

MINUTES

Eugene Toxics Board
Classroom 1 – Eugene Emergency Services Center – 1705 West 2nd Avenue

May 5, 2003
7:30 p.m.

PRESENT: Clyde Carson, Chair; Brian Allen, Marylee Bowman, Madronna Holden, Jennifer Gleason, Paula Holloway, David Monk, members; Glen Potter, Fire & Emergency Medical Services; Katherine Brotherton, City Attorney's Office.

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

I. APPROVAL OF AGENDA/NEW ITEMS

Seeing no additions or changes to the agenda, Mr. Carson deemed it approved.

II. PUBLIC COMMENT ON ITEMS NOT SCHEDULED FOR PUBLIC HEARING

No members of the public wished to speak at this time.

III. PUBLIC HEARING – COMMENTS ON EUGENE TOXICS RIGHT-TO-KNOW PROGRAM

Mr. Carson opened the public hearing, held in accordance with ORS 453.370(4)(e).

Jan Spencer, 212 Benjamin Street, supported the Toxics Right-To-Know Program. He noted that he lived in the River Road area and there were concerns regarding the uses of chemicals by the railroad company in that area. He stressed that the citizens of the City of Eugene had a right to know what they were being exposed to.

Mike Lowden, 1260 Wallace Street, stated that he was a business owner that had been reporting under the Toxics Right-To-Know Program. He said that his largest concern was that the fees were being increased and the smaller businesses were being unfairly penalized. He also advocated for including the University of Oregon in the program, as the university was not currently required to participate.

Thomas E. Price, address confidential, explained that he had participated in the program since 1997. He expressed concern that the state mandate exhibited too much infringement on home rule and that the increase of fees was unfair to small businesses.

Ray Wolf, 1473 Luella Street, said that he had studied "Superfund" sites, noting that one was located in Eugene. He suggested that people go to the Department of Environmental Quality

(DEQ) for the details on this. He stated that the groundwater pollution was very expensive to mitigate. He stressed the importance of monitoring chemical outputs of local businesses and supported the Toxics Right-To-Know Program.

Bob Cassidy, 1301 East 27th Avenue, commented that the buildings that had been destroyed in the tragic events of September 11, 2001, had put out a toxic flume while burning. He felt that the fire department had a right to know what sorts of chemicals a burning building contained. He affirmed his support for the law, but felt that it was not being funded correctly.

Terry Connolly, Eugene Chamber of Commerce, 1401 Willamette Street, relayed the continued opposition of the Chamber of Commerce to the program. He commented that there was a notion that businesses had come to accept the program. He stated that this was not true. He related that businesses complied with the program because it was the law. He said that the Chamber had interviewed over 250 firms and that the top concern expressed in the survey was regulations, adding that the Toxics Right-To-Know Program was cited by name by 37 percent of the businesses surveyed as having a negative impact on business in the city. He also noted that the fee increase was unfairly distributed and that establishing procedures for exemptions for some businesses would be a good idea. He expressed appreciation for the Toxics Board decision to accept public comment at its meetings.

Elizabeth Davies, 2968 Summit Sky Boulevard, explained that she was a breastfeeding advocate. She stated that the effects of toxic substances were concentrated in breast milk and posed a threat to the health of nursing children. She referred to a book entitled *Having Faith* by Sandra Steinhaber. She supported the program, emphasizing that she felt it was terribly important, and commended the City of Eugene for "leading the way" for other communities.

Beth Aydelott, 4690 University Street, felt that the State Fire Marshal could not replicate the work of the Toxics Right-To-Know Board. She supported the work of the program.

Mark Marzullo, 3787 West 1st Avenue, spoke on behalf of Whittier Wood Products. He stated that there were ample laws and regulations enforced by the Lane Regional Air Pollution Authority (LRAPA) and the DEQ and it was not necessary to have the Toxics Program as well. He recommended bringing the entire issue back to the voters. He advocated for making the fees more fairly distributed. He opined that the Toxics Program did nothing to reduce the use of toxic chemicals.

Joe Fyie, 195 North Bertelsen, spoke on behalf of the TrusJoist Company. He related that the company felt that the Toxics Program put an "unfair and ill-advised burden on business." He described some of the measures that the company took to keep the generation of hazardous materials to a minimum. He noted that the company was required to maintain an industrial discharge permit and a Title V air permit. He stated that the company had to certify compliance with all regulations to LRAPA and the DEQ. He asserted that the Toxics Board created a disincentive to Eugene businesses, calling the program a "luxury," adding that the program required a significant dedication of resources on the part of businesses.

Lisa Arkin, 29126 Gimpl Hill Road, spoke in support of the program. She opined that as all citizens breathe the air, all citizens had a right to know what they were breathing. She stressed that she supported businesses that participated in the program to show her approval of their

work to promote health in the community.

Ruth Deumler, 1745 Fircrest Street, supported the program. She related that she had worked hard, along with others, to get the measure passed. She commented that she had worked on similar measures in California and nationally and that such measures provided a tremendous benefit to citizens. She noted that there had been an article in *The Register-Guard* in the previous week that reported that 70 percent of the lettuce sold in the United States in the winter time was contaminated with perchlorate due to contamination of Colorado River water. She said that the contamination happened in spite of the regulations and monitoring by agencies such as the DEQ and that it pointed to the need for local measures such as the Toxics Right-To-Know Program.

Joe Kidd, 1995 Pierce Street, supported the program. He spoke on how the program represented the democratic ideal that this country was founded upon as it demonstrated the ability of people to foster an idea for the improvement of their environment and to carry it forward.

Rachel Kidd, 1995 Pierce Street, spoke in support of this program. She asserted that history was “clogged” with examples of people who did not do the right thing. She stated that many industries had knowingly and unknowingly polluted air and water. She felt that the impact that pollution had on infants and children warranted as much protection from such pollution as possible. She reiterated that the program was the “will of the people.” She added that it was important that the program was not funded disproportionately by smaller businesses.

Robert Bachelor, 1293 Riden Place, felt that, with the upcoming changes in the law, small businesses would be unfairly burdened. He suggested that the Toxics Board request that City Council send another ballot measure to the voters suggesting that the program be partially funded through the General Fund.

Moshe Immerman likened this law to a blessing. He opined that this law was visionary. He felt that compliance with the right-to-know law was a good point of advertisement for businesses. He hoped that a way would be found to make the funding more fair so that small business was not supporting big business. He commented that cancer rates were on the rise and were attributed to the increases in chemical pollution in our environment.

Jacqueline Fern, 2255 Arthur Street, supported the Toxics Right-To-Know Program. She stressed the importance of maintaining the intent of the law, which was to provide the citizens of Eugene with information, and suggested that the companies that use the chemicals were being good neighbors in doing so. She agreed that the proposed change in fee structure posed an unfair burden on small business. She advocated for the creation of a reward program for companies that could document a measured reduction in the levels of chemical outputs. Conversely, she felt that companies whose chemical levels rose could be penalized with greater fees.

Kevin Arkin, 29126 Gimpl Hill Road, said that, as a growing child, he should not be exposed to substances that could harm him. He commented that, though the regulations were sometimes perceived as an unfair burden for business, it was also unfair to burden the citizens of the community with exposure to toxic chemicals.

Russell Arkin, 29126 Gimpl Hill Road, younger brother of the previous speaker, read a letter he had written to the editor of *The Eugene Weekly* that expressed concern regarding the dumping of chemicals in the river. He felt that citizens should work to end pollution and that people should know what they were being exposed to.

Mary O' Brien, 3525 Gilham Road, displayed examples of reports from the Toxics website. She explained how the chemicals were being reported and how changing chemical levels were being accounted for. She compared the mitigation of the chemical acetone between two companies, noting that one had reduced its emissions by employing a bio-filter that utilized living bacteria and fungi. She averred that this sort of data was extremely important for comparison purposes. She cited an example of a non-toxic company with 70 employees that was located across the street from a business that had chemical outputs, noting that they could utilize this information to protect their employees.

Steve Johnson, 1825 Longview Street, felt that the law could be brought back to the voters for refinement. He advocated for an incentive that would reduce fees for a company that demonstrated substantial reductions in its chemical output. He thought it possible to contest the fee structure at the state level. He suggested that the cost of the program could be reduced.

Bob O' Brien, 3525 Gilham Road, spoke in support of the Toxics Right-To-Know Program. He stressed that the citizens had worked hard to get the initiative on the ballot. He urged the board members to consider the responsibility they had been given, that they had an ethical obligation to make the act work as the voters had intended.

Scott Forrest, of Forrest Paint, asserted that the law was a burden on business, and a bigger burden on small business. He commented that larger companies had an expert to handle environmental reporting but a small business did not have such a resource. He noted that the state had eliminated the tax credit for the installation of pollution prevention devices. He remarked that the City of Eugene reported under the Toxics Right-to-Know Program but was not required to pay a fee. He opined that some businesses had chosen not to locate in the City of Eugene because of this program.

Mr. Carson closed the public hearing.

IV. PUBLIC HEARING – COMMENTS ON REPORTABLE CHEMICALS

Mr. Carson opened the second hearing in accordance with ORS 453.370(7).

Moshe Immerman stated that when Hynix Corporation first located in Eugene, the chemicals it used were unknown. He said that, once found out, some of the chemicals were determined to have the same toxicity as nerve gas. He stressed the importance of awareness of the utilization of these sorts of chemicals in our area. He added that transportation of these chemicals was also a cause for concern.

Mary O' Brien, 3525 Gilham Road, stressed that each of the 1,500 chemicals required to be reported by the Toxics Right-To-Know had been determined to be toxic to under federal laws. As to the cost of reporting, she shared that she had been treated for breast cancer, now

associated with chemical exposure, and the cost of treatment had been \$20,000. She noted that one person present had lost a spouse to cancer and that the loss of a spouse was priceless. She stated that chemical exposure can cause birth defects, immune system suppression, hormone disruption, interference with reproduction, developmental defects both in utero or as a child, reduction of liver, kidney, or gastro-intestinal system, damage to the nervous system, damage to genetic material, alteration of survival behavior of wildlife, and more. She commented that a former Toxics Board member had asked how a bread maker could contribute to the toxic chemicals in the area. She said that the bread maker in question had emitted 822 pounds of methyl ethyl ketones into the air in 2002. She explained that this chemical was toxic to the cardiovascular system, to developing embryos, to the gastro-intestinal system, to the nervous system, to reproduction, to the respiratory system, and to the skin and sensory organs. Additionally, 20 companies emitted the same chemical for a cumulative total of three tons of methyl ethyl ketone emitted into the air. She stressed that this posed a threat to the health of the residents of this community.

Ruth Deumler, 1745 Fircrest Street, advocated for an emission fee, that companies should be charged based on what they emit. She stated that this had been how the initiatives that she had worked on in San Diego and Los Angeles, California had functioned. She stressed that the health costs for the community were much higher than the fees that were charged to businesses. She felt that, if people fully understood the implications of chemical emissions, they would not choose to live downwind from a plant that releases toxic chemicals. She added that, when living in San Diego, she had been made aware of a plant that made arsine gas and that a study had indicated that, in the event of a serious spill, 30,000 people would die within a few hours. She advocated for encouraging businesses that use less toxic chemicals to locate in the Eugene area.

Mr. Carson closed the public hearing.

V. PROCESS FOR EXEMPTING ENTITIES

Ms. O' Brien stated that the Toxics Board and the City Council had provided companies with specific exemptions and that, should a manufacturer be determined to have little impact on the environment, it could be exempted according to the charter amendment. She felt that the state exemption clause was not in accordance with the Toxics Right-To-Know Program. She encouraged the board to write down the procedures for the consideration and granting of exemptions.

Mr. Carson asked Ms. Brotherton to speak on the legal implications of the exemption.

Ms. Brotherton stated that City Attorney's Office had looked at subsection (8) of ORS 453.370 and that, regarding current practice of using 2,640 pounds of inputs as the reporting threshold, legal staff recommended establishing an exemption process above and beyond that. She said that how the process would be determined would be up to the Toxics Board.

Ms. Gleason commented that the City Charter already allowed for exceptions. Ms. Brotherton responded that the concern was that the existing Charter language did not meet the intent of subsection (8).

In response to a question from Ms. Holden, Ms. Brotherton affirmed that it would still be the job

of the board to decide what procedures the board would choose to follow, that the board would determine the standards and the procedures and then the City Attorney would determine if it met the intent of the law. She stated that the board could decide that its current process was adequate, but that the board ran a risk of being legally challenged because of the ambiguity in the law.

Ms. Gleason stressed that the law of the Charter had to be followed. She added that the Charter already provided for exemptions that were deemed reasonable.

Mr. Monk felt that the board was opening the door to a lot of difficulty. He wondered if there was a rule that governed substances that could be exempted.

Ms. Gleason said that there was already the possibility that people would not report. She noted that she had heard much testimony regarding the burden on small companies. She asserted that anything beyond the charter as it currently existed would put a larger burden on the small companies.

Mr. Carson felt that an exemption process could be designed in such a way as not to cost the small businesses more. He said that the state had been clear that the board needed to come up with criteria for exemptions. He commented that rational risk assessment was based on many factors. He added that it would be good to provide incentives for the smaller companies that do well by the environment. He thought that a subcommittee could be formed to consider this, adding that he could support Ms. Gleason's proposal to take a conservative approach to the assignment.

Ms. Gleason remarked that whether or not what was already written fulfilled state law was unclear. She wondered if the board needed to create a procedure to exempt an entity from the whole program.

Mr. Carson did not advocate for basing an exemption on the quantity of a chemical that was emitted. He felt that companies should be provided the opportunity to present the measures that they have in place to justify the claim that they pose little or no risk to the environment. He felt that it probably would not be necessary to hire an expert, but rather a rational risk assessment should be applied.

Ms. Holden expressed concern that, in order to comply with the state law, the Charter Amendment would be violated. Ms. Brotherton stated that the law of the state superseded the Charter Amendment. She reiterated that it was up to the board to attempt to harmonize the two. Ms. Holden responded that, if at all possible, the board should adhere as closely as possible to the intent of the charter amendment.

Mr. Allen recommended that a subcommittee be formed to brainstorm ways the program could comply with the state law. Ms. Brotherton added that, with specific ideas of how the board would address this, the City Attorney's Office would be better able to provide advice regarding it.

Ms. Gleason moved to instruct the City Attorney's office to frame proposed criteria for exemptions around the exemptions that had already been granted. Mr. Monk provided the second.

Ms. Holden suggested holding a two-step process, utilizing Ms. Gleason's motion, if passed,

and then, should the legal feedback so indicate, forming a subcommittee to address the issue.

Ms. Gleason provided a friendly amendment to her motion to form a subcommittee to examine the criteria for exemptions, in addition to instructing the City Attorney's office to craft criteria based on past exemptions. Mr. Carson provided the second. The friendly amendment was unanimously approved.

The main motion was unanimously passed.

VI. SCHEDULE NEXT MEETING/AGENDA ITEMS

Members agreed to meet on June 12, 2003, at the new Eugene Public Library at 3 p.m.

The meeting adjourned at 9:45 p.m.

(Recorded by Ruth Atcherson)