

MINUTES

Eugene Toxics Board
Fire Conference Room, Second Floor—Emergency Services Center
2nd Avenue & Chambers Street, Eugene, Oregon

September 15, 2004
2 p.m.

PRESENT: Marylee Bowman, Chair; Jennifer Gleason, Brian Allen, David Monk, Paula Holloway, Steve Johnson, Clyde Carson, members; Glen Potter, staff; Katherine Brotherton, City Attorney's Office; Ken Luse, Terry Connelly, Zach Vishanoff, guests.

I. Approval of Agenda/New Items

Ms. Bowman called the meeting of the Eugene Toxics Board to order. She determined there was no objection to the order of the agenda, and members had no new items they wished to add.

II. Public Comment

Zach Vishanoff, who identified himself as a resident of east Eugene, asked the board to consider sending the Eugene City Council a resolution calling for the formation of a citizen advisory committee to oversee research into nanotechnology at the University of Oregon. He expressed concern about the potential uses of nanotechnology and provided material on the subject for the board to review.

Mr. Potter determined from Mr. Vishanoff that he had asked the City Council to form such a committee, and it had expressed no interest in proceeding. He pointed out to Mr. Vishanoff that the board was advisory to the council and the board could, at best, only forward the same suggestion. Mr. Vishanoff believed the council would be receptive to his message if it came from the board.

III. Approval of Minutes

As the minutes of the August 26 meeting were not available, consideration of this item was postponed to a future meeting.

IV. Staff Report

Mr. Potter reported that Ms. Gleason and Ms. Bowman had indicated interest in reapplying for their positions on the board. He had also received a call expressing interest in membership from a representative of industry. Applications were due on September 24, and the council would act on the appointments on October 25. Mr. Potter reminded the board that in past years, it had reviewed applications for membership and forwarded recommendations to the City Council. He recommended the board meet prior to October 19 to review the applications.

V. Policy Regarding Late Responses to Audits

Mr. Potter noted that he had received another late response to an audit following the August 25 meeting, at which the subject of the board's position on late responses was discussed. He recalled the discussion, which was whether the late response constituted a violation and could be considered a first offense. Mr. Potter said that a violation was defined in the charter as a failure to submit a complete, accurate, and timely report. He reminded the board that it could not level a fine for a first offense.

Mr. Potter recommended that the board authorize him to prepare a form letter to use in such cases to remind companies that failure to comply with the law had consequences.

The board briefly discussed the issue. Mr. Johnson pointed out the board had taken a fairly tolerant position on reporting in the past, allowing companies to correct errors identified in audits as opposed to fining them. He thought the board would be justified in considering late responses a first violation. Mr. Carson suggested the violation could be considered a failure to cooperate, and the penalty could be based on the fine schedule already in place. He noted that in some cases, companies could be ordered to cease and desist from the use of certain chemicals.

The board agreed that a late response to an audit could be considered a violation because it represented a continued failure to submit a complete, accurate, and timely report. The board also agreed the recommended letter should be prepared.

Ms. Brotherton suggested the audit letter requesting the additional information state that failure to respond within 30 days was considered a first offense. Mr. Potter suggested that the letter read that failure to respond may be considered a first offense, depending on future circumstances. Ms. Gleason suggested Mr. Potter consult the text on page 21 of the Tracking Instructions related to enforcement when he prepared the letter.

VI. Response to City Council Request

Mr. Potter reminded the board of its August 26 discussion on the council's direction to address the perceived fee inequity. At that time, the board agreed to pursue an approach that would require all Eugene businesses to submit reports and pay fees regardless of SIC codes or FTE levels. He asked the board to reconsider that direction due to the administrative complexity involved -- given the many, many companies that would be included -- and recommended that it instead

return to Proposal D, adding selected SIC codes to the existing program. Mr. Potter called the board's attention to a memorandum in the packet entitled *Response to City Council Direction*, and the possible list of SIC code additions at the bottom of page 1 of the memo.

Mr. Potter indicated that the information he provided regarding fees and the budget was very preliminary and would require further analysis following the board's decision on which direction to take.

Ms. Bowman related a conversation she had with her dry cleaner on how such a fee would affect his business, and he had shared with her the many fees he already paid. The potential of adding onto those fees concerned her.

Mr. Allen provided the board with copies of a document listing the available Web sites with industry toxic use information and the types of reports already submitted by companies. He said companies already submit reports that cover the materials addressed by the Toxics Program.

Ms. Gleason believed the fee issue was out of the board's hands given the State cap. There would have to be a larger group of people paying the fee in the future than pay it now, and she termed that unfortunate. She suggested the board form a subcommittee to make a recommendation to the board on businesses to add to the program. She wanted the subcommittee to envision where Eugene was going in the future so the board did not have to continually consider further revisions when a new industry moved to town, or risk leaving that industry out of the program. She also wanted to ensure that the companies required to report had the infrastructure to do so, and did not want to include, for example, such companies as small paint contractors.

Speaking to Mr. Allen's concerns, Mr. Johnson said he did not consider the information collected by Eugene to be duplicative, and was not moved by the fact that companies had to file lots of reports because that was part of doing business. He wanted to focus on increased reporting that provided increased information rather than merely more funding. Mr. Johnson believed Ms. Gleason's concerns about the small painting contractor would be addressed by the FTE threshold. That could be true of the dry cleaning example mentioned by Ms. Bowman as well. That depended on whether one was talking about fees or reporting. Mr. Johnson believed a reduction in the threshold was still in order.

Mr. Johnson did not disagree with the list prepared by Mr. Potter although he thought there might be other businesses to add. He was not as concerned as Ms. Gleason about new industries because he thought it would have to be a very unique business to not fall under the existing program.

Mr. Johnson agreed with Ms. Gleason about forming a subcommittee.

Mr. Potter said he had considered the issue of the different groups of businesses that could be created by the board, reporting groups or paying groups. Currently there were businesses that report and pay, and businesses who only pay. The addition of the new businesses and the reduction of the FTE threshold could create two new groups: new businesses that report and pay,

and new businesses that pay but do not report. He suggested the board consider narrowing the focus to one or two groups. The council had the authority to reduce the FTE level and the chemical threshold for the entire program, which might simplify things. Mr. Johnson believed the board should recommend uniform FTE levels.

Ms. Gleason agreed with the remarks of Mr. Johnson, and added that the proponents of the program would never have gone to the trouble of initiating the program if the information they desired had been available already. She said the courts had ruled the program was not duplicative.

Ms. Gleason suggested the subcommittee could meet with a business group likely to have interest in the subject, such as ALERT.

Mr. Carson indicated that the industry representatives were unlikely to have time or the motivation to serve on the proposed subcommittee. However, he suggested it was possible that employees of other business interests in the community might have interest in contributing to the subcommittee.

Members briefly discussed the timing of the recommendation to the council.

Mr. Allen, seconded by Mr. Carson, moved to reconsider adoption of Proposal A, and then at later time the board could research the other three proposals to add to the program.

Mr. Allen did not think the board had sufficient time to make a recommendation prior to the next billing period. Mr. Johnson believed the board could provide a recommendation to the council for action in December 2004 or January 2005.

Mr. Monk said the charge of the board was to seek more equitable funding, and he urged the board not to support the motion as he believed it had time to develop an equitable funding measure.

Mr. Johnson said if the subcommittee was unable to complete its task in the time remaining, he would support Proposal A. Ms. Gleason concurred.

The motion passed, 4:3; Mr. Johnson, Ms. Gleason, and Mr. Monk voting no.

Mr. Johnson, seconded by Ms. Gleason, moved to form a subcommittee to return to the board with a proposal based on Proposal D to add SIC codes that also took into account FTE levels, chemical thresholds, the definitions of use, the number of reporting groups, and the ability of companies to report.

Mr. Monk determined from Ms. Bowman that if the proposed subcommittee developed a recommendation that gained majority support from board members, it would supersede the previous motion.

The motion passed, 4:3; Mr. Carson, Mr. Allen, and Ms. Holloway voting no.

Responding to a question from Mr. Monk, Ms. Brotherton clarified that elements of the program outside of what was mandated by the charter could be funded in any way, including on a quantity basis.

Mr. Johnson and Ms. Gleason volunteered to serve on the subcommittee.

Mr. Luse indicated he would attempt to attend the subcommittee meetings and suggested staff notify Andy Poynter as well.

VII. Schedule Next Meeting/Agenda Items

The board scheduled its next meeting for October 14 at 2 p.m.

The meeting adjourned at 3:05 p.m.

(Recorded by Kimberly Young)