

MINUTES

Eugene Toxics Board
Fire conference Room – 1705 W. 2nd Avenue

February 13, 2003
3 p.m.

PRESENT: Clyde Carson, Chair; Brian Allen, Marylee Bowman, Jennifer Gleason, Madronna Holden, David Monk, members; Glen Potter, Fire & Emergency Medical Services; Terry Connolly, Deirdre Malarkey, Ken Luse, Andy Poynter, guests.

Mr. Carson called the meeting of the Toxics Board to order.

I. APPROVAL OF AGENDA/NEW ITEMS

Mr. Monk added a report about House Bill 2466 to the agenda.

Mr. Carson added the following items for discussion to the agenda: errors on the chemical list, inventory discrepancies, and fees.

Members agreed by consensus to the amended agenda.

Ms. Bowman noted that her e-mail address had changed and was now mzb@efn.org.

II. PUBLIC COMMENT ON ITEMS NOT LISTED ON AGENDA

Terry Connolly from the Eugene Chamber of Commerce said that he would like to comment on an agenda item and asked if that was acceptable. Members agreed to allow public comments on items on the agenda in the future, as long as there was not a public hearing on the items scheduled at the meeting, and as long as public participation did not become so extensive that it impeded the work of the board.

Mr. Connolly suggested that the board discuss the effective date for the fee cap imposed by 1999 House Bill 2431. He also expressed concern that the City Council would be approving new Toxics Program fees to support the program in FY04, and the fees would in fact be collected, prior to final Council action on the City's FY04 budget.

Andy Poynter said that he prepared the toxics reports for many companies. Mr. Poynter noted that companies did not communicate with each other the process used for toxics reporting and that the amount of work put into reporting was quite different from company to company. He suggested that guidance materials or clarification about reporting would help equalize the work being done.

Mr. Poynter added that some of the information of the list of chemicals was incorrect and needed to be checked. He mentioned that kerosene was on the list even though it has a flash point of 150 degrees.

III. APPROVAL OF THE MINUTES OF THE NOVEMBER 12, 2002, AND DECEMBER 2, 2002, MEETINGS

Mr. Monk noted that the word “not” should be removed from the second sentence of the fourth paragraph on page 3 of the December 2, 2002, minutes so that the sentence read as follows: “He believed that the fee cap made the issue moot, because no company, regardless of how many chemicals it used, would be charged more than \$2,000.”

Mr. Carson suggested changing the first sentence in the fifth paragraph on page 2 of the December 2, 2002, minutes to read as follows (italicized words added): “Mr. Carson perceived *there were* two questions before the board: . . .”

Ms. Holden moved, seconded by Ms. Bowman, to approve the minutes of the meetings of November 12, 2002, and December 2, 2002, as corrected. The motion carried unanimously.

At this point in the meeting, the board agreed to address agenda item V, User Feedback Invitation on Website, in order to accommodate Mr. Chipman.

V. USER FEEDBACK INVITATION ON WEBSITE

Mr. Potter reminded the board that it had proposed adding a feedback page to the website in order to gather information about who was using the website and for what purposes. Mr. Chipman suggested that the feedback page be an option on the menu. He said that the data would be gathered on a form which would automatically go into a data base and that there would be no identifier as to who filled out the form. Mr. Potter suggested that Mr. Chipman create a prototype page to show to the board. Mr. Monk suggested soliciting information about why a user had accessed that website. Mr. Carson suggested that the form not be too elaborate. Mr. Chipman agreed to return with a prototype page.

IV. STAFF REPORT

- Status of 2002 Reporting

Mr. Potter said that he had received 2 reports out of 40 expected for the year 2002. The reporting deadline is April 1.

- **Budget/fee process**

Mr. Potter reported that he had received all of the 2002 FTE surveys from companies required to pay. Using the board-approved FY04 program budget, and in accordance with City Code, he had calculated a fee of \$16.95 per FTE for this year. He said that there would be a public hearing on the proposed fee before the City Council on February 24, 2003, with council action scheduled for March 10. Mr. Potter requested that some board members attend the City Council meetings. He said that if the City Council approved the fee structure, the bills would be generated and would be due on May 1, 2003.

Mr. Carson noted the issue raised by Mr. Connolly about the process of billing companies before the program budget had been formally approved. Mr. Potter acknowledged that the program did collect fees before the City budget was approved. However, he said that the City Council retained the option, until it gave final approval to the City budget, to change the budget for the Toxics Program for an upcoming fiscal year. Ms. Gleason noted that the City Charter requires that Toxics Program fees be paid by May 1 of each year.

Mr. Carson said that he interpreted 1999 House Bill 2431 to mean that the \$2,000 cap on local fees would apply now. Mr. Potter said that the City Attorney had given the legal opinion that the cap was not in effect now, but for purposes of Eugene's program, would be in effect next year. Ms. Gleason said that she would like to see the language of HB2431 before commenting on this issue. The discussion was postponed until later in the meeting.

- **Citizen Handbook Update**

Mr. Potter distributed copies of the latest draft of the Citizen Guide to the Website. Ms. Holden commended Mr. Potter for his work on the guide. Board members agreed to review the guide and to give feedback about it at the next meeting.

- **Roster**

Mr. Potter noted the Toxics Board roster at the end of the agenda packet. Mr. Allen changed his e-mail address to AllenB@hsma.us.hynix.com.

VI.ADDITIONAL ITEMS FOR DISCUSSION

- **Errors on Chemical List**

Mr. Carson said that some businesses had reported errors on the chemical list. He asked the board for suggestions to deal with this problem. Ms. Holden said that Mr. Potter could continue to make needed changes when errors were brought to his attention. Mr. Potter said that errors were creeping in now that companies were adding their own chemicals. Mr. Potter said that he would go through the list to check for spelling and correct CAS numbers. He said that he was not qualified to know if a chemical was reportable. Mr. Carson said that it was up to each business to decide if the chemicals it was using were reportable. Mr. Poynter said that he would inform Mr. Potter when he discovered an error in the list.

- **Guidebook for Reporting Procedures**

Board members discussed Mr. Poynter's suggestion of creating a guidebook for reporting procedures. Mr. Allen said that references should be included for information about chemicals which would also address the issue of errors on the list of chemicals.

Ms. Holden said that the board should not determine reporting procedures for companies. Mr. Carson thought that helpful hints could be given to companies such as obtaining information from vendors about the chemicals their business purchased during the year. Ms. Holden emphasized that any guidelines should be given with the understanding that the Toxics Board was not endorsing a certain way of reporting. Mr. Allen suggested adding these hints to the Website. Ms. Holden suggested putting the hints in the form of questions and answers. Mr. Carson asked for a subcommittee to develop some helpful hints or suggestions for the reporting process.

Mr. Allen, seconded by Ms. Bowman, moved to create a subcommittee to work on developing suggestions or hints for the reporting process. The motion carried unanimously.

Mr. Allen, Ms. Bowman, Mr. Poynter, and Mr. Monk volunteered for the subcommittee. Ms. Gleason suggested that the document be intended to provide helpful information. She cautioned the board against making any guarantees that following the recommendations would ensure that reporting was being done correctly, as there are many other possible reporting methods that will not be covered in the guidelines.

In response to a question from Mr. Monk, Mr. Potter said that if a company did not report correctly, he usually required the company to correct the report in two weeks. He said that if the company did not comply with the two weeks, the issue would be brought before the Toxics Board.

Members agreed that they wanted to support companies in doing a good job of reporting in the easiest way possible, while not discouraging companies from being as thorough as possible.

- **Inventory Discrepancies**

Mr. Carson noted that there could be discrepancies from year end to year beginning inventory. He said that reasons for the discrepancies could be: 1) a change in assumptions, 2) a change in the percent of chemical in the MSDS, 3) chemicals discovered after the report was filed. Mr. Carson wondered when discrepancies should be noted and a report amended. Mr. Potter volunteered to work with Mr. Carson on some new entries to the question-and-answer section of the reporting instructions to address this.

In discussing whether or not to amend a report because of an inventory discrepancy, Mr. Allen suggested that an inventory change should be noted and amended whereas a methodology change should not require that a previous report be amended. In response to a question from Mr. Monk, Mr. Potter stated that if a company prefers to explain a discrepancy rather than correct it, the written explanation is kept on file.

Mr. Carson summarized the consensus that inventory discrepancies greater than 2.2 pounds or .022 pounds for extremely hazardous chemicals should be noted so that the report could be amended. He added that if the discrepancy was due to a change in methodology or percent MSDS, then an explanation could be provided in lieu of an amendment.

- **HB 2466**

Mr. Potter distributed copies of 2003 House Bill 2466 (proposed) and 1999 House Bill 2431 (adopted).

Mr. Monk reported that HB2466 was sponsored by the Northwest Propane Gas Association and the Pacific Northwest Paint Council to specify that employers required to return a hazardous substance survey to the State Fire Marshal pay an annual fee. He said that there was some concern that some of the language of the bill would prohibit a city from assessing a fee for a hazardous substance program.

Mr. Potter referred members to page 3 of HB2466, subsection 4, which read that fees could be used only to fund local government hazardous substance planning activities that were supplemental to, and not duplicative of, the State Fire Marshal's programs under ORS 453.307 to 453.414. The bill further provided that the local government would bill and collect any fee under this subsection through contract with the State Fire Marshal. Mr. Potter explained that this would require a new funding source for Eugene's program or a complete reworking of the program as described in the City Charter. He reported that he along with others had testified against this particular subsection of the bill in that it would hurt local programs. He pointed out that the legislative session was young and that changes could be made to the bill.

- **HB 2431**

Mr. Carson said that in reviewing HB2431, he noticed that the fee cap mentioned in Section 3(2)(b) would go into effect on July 1, 2003, as stated in Section 3(11). Ms. Gleason said that

would rely on the advice from the City Attorney that the fee cap did not apply at this time. Mr. Carson stated that he did not agree with the City Attorney, and urged that the City operate under the fee cap now.

Mr. Carson noted that Section 3(8) indicated that the City should develop procedures to exempt industries from reporting which had "trade secrets" or which posed "little or no risk" to public health or the environment. He said that this issue should be put on the agenda for consideration. Mr. Potter said that he had already asked the City Attorney to draft some procedures based on this section. Members asked that the City Attorney be present at the next meeting to answer questions.

In response to a question from Mr. Luse, Mr. Potter said that the fee cap would required restructuring of the program's fee system. He said that the City would probably have to go to a flat rate, or move much closer to a flat rate, which would hurt small companies. Members acknowledged that the board had already decided that it did not want to cut the program budget.

VI.SCHEDULE NEXT MEETING/AGENDA ITEMS

Board members discussed a date for the next meeting. Mr. Carson strongly urged that the board meet before the February 24 public hearing on fees. He said that it was the board's responsibility to recommend a fee schedule and that the board had not yet done that. He said that he wanted to revisit the issue of the budget and the fee structure every year, emphasizing that he continued to think that the public should be paying for this program. In response to a comment from Ms. Holden, Mr. Potter said that he would research the minutes to see if the board had recently approved the procedure for setting fees.

After more discussion, members decided to meet again on February 21, 2003, at 3 p.m. in the Fire Conference Room. The only item on the agenda would recommending a fee structure.

The meeting adjourned at 4:45 p.m.

(Recorded by Elise Self)

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