

MINUTES

Eugene Toxics Board
Fire Conference Room, Second Floor
Eugene Emergency Services Center
1705 West Second Avenue, Eugene

February 3, 2011
3:00 p.m.

PRESENT: Cynthia Kokis, Vice Chair; David Beede, Diana Bollenbaugh, David Doll, Holly Jacobson, Randall Prince, members; Joann Eppli, Fire and Emergency Services staff; Bob O'Brien, Glen Potter, visitor.

ABSENT: Stephen Flanagan, Chair.

Ms. Kokis called the meeting of the Toxics Board to order.

I. INTRODUCTIONS/APPROVAL OF AGENDA

Those present introduced themselves.

Mr. Beede said he had to leave the meeting early and requested that item III. History of the Eugene Toxics Board Right-to-Know Program be moved to the end of the agenda. There was consensus to accept Mr. Beede's request.

Ms. Eppli had been working on getting all of the Toxics Board meeting minutes, a current list of non-reporting businesses and toxics program related links on the City's website. The information should be available in the near future.

II. PUBLIC COMMENT

Mr. O'Brien stated he was at the meeting to listen to Mr. Potter's presentation. He had been involved with the Toxics Right-to-Know Program when it began. He stated that many things had happened with the funding because of court cases and state legislation. He was in attendance to advocate for the current methods of funding the Toxics Right-to-Know Program.

Mr. Potter was in attendance as a former Toxics program staff person and to make a presentation on the history of the program.

III. REVIEW OF RECOMMENDED FEES

Ms. Eppli directed board members to a memorandum dated January 26, 2011 to the Eugene Toxics Board from Joann Eppli, subject Recommended Hazardous Substance User Fees for

FY12. She noted a public hearing and possible City Council action was scheduled for February 22, 2011. A delay in the board's approval of the fee could potentially delay funding for the program. She said the recommended fee was based on the number of full time equivalent employees (FTE) of all businesses in the program, the revenue requirement, and took into account the \$2,000 State imposed cap fee. The fee recommendation for FY12 was \$53.34 per FTE up to the \$2,000 cap. After fees were approved by the board, they would go to the City Council for approval.

Mr. Beede had reviewed the Standard Industrial Codes (SIC) and referenced the 28 companies that did not report, but were required to pay the fees. He asked if that was up for adjustment and if it was possible for companies that did not meet the minimum threshold for reporting to opt out of the program.

Ms. Eppli responded that the program would continue to run under SIC codes until the City Charter was updated.

Mr. Potter said SIC codes were found in both the City Charter and the applicable ordinance, and noted that there is no opt out clause in either of the documents.

Mr. Beede said he would favor looking at an approach that would shift the fees onto the businesses that used more hazardous substances.

Ms. Kokis asked why the board would work toward eliminating the Toxics Review Board, since the \$2,000 cap limited costs for businesses. The program had been authorized by the people of Eugene.

Mr. Beede suggested expanding the SIC codes to capture businesses and public agencies that used hazardous substances but were not currently required to pay the fee or report.

Ms. Bollenbaugh asserted the discussion had gone beyond the bounds of reviewing the recommended fees and had moved on to future events. She said Mr. Beede's issues would be addressed later.

Ms. Bollenbaugh, seconded by Ms. Jacobson, moved that the board approve the proposed budget as iterated on the January 26, 2011 memorandum to the Eugene Toxics Board from Joann Eppli, subject Recommended Hazardous Substance User Fees for FY12. The motion passed unanimously, 6:0.

IV. REVIEW OF REVISED ANNUAL REPORT

Ms. Eppli offered the staff report. She directed board members to the February 4, 2011 memorandum to Mayor Kitty Piercy and City Council Members from the Eugene Toxics Board, subject Eugene Toxics Board 2010 (draft) Annual Report. She reviewed the revisions suggested by the board at the January 25th, 2011 meeting.

Mr. Prince suggested a list of businesses that contributed to the program but did not meet the requirements for reporting should be included in the report. He also suggested there should be an adjustment to allow more of the fees fall on those whose operations needed to be reported on.

Mr. Doll said the board had studied establishing a reward system in the past and had concluded that was a separate issue from the reporting function. He thought it may be difficult to include that information on this year's report due to time constraints.

Ms. Jacobson, seconded by Mr. Doll, moved to include the reward system to the agenda for the next board meeting. The motion passed unanimously, 6:0.

V. SCHEDULE NEXT MEETING/AGENDA ITEMS

The next meeting was scheduled for March 8, 2011 at 3:30 p.m. The April meeting was tentatively scheduled for April 26, 2011.

Mr. Beede left at 4:15 p.m.

VI. HISTORY OF THE EUGENE TOXICS RIGHT-TO-KNOW PROGRAM

Mr. Potter directed board members to the following documents:

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- *Oregon Revised Statute 453.402.*
- *Eugene Charter, Section 54, Amendment IV.*
- *May 5, 1999 Court of Appeals of the State of Oregon Ruling* related to the Toxics Right-to-Know program.
- *Eugene Code, Hazardous Substances User Fee 3.690 through 3.696.*

He reviewed the important dates related to the program including:

- 1902—State of Oregon adopted citizen initiative laws.
- 1979—ORS Citizen Initiative Provisions.
- 1987—Eugene Free Zone Ordinance.
- 1989—Oregon State Fire Marshal Preemption Laws in ORS 453.402.
- 1995—Construction of Hyundai factory in Eugene.
- 1996—Eugene Toxics Right-to-Know Charter Amendment.
- 1996—Lawsuit Filed by Eugene Businesses.
- 1999—Oregon Court of Appeals Ruling.
- 1999—Eugene City Council Adopts Eugene Code (EC) 3.690 to 3.696.

Mr. Potter noted that any change to the Charter would take a public vote. If the board attempted to let businesses that had to pay a fee but did not have to report off the hook, it would be in violation of the court decision and applicable ORS.

Mr. Prince asked if the criteria for reporting was based on quantity.

Mr. Potter said there were three criteria for paying a fee and four criteria for reporting and paying a fee, the fourth being a quantity threshold.

Mr. Prince said the City Council adopted a provision for a third type of legislation, a protected ordinance, that was not a charter amendment and could be amended by City Council with a unanimous vote of the council.

Mr. Potter said other local governments had been restricted by the State from easily implementing similar toxic right-to-know laws.

Mr. Prince thought it was in the best interest of the program to refrain from tampering with the fees.

Mr. Potter commented there were two schools of thought on a recognition program. Some businesses did not want to be named on a list of businesses with hazardous substances at their sites.

Ms. Bollenbaugh noted the board had voted in the past on whether or not the Toxics Board should recognize companies that were diligent. At that time the board determined there were other avenues for recognition and chose not to move forward with a recognition program.

The group discussed the pros and cons to the business community and the public of recognizing businesses that were required to pay but not report.

Ms. Jacobson noted the board had already decided to discuss this issue at the next meeting.

In response to Ms. Eppli, Ms. Bollenbaugh suggested deferring adding the list of businesses that paid the fee but did not report to the City's website until the board had discussed the issue at the March meeting.

Ms. Jacobson suggested inviting a representative from one of the 28 businesses that pay a fee but do not report to attend the next board meeting. There was consensus to accept Ms. Jacobson's proposal.

Ms. Kokis invited Mr. Obrien to attend the next meeting.

Ms. Eppli invited Mr. Potter to attend the next meeting.

The meeting adjourned at 4:56 p.m.

(Recorded by Linda Henry)