

MINUTES

Eugene Toxics Board
Tykeson Conference Room—Eugene Public Library

September 20, 2005
3 p.m.

PRESENT: David Monk, Chair; Jennifer Gleason, Clyde Carson, Douglas Brooke, members; Glen Potter, staff; Terry Connolly, Eugene Chamber of Commerce; Ron Tyree, Greg Agee, Tyree Oil Company.

ABSENT: Marylee Bowman, Dave Doll, Steve Johnson, members.

Mr. Monk called the meeting to order.

I. Approval of Agenda/New Items

Mr. Potter added a third report to item IV, Staff Report, "Late Audit Response."

Mr. Monk determined there were no other changes to the agenda, and suggested that item V, "Further Discussion of Council Direction," could be truncated due to member absences.

II. Public Comment

Terry Connolly, representing the Eugene Area Chamber of Commerce, expressed the chamber's interest in knowing how the board's recommendations would be packaged for review by the City Council. He indicated he would submit further comments in writing or defer the remainder of his comments to the next meeting, when more members were present.

Ron Tyree, representing Tyree Oil, noted his company was the only distributor in the community so was potentially impacted by the board's recommendations. He did not favor the addition of oil distributors to those firms that must report to the Right-to-Know Program. He referred to a letter sent to the board by the Oregon Petroleum Manufacturers Association (OPMA) and indicated he would speak to its content later.

Mr. Tyree recalled that the origin of the Right-to-Know Program focused on manufacturers and noted the subsequent State cap on fees that could be charged for the program. It was his understanding that the cap led to a budget shortfall and that the board was seeking additional revenues to keep the program going. Mr. Tyree emphasized the pressures his business, like other businesses, faced, but said he believed in paying his company's fair share of taxes. The products his company sold that could potentially involve it in the program presented only a minimal threat to the environment. He suggested there was no benefit to the City, its citizens, or his business to

provide access to information already readily available. Mr. Tyree questioned if the public would support the program now if citizens were aware of the funding situation.

Ms. Gleason clarified that the program was fully funded at this time. The issue was that small businesses were paying more in fees per employee than they had prior to the cap. She said the board's charge from the council was no longer focused on fees but rather on expanding the list of businesses that reported. Mr. Tyree asked if the charter amendment allowed for such a program expansion. Ms. Gleason indicated the program could be expanded through an ordinance as the City Council had the right to pass an ordinance at any time. Mr. Carson added that the question was whether a program established by ordinance was an expansion of the existing program. He said the council could add to the list of those reporting unless it violated the State preemption.

Mr. Potter indicated he would provide the board with the legal opinion provided by the OPMA and referred to by Mr. Tyree. He said the opinion suggested there was a good argument to be made that the City Council was not authorized by charter to expand the program, but the City Attorney would likely indicate that the council could proceed on the basis that it was authorized by the City Charter to essentially do what it deemed to be in the public interest, within the parameters of the law.

Mr. Brooke clarified that the board had not been asked to make a recommendation on whom to add to the program; but rather, to submit a list of types of businesses in the community not already required to report, at least some of which would meet the reporting threshold of 2,640 pounds of hazardous substance inputs in a calendar year.

Mr. Monk said the focus of the City's program was on the release of hazardous substances. The board had invited representatives of the petroleum industry, including representatives of the OPMA, to speak about some of the issues of concern to the board. He maintained that the OPMA had provided erroneous, if not misleading, information. For example, the OPMA maintained that "everyone" used Stage 1 equipment, but representatives of the Department of Environmental Quality (DEQ) and Lane Regional Air Pollution Agency (LRAPA) had indicated to the board that that was not the case. He said that the average gas station emitted 20,000 pounds of volatile organic compounds annually, and that was a concern to him.

Responding to a question from Mr. Tyree, Mr. Monk said it was his understanding that all local gas stations had the Stage 1 equipment, but that some did not use it because the delivery drivers were not instructed to do so. Mr. Tyree said he could only speak about his own drivers, but the rules were that the equipment must be used. He was not allowed to deliver to facilities without Stage 1 equipment. He said the exception was heating oil tanks and small farm tanks. For the most part, the volume of fuel consumed in Eugene was through underground tanks, and the majority of those were four-inch gravity-drop tanks that must be equipped with Stage 1 equipment.

Mr. Brooke encouraged Mr. Tyree to feel free to provide additional information to the board. Mr. Tyree invited the board to call him with questions, and provided his card to board members.

III. Approval of Minutes

It was noted that Ms. Gleason was incorrectly referred to as Mr. Gleason on page 5 of the minutes, and Ms. Fitzgerald was incorrectly referred to as Mr. Fitzgerald on page 4 of the minutes.

Mr. Brooke, seconded by Ms. Gleason, moved to approve the minutes as amended. The motion passed unanimously.

IV. Staff Report

Mr. Potter reported he continued to work with Old Dominion/Carstar staff on the issue of including auto body shops in the program. He considered their inclusion a “maybe” given the threshold issue. He had spoken to a representative of the largest auto body shop in Eugene, AutoCraft, earlier that day, and learned that its total purchases of reportable substances in the form of paint and lacquer thinner totaled about 2,112 pounds annually, below the threshold. Mr. Monk asked if auto body paint was comparable with other paint types. Mr. Potter did not know, and indicated he would review copies of applicable Material Safety Data Sheets.

Mr. Potter reported on the status of recruitment for members to replace outgoing members Mr. Carson and Mr. Monk, and indicated that John Jordan-Cascade had applied for the right-to-know position. There were not yet any applicants for the industry position, and it was likely that the deadline for that position would be extended. He understood some interest had been expressed in the industry position by an employee of J. H. Baxter, and encouraged industry representatives to contact that individual to encourage her to apply.

Mr. Potter reported that there was a late audit response from A&K Development; the response was due to him on August 22, but he had yet to receive it. Andy Poynter was consulting for the company but had not returned his calls. The company would be identified as having a first-time violation, but it did not appear that there was a penalty other than that or any time constraint for a response from the company. He would continue to attempt to contact Mr. Poynter.

Ms. Gleason pointed out that the law stated that each day a violation continued it would be considered a separate violation.

Mr. Monk encouraged Mr. Potter to contact the company directly. Members agreed to establish a deadline of September 30 for a response from the company. Mr. Brooke said that was not much time for a response, and asked Mr. Potter to let the company know the audit was not complete. Mr. Potter said he would do so, noting that the company had received the initial audit letter and should be aware of the deadline.

Reading from ORS 453.370(3)(b), Ms. Gleason quoted, “Except when a local government has reasonable grounds to find that an employer willfully and knowingly avoided compliance with the local program, and as long as the employer submits the required information within 30 days following a written notification of noncompliance, penalties shall be suspended if the employer

has no history of violating the local program.” Hearing this, the board instructed Mr. Potter to forward a notice of noncompliance to A & K Development.

V. Further Response to Council Direction

Mr. Potter noted that the board had been asked by the council to provide it with a list of businesses to add to the program, at least some of which would exceed the 2,640-pound threshold. He said candidates for the list appeared at this point to be limited to gas stations, petroleum product distributors, and possibly auto body shops. Mr. Potter said the fact that these were not manufacturers meant that the requirement to report chemicals used in manufacturing did not apply and the City would have to develop some other type of wording if an ordinance was proposed. The board’s charge was to develop a list and estimate the financial implications of adding the businesses to the program. He did not anticipate the revenue impact would be great given the limited number and size of the candidate businesses.

Mr. Potter recalled that another element of the council’s charge concerned streamlining of reporting. He said that coordinating the reporting with other programs was difficult because the aims of the programs were all different.

Mr. Potter believed that it was appropriate for the board to make a recommendation to the council in regard to the issue if it wished. It was not required to make a recommendation. The council would have the list and could determine what direction it wished to take. If the council ultimately decided to adopt an ordinance, it was unlikely to do so until 2006. In that case, the first reporting year would be 2007, and the information from the newly reporting companies would be available to the public on April 1, 2008.

Mr. Carson indicated he would be unlikely to support any list if the board did not make it clear that it was fulfilling its charge by providing the list as opposed to recommending the addition of more companies to the program.

Mr. Monk suggested that the board’s report to the council could specify what it examined and why some types of businesses were dropped from further consideration. Mr. Potter agreed.

Mr. Potter said he would ask the City Attorney to attend the board’s next meeting.

VI. Schedule Next Meeting/Agenda Items

The board scheduled its next meeting for either October 20 or October 21, depending on the availability of absent members, at 3 p.m. in the Fire Conference Room at 2nd and Chambers.

Members briefly discussed what would happen if the City was unable to secure an industry representative to serve on the board in a timely matter. Mr. Carson suggested that if the board was unable to secure an industry representative within a reasonable time, one of the right-to-know advocates could abstain from voting, in the interest of balance.

Mr. Monk again raised the issue of reporting coordination with other regulatory agencies, and suggested that the LRAPA or DEQ might be interested in such coordination, at least in regard to gas stations. Mr. Carson said the board attempted to address that element of the charge by inviting regulatory agency representatives to its August meeting, but he did not think any resolution was reached in regard to the issue. He said the laws governing each agency were so different that it was difficult to see how such coordination could occur.

Mr. Monk said that Ohio had had some success in coordinating reporting between agencies with the use of specialized reporting software. He believed businesses would be supportive of such an approach and the regulatory agencies would like businesses to use such software. Mr. Potter pointed out that the Toxics Program would be unable to secure the information it needed from DEQ reports because its requirements were so much more detailed. However, he believed the board was open to the possibility of coordinated reporting if a way could be found to accomplish it. Mr. Brooke suggested that the onus would be on the City of Eugene to develop such reporting software given that it had the only right-to-know program in the state.

Mr. Monk adjourned the meeting at 3:52 p.m.

(Recorded by Kimberly Young)