

# MINUTES

Executive Session  
Eugene Toxics Board  
1st Floor Conference Room - Public Works Department - 858 Pearl Street - Eugene

June 12, 2003  
3:15 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; Kathryn Brotherton, Jerome Lidz, City Attorney's Office.

Mr. Carson explained the Toxics Board was meeting in Executive Session to discuss legal advice from the City Attorney regarding compliance with ORS 453.370(8). He introduced Mr. Lidz and Ms. Brotherton from the City Attorney's Office.

Mr. Lidz referred to a confidential memorandum to the board from his office, dated June 6, 2003, which described options for complying with the requirement that a community establish reporting exemptions procedures. He said a review of the existing process (Type I) in the charter amendment determined that it probably did not satisfy the statute because it did not give businesses an opportunity to make the case that they did not pose a risk to the public health or environment, and therefore a Type II process was being proposed.

Mr. Lidz discussed Attachment A to the June 6 memorandum, which proposed hazardous materials accounting exemptions and Type I and Type II exemption processes. He said the proposal did not address how easy or difficult obtaining an exemption should be; it was the role of the board to recommend to the City Council the basis for granting exemptions.

Mr. Carson thanked Mr. Lidz and Ms. Brotherton for their work on the proposal.

In response to a question from Mr. Allen, Ms. Brotherton said the Type II exemption process required a business to affirmatively state to the board the nature of its request and the justification for the exemption. He said that with a Type II process in place, it was unlikely that business would choose to use the Type I process.

Mr. Allen said quantity of materials was the basis for reporting in the current program, as outlined in the Type I process, but did not appear to apply to the proposed Type II process. Mr. Potter said the Type II process would address handling, concentration,

and toxicity of the chemical and lack of risk to public health or the environment.

Mr. Carson said it was not the board's intent to override the law and it wished to be as reasonable as possible. He questioned whether it would be possible to obtain an exemption with the requirement that

six of the seven board members vote in favor, and suggested instead requiring a simple majority of the board for approval.

Ms. Gleason expressed concern that the proposal diluted the current program and she was reluctant to eliminate the Type I quantity-based reporting requirements in favor of a Type II process. She felt that a six-member vote for granting approval of an exemption was necessary.

Mr. Lidz explained the statute did not require the board to ever grant an exemption, but it did require an exemption process to be available.

Ms. Holloway said she agreed with the Type II process as a way for a facility to petition the board, with the board retaining the power to deny the exemption if at least six members did not agree with the justification for an exemption.

There was a general discussion of whether the exemption process should apply to payment of the hazardous materials user fee. Members concluded that the process should make it clear users could be granted an exemption from reporting requirements, but not from the user fee.

Mr. Carson asked if a business could request a retroactive exemption if the new process was adopted. Mr. Lidz said that a retroactive exemption could not be requested. Mr. Carson noted that the charter allowed a board decision to be appealed to the Circuit Court and asked if the appeals process would also apply to a Type II process decision. Mr. Lidz said it would.

Ms. Gleason said her understanding of the process was that the Type I and Type II processes would be referred to a subcommittee for further discussion following the meeting. Mr. Carson suggested that the attorneys redraft the Type II process and incorporate the items discussed.

Mr. Lidz identified two other areas in the proposed Type II process that would also require further discussion from the board:

- the type and qualifications of the profession that would prepare the exemption request form, and,
- the amount of the filing fee

Mr. Lidz suggested that the board entertain a motion during its regular session

requesting the attorneys to redraft the Type II process to incorporate items from the discussion.

Mr. Monk said he preferred the Type I process, which might satisfy the statutory requirements, and would like to see the Type II process referred to a subcommittee.

Mr. Potter noted that a majority of board members seemed to prefer the Type II process and he felt that it would be difficult to convince the Council to retain a Type I process in view of the legal advice that it probably did not comply with state law.

Ms. Holden said the questions of type of professional to prepare the Type II exemption request and the filing fee should be referred to a subcommittee. She felt the Type II process, properly established, should not conflict with the charter.

Mr. Carson summarized that the board would request a redraft of the Type II process for consideration and refer details such as professional qualifications and filing fee to a subcommittee.

Mr. Monk raised the issue of whether the subcommittee should also determine what type of evidence would establish that little or no risk was posed to the public health or environment. Mr. Carson thought the term should remain somewhat vague as the board would be deliberating on a case-by-case basis and it would be difficult to define evidence in advance. Ms. Holden said the board would need to discuss ways to protect itself from spurious requests and determine the burden of responsibility on businesses with comparative resources to petition the board.

Ms. Bowman felt it might be beyond the board's expertise to define professional qualifications for persons completing exemption request forms. Ms. Gleason said the fee would include review of the request by qualified City staff.

Mr. Carson said he supported adoption of a Type II process, redrafted to include the board's recommendations.

There being no further discussion, the executive session was closed and the regular meeting reconvened at 4 p.m.

(Recorded by Lynn Taylor)

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