

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL RESOURCES

5-29-84

In The Matter Of:

Tonolli Corporation :  
Nesquehoning :  
Carbon County, Pennsylvania :

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is issued by the Commonwealth of Pennsylvania, Department of Environmental Resources (hereinafter "Department"), pursuant to Section 4 of the Air Pollution Control Act, the Act of January 8, 1960, P.L. 2119, as amended, 35 P.S. §4001 et seq., and the rules and regulations promulgated thereunder.

Whereas, Tonolli Corporation (hereinafter "the Company") is a Pennsylvania corporation which owns and operates a secondary lead smelter facility in Nesquehoning, Carbon County, Pennsylvania, which facility includes air contamination sources subject to the Department's regulations.

Whereas, lead emissions from said facility have been identified to include, but not limited to, the following air contamination sources: battery yard, battery breaking, raw material storage and conveyor system, lead smelter road and yard, refinery buildings and solder plant.

Whereas, the Department has performed a study of lead emissions from the facility, which the Department interprets as indicating the potential for nonattainment of the national ambient air quality standard (hereinafter "NAAQS") for lead in the vicinity of the facility at current emission levels; and the Department interprets previous ambient air quality monitoring conducted by the Company to indicate exceedances of the NAAQS for lead.

Whereas, the Company believes that the NAAQS for lead is presently being attained and that there is not a potential for future exceedance, but is desirous to enter into an agreement with the Department to amicably resolve this matter.

Whereas, 25 Pa. Code §141.1 authorizes the Department to impose standards related to the attainment and maintenance of any ambient air quality standard.

Whereas, Section 110 of the Federal Clean Air Act, 42 U.S.C. §7410 requires each state to develop a state implementation plan for attainment of the NAAQS for lead.

Whereas, the Company has committed to implement further lead emission control measures as may be necessary to assure the attainment and maintenance of the NAAQS for lead as expeditiously as practicable, but in no event later than the attainment date specified pursuant to Section 110 of the Federal Clean Air Act and 40 CFR 51.30.

Whereas, the Company believes that following implementation of the specific control measures described herein, and in any event by May 1, 1986, the attainment and maintenance of the NAAQS for lead will be fully demonstrated.

Whereas, the Department will submit this Consent Order and Agreement to the U.S. Environmental Protection Agency as a supplement to the Pennsylvania State Implementation Plan for lead, in accordance with Section 110 of the Federal Clean Air Act, 42 U.S.C. §7410, et seq.

Now, therefore, the Department and the Company, intending to be mutually bound, do hereby agree and covenant as follows:

A. On or before February 28, 1985, the Company shall submit to the Department a Plan Approval Application for the construction of a building to enclose the battery breaking, crushed battery storage, used battery storage, slag storage and charge materials bins presently located along the northern wall of the smelter building. This new building shall be similar to the structure used at Tonolli's Mississauga plant in Canada. An airlock system shall be installed between this new building and the adjoining smelter building. This new building and all necessary equipment described in the Plan Approval Application shall be installed and operational by no later than May 31, 1986.

B. The Department will notify the company of its decision on any Plan Approval Application within 75 days of submittal.

C. The Company shall implement the other methods of reducing lead emissions listed in the Company's letter of July 7, 1983, attached as Appendix A. The other control measures shall be installed and operational in accordance with the schedule provided in the Company's letter of September 9, 1983, attached as Appendix B.

D. The Company shall submit quarterly progress reports, signed by an authorized official within thirty (30) days after the end of each calendar quarter, which shall describe the progress that has been made and the emission control measures that have been implemented during the most recent calendar quarter. Such reports shall be submitted in triplicate to the Wilkes-Barre Regional Office after the end of each calendar quarter while this Consent Order and Agreement is in effect.

E. On or before January 1, 1985, the Company shall relocate and operate at the facility meteorological monitoring equipment for wind speed and direction, atmospheric temperature and atmospheric stability in accordance with guidelines established in EPA-450/4-80-012 of November, 1980. The equipment shall be installed in accordance with the specifications set forth in Appendix C. Prior to the installation of the meteorological equipment the Department shall meet and confer with the Company.

F. The Company shall monitor ambient air quality at the five sampler locations specified in Appendix D. All samplers shall be operational no later than September 1, 1984. On or before May 31, 1985, the Department shall complete a review and evaluation of the adequacy of these sampler locations. Following this review and evaluation the Department may notify the



Company of the need to relocate up to two existing samplers. If the Department notifies the Company, the Company shall install and operate sampler(s) at the new location(s) within 60 days of the Department's selection of the new sampling site(s), provided that no more than two samplers may be relocated. Recognizing that a particular sampling site may not be available to the Company the Department will identify at least three alternative sites.

The ambient air quality monitoring (including the site selection) shall be in accordance with the specification set forth in EPA-450/4-81-006 of January, 1981 and other applicable guidelines. Prior to identifying new sampling sites the Department will meet and confer with the Company on the appropriate sites to select. After presenting sufficient supporting data and securing the consent of the Department, the Company may relocate a sampler to a Department approved site.

G. The Department and the Company are committed to attainment and maintenance of the NAAQS for lead as expeditiously as practicable. The following steps are therefore agreed upon:

1. If subsequent to the implementation of the controls set forth in paragraphs A, C and J the Department determines that the NAAQS for lead has not been attained and/or will not be maintained, the Company shall, within 90 days of the Department's notification, complete a study of additional appropriate control measures that could be implemented by March 31, 1989. One of the control measures studied shall be the maintenance of negative pressure and evacuation of all air in the enclosed battery building through appropriate air pollution control equipment.

2. Subject to the preceding subparagraph, the Department and the Company will meet and confer on the results of the Company's study. If the Company and the Department fail to reach agreement by December 31, 1986 on the additional appropriate control measures that should be implemented to meet the NAAQS for lead, the Department may in its reasonable discretion issue an order directing the Company to implement specific control measures as expeditiously as practicable, but by no later than March 31, 1989.

H. The Company shall submit to the Department, on a quarterly basis, all meteorological and ambient air quality data from the monitoring equipment described in paragraphs E and F. The data shall be forwarded in duplicate to the Wilkes-Barre Regional Office within thirty (30) days of the end of each calendar quarter while this Consent Order and Agreement is in effect.

I. On or before September 1, 1984 the company shall submit for the Department's approval a quality control plan for the ambient air and meteorological monitoring networks in order to secure valid data.

J. The Company shall remove the inactive plastics storage piles by January 1, 1986. The Department has no objection to recycling the plastic battery casings through the Company's plastics recycler in accordance with the applicable Department and EPA regulations. The hard rubber will be disposed of in a disposal site.



K. The Company shall continue to operate and maintain the existing lead emission control measures and work practices installed at the facility.

L. This Consent Order and Agreement shall constitute a final Order of the Department issued pursuant to Section 4 (4.1) of the Pennsylvania Air Pollution Control Act (35 P.S. Section 4004 [4.1]).

M. The Company hereby agrees to waive its right to appeal the provisions of this Order contained in paragraphs A, C, D, E, F, G(1), H, I, J, and K herein to the Pennsylvania Environmental Hearing Board and/or request a hearing thereon and acknowledges that the Order may be enforced in any manner permitted by law, including actions for civil penalties, and agrees to waive its right to appeal the promulgation of this Consent Order and Agreement as part of the Pennsylvania State Implementation Plan. The Company specifically reserves its right to appeal to the Pennsylvania Environmental Hearing Board and to request a stay or supercedeas from any other Department action not covered by the above listed paragraphs, including any action pursuant to paragraphs B, G(2) and Q.

N. So long as the Company fully complies with all provisions of this Consent Order and Agreement, the Department will not institute any action at law or in equity for any violations of the laws or regulations of the Commonwealth of Pennsylvania relating to lead emissions prior to the termination of this Consent Order and Agreement; but if the Company fails to fully comply with any provisions of the Consent Order and Agreement, the Department may institute any appropriate action based upon any violation of the laws or regulations of the Commonwealth of Pennsylvania occurring prior to or after the date of this Consent Order and Agreement. Any litigation that the Company undertakes pursuant to paragraphs B, G(2) and Q shall relieve the Department of the provisions of this paragraph.

O. The Department does not waive any rights it may have to take any action with respect to violations of Department's other emission regulations, specifically including particulate matter emissions. Furthermore this Consent Order and Agreement shall not be construed as a limitation or abridgement of the Department's rights and duties pursuant to Section 6.2 of the Act, 35 P.S. Section 4006.2; nor shall this Consent Order and Agreement be construed to affect any rights of the Company pursuant to Section 6.2 of the Act, 35 P.S. Section 4006.2.

P. This Consent Order and Agreement shall constitute the entire agreement between the Company and the Department and no alterations, additions or amendments thereto shall be valid unless in writing and duly executed by the Company and the Department.

Q. The obligations to comply with the terms set forth in paragraphs A, C, E, F, and J shall be delayed in the event of force majeure, including act of God, war, riot, fire, explosion, accident, flood, sabotage, storms, hurricanes, washouts, lightning, accidents to machinery or equipment, strikes, or other industrial disturbances, civil disturbances, national defense requirements, unreasonable delays or unreasonable failure by the Department to grant plan approval or permits, or any other like event beyond the reasonable control of the Company which prevents the timely completion of an obligation and which the Company cannot adequately remedy or substitute. In no event shall the

completion of an obligation be extended beyond April 1, 1987. The Company shall give written notice to the Department of the occurrence of any force majeure event promptly upon discovery, and upon satisfactory demonstration to the Department of the supporting facts, the time limits provided herein shall be extended for a time period necessary to complete the obligation.

R. This Consent Order and Agreement shall remain in effect until April 1, 1989 unless extended by mutual consent of the parties.

FOR TONOLLI CORPORATION:

We, \_\_\_\_\_ and \_\_\_\_\_  
do hereby affirm that we are officers of Tonolli Corporation and are authorized  
to execute this Consent Order and Agreement for the Company.

May 23/84  
Dated

30 MAY 1984  
Dated

Sup. 6  
General Manager

Thomas Baile  
Secretary or Treasurer

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Attorney for Tonolli Corporation

FOR DEPARTMENT OF ENVIRONMENTAL RESOURCES:

5/31/84  
Dated

6/8/84  
Dated

John Wilkes  
Regional Air Pollution Control Engineer

Thomas G. Qu  
Attorney for Department