

MINUTES

Eugene Toxics Board
Pete & Jerry Room, Fire Station 1
Eugene, Oregon

March 18, 2010
4 p.m.

PRESENT: Cynthia Kokis, Maeve Sowles, Diana Bollenbaugh, members; Glen Potter, Eugene Fire & Emergency Medical Services; Bob Cassidy, Lisa Arkin, guests.

ABSENT: David Doll, Holly Jacobson, Stephen Flanagan, Elizabeth Weaver.

I. Approval of Agenda/New Items

Ms. Bollenbaugh convened the meeting in Mr. Doll's absence. There was no quorum. She determined that there were no changes to the agenda, but that the members present would be unable to act as the board.

II. Public Comment

Bob Cassidy said the City Charter had been changed in 2002 and in that time an ordinance was approved specifically with the Toxics Board in mind, the purpose of which was to allow the board to propose Charter changes to the City Council; the City Council could, with a unanimous vote, make the change. He wanted to remind them that this would present an opportunity for the board to effect changes to the City Charter, should they so desire.

Mr. Potter ascertained from Mr. Cassidy that he meant that the board would have to take a change to a vote of the people first to authorize the special ordinance, and then the Charter could change with a unanimous vote of the council.

III. Approval of Minutes

Action was deferred due to a lack of quorum.

IV. Report from Oregon Toxics Alliance

Lisa Arkin, representing the Oregon Toxics Alliance (OTA), presented her report, hard copies of which were provided to everyone present. She explained that it was the contention of the OTA that there were discrepancies between J.H. Baxter's reporting to the Department of Environmental Quality (DEQ) and the Right to Know (RTK) program. She said the reason they were focusing

on J. H. Baxter was that it was believed that Baxter was causing many complaints about air quality. She related that a school teacher had complained about breathing problems on a playground that was blamed on J.H. Baxter. She discussed the impacts of poor air quality on children. She averred that the Bethel School District had an asthma rate of 13 percent and the asthma rate for Lane County was 10.5 percent, while the national rate was 5 percent. Ms. Arkin explained that J.H. Baxter was a wood treating company that employed three formulations of restricted wood preservatives no longer used residentially due to their toxicity: pentachlorophenol; creosote, which included at least 100 identified components including naphthalene and polycyclic aromatic hydrocarbons; and arsenic-based formulation, which had high ammonia emissions. Those substances were now used only for industrial and commercial applications. She said that information from the Environmental Protection Agency's (EPA) Toxics Released Inventory (TRI) indicated that in 2008, J. H. Baxter reported 250 pounds of pentachlorophenol to the TRI but that substance was not reported to the RTK data base. In regard to creosote, the situation was similar. J. H. Baxter reported creosote and two other compounds that might be associated with creosote but neither creosote or its major components were reported to the RTK Program, nor was ammonia. She said the emissions from the facility were considered fugitive emissions and companies did mass balance calculations and estimated the amounts released. She also pointed to the Lane Regional Air Protection Agency (LRAPA) regulation that directed that companies could not create a public nuisance.

Ms. Arkin concluded that it appeared fugitive emissions were not being reported to the RTK Program and that the fugitive emissions were subject to weather patterns and warranted better monitoring, including fence line monitoring and emergency planning. She believed that the Toxics Board should investigate the company and possibly fine them.

Mr. Potter thanked her for the report. He explained that the program operated under restrictions specified in Oregon Revised Statute (ORS) 634.057, which provided that a city, town, county, or other political subdivision of the state could not adopt an ordinance restricting pesticide use or requiring notification or reporting thereof. He said this was the reason for the discrepancies Ms. Arkin mentioned. He stated that in 2000 the Circuit Court for Lane County affirmed the state law and the direction given by the Oregon Court of Appeals and, as a result, had struck down sections of the Eugene City Charter requiring reporting of pesticides. He said the Board was at liberty to act on the petition presented by the OTA, but should the Board ask that he investigate J.H. Baxter, he expected that the company would defend itself from that investigation on that legal basis.

Ms. Arkin reiterated that she had presented to the Board what she believed was required by federal law, which she considered to be "the law of the land." She thought there was perhaps some problem in the interpretation of the language because the company was not applying pesticides in the manner that was addressed. She said it also had nothing to do with the ammonia or the polycyclic hydrocarbons. She asserted that the purpose of the law was not to hide information; rather, it was to provide information.

Ms. Kokis expressed discomfort sitting on the Board and knowing that the reporting might not be complete because the citizens of Eugene expected the Board to protect them from toxic substances. She thought that if there were legal restrictions on the Board, this was something the public should know. She was also concerned because the people were not familiar with the

“acronyms” or the processes of the various entities that were available to protect them. She said even if it was difficult to address the situation, they should address it.

Mr. Potter did not dispute that the program had been founded for the purpose of providing the public with information, but the Board had been instructed by legal decision not to address pesticides. He added his assurance that fugitive emissions were being tracked.

Ms. Kokis remarked that it was challenging to have to report to different entities in different ways. She said the citizens thought the Board existed to provide rules and means for the air to be pollution-free. She thought if they were not doing so, they should make the citizens aware of this.

Mr. Potter appreciated the points she was making. He said the reporting businesses knew that the reports were different for the different agencies. He provided a brief overview of the program, which he called “extremely limited.” He averred that 12 cars being driven around the clock could pollute the air more than all of the reporting companies did that report to the program, of which there were only about 30. He underscored that the RTK Program captured a small fraction of the area’s environmental releases; the program had been limited by the state legislature and the courts. The information was incomplete because of the nature of the program.

Ms. Kokis believed they could fix it somehow. She wanted to be able to assure people that they were trying to protect them. It made sense to her to have “restraining groups” that kept companies from polluting. She wondered if there would be a way to make the reporting requirements more uniform.

Ms. Bollenbaugh acknowledged that it was frustrating to have to report to so many different agencies in different ways. She related that she spent much of the first six months of the year filing out the various environmental reports for the company she worked for.

Ms. Sowles stressed that most of them worked hard to provide accurate information. She thought it disturbing to think that someone might not be reporting at all.

Mr. Potter said Baxter did have to report to the program and also had to fill out state fire marshal reports. He suggested that they ask the City Attorney to provide an opinion on the ORS that prevented them from tracking pesticides.

Ms. Kokis thought that would be helpful.

Ms. Arkin offered to provide an opinion on the matter issued by the EPA. She also commented that the Oregon State Legislature had just passed Senate Bill (SB) 637 which would require notification of pesticide use at schools.

V. Staff Report

Mr. Potter reported that the program had received nine or ten reports for 2009 out of 30 or so businesses that were required to report. He said he would let the Board know if any slipped past

the deadline. He stated that the invoices were being prepared.

VI. Status of Position 6 on the Board

Ms. Bollenbaugh explained that Ms. Weaver had not attended a Toxics Board meeting in approximately one year. She said they would consider whether to open the position up to appoint a replacement for her at the next meeting.

Mr. Potter related that he had not been able to reach Ms. Weaver. He said the next step to take would be to declare the position vacant and then seek someone to fill it. He reiterated that a quorum would have to be present to do so.

VII. Schedule Next Meeting

The board scheduled its next meeting for April 16, 2010, in the Pete and Jerry Room.

The meeting adjourned at 4:59 p.m.

(Recorded by Ruth Atcherson)