COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO PolyOne Engineered Films, Inc.

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and the PolyOne Engineered Films, Inc., regarding regulatory closure of the industrial waste disposal facility located at 1944 Valley Avenue in Winchester, Virginia, and for the purpose of resolving violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.

2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Facility" means the plastic sheeting manufacturing plant, located at 1944 Valley Avenue in Winchester, Virginia, which is currently owned and operated by O'Sullivan Films, Inc.

5. "FAR" means the Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities, 9 VAC 20-70-10 *et seq.*

6. "Landfill" means the two rubber pile fill areas located on opposing sides of Abrams Creek on the eastern most portion of the property identified in this Order as the Facility.

7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

8. "Order" means this document, also known as a "Consent Order" or "Order by Consent."

9. "O'Sullivan" means O'Sullivan Films, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. O'Sullivan is a "person" within the meaning of Va. Code § 10.1-1400.

10. "PolyOne" means PolyOne Engineered Films, Inc., a corporation authorized to do business in Virginia and its partners and subsidiaries. PolyOne is a "person" within the meaning of Va. Code § 10.1-1400.

11. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulation, 9 VAC 20-80-10 *et seq.*

12. "Solid waste" is defined as any material meeting the criteria provided in 9 VAC 20-80-140 and not subject to the exclusions or exemptions found in 9 VAC 20-80-150 or 9 VAC 20-80-160.

13. "Va. Code" means the Code of Virginia (1950), as amended.

14. "VAC" means the Virginia Administrative Code.

15. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

16. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 2 (Va. Code §§ 10.1-1408.1 through -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. PolyOne owned and operated the Facility until December 31, 2005. On that date, ownership of the Facility was transferred to O'Sullivan, which currently owns and operates the Facility.

2. From sometime in the 1930s until the mid-1960s, PolyOne collected primarily scrap rubber and to a lesser extent polyvinyl chloride from its manufacturing processes and stored it in a pile along the eastern property line of the Facility. PolyOne believed that

the collected scrap might increase in value due to its potential for reuse or recycling opportunities. The material sat in a pile on the property until 1990, at which time, PolyOne determined that it could not be reused in the manufacturing process and they were unable to find a recycling market for it.

3. In 1990, for aesthetic reasons, PolyOne flattened and covered the Landfill with clay soil.

4. In 1988, the Regulations were promulgated and the rubber material that was stored in the Landfill therefore became a regulated industrial waste once PolyOne determined that it was useless for resale, recycling or as a raw material for manufacturing. In 1990, flattening and covering the rubber/vinyl pile was not a sufficient mechanism for closure in place as an available regulatory option for managing the industrial waste, because at that time, the material met the definition of solid waste.

5. On January 2, 2008, O'Sullivan submitted documentation confirming that PolyOne contacted DEQ regarding regulatory closure options for the Landfill on both August 30 and December 13, 1990. Despite the information regarding the Landfill provided in the 1990 letters, there is no documentation confirming DEQ approval of the actions taken by PolyOne in 1990 to close the Landfill. However, there is evidence of communication from DEQ to PolyOne in November 1990 regarding pertinent then-current Regulations concerning the Landfill and closure mechanisms available. The flattening and covering of the rubber/vinyl pile as conducted by PolyOne was not one of the mechanisms sufficient to achieve a closure in place under the applicable DEQ Regulation. In 1990, following the flattening and covering activities, PolyOne believed it had appropriately closed the Landfill under the then-applicable VAC and Regulation.

6. On May 2, 2008, DEQ staff received a Site Assessment Technical Memorandum prepared by a consultant for and voluntarily submitted by PolyOne. The memorandum provided an evaluation of the quality and physical characteristics of the fill materials and soil cover, the potential for Landfill leachate contamination of local groundwater and the existing groundwater quality.

7. Based upon information provided in the Site Assessment Technical Memorandum the Board concluded that the Landfill was an Industrial Waste Landfill as defined in 9 VAC 20-80-10, currently is an Industrial Waste Disposal Facility as described in 9 VAC 20-80-270, and, as such, is subject to the closure and monitoring requirements stipulated in the Regulations and the financial assurance requirements of FAR. The Board concluded that PolyOne did not fully comply with the VSWMR.

8. On June 9, 2008, DEQ staff received a Closure-in-Place Demonstration document submitted by PolyOne. The Demonstration showed the viability of the closure-in-place method for handling the regulatory closure of the Landfill. DEQ staff responded to this submittal requesting revisions and further information on July 3, 2008.

9. On August 7, 2008, DEQ staff met with PolyOne and O'Sullivan staff at the Facility to discuss closure plan alternatives for the Landfill.

10. On December 19, 2008, DEQ staff received an Additional Characterization and Closure Memorandum document submitted by PolyOne. Throughout the first half of 2009, multiple communications and responses were sent and received between DEQ and PolyOne staff. These culminated in PolyOne's written decision, submitted to the DEQ on April 15, 2009, to select closure-in-place as PolyOne's preferred closure method for the Landfill.

11. In connection with PolyOne conducting a closure in-place, the VSWMR, DEQ staff and representatives of PolyOne have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code § 10.1-1455, the Board orders PolyOne, and PolyOne agrees to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of PolyOne for good cause shown by PolyOne, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those issues specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, PolyOne admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.

4. PolyOne consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. PolyOne declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by PolyOne to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. PolyOne shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. PolyOne shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. PolyOne shall notify the DEQ Regional Director verbally within 72 hours and in writing within five business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

   a. the reasons for the delay or noncompliance;
   b. the projected duration of any such delay or noncompliance;
   c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
   d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

   Failure to so notify the Regional Director verbally within 72 hours and in writing within five business days, of learning of any condition above, which PolyOne intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and PolyOne.

11. This Order shall continue in effect until:

    a. PolyOne petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
    b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to PolyOne.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve PolyOne from its obligation to comply with any statute, regulation, permit

condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by PolyOne and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of PolyOne certifies that he or she is a responsible officer authorized to enter into the terms and conditions of this Order and to execute and legally bind PolyOne to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible officer of Poly One.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, PolyOne voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2010.

_____
Amy Thatcher Owens, Regional Director
Department of Environmental Quality

Accepted and Agreed to for PolyOne Engineered Films, Inc. voluntarily agrees to the issuance of this Order.

Date: 2/3/10 By: _____, Treasurer

State of Ohio, County of Lorain

The foregoing document was signed and acknowledged before me this 3rd day of February, 2010, by Arif N. Ahmed, known to me and known to me to serve as Treasurer for PolyOne Engineered Films, Inc..

Tracy L. Fenton
Notary Public

TRACY L. FENTON
Notary Public, State of Ohio, Cuy. Cty.
My Commission Expires May 25, 2010

My commission expires: _____

Seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Certification of Closure with no Threat**

   Within 45 days of the effective date of this Order, PolyOne shall submit a certification signed by a certified engineer or qualified groundwater scientist that states in their professional judgment, the facility can be closed with the waste left in place without posing a threat to human health or the environment as required by 9 VAC 20-80-210.B.1.c.

2. **Closure and Post-closure Plans**

   Within 60 days of the effective date of this Order, PolyOne shall submit Closure and Post-closure Plans for the Facility, for approval by the Department, as required by 9 VAC 20-80-210.B.2.a. The Closure Plan shall be prepared per the requirements in 9 VAC 20-80-270.E.1, 2, and 4. The Closure Plan shall include a brief summary of the cap construction and characteristics, calculated area of both landfills, diagram showing the waste boundaries, the location of all groundwater monitoring wells and benchmarks, a waste volume inventory (270.E.1 and 2), and any site defects which include floodplain intrusion, non-compliance due to setbacks, and the storm-water transference pipe that runs through the north cell. PolyOne shall also prepare a Post-closure Plan that covers both landfills and addresses pertinent issues in 270.F.1 through 4. This plan shall include the post-closure time period (10 years or less based upon groundwater results), site use, methods to protect and repair (if necessary) cap, conductance of the ground water monitoring program, periodic landfill inspections and record-keeping.

3. **Preparation of Revised Deed and Plat**

   As required by 9 VAC 20-80-210.B.2.a and defined in 9 VAC 20-80-270.E.4.c.(2) and (3), and within 60 days of the effective date of this Order, PolyOne shall submit a revised survey plat for the property, prepared by a professional land surveyor registered by the Commonwealth, showing the location and dimensions of the landfill disposal areas and the existing groundwater monitoring wells with appropriate numbers, and a note stating the obligation to restrict disturbance of the site to the local land recording authority. A revised deed shall be prepared and submitted which includes a note stating that the property has been used as a waste management facility.

4. **Groundwater Monitoring Plan**

   As required by 9 VAC 20-80-210.B.2.a. and c., and 270.F.1.c, and within 90 days of signing this Order, PolyOne shall prepare and submit a Groundwater Monitoring Plan for the Facility, for approval by the Department, that addresses the criteria found in 9 VAC 20-80-300.A. and 300.C.. The structure for this document, including the specifics of the plan, can be found in the document "**SUBMISSION INSTRUCTIONS NO. 05, GROUNDWATER MONITORING AND SAMPLING & ANALYSIS PLANS FOR NEW SOLID WASTE DISPOSAL FACILITIES.**" Within 120 days of the DEQ approval

of the Groundwater Monitoring Plan, PolyOne shall implement the groundwater monitoring program as described in the Plan.

5. Financial Assurance Requirements

PolyOne shall demonstrate financial assurance for the costs of post-closure care and the costs of groundwater monitoring for the closed landfill as required by 9 VAC 20-80-210.B.2.d and as found in 9 VAC 20-70- *et.al.*

a. **Within 60 days of signing this Order**, PolyOne shall submit costs estimates for post closure care and groundwater monitoring in accordance with 9 VAC 20-70-112. PolyOne shall provide updates of these cost estimates as required by the regulations. The Post-closure care cost estimate shall be based on the total cost of post-closure care over the entire post-closure period and shall be based on third party costs. Industrial landfill post-closure care estimates must reflect a 10-year post closure period beginning on the date that the closure is certified, as described in item 1 of Appendix A.

b. Within 60 days after the Departments approval of the Post-closure and Groundwater Monitoring Plans, whichever is later, PolyOne shall submit a complete and approvable financial assurance demonstration packet including a single mechanism or combination of mechanisms under 9 VAC 20-70-140 through 250. The financial assurance demonstration packet shall be sent to:

Virginia Department of Environmental Quality
Office of Financial Assurance
Attention: Leslie Beckwith
Post Office Box 1105
Richmond, VA 23218

c. PolyOne shall respond to any notices of deficiency with respect to its financial assurance cost estimates or mechanisms in accordance with the notice.

6. Initiation and Conductance of Plans

PolyOne shall initiate and conduct post-closure care and groundwater monitoring as required by 9 VAC 20-80-210.B.2.b. and c. and maintain financial assurance as required by 9 VAC 20-80-210.B.2.d. Once initiated, these programs will be regulated by DEQ under the authority of Part V of the VSWMR.

7. Contact

Unless otherwise specified in this Order, PolyOne shall submit all requirements of Appendix A of this Order to:

David Robinett
Enforcement Specialist

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Harrisonburg, VA 22801
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540-574-7878
david.robinett@deq.virginia.com