

# MINUTES

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

March 8, 2011  
3:00 p.m.

PRESENT: Stephen Flanagan, Chair; Cynthia Kokis, Vice Chair; David Beede, Diana Bollenbaugh, David Doll, Randall Prince, members; Joann Eppli, Fire and Emergency Medical Services staff; Andy Poynter, Joe Honochick, Ken Luse, visitors; Glen Potter, former staff.

ABSENT: Holly Jacobson

Mr. Flanagan called the meeting of the Toxics Board to order at 3:34 p.m.

## I. INTRODUCTIONS/APPROVAL OF AGENDA

Those present introduced themselves.

Mr. Flanagan noted that Mr. Beede wished to add a discussion about improving website Eugene Toxics Right-to-Know (RTK) data collection.

Mr. Beede, seconded by Ms. Bollenbaugh, moved to add the item to the agenda. The motion passed unanimously.

## II. PUBLIC COMMENT

No one wished to provide public comment.

## III. APPROVAL OF MEETING MINUTES

Mr. Beede offered the following amendment to the second sentence of the fifth paragraph of page two of the February 3, 2011 minutes: ~~“He said in the spirit of right to know, it would be legal for the City to acknowledge people who supported the program but we not required to report.”~~

Ms. Eppli offered the following amendment to section V. of page three of the February 3, 2011 minutes: ~~“The next meeting was scheduled for March 18, 2010~~ *March 8, 2011* at 3:30 p.m.”

Mr. Poynter offered the following amendment to the second paragraph of section II on page one of the January 25, 2011 minutes: ~~“He wondered if that amount would be five pounds or 500, or 2500 pounds.”~~

Ms. Kokis, seconded by Ms. Bollenbaugh, moved to accept the January 25, 2011 and February 3, 2011 minutes as corrected. The motion passed unanimously.

#### **IV. DISCUSS FEE STRUCTURE AND NON-REPORTING BUSINESSES**

Mr. Beede noted that he had been examining memorandums to the City. He read: "To be required to report, must have a certain industrial classification code, be within Eugene, have ten or more FTEs and have total inputs of 2640." He asked if those who met only one of these criteria had to report.

Mr. Potter said that only those who met all four criteria were required to report.

Mr. Beede asked why non-reporting entities who did not meet all four criteria reported.

Mr. Potter explained that non-reporting entities were not reporting.

Mr. Beede said that non-reporting entities were still contributing and paying a fee. He asked why this was.

Mr. Potter said he had explained this at the last meeting. The City had been sued for violating ORS 453.4026, which stated that a fee could not be charged based on quantity if an entity in any way duplicated the State Fire Marshall's Reporting Program. He stated that the City of Eugene's RTK Program had always charged on the basis of FTE, but an Oregon Court of Appeals judge had ruled that the program was still charging on the basis of quantity because it used a quantity threshold. Because of this ruling, the City had had to refund two years worth of fees and adopt an ordinance. The City Attorney had advised the City Council that in order to "keep the faith" with the voters, they could adopt an ordinance requiring a fee of businesses that met the three criteria that did not have to do with quantity. Therefore, any entity that had ten or more FTE, was a manufacturer and operated within the City limits must pay a fee, as per the charter and ordinance.

Mr. Beede asked if this text could be found online.

Mr. Potter stated that yes, the City Code was online. He said it had also been distributed at the last meeting.

Mr. Beede did not think this practice was fair and equitable. He asked how it could be adjusted to be fair and equitable.

Mr. Potter said he did not know.

Mr. Beede asked if the City Council had to get involved.

Mr. Potter said that it did, as did the voters. The City Council had been told by a judge that a fee could not be charged based on quantity. The 2640 criterion constituted charging by quantity, even though another criterion was FTE. This was why the City Council had adopted this ordinance.

Mr. Beede said that he was suggesting that those who were not using chemicals should not have to participate in the program. This made the program non-equitable across the board. He gave

examples of entities that had less than ten FTE sometimes and consumed “vast quantities” of chemicals. He thought government entities should also have to participate rather than submit hazardous substance reports. Vulnerable entities should not be singled out.

Mr. Prince arrived at 3:43 p.m.

Ms. Kokis said that Mr. Beede had left the last meeting early after requesting that this discussion be placed at the end of the agenda. She said that fees were necessary for the RTK Program.

Mr. Beede acknowledged this, saying that he assumed the items earlier on the agenda were more pertinent. He understood many of the rules and had been involved in the program for many years. He said he got on the Board to make sure these issues were discussed publicly and to state his companies’ positions. He was attempting to be pragmatic and fair across the board. He said that some companies felt targeted.

Mr. Potter said that entities that had to pay a fee but did not have to report, such as Mr. Honochick’s business, had a “legitimate beef.” However, voters, the City Council and a judge had decided on these rules and to change them would require action from all three, in addition to the Toxics Board. Four Toxics Board members were needed to vote to advise the City Council to refer the issue to voters, go to the State Legislature or adopt an ordinance. He advised the Toxics Board to discuss with the City Attorney whether this advisement was legal. He added that the Toxics Board can only act by majority vote.

Mr. Doll asked if the Toxics Board could make a recommendation to the City Council.

Mr. Potter said it could if four members voted in favor of doing so.

Mr. Prince said that the fee structure was a product of a court decision. He said that for the medium term future, the fee structure satisfied most people who were paying the fee. The fee structure insured the public that Eugene was a clean city that looked carefully after the public’s interest. He understood businesses’ position. He suggested plaques or stickers for those who complied, with the following wording: “X is a Eugene manufacturer subject to the Toxics RTK Program because it belongs to Industrial Class X and their status is: In compliance or Exempt.” He thought this could be a positive thing for businesses, and that the sticker could be optional to display.

Mr. Beede said that he was not in favor of this because it was like getting a ticket from a police officer, and then having the police officer giving a reward to the person they ticketed. Businesses saw this practice as punitive rather than beneficial. He said that the Toxics Board was not a regulatory agency, but an entity that enabled the RTK Program. He said this information was used by environmental groups and was not in the best interest of businesses.

Mr. Prince said that the Toxics Board was also to help the public add regulations if they felt it necessary.

Mr. Beede asked if there was doubt that regulatory agencies could do their jobs.

Mr. Prince said that this was the presumption behind the law. Citizen supervision was a part of the original environmental laws. Often, laws around the country were not sufficiently enforced. This law also allowed citizens to get information and make complaints.

Mr. Luse arrived at 3:54 p.m.

Mr. Beede asked how data helped regulation and a citizen's ability to do these things.

Mr. Flanagan said that regardless of the original intent of the law or whether or not the Toxics Board was a regulatory agency, the statute existed and it was the Toxics Board's responsibility to do its part to administer it. He acknowledged Mr. Beede's concerns but noted that a practical solution needed to be found. Repealing the law or getting rid of the Toxics Board might not be practical. He wished to use the Toxics Board's time wisely.

Mr. Beede said he also wished to use the Toxics Board's time wisely.

Mr. Poynter asked where the list of reporting agencies was.

Ms. Bollenbaugh said a published list did not exist and the Board did not feel as though it should "out" businesses to public scrutiny that was not necessarily warranted.

Mr. Potter said that the list was public record, but he could not recall it ever being requested.

Mr. Poynter recommended publishing the list.

Ms. Bollenbaugh said that the Board had requested reporting agencies come in to solicit their feedback about publishing the list.

Mr. Poynter said that there wasn't a choice, since the list was public record. He understood the backlash from businesses, but wanted to know where the program's funding was coming from.

Mr. Honochick said that his company, Zip-O-Log Mills, received an annual request for their total FTE. After this was sent in, the City invoiced them for \$2,000. He wished to know what this money went towards, and whether or not all other businesses were also contributing.

Mr. Flanagan said that any other businesses that met the criteria were also paying into the program, and that there were businesses that were not reporting and were paying.

Mr. Honochick asked if the Board would be surprised to hear that businesses that were required to pay were not.

Mr. Potter said that they would. He explained that if a company had an SIC code that classified them as a manufacturer, had ten or more FTE, and operated a facility within the City of Eugene, the law said that the company had to pay a fee. This had been decided by voters, a judge and the City Council. The Board and Fire and Emergency Medical Services Department believed that all businesses that met these criteria were paying fees. He said that Mr. Honochick's business was caught in the net and as a result of the lawsuit and the judge's decision, and had to pay a fee but did not have to report. He said that if a company existed that met the criteria but was not paying the fee, they needed to be investigated.

Mr. Poynter asked what happened to those companies when found.

Mr. Potter said that they started paying. All were "caught" within the first year or so. Those who began paying later on in the program were businesses that had just opened. The Fire and Emergency Medical Services Department had sent out postcards about the rules to all businesses

in Eugene.

Mr. Honochick wondered about businesses that had not complied or had ignored the postcard.

Mr. Potter said that there were ways to investigate whether this was happening. He did not think any businesses existed that were not in compliance.

Mr. Prince said that he was not claiming that the acknowledgement program he proposed would be a “plus” for all businesses, but he believed it would work for many. Advocates of the RTK Program had wanted potential polluters to pay. The judge had made a decision. If a broader reform was desired, publishing the list would make more widely known those businesses that were paying fees but did not have to report. This would help in bringing about reform. He understood the narrow targeting of those who had to pay fees. This was turned down in order to get it passed. The size of the program was not large compared to the City of Eugene's budget. He thought publishing the list could be positive as long as the judge's decision and the state legislature's influence was also noted. The program was not entirely to blame for the current regulations. He did not think the list would have a negative effect on the businesses in it.

Mr. Flanagan asked if Mr. Prince was suggesting acknowledgement of businesses that qualified for the program but did not report.

Mr. Prince said that this was correct. He said that businesses that did not have to file a report because they were not polluting would not suffer if they were listed publicly.

Mr. Beede agreed that the information should be available. He perceived that the strategy involved in keeping the non-reporting entities paying was devised to fund the program. If this was the case, the program needed to be further-reaching to ensure that all businesses that were required to contribute did contribute.

Mr. Prince agreed. This would be a basis to help more members of the public know which businesses were paying. This would show that advocates and businesses felt that the law and public information were important and that perhaps there was a more fair way to distribute the modest cost of the program.

Mr. Beede asked how to get the City, state and other governmental entities, including the University of Oregon, to participate in the program.

Mr. Prince said that members of the public would probably be in favor of more entities reporting and paying into the program. He said that these entities were left out of the wording of the law so that it would pass.

Mr. Beede said that this change would also allow non-reporting entities to opt out because it would be less dependent on their financial contributions.

Mr. Doll asked if it would be difficult to add non-reporting companies and the reasons they were non-reporting to the website.

Mr. Flanagan was not sure he would appreciate his business being listed if he were the owner of Zip-O-Logs.

Mr. Prince said that publishing such a list would create an argument for reforming the fee

structure. The list would also show that the rules were a consequence of something that was “out of the hands” of Eugene voters. He thought that proposals for reforming the fee structure as opposed to “scrapping” the program would be popular enough to pass. He said that the RTK Program had come about because of a history of distrust between citizen groups and the City Council related to toxics.

Mr. Potter said that this was because there was no report. The RTK Program was a public information program that was to post information on the Internet about chemical use. If a company had not given the City a report, there was no information for the City to report. This did not mean there was anything the matter with posting the list of the non-reporting entities that paid a fee. This was technically feasible.

Mr. Flanagan asked if the Board wanted to publicly list those companies that were required to pay a fee but that did not report.

Ms. Bollenbaugh said that she would prefer that the non-reporting companies were consulted first. She was concerned about companies' potential concerns about the public's perception of them.

Mr. Prince said that the program did not cover all businesses that used chemicals, and the public might want more information. There was a benefit to the spirit of the law to make public the reasons why certain companies did not participate in the program. This might result in the public's desire for an expansion of the program, and would be of benefit to the public.

Mr. Beede asked if Mr. Prince thought members of the public used the RTK website to ascertain companies that might be producing pollutants in the City of Eugene.

Mr. Prince suspected that the website was underutilized. He thought members of the public should be encouraged to pursue information.

Mr. Beede asked Mr. Prince what proactive people did if they saw a chemical spill.

Mr. Prince said that people probably called the Oregon DEQ. He said that he would call his Lane County Commissioner and ask which agency should be called.

Mr. Beede said that the law required businesses to call OERS if something was spilled, which triggered all agencies that would respond to malodors, spills, contamination that could impact other properties, groundwater, land or air issues. He did not think that people would consult the RTK website. He thought they would conduct their own investigation and would hold companies financially and civilly responsible.

Mr. Prince said that Mr. Beede was again questioning the point of the RTK Program. He said that the public had a right to know and a right to information.

Mr. Beede said that Mr. Prince thought the laws that existed were not enough to regulate manufacturing companies. He did not believe this and thought businesses were good stewards and cared about the environment and the community. He said that boards like the Toxics Board implied a criminality about certain businesses.

Mr. Flanagan asked for a practical step from the Board.

Mr. Prince moved to put the list of non-reporting, fee-paying businesses on the RTK website with an explanation of the reasons they were on the list. The motion died for lack of a second.

## V. RIGHT-TO-KNOW WEBSITE USER DATA

Mr. Beede wanted the RTK website (<http://www.eugene-or.gov/toxics>) survey to quantify who was using the website and why and asked when the survey had originated.

Mr. Potter explained that there had always been a question of who used the information and the value the program had to the community. He said that about eight years ago, the Fire Marshal had requested that he recommend to the Toxics Board that information must be provided before the RTK website could be accessed. The Board had said that this would restrict access to the site. Two years ago, the Board had approved the addition of an optional survey prior to access to the site (which could be skipped).

Mr. Beede said that his business and the businesses he represented felt that they subsidized the RTK program and therefore had a right to know who was accessing the data and where they were. He said that the survey data as it was, was “useless.” He referred to a table he created from the survey data, in a document titled *City of Eugene Toxics RTK Web Site Visits vs. Cost of Program Administration*. He reviewed the table. He noted that based on his averages, each visit to the RTK website cost approximately \$336.

Mr. Flanagan asked if Mr. Beede was dividing the entire cost of the RTK program by the number of visits to the website, which would imply that the total cost of the program went into the website.

Mr. Beede said this was true. The objective of the program was to convey the information on the website to the public.

Mr. Flanagan said he did not agree with this calculation.

Ms. Kokis said that the website was just one piece of the program.

Mr. Flanagan understood Mr. Beede's perspective, but would not quantify the cost of the website the same way. He said that no entity could ever truly characterize who was accessing their data if it was in on the web in a public domain. He also took issue with Mr. Beede's calculations because they discounted the 500 visitors to the website that had skipped the survey.

Mr. Prince appreciated the opt-in nature of the survey. He thought that wording the prompt in a certain way might encourage more visitors to share information.

Mr. Flanagan felt that forcing website visitors to share personal information in order to gain access to the data was antithetical to RTK. He did not agree with it.

Ms. Kokis called the question.

Ms. Bollenbaugh commented that the TRI program, to which many entities reported, did not require a survey to access its data.

Mr. Beede said that TRI was funded by the government.

Mr. Flanagan noted that the government was funded by citizens.

Ms. Bollenbaugh agreed that forcing site visitors to provide information was counter to the intent of RTK.

Mr. Prince proposed alternate wording be used to encourage more site visitors to provide information.

Mr. Flanagan, seconded by Mr. Doll, called the question.

Mr. Flanagan asked for a motion.

Mr. Beede asked for an opportunity to better quantify the information on the front end of the website before making a motion.

Mr. Flanagan suggested speaking with the network staff person about the database and ask for what was practically feasible to ask of site visitors.

Ms. Eppli asked Mr. Beede to write out what he wanted so she could discuss his ideas with the network staff person.

## **VI. TOXICS BOARD MEMBERSHIP UPDATE**

Ms. Eppli noted that Mr. Doll's and Ms. Kokis' terms would end at the end of June. She thanked each for their service. She noted that per policy, Mr. Doll was not allowed to re-apply right away, because he already served for two three-year terms, but could re-apply in one year. This left the Board with two open positions as of July 1 – an industry position and an RTK position. She asked for help spreading the word. There was a City-wide recruitment process to fill vacancies on all boards and commissions. As of March 7, no applications for the Toxics Board had been received.

Mr. Flanagan said that he would re-apply to serve another term on the Board.

Ms. Eppli noted that Mr. Flanagan filled position seven, Mr. Doll filled position two and Ms. Kokis filled position five. Ads about the open positions had been run. The City-wide application process ended on March 31 (applications are due March 31).

Mr. Potter asked Board members to give Ms. Eppli suggestions about recruiting.

Mr. Beede asked if industry representative members had to be working for an actively reporting business.

Mr. Potter said this was true.

Ms. Eppli said that on the RTK side, applicants only needed demonstrated experience in the public's RTK.

Mr. Poynter asked where the requirements for industry Board members was.

Mr. Potter said the requirements were listed *City of Eugene Charter, Section 54, Amendment IV*. He read: “Three members shall be appointed who are employed by or are agents of 'persons' required to report under this Section.” He said that “persons” meant manufacturers.

Ms. Eppli said that Mr. Flanagan would have to step down as Chair. The Chair rotation stated that effective July 1, 2011 Holly Jacobson, the most senior RTK board member, would be Chair. Ms. Bollenbaugh would become Vice-Chair. In July 2012, the most senior industry Board member would be Chair. She said that the Board would need to decide if they wanted to interview applicants and make a written recommendation to the City Council, who would then make the final decisions.

Mr. Potter said that in the past, sometimes the Board or a faction of the Board would interview applicants and forward a recommendation to the City Council. The City Council could also interview applicants, but usually followed the Board's recommendation.

## **VII. STAFF REPORT**

Ms. Eppli stated that she had submitted the *Eugene Toxics 2010 Annual Report* to City Council and had not received any comments, questions or requests for further information. On February 22, the City Council had held a Public Hearing about the *Ordinance Adopting Hazardous Substance User Fees* for fiscal year 2011. The City Council had not acted on it, so Ms. Eppli would return on March 14 to recommend they adopt the ordinance.

Mr. Potter noted that at the February 22 City Council meeting, two members of the Oregon Toxics Alliance testified in favor of the Eugene Toxics Right-to-Know Program.

Ms. Eppli noted that she had received two Council assignments from Councilors Ortiz and Clark, which she had forwarded to the Board and to which she had responded.

Ms. Eppli had received three reports from reporting businesses, as well as reports from two out of the four City of Eugene departments that were required to report.

Mr. Poynter asked how many businesses were required to report.

Ms. Eppli said that there were now 31 reporting businesses, and they could submit their reports online as a text file. A certification letter was also required. She said that Griffith Rubber Mills had reported total 2010 hazardous substance levels were below the 2,640-pound threshold and had therefore had been moved to fee-only status.

Mr. Potter said that this had happened to many companies over the years.

Ms. Eppli had made some improvements to the website, including adding related program links and meeting minutes. She asked for suggestions for improving the website. She also said that audits of businesses continued without issue.

## **VIII. SCHEDULE NEXT MEETING/AGENDA ITEM**

The next meeting was scheduled for April 26, 2011 at 3:30 p.m. The agenda would include a reporting update, a discussion about Board membership, and further survey discussion.

Mr. Poynter asked about reporting extensions.

Mr. Potter said that staff would remind those who had yet to report a few days before the deadline. Therefore, extension criteria might change. He had granted extensions of up to two weeks to those who had reasonable requests. He also reported these to the Board. At times, he had also denied extensions.

Ms. Eppli said she would make reminder calls and make reasonable extensions, which she would report to the Board.

Mr. Potter said that Ms. Eppli could also leave extension permissions up to the Board.

Mr. Flanagan said the intent of the Board's recommendation to make reminder calls was to be proactive, which might preclude certain problems.

Ms. Kokis did not think the Board's inclination was to be punitive. Mr. Flanagan agreed.

The Board decided to let Ms. Eppli use her own discretion about granting extensions, unless a company continued to fail to report.

Mr. Flanagan suggested that Ms. Eppli give one-week extensions, and beyond that, the Board could decide.

The meeting adjourned at 5:01 p.m.

*(Recorded by Katie Dettman)*