

**MINUTES**  
Eugene Toxics Board  
Fire Conference Room  
Eugene Emergency Services Center  
1705 W. 2<sup>nd</sup> Avenue  
Eugene, Oregon

January 25, 2011  
3:30 p.m.

PRESENT: David Beede, Diana Bollenbaugh, Stephen Flanagan, Holly Jacobson, Cynthia Kokis, members; Joann Eppli, staff. Andy Poynter of Environmental Poynters and Ken Luse of Luse and Associates, guests.

ABSENT: Dave Doll

**I. Introductions/ New Board Members/ Approval of Agenda**

Board Chair Stephen Flanagan convened the meeting at 3:35 p.m. and those present introduced themselves. The agenda was accepted as submitted.

**II. Public Comment**

Andy Poynter said he had worked with Glen Potter the past thirteen years and had somehow recently discovered there were companies not listed on the program's website but were paying into the program. Ms. Eppli explained to him that these companies met the criterion to be in the SIC code 20-39, had more than ten employees, but did not meet the threshold of 2640 in Toxics. Mr. Poynter thought this was odd, as it was spelled out in the charter amendment the criteria for meeting the compliance with the toxics rules, and not to have toxics but still pay into the program seemed strange to him.

Mr. Poynter wanted to understand the history and if this was true, how many of these companies existed and why they were not listed on the website. Something must have changed, he added, between 1997 when the City Council adopted the ordinance and now when companies paid into the program that did not have toxics, or met the threshold of 2640.

Mr. Flanagan asked Ms. Eppli if she knew when the 2640 pounds criterion was added. Mr. Poynter clarified that this was the federal definition of a small quantity generator. Ms. Eppli said she thought this had happened in 1999.

Mr. Beede commented that he had spoken to Glen Potter about this matter a while back and Mr. Potter said that even though companies did not meet the threshold, due to their classification code and their number of employees, they were required to pay. Ms. Eppli noted that at last count the number of such companies was 29.

Mr. Luse reiterated that the question was how did the process change from the original charter amendment where those who had to report had to pay, to the current point where

those companies who did not have to report still had to pay, based on their number of employees. Mr. Poynter added that if a company had zero toxics and still had to pay seemed contrary.

Mr. Flanagan said the Toxics Board would take this question under advisement, reviewing the history and consulting with Mr. Potter and perhaps the City Attorney to clarify the issue. The board would invite Mr. Poynter and Mr. Luse back to a meeting when the information had been clarified, he said.

Mr. Beede reported that the fees were per person based on FTE, up to \$2,000 maximum. One of his companies with no toxics was paying the maximum fee. He noted that most large companies paid the maximum amount.

### **III. Approval of Meeting Minutes**

Ms. Bollenbaugh moved, seconded by Ms. Kokis, to accept the minutes as presented for November 3, 2010 and November 15, 2010. The motion passed unanimously.

### **IV. Review of 2010 Annual Report**

Ms. Eppli reported that the City Charter which created the Toxics Board required an annual report to be submitted to City Council. She had created a draft report and distributed it to board members for review. Ms. Eppli noted that earlier it had been reported that the Toxics fee was expected to increase slightly, but that in actuality the fee would be declining slightly due to reduced staff costs.

Responding to a question by Mr. Beede about whether FTE costs were driven by the cost of the program, Ms. Eppli said the fee was calculated by totaling the FTE numbers from all the reporting companies and combining these with the costs of running the program in an Excel spreadsheet, which resulted in a recommended per FTE number.

Mr. Flanagan confirmed that if companies not using toxics were dropped from the requirement to pay fees, the cost to the remaining companies would rise.

Mr. Prince found the paragraph relating to fees a little confusing and suggested that the sentence, "Fees are capped at \$2,000" be expanded to include the words, "per reporting entity" and also to add that last year's fee was \$55.48 per full-time employee. He also found confusing the concept that the fewer the number of total employees, the greater fee per employee, except for when the cap was reached. Mr. Beede responded that this had been a hard-fought legal battle. Mr. Prince said he felt it was important to add that many of the businesses were at the \$2,000 cap, and also that there was approximately an equal number of businesses that did not report but did pay into the program.

Mr. Flanagan agreed that a sentence could be added at the end of the first paragraph on page 1 stating that in addition, there were 29 non-reporting entities which—because of their classification—did pay a fee into the program.

Mr. Prince added that it would be helpful also to report the amount of fees collected from both non-reporting entities and reporting entities. He further suggested that the fee section of the report could have its own header.

Mr. Flanagan asked that Ms. Eppli break out reporting and non-reporting entities and give the amounts for each, and that the board then take another look at the report. Ms. Eppli noted that there was not a set date for the report to be submitted.

Mr. Prince had a question, under the heading “Compliance Continues at Acceptable Level,” regarding Green Gear Cycling, Inc. paying fees in installments. Ms. Eppli replied that she did not have the information on-hand, but she would look it up and submit it to the board.

Mr. Beede remarked, regarding the possibility of changing the rule that non-reporting entities needed to pay fees, that there would need to be a change made to the amendment based on the SIC code to alleviate non-reporting entities having to pay, which would be ideal from his perspective. Mr. Flanagan asked that any further discussion wait until after hearing back from Ms. Eppli.

Mr. Luse commented, in terms of historical events around the fee structure, that when companies started declining and the budget was becoming short, someone had suggested that the non-reporting companies pay fees, and the City Council had been asked to impose the fee. The City Council then had passed a resolution that incorporated the non-reporting entities paying fees based on their potential to use chemicals because of their classification.

It was agreed that Ms. Eppli would bring information back to the board for further discussion.

#### **V. Toxics Program Budget – FY12**

Ms. Eppli referred to a one-page “Estimated Budget” in the meeting packet. She said that the last day of last year she had sent out year-end reminders to companies that inventories should be conducted with the Toxics Program reporting requirements in mind. At the beginning of the year she had sent out requests for FTE’s for all companies, as well as software and reporting requirements to the companies that needed to report.

Ms. Eppli continued that in requesting FTE information, the following discoveries were made. She reported that Hearin Forest Industries had closed up shop, though she did not know if they had moved elsewhere. When no response had been received from them, she drove by their site, and clearly saw that the site had been abandoned. Knight’s Fabrication and Eugene Carbide Saw did not meet the 2010 FTE reporting threshold, so they would also be out of the program in the coming year, she said. She had also learned that Gheen Irrigation might be moving its two locations to Harrisburg soon, though she had not been

able to confirm this information yet. She said she would share any information that she receives in this regard with board members.

Ms. Eppli commented that the fiscal year estimated budget had decreased from last year's budget by about 6%, with last year's budget being \$98,718 and the coming year's estimated budget being \$92,409 due to her own salary being less than the previous staff person's salary. One small change in the Estimated Budget, she noted, was the moving of \$1,000 from City Attorney fees to Advertising.

Ms. Eppli continued that a recommended fee was generated for 2012 of \$53.34 per FTE to fund the Toxics program for 2012. She said the next step for the board would be to discuss and decide on a fee for the upcoming fiscal year in preparation for the City Council's official establishment of the fee on February 22, 2011.

Responding to a question from Mr. Flanagan regarding the need for a company to report if they closed business halfway through a fiscal year, Ms. Eppli replied that if a company left town today, they would not be required to pay a fee. If, however, they were still in local business when the fee and reporting was due, they would owe both a report and a fee. She clarified that reports were due April 1<sup>st</sup> and bills were sent out on May 1<sup>st</sup>. She had received reports on 2010 FTE numbers from both reporting and non-reporting companies, and from those numbers had generated the 2012 estimated fee.

A question arose about a company storing chemicals on a site but not consuming the chemicals. Mr. Beede commented that storing versus consuming chemicals were different issues. He suggested that when a company stopped generating revenue and stopped manufacturing operations, that the FTE component would stop at that point. As well, the industrial classification of that parcel of property would change at that time, he said. He clarified that there were different ways to derive industrial classification, and that the standard used here was the NAICS Code.

Mr. Flanagan said he did not believe there was any official way to know that a company had ceased doing business. Ms. Bollenbaugh responded that if a company had permits with other government agencies, they were required to contact the agencies to report their cessation of business. Mr. Beede surmised that when the company received the FTE request sheet, they would either respond or not; and if there was no response, that would be the time to call or drive to their site to check on what was happening.

## **VI. Staff Report**

Ms. Eppli asked if there were any additions or changes to the Board Roster she had included in the meeting packet. There were none reported.

She had received an amendment report from Willamette Valley Company regarding discharge to storm water for the years 2003-2009, and had entered the corrections into the Toxics Program database.

As well, Ms. Eppli said she continues to do regular audits of businesses that reported into the program on the three-year cycle. Businesses were randomly audited, she explained, and everything was going well with the audits.

Ms. Eppli said she was still learning about the Toxics Program as a new employee, and that Glen Potter had offered to do a presentation at one of the upcoming Toxics Board meetings on the history of the program for her benefit and for new board members as well. This was agreed to be a good idea.

She clarified for Mr. Beede that in order to put an item on a meeting's agenda, he could email everyone with the request and she would put the item on the agenda.

## **VII. Schedule Next Meeting/Agenda Items**

Ms. Eppli acknowledged the need for a meeting before the February 22 City Council meeting to decide on the fee, sign off on the Annual Report, and perhaps have Mr. Potter give his presentation. The next meeting was scheduled for Thursday, February 3, 2011 at 3:30. It was noted that signing off on the Annual Report could be put off until March, if necessary.

Ms. Jacobson moved, seconded by Mr. Beede, to adjourn the meeting. The motion passed unanimously, and the meeting was adjourned at 4:35 p.m.

*(Minutes recorded by Judith Burton)*