owner or operator shall not cause water pollution. Ohio Revised Code (ORC) Section 6111.04 states that no person shall cause water pollution.

    Leachate continues to discharge from your debris disposal area. Clay material has been placed into the original onsite stream channel. Existing contours can potentially convey leachate into the remaining onsite stream channel located at the north end of your facility. The debris placed in the drainage swale along the east side of the facility has also resulted in pollution being introduced into waters of the state. Therefore, you remain in violation of OAC Rule 3745-400-11(B)(16), as well as, ORC Section 6111.04.

13. OAC Rule 3745-400-11(B)(2) states that the owner or operator shall dispose of construction and demolition debris only within the active licensed disposal area.

    During my inspection, it appeared that debris remains disposed of in an area that did not contain available air space, as defined by your license applications.

Therefore, you are in violation of OAC Rule 3745-400-11(B)(2).

14. OAC Rule 3745-400-11(E)(3) states that the owner or operator of a facility with limits of debris placement within five hundred (500) feet of an occupied building which is not owned by the owner or operator shall establish a barrier to minimize visibility of the facility operations. The owner or operator shall place the barrier on sides with occupied building in existence at the time of the initial license application.

    There are occupied buildings within five hundred (500) feet of the east side of your C&DD facility. These buildings were in existence at the time of your initial license application, and therefore, you are required by this OAC Rule to establish a barrier that will minimize visibility of your facility. The visual barrier must exist on your property. At the time of my inspection, it appeared that there is not a visual barrier on the east side of your property sufficient to minimize visibility from the above referenced buildings. Therefore, you are currently in violation of OAC Rule 3745-400-11(E)(3).

15. OAC Rule 3745-400-11(B)(1) states that the owner or operator shall conduct all operations at the facility in strict compliance with the license, any orders, and other authorizing documents issued in accordance with Chapter 3714 of the Revised Code.

    As indicated by the above-cited violations of OAC Rule 3745-400-11, your facility has not been operating in strict compliance with the facility license. Therefore, you are in violation of OAC Rule 3745-400-11(B)(1).

16. Order #12 of the DFFOs states that 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 eight quarterly installments of $7,812.50 with the first installment payment due on April 1, 2005.

    To date, there is no record of Ohio EPA having received your eight payments totaling $62,500, which was due on October 1, 2006. Therefore, you are in violation of Order #12.

Please be advised that in addition to the above-cited violations of the December 2004, Directors Final Findings and Orders, you are also in violation of OAC Rule 3745-400-12, *Final closure of facilities.*

OAC Rule 3745-400-12(B)(2) states that final closure of a facility is mandatory when a facility license has expired and another license has not been applied for in the manner prescribed in Chapter 3745-37 of the Administrative Code. OAC Rule 3745-37-02(D)(3) states that applications for solid waste facility licenses or infectious waste treatment facility licenses or *construction and demolition debris facility licenses* shall be made during the month of September, if the licensed facility will continue operations beyond December 31. Any license application not filed in the manner set forth in paragraph (D) of this rule shall not be considered. To date, Ohio EPA has no record of receiving from you construction and demolition debris facility license applications for 2007, 2008, 2009, 2010, or 2011. Therefore, the James Brothers Construction and Demolition Debris (C&DD) disposal facility is currently subject to the mandatory closure requirements specified in OAC Rule 3745-400-12(A)(1).

OAC Rule 3745-400-12(A)(1) states that the owner or operator of a licensed facility which meets the criteria contained in paragraphs (B)(1) to (B)(3) of this rule shall comply with paragraphs (C) to (H) of this rule. For the purpose of paragraph (A)(1) of this rule, licensed facility means any facility which received a license in accordance with Chapters 3745-400 and 3745-37 of the Administrative Code.

OAC Rule 3745-400-12(E)(1) states that within seven (7) days of ceasing to accept debris for disposal, the owner or operator shall provide written notification to the licensing authority of the date the facility ceased to accept debris. To date, Ohio EPA has no record of receiving from you the required notification. Therefore, you are currently in violation of OAC Rule 3745-400-12(E)(1).

OAC Rule 3745-400-12(E)(3) states that within thirty (30) days of ceasing to accept debris for disposal, the owner or operator shall post signs, easily visible from all access roads leading onto the facility, stating in letters at least three inches high that the construction and demolition debris facility is closed and no longer accepts construction and demolition debris. The signs shall be maintained in legible condition for at least two years after the facility ceases to accept debris. At the time of my inspection, there were no signs present at the James Brothers C&DD disposal facility containing the information specified in this OAC rule. Therefore, you are in currently violation of OAC Rule 3745-400-12(E)(3).

OAC Rule 3745-400-12(E)(4) states that within sixty (60) days of ceasing to accept debris for disposal, the owner or operator shall cover all uncapped disposal areas with at least six inches of recompacted soil and grade this soil to prevent ponding of water. This soil layer may be considered a part of the cap system required by paragraphs (D) and (E) of rule 3745-400-07 of the Administrative Code. At the time of my inspection, a six-inch layer of recompacted soil has not been applied to the north side of the debris disposal area. It also appeared that the required six-inch layer of recompacted soil is lacking at several areas previously used for debris disposal. Therefore, you are currently in violation of OAC Rule 3745-400-12(E)(4).

OAC Rule 3745-400-12(E)(5)(b)(I) states that the owner or operator shall maintain and continue to maintain compliance with all applicable financial assurance requirements. Ohio EPA was notified by Huntington National Bank that the letter of credit used by James Brothers C&DD disposal facility to fulfill its financial assurance obligations expired on July 11, 2007, and was not being renewed. Pursuant to OAC Rule 3745-400-13(E)(8), James Brothers C&DD disposal facility was required to establish and obtain written approval of alternate financial assurance from Ohio EPA by June 5, 2007. Since you have not maintained compliance with all applicable financial assurance requirements, you are currently in violation of OAC Rule 3745-400-12(E)(5)(b)(I).

OAC Rule 3745-400-12(E)(7) states that the owner or operator shall file with the appropriate county recorder a plat of the facility and information describing the acreage, exact location, depth, volume and nature of the placed debris. To date, Ohio EPA has no record of receiving from you information documenting your compliance with this OAC Rule. Therefore, you are currently in violation of OAC Rule 3745-400-12(E)(7).

OAC Rule 3745-400-12(E)(8) states that the owner or operator shall record a notation on the deed to the facility property or on another instrument which is examined during title search, alerting in perpetuity any potential purchaser of the property that the land has been used as a construction and demolition debris facility. The notation shall include information describing the acreage, exact location, depth, volume and nature of the placed debris. To date, Ohio EPA has no record of receiving from you information documenting your compliance with this OAC Rule. Therefore, you are currently in violation of OAC Rule 3745-400-12(E)(8).

The contents of this letter do not relieve you from your obligation to comply with other applicable requirements outlined in ORC Chapter 3734 and the rules promulgated thereunder, or their obligation to comply with other applicable State and Federal laws and regulations.

To date, Ohio EPA has not received a response to several of the previous letters to you. Ohio EPA is again requesting that you please respond to this letter, in writing, within 15 days and detail your intentions and actions taken to comply with the DFFOs and the above-cited violations of OAC Rule 3745-400-12. Should you have any questions, please contact me at (740) 380-5428.

Sincerely,

Mark Mansfield
Environmental Specialist II
Division of Solid and Infectious Waste Management

MM/cb

cc: Muskingum County Health Commissioner
Matt Boyer, CO, DSIWM
Jeff Hurdley, Legal
Nick Bryan, AGO