

# MINUTES

Eugene Toxics Board  
Fire Conference Room - Eugene Emergency Services Center- 1705 West 2<sup>nd</sup> Avenue

July 15, 2003  
3 p.m.

PRESENT: Clyde Carson, Chair; Brian Allen, Marylee Bowman, Jennifer Gleason, Madronna Holden, Paula Holloway, David Monk, members; Glen Potter, staff; Kathryn Brotherton, City Attorney; Kathryn Thomason, guest.

## 1.APPROVAL OF AGENDA/NEW ITEMS

Mr. Carson convened the meeting.

There were no changes to the agenda.

## II.PUBLIC COMMENT

There were no members of the public wishing to speak.

## III.APPROVAL OF MINUTES

The minutes of June 12, 2003, were approved, as submitted, by general consensus.

## IV.STAFF REPORT

### A.City Council Action on HB 2431 Compliance

Mr. Potter said the City Council had approved the proposed resolution, without debate or comment, establishing/declaring the Toxics Board compliance with Sections 4 and 9 of House Bill 2431 (ORS 453.370). He noted that the procedure for exemptions and the State-imposed fee cap remain to be addressed.

### B.Payment of 2003 Fees

Mr. Potter said 73 invoices had been sent out and 70 payments had been received. He said two companies would be late making payment. He said one company had declared itself out of business after its assets had been confiscated by the US Drug Enforcement Administration in an investigation into the manufacture of drug paraphernalia. However, he said the US Attorney's Office had indicated that the company was still in business, manufacturing other products. He said if the company was found to be still in business, based on a visual inspection, then collection efforts for the fee would continue.

### **C.Reporting Methodologies Subcommittee Update**

Mr. Potter said the last meeting had been very productive and a draft list of recommendations had been generated. He said the subcommittee would give a formal report to the board in September. He said the subcommittee's intent was to recommend that various suggestions and reminders be incorporated and emphasized in the next edition of the handbook that was distributed to businesses. He added that the subcommittee might wish to meet one more time prior to the next board meeting to formally ratify its recommendations.

### **V.PROCEDURE FOR EXEMPTIONS**

Members reviewed the document attached to the agenda packet, which had been prepared by the City Attorney's Office.

Mr. Allen asked whether the procedure should include some provision for exemption from fees. Ms. Brotherton noted that fees are currently being paid by companies not required to report; provision for an exemption from fees would probably attract all of those companies plus some reporting companies; if those petitions for exemption were successful, the program's support would be destabilized.

Mr. Carson clarified Mr. Allen's question as whether paying a fee made a company part of the toxics reporting program. He asked if a company that was paying fees was by definition involved in the program.

Ms. Brotherton noted that the state statute was not written in a clear manner. She said the board had requested that no exemptions from fees be provided.

Ms. Gleason said the wording should be left in its current form.

Mr. Carson said there was not enough support on the board to alter the fee paying procedure. He said the proposed procedure for exemptions made a reasonable attempt to comply with the law.

In response to a question from Mr. Monk regarding the largest fee a non-reporting agency was paying, Mr. Potter said it was approximately \$1,000.

In response to a question from Ms. Holden regarding how many companies were paying fees while not being required to report, Mr. Potter said there were 33.

In response to a question from Mr. Potter regarding whether the exemption needed to be approved by the City Council, Ms. Brotherton said that it did and suggested that the board recommend adoption of a resolution by the council.

In response to a question from Mr. Monk regarding whether the board was actually in compliance with all of HB2431 before it had recommended an exemption procedure, Mr. Potter responded negatively.

Ms. Gleason, seconded by Mr. Monk, moved to recommend to the City Council that it adopt the exemptions that were already provided in the City Charter amendment establishing the Toxics Program.

Mr. Monk said the board was being asked to violate the City Charter to accommodate state law. He said it was impossible to establish a reasonable procedure for exemptions from the current program. He said the existing exemptions satisfied that state law.

Mr. Carson said it was unlikely that anyone would use the exemption process because the difference between the cost of the process and any savings realized would likely be insignificant. He said the motion was susceptible to legal challenge. He suggested adopting the City Attorney's recommendation.

The motion failed, 5:2, with Ms. Gleason and Mr. Monk voting in favor.

Board members and staff then discussed a series of suggested revisions to the draft procedure. Ms. Brotherton assimilated these to produce the following:

Exemption Process:

- A. If a facility believes that it has evidence that its operations pose little or no risk to the public health or the environment, the facility may request an exemption from all or part of the material balance report requirement by submitting an Exemption Request form provided by the Toxics Board.
- B. A facility requesting an exemption must specify from what reporting requirements it is seeking an exemption. A facility may not seek an exemption from a requirement to pay a fee.

- C. An Exemption Request form must be accompanied by a report prepared by an independent public health or environmental consultant that demonstrates that the facility's operations pose little or no risk to the public health or the environment.
- D. The facility must submit a non-refundable filing fee of \$150. The facility shall be assessed an additional fee to cover the City's cost of hiring a state certified toxicologist to review the report submitted by the facility. Prior to the toxicologist commencing review of the submitted report, the facility will be provided a fee estimate. Within thirty (30) days of receiving the estimate, the facility shall notify the City whether it wants to proceed with the report review or withdraw from the exemption process.
- E. Within sixty (60) days of receiving a facility's notification that it wants the toxicologist to commence review of its submitted report, the Toxics Board will meet to consider the request. At that meeting a representative of the facility will have an opportunity to speak to the Toxics Board regarding the requested exemption. Those wishing to speak in opposition or in favor of the request may also speak at this meeting.
- F. An exemption request may be denied, granted in whole, or granted in part.
- G. An exemption shall not be granted (in whole or part) unless the facility establishes by clear and convincing evidence that its operations and use of hazardous substance(s) do not pose a risk to the public health or the environment.
- H. Six out of the seven Toxics Board members must vote in favor of exempting the facility in order for the facility to be exempted from all or part of the reporting requirements.
- I. The Toxics Board shall render a decision on the facility's requested exemption within twenty (20) days of the meeting that the request was considered.
- J. The decision of the Toxics Board is final.

Ms. Bowman, seconded by Ms. Holden, moved to approve the amended procedure as read by the City Attorney. The motion passed 5:2 with Ms. Gleason and Mr. Monk voting in opposition.

## **VI.NEXT MEETING**

The next meeting was scheduled for September 30, at 3 p.m. at the Eugene Public Library.

The meeting adjourned at 4:30 p.m.

(Recorded by Joe Sams)