

MINUTES

Eugene Toxics Board
Saul Conference Room--The Atrium Building--99 West 10th Avenue

January 7, 2000
3 p.m.

PRESENT: Mary O'Brien, Steve Morgan, Madronna Holden, Steve Johnson, Don Upson, members; Glen Potter, staff; Steve Chipman, Information Services Division (after 4:25 p.m.); Terry Connolly, Ken Luse, Clyde Carson, guests.

ABSENT: Cathy Verrét, Mike Friese

Mr. Johnson, vice chair, called the meeting to order.

I. SELECTION OF NEW CHAIR/VICE CHAIR

Mr. Johnson asked for nominations for chair and vice chair.

Ms. O'Brien moved, seconded by Mr. Upson, to elect Mr. Johnson chair and Mr. Morgan vice chair of the Eugene Toxics Board. The motion passed unanimously, 5:0.

Mr. Johnson explained that the board had agreed by consensus to rotate the chair position every three years among the right-to-know representatives, the business representatives, and the seventh member.

I. APPROVAL OF AGENDA

At the request of Ms. O'Brien, the board added an item concerning the Western Structures materials balance report after the staff report.

Mr. Potter informed members that Steve Chipman would arrive at 4:30 p.m.

Mr. Upson asked for and was granted ten minutes of agenda time before Item XI.

I. PUBLIC COMMENT ON ITEMS NOT LISTED ON AGENDA

There was no public comment.

II. APPROVAL OF MINUTES

Ms. O'Brien noted that the word "then" should be changed to "them" in the last sentence on page 3 of the minutes.

Ms. O'Brien pointed out that the second paragraph on page 4 did not accurately reflect Mr. Upson's statement. Mr. Upson agreed and asked that the words "the charter amendment" be replaced with "hazardous substances."

Mr. Upson reported that he did look for reference materials for aqueous solutions, as mentioned at the bottom of page 2 of the minutes, but he did not find any references.

Mr. Johnson declared the minutes approved by consensus.

III. STAFF REPORT

A. Legal Update

Mr. Potter reported that the court case was over and that the Lane County Circuit Court had filed a final declaratory judgment. The judgment said that the City could not expand the list of hazardous and extremely hazardous substances automatically; the City could not require reporting of substances listed under FIFRA (the Federal Insecticide, Fungicide, and Rodenticide Act) unless they were also listed elsewhere and unless the substances were used as other than pesticides; and the City may not use a quantity threshold for determining who was required to pay fees for the program. Mr. Potter added that the city manager had decided to issue refunds for all of the fees issued in 1998 and 1999.

In response to a questions from Ms. O'Brien, Mr. Potter said that the city manager was not required to hold a public hearing on that issue, did not do so, and instead based his decision to refund fees to all businesses on the fact that all were treated the same by the City with respect to this program, even though only some sued.

B. City Council update/Fee Structure

Mr. Potter reported that it had been determined that the council needed to adopt an ordinance, and not a resolution, in order to institute the fee structure that had been recommended by the Toxics Board. The council would hold a public hearing on the proposal on January 24, 2000, at 7:30 p.m. in the Council Chambers. The council was scheduled to act on the proposal on February 14, 2000.

Mr. Upson noted that he took exception to saying that the Eugene Toxics Board recommended the fee structure proposal when it was done under duress. Mr. Johnson said that the article in *The Register-Guard* had made it clear that no one on the Eugene Toxics Board liked the proposal or thought that it was equitable.

C. 2000 Handbook / 1999 Reporting Software

Mr. Potter distributed copies of the 2000 Handbook. He reported that it was mailed in mid-De-

ember to businesses now known to be required to report.

Mr. Potter said that the 1999 reporting software was still being tested and “debugged.” He projected that it would be out to businesses around the end of January 2000.

D. Other

Mr. Potter thanked Mr. Upson for his service to the Eugene Toxics Board and to the program. He also welcomed Mr. Carson to the board.

Mr. Johnson acknowledged Mr. Upson for his contributions toward making the program work even when it was difficult and when there were disagreements. Ms. O'Brien said that Mr. Upson's contributions had been crucial especially during the first year when the “tone” of the program was being set. She said that his contributions to wording that would meet everyone's criteria for accuracy, fairness, and clarity were very important. Ms. Holden agreed. Mr. Morgan congratulated Mr. Upson for his work on the handbook and said that it was outstanding.

VI. WESTERN STRUCTURES

Ms. O'Brien distributed copies of the 1998 materials accounting report for Western Structures, Inc., printed from the City's database. She explained that she had learned that the Lane Regional Air Pollution Authority (LRAPA) estimated annual emissions from Western Structures of 2.04 tons of volatile organic compounds (VOCs) and 0.26 ton of formaldehyde, and yet Western Structures reported no such emissions under the Toxics Right-to-Know Program. Ms. O'Brien wondered how to proceed with this information.

Mr. Luse explained that Western Structures hired outside testing agencies to do its air monitoring in the plant. He said that all of the tests to date showed less than one half a part per million which was well within Occupational Safety and Health Administration (OSHA) guidelines. He said that without bringing in new test equipment, there was no way to come up with an accurate number.

Mr. Upson said that his interpretation of the numbers provided in the report was that sometime between 1993 and 1998, the company switched from formaldehyde to paraformaldehyde which was a less volatile substance. He said that if emission factors existed, the company could be instructed to improve its report by listing those, even if they were below the 2.2 lb total.

Ms. O'Brien said that she would ask LRAPA for more recent information and whether the company currently has an LRAPA permit. She would also ask what the process was if a company no longer needed a permit because of a reduction in air emissions.

Mr. Johnson noted that LRAPA had contacted him to request the next report from the Right-to-Know program. He said that LRAPA wanted to compare the information from the report with its own information.

VII. 1999 ANNUAL REPORT

Mr. Johnson reminded members that the charter amendment required that the Toxics Board make an annual report. Members reviewed the draft 1999 Annual Report contained in each

member's meeting packet and made a number of changes to the text.

Mr. Potter said that he would make the corrections and send the report to the city council.

VIII. 2000 WORK PLAN

Mr. Potter distributed the draft 2000 Work Plan for the Toxics Board. He noted that it was a "bare bones" work plan and contained only what was known and what was legally required of the board. He said that the plan would fill out as the year progressed. He asked for any additions or input from members. Ms. O'Brien suggested moving the review of draft 2001 tracking instructions to the May 2000 meeting. Members agreed.

The board recessed at 4:17 p.m. and reconvened at 4:25 p.m. with Mr. Chipman in attendance.

IX. WEBSITE CHANGES

Mr. Chipman reported that he had completed the work on the updates to the data entry program and that he had just begun working on the changes requested by the board to the Website. He distributed a sample page for members to review and discuss.

The board discussed what kind of data totals would be helpful. Members of the board decided that yearly totals would be the most helpful. Mr. Morgan pointed out that in order to compare air emissions from year to year, it would also be important to compare usage totals from year to year to reflect changes in production. Ms. O'Brien suggested that the usage total could be put on the summary page. The formula for usage total would be Input 1 plus Input 3 plus Input 4 minus Output 11.

In response to a question from Mr. Potter, members agreed that totals for any combination of information should be for one year at a time.

Mr. Chipman said that he would report back to the board in March.

The board asked Mr. Chipman if there was a way to identify how many individuals visited the site, rather than the number of hits on the site. Mr. Chipman said that he did not think this was possible because of the nature of the Internet. He said he would explore this request, however.

Members thanked Mr. Chipman. Mr. Johnson said that the Work Plan would be on the February agenda for further discussion.

X. NEW CHEMICALS

Members decided to begin the discussion of new chemicals by discussing characteristic substances. Mr. Upson read the following sentence from the minutes of the previous meeting: The board reached consensus that chemicals would only be listed as reportable if there was concurrence from both the business side and the right-to-know side.

Ms. O'Brien said that if a company knew that something it was using was a characteristic substance, then it was required to report it. She pointed out that citizens could provide companies

with lists of such substances.

Mr. Potter noted that it was stated in the Question-and-Answer section of the handbook that if a characteristic substance was in a mixture that was not reportable and never becomes reportable, the company did not have to report it. Ms. O'Brien said that she would like to revisit that statement.

Ms. O'Brien noted that the charter amendment requires reporting of "any substance which, if it were in a container, would possess the characteristics of a hazardous waste." She said her reading of the law was that if a company was using a substance that by itself in a container would be considered hazardous, the substance was reportable. Mr. Johnson added that a chemical was then reportable as if it was in pure form. Ms. O'Brien agreed.

Ms. O'Brien then wondered if the responsibility for informing companies about such substances was the job of the Eugene Toxics Board or of citizens. Mr. Potter said that he thought that the question was whether or not a company had to report the substance if it was in a non-hazardous concentration. Members discussed this issue at length.

Mr. Morgan pointed out that the nature of some substances was that they were not as hazardous in a mixture as in pure form. He used the example that chlorine was not as hazardous when combined with sodium to form salt. He said that the reason for requiring reporting of characteristic substances was to provide information about ignitable, reactive, or corrosive substances. He said that if a substance was in a mixture that was not characteristic, then there was not reason to report it.

Board members continued to discuss this issue and the interpretation of the law. Part of the discussion centered around the definition of the word "substance" in this section of the law. Mr. Morgan, Mr. Upson, and Mr. Carson defined "substance" as the mixture used by a company, whereas Ms. O'Brien and Mr. Johnson said that the intent of the law was that "substance" would be defined as any pure chemical contained in the mixture.

Mr. Upson said that unless a characteristic chemical in a mixture was going to somehow become concentrated, it was not reportable by itself. Mr. Morgan pointed out the difficulty of verifying all the different chemicals contained in mixtures.

Mr. Johnson asked about the practical implications of interpreting the law in the strict sense that Ms. O'Brien was recommending. Mr. Morgan said that the Material Safety Data Sheet (MSDS) did not give information about each individual chemical contained in a mixture, only the characteristics of the mixture. Ms. O'Brien still thought that a company should have to report any chemical contained in a mixture that by itself would be characteristic. Mr. Upson and Mr. Morgan argued that if the mixture was not characteristic, the chemicals contained in the mixture would not become concentrated and therefore be characteristic.

Ms. Holden asked, given the discussion, what should be done about question 21 in the handbook. Mr. Johnson pointed out that nothing could be done this year and that the board was really discussing the reporting laws for the year 2001. In response to a question, Mr. Potter said that the list of characteristic chemicals agreed upon by both "sides" had been added to the electronic list of reportable chemicals.

Mr. Johnson added further discussion of this issue to next month's agenda. Ms. O'Brien suggested that the board wait to deal with this issue until someone has a proposal for a solution.

Ms. O'Brien distributed information from the *Federal Register* about persistent bioaccumulative toxins (PBTs). She also distributed a revised list of new chemicals that she would propose be added to Eugene's list of reportable substances. She noted that an ordinance was needed to add chemicals to the list. Members agreed that PBTs would be on the next month's agenda.

XI. OLD CHEMICALS

Board members postponed this discussion until the next meeting.

XII. SCHEDULE FUTURE MEETINGS

The board agreed to meet on either February 9 or February 16, depending on additional input from members.

Mr. Upson spoke about his experience serving on the Eugene Toxics Board. He said that it had been a learning experience with "highs" and "lows." Mr. Upson listed the benefits he had received from his association with the board. He acknowledged the board members and Mr. Potter for their contributions. Members again thanked Mr. Upson for his service.

The meeting was adjourned at 6 p.m.

(Recorded by Elise Self)

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