

MINUTES

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

May 4, 2006
3 p.m.

PRESENT: Marylee Bowman, John Jordan-Cascade, David Doll, Steve Johnson, Jennifer Gleason, members; Glen Potter, Fire and EMS staff; Terry Connolly, Eugene Chamber of Commerce; Dave Beede, A & K Development.

ABSENT: RueAnn Thomas, Douglas Brooke, members.

I. Introductions

Ms. Bowman called the meeting to order and those present introduced themselves.

II. Approval of Agenda/New Items

There were no changes to the agenda.

III. Public Comment

Ms. Bowman determined there was no one wishing to speak.

IV. Approval of Minutes

Ms. Gleason, seconded by Mr. Doll, moved to approve the Toxic Board minutes of March 14, 2006, as submitted. The motion passed unanimously, 5:0.

V. Staff Report

a. Status of 2005 Reporting

Mr. Potter announced that all reports had been received and were posted on the website. He would print and place hard copies in the library next week. He said fees were due on May 1 and

an updated report on indicated that 15 companies were delinquent, which was a higher number than expected but not necessarily cause for concern as the City will proceed with normal collection steps as it has done in the past. The program has no history of chronic delinquencies.

Mr. Potter referred to his April 11, 2006, memorandum regarding late reports. He said that Forbo Adhesives had requested and been granted an extension to the reporting deadline and had filed a report within the extended timeline. With respect to the other five companies mentioned in the report, Mr. Potter said the board has discretion to decide enforcement action, within the limitations of state and local law and in accordance with the board's adopted fine schedule and the considerations listed in the Charter Amendment. He distributed copies of the latter two.

Mr. Potter noted that only two companies were subject to actual fines under the guidelines, and representatives of both were present at the meeting. He stated that he had contacted the other three companies, invited their representatives to the meeting, and indicated to them the likelihood that they would simply be notified of an initial violation.

Mr. Johnson said his understanding was that failure to report had been fined, particularly for second or third violations, and asked what companies had been fined in the past. Mr. Potter agreed with Mr. Johnson's understanding and said that, in his recollection, only Newood Products had been fined and that had been done twice; each time was considered a one-day violation and a \$250 minimum fine was imposed. He noted that the State imposed a \$1,000 per day maximum on fines and further penalties could not be imposed for first offenses, only subsequent offenses.

Reviewing applicable State law, Ms. Gleason noted that if a company was more than 30 days late reporting on its first violation it could be fined.

Mr. Potter said the charter required that the names of companies reporting late must be published in the newspaper and the board did not have any flexibility on that requirement. He said that since fines could not be levied for first offenses, a precedent had been established for sending a written notice of first violation and retaining that record against subsequent offenses.

Mr. Johnson said that notices should be sent to those companies that had a first violation. He determined that reports had been received from those companies.

Mr. Johnson moved, seconded by Mr. Jordan-Cascade, to instruct staff to send to Emerald Valley Kitchen, King Retail Solutions and Willamette Valley Company notice that they had committed their first violation and there would be no fine for a first violation. The motion passed unanimously, 5:0.

Mr. Johnson noted that the board had always levied the minimum fine for a second violation and there had not previously been a third violation.

Ms. Gleason commented that the law was somewhat ambiguous and cited statutory language that indicated in the event of non-compliance the Toxics Board had the authority to enforce and any hazardous substance user shall be subject to a penalty not less than \$250 a day. She noted that

each day of a violation could be considered a new violation. She said the board should at least impose the minimum penalty allowed.

Mr. Johnson said the board had a lenient policy in the past and had been reluctant to fine for first violations even when it had the authority to do that. He said that in the case of A & K Development the board could consider each day from April 1 to April 10 a separate violation but wanted to hear from Mr. Beede about the circumstances.

Mr. Beede said the first violation was issued to A & K Development over an audit in the fall of 2005. He asked if the audit was something the company should have anticipated or just mailed from staff's schedule with no previous notification. Mr. Potter said the audit was mailed from his schedule without previous notification and the audit letter provided 30 days for response. He said that audits were required under the program and he audited on a random basis each company's reporting on a three-year cycle.

Mr. Beede said A & K Development was a for-profit business that dealt with a large volume of mail and had numerous staff. He said it was not the company's intention to be remiss in reporting or responding to audits. He said when there was the possibility of a fine being assessed it seemed prudent to mail the notice with certification or return receipt and follow it up with a telephone call to assure the company was aware of the requirement. He did not feel that just stamping and mailing a letter was fair notification. He said the employee responsible for right-to-know reporting had left the company and he had recently assumed responsibility for any permitting or due diligence reporting requirements. He was not aware of the notification and pointed out that when Mr. Potter had contacted Bob Isaac on April 4 that the report was due the company had acted instantly. He reviewed the timeline of the company's response and submission of the report on April 10.

Mr. Beede said that compiling the report was a major undertaking for a facility the size of A & K Development but the company had completed it very quickly once it realized it needed to be done. He felt confident that reporting would be timely in the future. He addressed the considerations for imposing a penalty and stated that none of them implied to A & K Development's situation as no harm would arise from the violation, there were no profits from non-compliance, nor was it concealed, and it was his intention to assure that the company was fully in compliance in the future. He did not think that accrual of a separate penalty each day would be fair.

Mr. Potter observed that the penalty criteria were written before the right-to-know law was passed and drafters of the legislation did not know what to expect in terms of compliance. He said the criteria seemed to anticipate some evil intent but that had not proven to be the case; violations were always the result of oversight. Regarding the previous audit violation, he cited a letter to Mr. Isaac of A & K Development dated October 4, 2005, notifying him of non-compliance with the audit request. He pointed out that the audit report was mailed to the company on July 21, 2005, and a response was required by August 22, 2005. He said that before and after August 22 he was in contact by telephone with environmental consultant Andy Poynter who was retained by A & K Development to respond to the audit but needed additional time. He said that while he agreed to work with Mr. Poynter on a timeline he did notify him that the company would be con-

sidered in violation of program requirements and it would be a first offense and taken into account in the event of future offenses. He said that no written response to the audit had been received as of his October 4 letter to A & K Development.

Mr. Beede replied that it appeared Mr. Poynter had not fulfilled his obligation and was no longer involved with the company. He said the audit was ultimately submitted by A & K Development.

Mr. Johnson said it did not appear there was any evil intent or profit to be made with regard to the violation, but noted that, according to the staff report, Mr. Isaac had acknowledged that he was aware the report was due.

Mr. Johnson, seconded by Ms. Gleason, moved to assess a minimum one-day fine to A & K Development of \$250 and not consider each day as a separate violation.

Mr. Doll determined that the late audit response was considered the first violation. He asked if Mr. Poynter was working for A & K Development at the time Mr. Potter spoke to him regarding the audit. Mr. Potter replied that Mr. Poynter told him he had been retained by A & K Development to respond to the audit.

Ms. Gleason asked when those contact dates occurred. Mr. Potter said the audit was mailed in July 2005 and he spoke to Mr. Poynter shortly before and after August 22, 2005. His letter was written in October 2005 and subsequent to that received the audit response.

Mr. Johnson said that the length of time was a clear violation but both of the offenses were minor and not done with ill intent.

The motion passed unanimously, 5:0.

Mr. Beede asked that in the future when the board requested information that was outside of the regular right-to-know reporting requirements, such as a random audit, that efforts be made to assure a company was aware of the request and consequences of non-compliance either through certified mail or a follow-up telephone call. He thanked the board for imposing the minimum penalty.

Mr. Beede said that A & K Development also filed reports to the Department of Environmental Quality and the State Fire Marshal and asked if it was possible to have standardized reporting formats and timelines. Several board members indicated that there had been attempts to standardize but the program was restricted to a certain format.

Mr. Jordan-Cascade suggested that notices be sent in envelopes that were prominently marked in such a way that they would be automatically directed to the person responsible for reporting.

Mr. Johnson suggested that the issue be made a future agenda item so the board could discuss ways to improve notification.

Mr. Potter said that, for purposes of the discussion of Newood Products, Mr. Doll would be sitting as a representative of the company and not as a voting member of the board. Mr. Potter explained that he received the Newood report initially as an unusable e-mail file on April 2.

Mr. Doll said he delivered a disc with the report on it along with a hard copy on April 3 and thought he had fulfilled his reporting obligation until contacted by Mr. Potter two weeks later.

Mr. Johnson noted that April 3 was actually the first business day of the month. Mr. Potter said that reports were due on April 1 and could be submitted electronically. He had received the reports of nearly all other reporting companies prior to April 1 and did not receive Newood's until April 3.

Mr. Doll related the problems he had encountered with his computer and the fact that his information technology support staff was unavailable. He was unable to transmit a file electronically on April 1. He said he had many different responsibilities and often had to do things at the last minute.

Ms. Gleason said that in the past the board had postponed action on controversial issues until the full board was present. There was a general discussion of the circumstances of the violation and appropriateness of a one-day minimum fine, whether and how weekends should be factored into deadlines, and how to treat unsuccessful (but timely) attempts to file electronically.

Mr. Johnson moved to assess a minimum fine of \$250 to Newood Products.

Mr. Jordan-Cascade thought the action should be postponed until business representatives on the board could be present for the discussion and action.

The motion died for lack of a second.

Mr. Jordan-Cascade, seconded by Ms. Bowman, moved to postpone action on the Newood Products violation until the next board meeting. The motion passed unanimously, 5:0.

Mr. Johnson left the meeting at 3:55 p.m.

VI. Possible Revision of Tracking Instructions

Mr. Potter said he had run out of copies of the tracking instructions handbook and it could be reprinted or revisions made before it was reprinted.

Ms. Gleason suggested that the handbook be made more generic and references to years removed so the same text could be reused each year until the board was ready to make substantive changes. She also suggested that if companies were sent a survey on petroleum distillates the survey be broadened to solicit questions or recommendations for the handbook.

Ms. Bowman, Mr. Doll and Mr. Jordan-Cascade agreed with Ms. Gleason's suggestion.

Mr. Potter said he would provide a draft of the survey, included open-ended questions soliciting feedback on both distillates and the handbook, at the next meeting. He said the only concern was when a new handbook could be made available.

Mr. Jordan-Cascade asked if the handbook could be made available on the website as a PDF file. Mr. Potter said he would do that.

VII. Reporting of Petroleum Distillates

Ms. Gleason said she was not certain about changing the reporting requirements if the two businesses most impacted were not concerned. She preferred to take no action until the businesses could be surveyed.

Mr. Potter said he also was not certain what benefits would be obtained from grouping distillates.

Ms. Gleason suggested tabling the item until more business representatives were present. Ms. Bowman determined there was agreement with Ms. Gleason's suggestion.

VIII. Possible Voluntary Subcategories for Output Categories 3 and 8

Mr. Potter announced that the board had requested a proposal from Doug Brooke and suggested the item be postponed until Mr. Brooke could be present. Ms. Bowman determined there were no objections to postponing the item.

IX. Schedule Next Meeting/Agenda Items

The next meeting was scheduled for June 1, 2006, at 3 p.m., at the Eugene Public Library.

The meeting adjourned at 4:10 p.m.

(Recorded by Lynn Taylor)