

# MINUTES

Eugene Toxics Board  
Sunstone Room, 3<sup>rd</sup> Floor – Eugene Public Library  
Eugene, Oregon

April 12, 2005  
3 p.m.

**PRESENT:** David Monk, Chair; Jennifer Gleason, Steve Johnson, Marylee Bowman, Clyde Carson, Dave Doll, members; Glen Potter, staff; Patty McConnell, Dustin Caldwell, Old Dominion Carstar; Shane McLaws, A & M Autobody; Terry Connolly, Eugene Chamber of Commerce; Kai-Huei Yau, Ken Luse, guests.

**ABSENT:** Doug Brooke, member.

Mr. Monk called the meeting to order at 3:08 p.m.

## **I. Approval of Agenda/New Items**

Mr. Potter added a legislative report to his staff report.

## **II. Public Comment**

**Terry Connolly**, Eugene Chamber of Commerce, asked for an explanation of legal fees in the Toxics Program budget. He observed that it represented one-tenth of the budget. He opposed spending any money from the Toxics Program on legal fees unrelated to the program. He also did not think any money should be spent on expanding the program. He said the funding was designed by the charter to only support the existing program.

Mr. Connolly also asked that the budget be broken into what was spent directly on the program and what was ancillary to the program.

Mr. Connolly reiterated the Chamber's support for a fee cap, calling it a safeguard to Eugene businesses.

## **III. Approval of Minutes**

Mr. Johnson moved to approve the minutes of March 8, 2005, as submitted. Ms. Bowman provided the second. The motion passed unanimously.

## **IV. Recycling as an Output Category**

This item was postponed until Mr. Brooke could be present.

## **V. De Minimus Amounts**

Mr. Johnson related that it had been suggested to him, given that the Toxics Board now had some years of experience, that *de minimus* amounts be revisited. He felt the technical community should take a look at the amounts. He noted that there had been a discussion “years ago” on this issue and a decision had been made on extremely hazardous materials.

Mr. Potter asked to what extent the board desired to reconsider *de minimus* amounts.

Mr. Carson said the biggest complaint heard by the board was about reporting threshold quantities. He thought it needed to be reexamined on behalf of both sides of the issue. He stated that the most time-consuming aspect of the toxics reporting was the counting. He recommended forming a subcommittee to review the *de minimus* amounts.

Mr. Doll said many chemicals were tracked but not reported because they did not meet the reporting threshold.

Mr. Doll volunteered to serve on the subcommittee.

Mr. Brooke was appointed to the subcommittee in his absence.

Mr. Johnson also volunteered to serve on the subcommittee.

Mr. Carson asked if the subcommittee could also look into the issue of whether to provide for reporting of recycling. The subcommittee members agreed to this.

## **VI. Staff Report**

- **2004 Reporting**

Mr. Potter reported that the 2004 reporting was virtually complete, with the exception of A.M. Todd. He recounted the contacts he had with A.M. Todd representative, Dean Bautz. He said Mr. Bautz indicated that he would submit the report soon. Mr. Potter observed that A.M. Todd had also reported late in 2002 (for 2001), and so this was not an initial violation.

Mr. Johnson stated that the company was clearly in violation as it had not requested an extension. He proposed that the Toxics Board consider imposing a fine.

Mr. Carson concurred. He added that the company should at least explain to the board what happened.

In response to a question from Ms. Bowman, Mr. Potter explained that the fine could be as high as \$1,000 per day and as low as \$250 per day.

Mr. Monk asked Mr. Potter to invite representatives of A.M. Todd to speak to the Toxics Board.

- **2005 Billing**

Mr. Potter reported that the City Council had authorized staff to proceed with billing at the rate that was recommended by the Board: \$30.94 per full time employee (FTE) up to a cap of \$2,000. He said the council had suggested a revised due date, and staff would send invoices with a payment-due date of May 20.

- **Legislative Report**

Mr. Potter stated that he, Mayor Kitty Piercy, and Councilor Betty Taylor had traveled to Salem on March 31 to testify before the House Environment Committee on House Bill 2943, which proposed to raise the State cap on local hazardous substance fees from \$2,000 to \$10,000. He related that the testimony attempted to explain the mathematics involved and that the cap reduced fees from the larger companies. He said one committee member asked why the Toxics Board would request a fivefold rate increase. He noted that the business community had testified that the program was redundant and the program was over-funded.

Mr. Potter said the City's Intergovernmental Relations Manager, Jason Heuser, reported to him that some members of the committee were now asking for a reaction to a \$6,000 cap. He said this would solve "about 85 percent" of the problem.

Mr. Potter related that the committee was also interested in looking into language that would limit future growth in the operating costs of the program. He said there were "natural forces" that worked to keep costs down; "right-to-know" people did not want the program to be perceived as expensive and business representatives did not want to pay high fees. He felt the City administration would ultimately be comfortable with some language along those lines. However, he added that it would be well to have an "escape clause" in the event of unforeseen circumstances.

In response to a question from Mr. Johnson, Mr. Potter stated that the bill was still in committee and there had been no further hearings or work sessions scheduled.

Mr. Potter said, in response to another question, that the \$6,000 fee cap would reduce the fees to about \$17 per FTE, though the companies who now paid less than that per FTE due to the \$2,000 cap would certainly end up with more on their total bill.

Mr. Monk commented that he still wished to bring other businesses into the program. He acknowledged that this would most likely increase the budget.

In response to a question from Mr. Johnson, Mr. Potter indicated that staff had direction from the board and the City Council regarding State legislation and did not necessarily need the board to take action at this juncture.

In response to a question from Ms. Bowman, Mr. Potter said the current bill included nothing about potentially expanding the program. He suggested that increasing the state fee cap to \$6,000 would take away most of the perceived financial "need" to expand the program.

Mr. Doll asked if the Toxics Board should address the reporting issue prior to addressing the raising of the fee cap. Ms. Gleason responded that Councilor David Kelly's motion addressed both and the board should be working on both tracks.

Mr. Monk commented that he did not know why smaller businesses would not support an increase in the cap.

- **Feedback from Agencies on Recommended Businesses to Add to Program**

Mr. Potter stated that he had not received much feedback from the agencies. He reported that he had talked to Deputy Fire Marshal Greg Musil and Mr. Musil had suggested considering retailers, especially those who dealt in chemicals or paint. He said Mr. Musil had also suggested looking at product distributors such as Tyree Oil and Northwest Solvents. He said he also spoke with Bob Albers of the State Fire Marshal's Office and Mr. Albers also suggested the above, plus cold storage because of the use of anhydrous ammonia. Mr. Albers also included janitorial services, construction contractors, and agricultural distributors as potential businesses to add to the program. He added that he had yet to hear from the Lane Regional Air Pollution Agency (LRAPA), but he felt certain they would mention auto body shops.

## **VII. Program Budget**

Mr. Carson asked Mr. Potter to clarify what legal fees were spent on. Mr. Potter responded that the program had not been engaged in litigation recently, but there was frequent need for legal advice. He said the proposed budget for legal costs was based on the program's history. He said what was not spent would be returned to the next year's budget and would serve as a fee reduction. He recounted that this had happened in the past and the reverse had also happened, that the program had exceeded budget and fees were raised as a result. He noted that Mr. Connolly had suggested that no legal fees should be spent on matters not required by Charter. He said he would have to consult legal counsel to determine whether it was a valid point.

Mr. Johnson observed that some program activities were clearly required by the Charter, while others were the result of ordinances, City Council directives, and/or Toxics Board policies. He asked that the City Attorney provide clarification on what fees could be spent for.

Mr. Carson agreed that the board needed a legal opinion. He did not think the program could use funds from the program to develop a new program. He suggested there be separate accounting for the time Mr. Potter spent on non-Charter-mandated work.

Ms. Gleason referred to the Charter and determined it did not clearly delineate how fees should be spent. She said the language dictated that fees should cover the program without specifying exactly what activities that entailed.

Mr. Johnson surmised that the board would likely receive the same interpretation from legal counsel that had been provided in the past.

Mr. Carson acknowledged that the City Council had the authority to tell the board to look into an issue, but questioned whether the budgetary authority to do so at their behest existed in the Charter.

Mr. Johnson did not think it was in anyone's best interest to pursue this issue. He noted that program staff spent a lot of time assisting industry by providing the handbooks and other help, and this was not mandated by the Charter either.

After some discussion, the Toxics Board directed staff to ask the City Attorney whether it was permissible to expend fee revenues on activities not specifically mandated by the City Charter.

Mr. Johnson asked for an explanation of advertising expenses. Mr. Potter replied that it was for compliance with the requirement that names of violators be published.

In response to another question from Mr. Johnson, Mr. Potter explained that the computer expense was for Steve Chipman's programming work and the printing costs were for anything he had to print for the program, including instruction booklets, Toxics Board agendas and materials, etc.

Ms. Gleason asked who the .25 FTE listed in the budget was. Mr. Potter responded that this was to pay for work done by other Fire & EMS Department staff (Fire Chief, Deputy Fire Chief, Fire Marshal, Budget Manager, clerical staff, etc.) in support of the program.

Mr. Carson commented that one way to reduce fees might be to outsource the work. There was no consensus, however, that outsourcing would in fact result in a reduction of program costs. Mr. Potter suggested that the opposite might be the case.

Mr. Potter commented that a City program of this size and type would normally be assigned 1.0 FTE, but the Fire & EMS Department, for purposes of efficiency and to help keep Toxics fees down, was supporting the remainder of his time (on non-program activities) from the General Fund.

Mr. Johnson remarked that some people had predicted that the program would cost a million dollars per year to implement. He thought the program was doing well, and that the budget was already "bare bones."

### **VIII. Further Response to City Council Direction**

Mr. Johnson questioned the wisdom of including large distributors such as Fred Meyer. He said while they carried large quantities of toxic substances, they did not use them.

Ms. McConnell added that distributors sold substances to hundreds of smaller companies. She thought monitoring the distributors would be the only way to track outputs.

Ms. Gleason said it was impossible to know if someone would, for example, purchase a substance in Eugene and use it in Salem.

Mr. Johnson agreed that it would be difficult to measure outputs through distribution of a substance.

Ms. Gleason related that Councilor David Kelly had said anyone who used 2,640 pounds of hazardous substances per year in Eugene should be required to report.

Mr. Carson suggested that the board should analyze hazardous waste and fire marshal reports to find out the maximum substances that went into a business and the maximum that went out. He thought LRAPA permits would be a good resource for finding hazardous waste outputs. He said there were a lot of sources of information for the subcommittee.

Mr. Potter related that the State Fire Marshal had indicated to him that most of the substances that were being released were from manufacturers.

Mr. Johnson observed that measuring a retailer's or wholesaler's onsite inventory would be a monumental task.

Ms. Gleason suggested that in order to give the City Council the most information possible, the subcommittee provide information for two categories: the manufacturing and service industries, and the wholesalers and retailers.

Mr. Johnson concurred.

Mr. Carson commented that Ms. McConnell's idea was not far-fetched. He noted that retail data in stores on pesticide sales was used in research a few years earlier, but it did not "get very far." He added that the study had trouble determining where the pesticide went after it was purchased.

Mr. Monk thought while it was likely that a Fred Meyer store on the west edge of town would sell some products to residents of Noti, most of the products went to residents in the same zip code.

Mr. Johnson observed that gas stations were retailers. He thought their inputs and outputs would be relatively easy to track and report.

Mr. Carson indicated he was willing to follow through with Councilor Kelly's request. He did not want to spend a lot of time on retail outputs.

After some discussion, the Toxics Board determined it would not focus its work on retailers, but would mention them in its report to the City Council.

Mr. Potter said he would continue to develop a list of types of businesses that might be considered, approximately how many were in Eugene, observations regarding their level of hazardous substance use, and estimates of fee impacts.

## **IX. Schedule Next Meeting/Agenda Items**

The board agreed to meet again on May 10, 2005, at 3:00 p.m. at the Emergency Services Center at 2<sup>nd</sup> Avenue and Chambers Street.

The meeting adjourned at 4:36 p.m.

(Recorded by Ruth Atcherson)

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