

## **MINUTES**

Eugene Toxics Board  
Saul Conference Room—The Atrium Building—99 West 10<sup>th</sup> Avenue

March 7, 2000  
3 p.m.

**PRESENT:** Cathy Verrét, Steve Johnson, Steve Morgan, Mary O'Brien, Mike Friese, Madronna Holden, Clyde Carson, members; Glen Potter, Fire and Emergency Medical Services Department; Steve Chipman, Information Services Division; Ken Luse, Deirdre Malarkey (Environmental Quality Commission member), guests.

Mr. Johnson called the meeting to order.

### **I. APPROVAL OF AGENDA**

Mr. Potter asked that an update on enhancements to the Toxics website be added to the agenda. The board added this as item VII.

Mr. Carson asked that the items under Old Chemicals (published agenda item VIII) be reversed. He also requested time on the agenda before the discussion on Western Structures (published agenda item VI) to discuss a point of order he had regarding how issues such as Western Structures were placed on the agenda. He asked that the board discuss a resolution he proposed to send the City Council. The board adjusted the agenda accordingly.

### **II. PUBLIC COMMENT ON ITEMS NOT LISTED ON AGENDA**

Mr. Luse complained that the toxics reports were extremely difficult to fill out this year, and requested board discussion on how staff would handle requests for extensions. Mr. Johnson pointed out that the board had a policy on filing extensions. The board agreed to discuss whether that policy was still appropriate later in the meeting.

Ms. Malarkey reported that the Persistent Bioaccumulative Toxins (PBT) program was being examined by the Department of Environmental Quality. Ms. O'Brien noted that a discussion of a possible new City of Eugene ordinance related to PBTs was scheduled later on the agenda.

### **III. APPROVAL OF MINUTES**

Mr. Carson asked that the last sentence in paragraph 3 on page 6 of the minutes be revised as follows (italicized text added; struck text deleted): "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 *sent out in writing to reporting businesses.*" Mr. Friese requested a copy of the letter sent to businesses.

Mr. Carson also asked that the following be added as a new paragraph 4 on page 6: "Mr. Johnson suggested written comments be prepared explaining board members' positions regarding characteristic chemicals." He noted he had prepared such a statement on behalf of industry, and distributed copies.

Mr. Carson questioned whether the remarks attributed to Mr. Upson in paragraph 7 on page 3 were actually made by him. Ms. O'Brien clarified that Mr. Upson was referring to the fact that Western Structures indicated it had air testing that showed emissions were below the threshold, and suggesting that because the emissions were unlikely to be zero the company could be encouraged to recognize those emissions, even if below the threshold. Members made no change to the minutes.

Ms. O'Brien commended the minutes in general.

The minutes of January 7, 2000, were accepted as amended.

#### **IV. STAFF REPORT**

##### **A. City Council Update/Fee Structure**

Mr. Potter reported that the City Council had adopted both the 2000 handbook and the recommended fee structure. He said that he would send a letter to 467 local businesses advising them of the new fee structure and asking them if they met the criteria for paying fees; if so, he would request data on the number of employees they employed in 1999. He described the way the mailing list had been developed and emphasized that the list did not necessarily represent all manufacturers in Eugene. Mr. Carson requested a copy of the mailing list.

##### **B. 2000 Handbook/1999 Reporting Software**

Mr. Potter stated that the 1999 reporting software and 2000 handbook had been sent out.

##### **C. Other**

Mr. Potter reported that one business, Chiquita Food Processing, had thus far submitted a 1999 materials balance report.

#### **V. 2000 WORK PLAN (Continued)**

Mr. Potter reviewed revisions to the work plan made by the board. He anticipated that more

work plan items would be added as the year progressed. Mr. Potter noted that the declaratory judgment issued by Circuit Court would be appealed.

The board accepted the 2000 work plan as revised.

## **VI. POINT OF ORDER**

Mr. Carson asked what role the board had in enforcement of the charter amendment, and what role the Fire Marshal's Office had. He said that industry representatives did not think the board should be reviewing all the reports filed by businesses, citing the board's discussion of Western Structures as a specific example of his concerns. He referred to Section 6.2(e) of the charter amendment, which indicated the Fire Marshal's Office would investigate whether reports were filed in compliance with the charter amendment. He suggested that board members with concerns about reports had other options as citizens.

The board discussed Mr. Carson's concerns. Ms. O'Brien believed that it was appropriate for board members to monitor the reporting process. Mr. Johnson agreed that the board could appropriately request staff to conduct an investigation if it felt a report was improperly filed; staff would bring findings back to the board, and the board could act. He said that a member of the public could also request that the board to initiate an investigation. However, he believed that investigation of individual cases was not the role of the board, but was rather the role of staff.

Board members noted that the example cited by Mr. Carson was brought to the board by Mr. Potter as an example audit. Given that, Mr. Carson withdrew his point of order.

Mr. Johnson encouraged Mr. Potter to continue to bring cases that raised questions about the implementation of the charter amendment to the board.

The board agreed that Mr. Carson's concern raised the need for a procedure for citizens to request investigation requests. The board added the item to the work plan, and directed Mr. Potter to draft the procedures.

## **VII. WEB SITE DEMONSTRATION**

Mr. Chipman demonstrated changes to the Web site. Board members discussed the changes and commended the improvements generally.

The board recessed at 4:23 p.m. and reconvened at 4:30 p.m.

## **VIII. WESTERN STRUCTURES EMISSIONS UPDATE**

The board discussed an issue related to the emissions reported by the firm to the City and the emissions that the Lane Regional Air Pollution Authority (LRAPA) predicted would be released by the firm. Ms. O'Brien provided background on the firm's LRAPA permit, noting that what was reflected in the 1990 LRAPA permit did not reflect process changes. New permits included that information. She said that LRAPA staff had agreed to get back to her with information about what chemicals the company was using, their emission factors, and a copy of the company's air discharge permit. Ms. O'Brien added that research indicated right-to-know

programs generally had the most accurate data about chemical use in manufacturing.

Mr. Luse pointed out that there was no way to measure minute amounts of less than one-half part per million. Testing of employees and the air indicated compliance with OSHA regulations. He said that the information submitted by the company about the discharge would be a best guess.

Ms. O'Brien did not think that air readings were significant because they would change depending on the circumstances. The numbers were not informative. Mr. Carson said that Mr. Luse was saying that the company did not have either readily available information or a readily available emission factor to develop a number, which was why the company did not report anything, which seemed logical to him.

Mr. Johnson said that the board had previously discussed that companies could sometimes not calculate certain quantities, and had no reason to calculate them. Even published emission factors sometimes do not exist, leading companies to offer their "best guess" about emissions. He added that he believed the City was receiving many such "best guesses." Mr. Potter agreed. Mr. Johnson said that if the amount of material used was less than 2.2 pounds, the "best guess" might be between 0 and 2.2, leading the company to report use as zero. Mr. Potter clarified that the issue in the case of Western Structures involved a third chemical; the firm did not know if the material was toxic or not, and so did not report it. Mr. Johnson said that was acceptable under current regulations.

Mr. Friese observed that it might be in the best interests of the company to have a hazardous waste determination done for the third chemical.

Mr. Johnson determined that the issue raised by Western Structures would only come up again if the board learned something it could apply generally in the future.

## **IX. NEW TRI CHEMICALS AND PBTs—POSSIBLE ORDINANCE**

Ms. O'Brien distributed copies of a document entitled *Information Requested by the Toxics Board Re: New Rules for TRI Reporting Thresholds for Persistent, Bioaccumulative Toxins*. She reminded the board that the court ruled that new chemicals added to federal lists of regulated substances could not automatically be added to Eugene's list. However, she stated that chemicals could be added to Eugene's list by the City Council.

She said that given the public support for the charter amendment and the fact the EPA has added new chemicals to its list of chemicals as well as lowering the accounting thresholds for PBTs, she had compared the City's list with the list published in the October 29, 1999, *Federal Register*. She recommended adding the chemicals listed in the register that were not now on the City's list to the City's list. Ms. O'Brien pointed out that citizens could seek action by the council to add the chemicals if the board did not.

Ms. O'Brien recommended applying the City's two existing reporting threshold quantities to the proposed new reportable chemicals, at five pounds if the TRI threshold is below 50 pounds, and at 50 pounds if the TRI threshold is above 50 pounds. She noted that an appropriate Eugene threshold for dioxin would require further discussion.

Mr. Johnson suggested the board first consider the principle involved. He believed that as

chemicals were added to the federal lists, the board's only recourse for ensuring those chemicals were added to the local list was to ask the City Council add them.

Industry representatives did not support expanding the list of chemicals. Mr. Morgan questioned the thresholds proposed by Ms. O'Brien, as the EPA threshold was based on usage. He also wanted to know more about the half-life of the chemicals involved, whether they were persistent or bioaccumulative, and why they were on the list. Ms. O'Brien said that the Federal Register contained information about why the chemicals were listed and the studies involved.

Mr. Carson noted former member Don Upson's opposition to adding more chemicals to the list of chemicals. He believed the board had enough to do without adding more chemicals to the list, and he did not want to act without more information about whether the addition would affect a local company. He did not favor doing anything that would place PBTs in the extremely hazardous chemical category, as they were different categories and PBT category was not in the charter amendment. He noted that Eugene, if not exempted from the new State law, would be required to exempt or include chemicals on a case-by-case basis.

Mr. Carson suggested that the board consider an approach that allowed board members to consult with those familiar with a chemical suggested for addition to determine the impact of adding it to the City's list. He proposed that if the board wanted to add to the list, it could discuss one chemical each month rather than consider a list of chemicals.

Ms. O'Brien clarified that she was not suggesting PBTs be categorized as extremely hazardous substances, but rather that reporting thresholds developed by the board be appropriately applied.

Ms. O'Brien suggested that if the board wanted to recommend adding substances to the list, it could bring each forward as it was added to the Federal Register. She pointed out that there would be a council work session and a public process when chemicals were proposed for addition to the list, and the council could decide to add some and not others, and could establish thresholds or not as it pleased.

Ms. Holden supported Ms. O'Brien's proposal because PBTs were extremely hazardous and she believed that their inclusion in the Federal Register argued for their inclusion on Eugene's list.

Ms. Verrét agreed with Ms. O'Brien and Ms. Holden, saying that given chemicals' inclusion on the federal list, why should Eugene leave them off its list? Mr. Johnson agreed. He was in favor of adding chemicals that were in the Federal Register to the City list as he believed it was in keeping with the spirit of the charter amendment. Regarding the thresholds, he noted that the State law did not apply in Eugene until 2003 so he was unmoved by arguments regarding the State law. He called for a motion on the principle of adding chemicals to the City's list.

Ms. Malarkey noted the potential formation of a State advisory committee on PBTs, and gave the board the name of Rick Gates, the contact for that effort. She suggested board members might want to participate on the advisory committee. Mr. Gates' number is (503) 229-5983.

Ms. O'Brien moved, seconded by Ms. Verrét, that the board recommend to the City Council that it make additions to the City's list of reportable chemicals in accordance with recent changes to federal law.

Regarding voter intent, Mr. Friese said that he did not think it was clear what that intent was. He said the board had time to look at the issue because the list in question would not be effective until 2001. Mr. Johnson agreed. Ms. O'Brien pointed out that if the board took action now, companies would have time to prepare. Mr. Johnson concurred, and recommended the board form a subcommittee to draft an ordinance for full board review.

Responding to a question from Mr. Friese, Ms. O'Brien said that the Environmental Protection Agency would require reporting of PBTs in 2000.

Mr. Johnson said that he was familiar with the intent of the charter amendment's framers, which was to keep the City list current with federal lists, thereby taking the onus off the City in determining what was appropriately included.

Mr. Carson preferred the State approach to listing chemicals as opposed to the method under consideration, saying such decisions should be based on science and not on someone's anxiety about hazardous chemicals.

The motion passed, 4:3; Mr. Morgan, Mr. Friese, and Mr. Carson voting no.

Ms. O'Brien and Ms. Verrét were appointed to a subcommittee to draft a recommended ordinance requiring reporting of new TRI chemicals and PBTs.

## X. OLD CHEMICALS

### A. Chemicals in Non-Hazardous Concentrations

Mr. Carson distributed written arguments in favor of requiring reporting of characteristic substances only when they occur in hazardous concentrations during the manufacturing process.

Ms. O'Brien proposed that the board adopt this policy, but that businesses be prepared to produce documentation demonstrating why a characteristic substance was not required to be reported in specific cases.

Following brief discussion, and without dissent, the board agreed.

### B. Acetylene

The board agreed that acetylene is a characteristic substance and should be treated as such in accordance with the policy above.

## XI. NEW BUSINESS

### A. Resolution

Mr. Carson proposed that the board adopt a resolution asking the City Council to direct City of Eugene staff to report hazardous substance use in the same manner as is now required of certain businesses under the charter amendment. He distributed draft copies of such a resolution.

The board briefly discussed the proposal, and agreed to place it on the agenda for the April

meeting.

## **B. Reporting Extensions**

Mr. Luse reported that he anticipates numerous requests for reporting extensions this year in view of the additional work required by the new policy requiring reporting of specific chemicals found in mixtures. He requested board discussion of policy regarding extensions.

Following discussion, the board agreed to retain the same policy as last year, which is to allow extensions of up to 30 days at the discretion of staff. Staff was directed not to allow longer extensions than businesses actually required, and to request board approval of any extensions longer than 30 days.

## **XI. SCHEDULE FUTURE MEETINGS**

The board scheduled the following regular board meetings:

Thursday, April 20, 3 p.m.

Thursday, May 11, 3 p.m.

Thursday, June 15, 3 p.m. (if necessary)

Locations will be announced.

The meeting was adjourned at 6:05 p.m.

(Recorded by Kimberly Young)