

MINUTES

Eugene Toxics Board
Saul Room, The Atrium Building—99 West 10th Avenue

March 5, 2002
3 p.m.

PRESENT: Mary O'Brien, Chair; Paula Holloway, Marylee Bowman, Jennifer Gleason, Clyde Carson, Madronna Holden, Brian Allen, members; Glen Potter, Fire and Emergency Medical Services Department; Deirdre Malarkey, Terry Connolly, Ken Luse, guests.

Ms. O' Brien called the meeting of the Toxics Board to order.

I. APPROVAL OF AGENDA/NEW ITEMS

Mr. Potter stated that he had found some discrepancies in the question-and-answer section of the Tracking Instructions that he would like to address after the staff report. He reminded those present that when discussing the next meeting time at the end of the current meeting, a place to meet also needed to be determined.

Mr. Carson sought to clarify that the board does need to make a recommendation regarding fees during the staff report. Mr. Potter affirmed that this was so.

Ms. O' Brien requested that new members introduce themselves.

Paula Holloway said that she works for the Willamette Valley Company in the Environmental Health and Safety Department. She noted that she works with the people who work in the company as well as the governmental agencies that oversee the environmental health of the company.

Marylee Bowman stated that she had retired from the wood products industry. She said that she was participating in the Toxics Board in the neutral position and noted that she was "strictly a volunteer."

Jennifer Gleason noted that in her capacity as a lawyer she had been a chief petitioner on the original Toxics Right-to-Know initiative. She said that she works for E-LAW (Environmental Law Alliance Worldwide).

II. PUBLIC COMMENT ON ITEMS NOT LISTED ON AGENDA

There were no members of the public wishing to comment at this time.

III. APPROVAL OF THE MINUTES OF THE JANUARY 17, 2002, MEETING

Ms. O' Brien noted that in paragraph 1, page 3, under agenda item V, the State of Massachusetts is incorrectly referred to as "the Massachusetts company" twice.

Mr. Carson moved, with a second from Ms. Holden to approve the minutes of the meeting of January 17, 2002, as amended. The motion carried unanimously.

IV. STAFF REPORT

- Charter Review Committee

Mr. Potter stated that he had no new information at this time. He said that the City Council has the recommendation from the Charter Review Committee and this includes some items related to the Toxics Right-to-Know amendment. He noted that the Charter Review Committee recommended that the pesticide regulations in the amendment be retained, but recommended that the language related to automatic addition of chemicals be changed. The City Council has received the memorandum from the Toxics Board noting that this would be an inconsistent application of the principle of preservation of the original intent of the voters.

- **2002 Fee Recommendation**

Mr. Potter said that staff, based on the budget approved by the Toxics Board, and after polling the participating businesses with respect to their 2001 FTE levels, is recommending a fee for this year of \$10.79 per FTE.

Mr. Carson objected and read the following statement into the record:

"The Public Should Pay For The Administration of The Eugene Toxics Program

"In making the case for public financing of the Eugene Toxics Program I will use the terms 'fee' and 'tax' interchangeably. Although there is a technical distinction between the two terms, especially in the mind of a bureaucrat, both the affect and the effect are the same. In short, a skunk by any other name still stinks.

"The right to know crowd, the Register Guard, and some manufacturers have said that this program would be more equitable if we were free to charge a quantity based fee. Not so! The quantity of chemical used may bear no relation to impact on the environment nor be related to the cost of administering the program. The net result of a quantity-based fee would be that a few companies would end up paying for most of the program, which is blatantly unfair. The State Legislature recognized that fact by capping the amount one could charge a single company for a right to know program. Let's look at a specific example.

"In the first year of our Toxics Program, Williams' Bakery reported ethanol, which is a by-product of fermentation and partly accounts for the wonderful fresh baked bread smell. Under a quantity-based fee, our 60 tons of VOC's would make us one of the largest chemical users in

the City of Eugene, and we would pay one of the highest fees. However, we are already being charged \$5400 for the privilege of reporting this same information to LRAPA. In essence, we are paying a double fee for the same chemical and our Eugene Toxic fee would be one of the highest under a quantity-based standard. A quantity based fee structure is inherently no better than any other fee structure, because the underlying problem is the narrow fee base used to finance the program. It is time to leave the fantasy of what might have been behind and pay attention to the reality of how this program should be financed, now that the lawsuit is over.

“The Toxics Board has struggled to come up with a fair solution within a narrow box of options and found that there isn't one. As I have tried to explain to the City Council before, the cost of the program is spread out over a narrow base of 40 reporting companies and in the case of last year's fee structure a few manufacturers that do not use significant amounts of hazardous chemicals. No matter how the fee is anted up the small number of participants insures an unfair result. Now is the time to operate outside the box.

“The logic of the situation, for those who are honestly concerned about equity, is to broaden the tax base for this program. The best way to broaden the tax base to pay for this program is to take it out of public revenue.

“The right to know group has vigorously fought this recommendation, arguing that it **CLEARLY** violates the intent of the Charter Amendment as passed, and they are correct. However, it also **CLEARLY** violates the intent and language of the Charter Amendment as passed, to charge manufacturers who use small amounts of hazardous chemicals. In truth, no fee structure that can be legally adopted meets the intent of the Charter as passed, which is why I suggested to the City Council that the fee structure should be a matter of public vote.

“In our most recent lawsuit, we argued, unsuccessfully, that the fee structure was not severable from the Charter Amendment, and that the entire program should be struck down. Since we lost the battle, the City of Eugene is now free to adopt any fee structure or tax that does not involve a quantity-based fee. Consequently, we have a program with a voter mandate, but no voter mandate on how to pay for it. Although we recommend that the City Council pay for the program out of city revenues, they should go back to the voters for future approval.

“Our arguments for public funding of the cost of administering the Toxics program are as follows:

“1. The voters have saddled manufacturers with a costly chemical reporting law that puts them at an economic disadvantage to companies outside of Eugene. The cost of program compliance is at least twice the cost of administering the program. In short, manufacturers are already paying the lion's share in compliance costs. Requiring the public to pay a small percentage of the cost of the program, that is 100% of the administrative cost, is only fair. It is much more fair than charging some company that uses nothing stronger than Windex a huge fee for the so called "right to know." Surely, some will say compliance costs are overstated. I can think of three companies who spent more on compliance than the administrative cost of the program for a year. Perhaps my estimate of double the cost is too conservative; it may be much more.

“2. If the public wants this program they should be willing to pay some of the costs.

They demand the goods and services supplied by our local companies, and bear some responsibility simply because of that relationship. If this program continues it should be as a public/private partnership. Manufacturing is a small percent of the total pollution problem. The general public and any business that uses resources are all hazardous substance users. Since we are all hazardous substance users, are we not all responsible?

“3. Spreading the cost over the general public eliminates the inequity of charging a fee across a small tax base. As we noted earlier, enlarging the fee base is the only way to insure fairness. It is time for the right to know crowd to stop complaining about the inequity of the situation and do something about it.

“4. The benefits of this program, if any, are to the public and those who benefit most from the program are the ones who should pay for it. What public health threat does the vinegar that goes in our bread pose for the community that is not already addressed by storm water and treatment plant permits, and the State Fire Marshals’ Report? The Toxics program requires a lot from manufacturers and nothing from the general public who supposedly benefit from this program.

“The City Council may ignore a recommendation that the public pay for the program. However, I will not cast my vote to charge manufacturers a hefty fee for this program that does nothing to address the inherent inequity of using a narrow fee base. I am tired of the annual hand wringing each time we address this issue.

“The real reason the right to know group and its supporters on the City Council do not favor public funding or a public vote is because they recognize that the public has no interest in paying for the program. I agree. I do not think the public would willingly pay a nickel for it, and the program should not continue if they are unwilling to do so.”

Ms. Gleason, responding to Mr. Carson’s statement, stated that the Toxics Board should comply with the intent of the law. She cited the section of the charter amendment that applies. She added that the public does pay for the program as the hazardous substance user fee is passed on in the price of the resulting product.

Mr. Carson disagreed, stating that the businesses are forced to keep costs down in order to remain competitive with hazardous substance users that are not affected by our local charter amendment and, thus, the cost is not passed on to the public here.

Ms. O’Brien stated that the public voted for the charter amendment, the courts have not supported arguments opposing it, and the City Council has not opposed it. She reiterated that it is a program that makes members of the public aware of what they are breathing and what is in the chemicals that a business uses in order to avoid adverse affects to their health. She noted that the Toxics Board did not have the ability to

disregard the law as it stands.

Mr. Carson responded that the law only specifies that a company has to pay a fee. He suggested that there had not been a voter mandate on how it was to be financed; that instead, the board is trying to infer voter intent. He felt that, should the public pay for the program, it would be a small amount of money to pay to receive the information regarding hazardous substance use by local companies.

Ms. Bowman asked what Williams' Bakery pays in compliance and fees. Mr. Carson responded that it amounts to approximately \$5000 per year.

Ms. O'Brien stated that what a company does for compliance is not at issue. She reiterated that the board is charged with doing what the law dictates pursuant to the voters' intent.

Mr. Carson moved, with a second from Mr. Allen, to recommend to the City Council that the public be 100 percent responsible for paying for the Toxics Right-to-Know program.

The motion failed, 3:4 (Ms. O'Brien, Ms. Holden, Ms. Gleason, and Ms. Bowman opposed).

Ms. Gleason moved, with a second from Ms. Holden, to accept the staff recommendation for the 2002 fee structure and forward it for recommendation to the City Council. The motion carried, 4:3 (Mr. Carson, Mr. Allen, and Ms. Holloway opposed).

· 2001 Reporting

Mr. Potter stated that the 2001 reporting is under way. He said that the CDs (containing the reporting software) do not work with Windows 2000 and he is in the process of replacing them as necessary. He noted that there are three reports in at present and no requests for extensions.

Mr. Potter announced that he would be out of town from March 25 to 29.

Mr. Potter highlighted the conflicting information in the question/answer segment of the Tracking Instructions. He noted that the responses to questions 9 and 32 conflict with one another and asked for clarification on questions 8 and 47. After discussion, it was the consensus of the board that question and answer number 9 should be eliminated from the book.

The board clarified that once a metal is melted, it is classified as reportable.

V. PUBLIC ACCESS SUBCOMMITTEE

The subcommittee members -- Mr. Carson, Ms. Bowman, and Ms. Gleason -- decided to meet at 3 p.m. on Tuesday, March 19, 2002. Mr. Potter said that he would arrange a meeting place and notify the subcommittee members and the public.

VI. SCHEDULE NEXT MEETING/AGENDA ITEMS

Mr. Potter stated that the next Toxics Board agenda would include a report from the subcommittee as well as other business items.

Mr. Carson expressed a desire to discuss issuing information on the web. Mr. Allen asked why it was necessary to put the information on the web. Mr. Carson felt concern that the events of September 11, 2001, exposed industry to potential security threats.

Ms. O'Brien stated that the website represents six years of commitment by the board to making the information available to the public. She felt it troubling that the investment of time and money in creating the website in order to disseminate information on toxic substances to the public could be eliminated due to the act of violence committed in September of 2001. She stressed that a discussion such as this should include the full membership of the Toxics Board.

Mr. Carson requested that the availability of the information on the website be postponed until the full membership of the board could hold this discussion. Ms. O'Brien felt that the board should not make precipitous decisions without discussion, and that this would be an alteration of the process.

Ms. O'Brien moved, with a second from Ms. Gleason, to wait to pull the information from the web until there can be a discussion held by the full membership of the board and until there is a report from the subcommittee. The motion passed, 4:3 (Mr. Carson, Mr. Allen, and Ms. Holloway opposed).

The next meeting of the Toxics Board will be held on Tuesday, May 14, 2002, at the Emergency Services Center located at 2nd Avenue and Chambers Street.

The meeting adjourned at 4:15 p.m.

(Recorded by Ruth Atcherson)

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