

MINUTES

Eugene Toxics Board
Fire Conference Room, 2nd Floor
Eugene Emergency Services Center
1705 West 2nd Avenue

August 2, 2011
3:30 p.m.

PRESENT: Randall Prince, Chair; Diana Bollenbaugh, Tom Carmicheal, Stephen Flanagan, Sheena Gardner, Alison Guzman, Christine Zeller-Powell, members; Joann Eppli, Fire and Emergency Medical Services staff

Mr. Prince called the meeting to order at 3:35 p.m.

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

Mr. Prince noted that all board members were at today's meeting. Those present introduced themselves. There were no changes to the agenda.

II. Public Comment

There were no public comments.

III. Approval of Meeting Minutes - June 1, 2011

Mr. Flanagan, seconded by Ms. Bollenbaugh, moved to approve the June 1, 2011 minutes as written. The motion passed unanimously, 7:0.

IV. Toxics Board Membership Update

Mr. Prince commented that he was in Position 6, an Advocate position, appointed about one year ago, and had one year to go in his position. Ms. Eppli added that at the end of his term he could apply for a second three-year term. Sheena Gardner, Position 2, had been appointed for three years to one of the Industry positions. Christine Zeller-Powell, Position 4, assumed an unexpired two-year term as an advocate. Alison Guzman, also an advocate, was appointed to Position 5 for three years. Tom Carmicheal, Industry position, took over the unexpired two-year term of Position 1. Diana Bollenbaugh, Industry, Position 3, would complete her third year one year from now. Stephen Flanagan, Neutral position, had just been appointed to Position 7 for a second full three-year term.

Mr. Prince remarked that he was now Board Chair, as he was the most senior member on the Advocate side, which was due for its spot as chair. The Board Chair position was for one year. Ms. Bollenbaugh was Vice Chair and was next in line to be Chair.

Ms. Eppli stated that in her position as Community Relations and Reporting Analyst, while managing the Toxics Program is her primary role, she is also responsible for community, public and media relations, as

well as reporting for both the Eugene and Springfield Fire Departments. She explained that she regularly has to manage multiple conflicting tight timelines, and asked for help from board members in creating a workable process for her to perform tasks for the board. She advised that it is required to send the meeting agenda and packet at least one week in advance of board meetings to board members, minutes recording staff and for public notification, so she needs information relating to the agenda before that time, as well as time to prepare information that may require additional research.

Responding to a question from Mr. Prince about the process for someone to request an item to be placed on the agenda, Ms. Eppli said that in the past the whole board would be emailed with the request and then she would be responsible to add the item to the agenda. To email the whole board, one could simply “reply all” to a previous board email. Others who received copies of the agenda and additional information about a topic of discussion would be her two supervisors—the Fire Marshal and Deputy Chief of Emergency Medical Services and Community Relations—and also Neighborhood Services and the City Manager’s Office, which published announcements in the newspaper. Discussion items would circulate only among the board members.

Mr. Prince commented that Ms. Eppli had taken on her position just under a year earlier and had caught up on a lot in that time. Glen Potter had held the position since the inception of the Eugene Toxics Right-to-Know Program in the mid-1990’s, he said, when the Charter Amendment had been passed.

Ms. Eppli, on behalf of the City of Eugene and the Toxics Board, thanked Holly Jacobson for her past service in Position 4 on the board, noting that Ms. Jacobson was not able to attend today’s meeting.

V. Overview of Toxics Board Duties

Ms. Eppli referenced the memorandum she sent to all board members, titled “Overview of Toxics Board Duties.” She asked if there were any questions about the written information. Mr. Flanagan expressed his hope that board members would read pertinent materials sent out before the meetings, so that meeting time could be used as efficiently as possible.

Mr. Prince asked whether the training activity which Ms. Eppli had announced in a recent email was optional. Ms. Eppli responded that it was optional, however, she highly recommended that especially new members attend the training. Two options for dates were available: Thursday evening, September 15, 2011, or Tuesday evening, October 4, 2011. More information would be sent out soon, she said. The training would be 1.5 – 2 hours.

VI. Review of Toxics Board Discussions (2010-2011); Items for Toxics Board Meetings (2011-2012)

Mr. Prince led a review of some topics that had arisen at board meetings over the past year and a half, some of which were already resolved, and suggested that other issues could be raised for discussion by the board during the coming year. Ms. Eppli explained that she had a staff support person go through Toxics Board meeting minutes from the past year and a half, and compile a list of major topics that had been discussed.

Ms. Bollenbaugh described a topic that had come up in January, 2010 about instruments that measured particulate matter. The issue regarded air pollution, which was not part of the charge of the Toxics Board.

Another topic had been about how billing fees were charged. Ms. Eppli explained that one requirement for a business to be in the program was to have at least ten full-time employees. Fees were billed according to the total number of FTE of the business, she said. There were no unresolved issues around this topic.

Mr. Prince added that another requirement to report under the program was for a business to have a Standard Industrial Classification (SIC) category between #20 through #39.

Regarding site visits to businesses in the Eugene Toxics Right-to-Know Program, Ms. Eppli noted that Mr. Potter had visited all sites during the first year of the program. She decided, as a new staff person, to make site visits to all businesses in the program to introduce herself. There are currently 31 businesses in the program that pay fees and file reports, and an additional 28 businesses that only pay fees.

In February, 2010, there had been some public comment from the Oregon Toxics Alliance (OTA) regarding some substances that were not reported to the Right-To-Know (RTK) database, as well as the criteria for reporting air emissions to the RTK Program.

In March, 2010, Lisa Arkin from OTA had brought a report and led a discussion with the Toxics Board about policies. There had also been a report on businesses reporting to the board. Ms. Eppli said businesses were reporting on time now since she started contacting them by phone ahead of the due date.

Mr. Flanagan said he was finding the process tedious, of going through all the many issues that had come up over the past year and longer. He wondered if instead of discussing each item, people could ask questions about any item they were unsure about.

Mr. Prince agreed that there was not time to discuss each item, and asked if board members had ideas about action items for the coming year for the Toxics Board.

Ms. Gardner asked if there was any unfinished business that needed discussing. Ms. Eppli said there was no current outstanding official business for the Toxics Board to discuss.

Ms. Guzman was curious about results of the online survey that had been performed. She said she had filled it out perhaps halfway, and wondered if others found it to be “in the way” when using the website. Ms. Eppli responded that information being gathered from the survey was not very useful to her and that she had heard many complaints about it.

Mr. Prince summarized about the survey that if the board wanted to disseminate information beyond the minimum, it was probably not necessary to go through the City Council. Ms. Guzman felt it was useful information, and she wondered if the IP address could be recorded so that a person could just fill out the survey once. Mr. Prince felt this could be a worthy discussion, whether more information should be disseminated and what that information would be.

Mr. Flanagan felt this would be outside the scope of the Toxics Board. Mr. Prince felt it would be proactive and going beyond the minimum requirement. Information could be emailed for free, he noted. The program had been criticized, he said, because the program did not reach many people because of only the minimum standard being met.

Mr. Carmicheal wondered if it might be best to inform more people that the information was available on the website rather than disseminating information to more people. Mr. Prince agreed that this would be a good discussion, whether the minimum posting should be publicized more widely than it had been or be supplemented in some way. It was felt that the survey seemed to be discouraging some people from using the website. Its purpose had been to record how many people accessed the website and for what reason.

Ms. Guzman wondered if it might be good to remove the survey. Mr. Prince responded that he thought it would be a good agenda item for a future meeting, to discuss how well information was being communicated.

Mr. Prince suggested another issue to discuss, regarding how the fee schedule had been determined by administrative procedures following a court decision that modified the Charter Amendment rather than by the language of the Charter Amendment. City officials had created a formula for how to charge fees, which differed from the original formula. There was no incentive built into the formula, he said.

Mr. Carmicheal wondered what the budget was for this, and Mr. Prince responded that it was around \$100,000. Ms. Bollenbaugh said that the board had earlier come to the conclusion that they were boxed in with the fee. Ms. Eppli also commented that there would be a discussion about the fee at year's end when she presented the recommended program budget for Fiscal Year 2013.

Mr. Prince said that the board had the authority to officially recommend that the statute be changed. Ms. Bollenbaugh replied that even the City could not change the fee structure, the State was in charge of it. Mr. Flanagan added that the Charter would need to be amended. Mr. Prince responded that there was a limited authority under state law for anybody to charge based on the quantity of materials involved. He noted that there seemed to be little interest in bringing the issue up at this time.

Ms. Eppli said she would email the board a copy of the last memorandum to on the fee recommendation for Fiscal Year 2012 and the related back-up materials.

Mr. Prince felt that another important issue for the board to discuss was the determination that the Baxter Plant was exempt, based on an opinion of the City Attorney that it qualified under the federal laws as a pesticide manufacturing plant. Mr. Flanagan corrected that Baxter was a user of pesticides and not a manufacturer. Mr. Prince felt that if the determination that the Baxter Plant did not fit within this law was based almost exclusively on the City Attorney's reasoning, he would want a second opinion. He felt there was information missing and he was not satisfied.

Mr. Flanagan offered a perspective that the only way the Eugene Right-To-Know law got passed was to specifically exclude pesticides because of FIFRA, the federal oversight and regulatory framework for pesticides. A second attorney opinion would be fine, he felt, but he guessed this would be the answer, that the board had no purview for regulating pesticides under the Charter.

Mr. Prince asked then if the determination that the Baxter Plant was a pesticide application facility was specifically from the City Attorney. Mr. Flanagan replied yes, and that wood treatment for the purpose of preservation was considered a pesticide application.

Ms. Guzman said she was pretty sure that creosote was reported to PRI under air emissions, although she

would need to double-check that. Mr. Flanagan agreed that this would be good to know. He was not sure where there would be a record about Baxter applying pesticides.

Mr. Prince asked if it would be agreeable to do some investigation on the Baxter issue. If it was found to be an open-and-shut case, then there would be no reason to pursue it. Ms. Bollenbaugh explained that last year the board spent about three months discussing this issue and that Mr. Potter had provided the background information.

Ms. Guzman believed there was still an issue with Baxter, and that a survey done last year had brought up complaints about the company. Ms. Bollenbaugh added that the Toxics Board was very limited by the Charter as to what it could do.

Mr. Prince then summarized that 1) dissemination of information was an identified issue that could be discussed in an upcoming meeting, 2) the fee issue was not a subject that needed discussion, and that 3) the Baxter issue was a “maybe” and would become open for discussion only if someone came up with a different legal opinion.

Ms. Guzman added that it would be interesting to learn background information for Baxter, such as their fee and reporting history. Ms. Bollenbaugh said that the issue had been discussed between February and May of 2010. Mr. Flanagan suggested that the minutes from those meetings be recirculated among board members.

Mr. Prince asked for any other issues for discussion in the coming year. Ms. Guzman was interested in learning about the Lane County Local Emergency Planning Committee (LEPC), saying she did not know what it was. Ms. Eppli responded that she had recently joined the newly-formed Lane County LEPC, and meetings were currently taking place on a bi-monthly basis. The purpose of the group was to bring together businesses using hazardous substances with government, media, hospitals and emergency responders to plan together on how to respond to accidents with hazardous substances. Ms. Eppli said it usually takes approximately two years for a newly-formed LEPC to gain momentum. Mr. Prince said he would like to discuss the Toxic Board’s role, as he was involved in other community groups that would like to be informed and also be able to participate in providing information. Ms. Eppli said the committee was just newly being formed, that she would be happy to report whatever came out of the meetings, and will forward future Lane County LEPC meeting invitations to Toxics Board members.

Mr. Prince asked if there was any new business that would be suitable as future agenda items. Mr. Carmicheal remarked about the communication issue, that it would be good to know how well information was currently being disseminated. Mr. Prince agreed that this would be an important part of the discussion, and then to research whether it was sufficient to meet legal requirements, and whether the board could and/or would want to do anything more.

It was agreed to discuss the dissemination of information at the next meeting.

VII. Staff Report

Ms. Eppli said she would send the link to the Toxics Program’s website, and asked that board members take a look at it before the next meeting to see if they might have suggestions about how to improve it. She would also send a copy of the last memorandum and background information on fees. As well, she

would send a copy of Glenn Klein's opinion on J.H. Baxter and find which meeting minutes to reference for background information.

Ms. Eppli reported on her site visit to Lanz Cabinets, noting that their operation was amazingly impressive. The warehouse, she said, was very clean and orderly, and beautiful cabinets were being made there. She encouraged board members to visit the site as well. Mr. Carmicheal invited them to find a time to come as a group.

Ms. Eppli again encouraged board members to attend one of the orientation sessions to the advisory group members being offered by the City, which she said would help them make the most of their service on board. She asked if there were any questions on the memorandum she had sent out on July 22, titled "Toxics Program Additional Revenue Suggestion," the suggestion being to charge a fee for a data query on businesses in the program as a means to provide additional revenue to run the program. The answer had been that a fee could not be charged.

Another memorandum, which Ms. Eppli sent out on July 28, concerned a new videotaping requirement from the City Manager's Office. Mr. Carmicheal said he did not see the pay-back of it. Mr. Flanagan agreed, saying he saw no value in it. Ms. Eppli explained that the City Manager had a goal around transparency in City business, and that the cost of this program would need to be paid out of program fees.

Mr. Prince saw this as an item that needed discussion. He felt that such a project should be paid out of the \$4 million Telecommunications Fund that was collected from a tax to users of Comcast and Qwest services. The first purpose of this fund, he said, was for things like the Metro TV and pilot programs such as this. If the project involved setting up a system or equipment and ongoing costs, he felt this would be an ideal project for funding through this dedicated fund. He said that a \$500,000 portion of the fund was being diverted annually to the City's General Fund, which he disputed. Mr. Carmicheal felt it was a waste of money, and Mr. Prince reiterated that it should not come out of the Toxic Program's budget.

Ms. Eppli explained that the City wanted this project to move forward as soon as possible, and would have liked today's meeting to be videotaped. She had resisted, saying she needed to bring the topic to the board before moving forward with requirement. She offered to draft a memorandum to the City Council from the board expressing the board's perspective on the issue. Ms. Guzman said she would rather see the board's funds go towards outreach projects. Mr. Prince suggested that the memorandum question anything that took money out of the board's operating budget, which had already been approved, and that the board would like to know if Telecommunication Funds could be used. Ms. Eppli said she would draft a memorandum and distribute it to board members.

Ms. Eppli asked if there were any changes to the roster of current board members she had created. There were none.

She further reported that she had been working with Central Information Technology personnel, who were nearly finished creating an Internet-based data entry program that was more user friendly than what was currently available. This database would be used starting with the new reporting cycle. She would send out a memorandum to all reporting businesses explaining how to use the program. There was no additional cost for this database, she said. She felt the new program would create better efficiency on both the business side and for her work.

Ms. Eppli noted that audits of business reporting continued in what was now a new three-year random order cycle. She conducts two to three audits per month.

Additionally, Ms. Eppli said she recently learned that the Toxics Board had a mailbox, which is posted as a link on the program's website so that information and questions from community members could be sent to the board.

VIII. Schedule Next Meeting/Agenda Items

The next meeting was scheduled for Wednesday, October 19, 2011 from 3:30-5:00 P.M.

Ms. Eppli suggested again that everyone commit to reading all materials before the meeting for efficiency of meeting time.

Ms. Eppli then announced and distributed an invitation for all board members and friends to the 2011 Neighborhood Summit on Saturday, September 24, 2011.

Mr. Prince adjourned the meeting at 5:35 p.m.

(Recorded by Judith Burton)