

MINUTES

Eugene Toxics Board
Fire Marshal's Conference Room/Saul Conference Room—The Atrium Building
99 West 10th Avenue

April 20, 2000
2 p.m.

PRESENT: Steve Johnson, Chair; Cathy Verrét, Steve Morgan, Mary O'Brien, Mike Friese, Madronna Holden, Clyde Carson, members; Glen Potter, Fire and Emergency Medical Services Department; Kent Nichols, Dave Doll, Newwood Products; Andy Poynter, Environmental Poynters, Inc; Kevin Masterson, DEQ - Right-to-Know Project; Ken Luse, Luse & Associates; Brian Allen, Hyundai; David Nearing, Shelton Turnbull Printers.

Mr. Johnson called the meeting to order.

I. APPROVAL OF AGENDA

The agenda was approved without change. Mr. Johnson suggested that the meeting move to the Saul Room during the break.

II. PUBLIC COMMENT ON ITEMS NOT LISTED ON AGENDA

Mr. Potter introduced Kevin Masterson of the Oregon Department of Environmental Quality. Mr. Masterson is the staff person for the state policy committee created by 1999 House Bill 2431. He was in Eugene to learn about the local program.

III. APPROVAL OF MINUTES

The board approved the following corrections to the minutes:

On page 4, in the final sentence of the first partial paragraph, the term "right-to-know" was changed to "materials balance."

At the end of the first sentence of the second full paragraph on page 4, the words "such as volume of air" were added.

In the next-to-last sentence of the third full paragraph on page 4, the words "the production of" were inserted after the word "involved."

In the first sentence of the final partial paragraph on page 4, the words “which called for addition of new chemicals” were inserted after the word “amendment.”

In the final full paragraph on page 5, the word “there” was changed to “their.”

In the first paragraph of Section II of the minutes, on page 1, the word “complained” was changed to “stated.”

With the above corrections, the minutes of March 7, 2000, were approved.

IV. CONSIDERATION OF LATE FILING BY NEWOOD PRODUCTS

Mr. Poynter, as the consultant for Newood Products, presented the board with a letter explaining the reasons for Newood missing the April 1 reporting deadline. Members questioned Mr. Poynter and Mr. Nichols and discussed the letter and the circumstances of the case before them.

Mr. Poynter noted that on page 19, section 8 of the 2000 Tracking Instructions, it was stated that it was incumbent on the Toxics Board to assist companies to comply with the law. He noted that Mr. Potter had done that by calling the company on the day the report was due to see if the company needed an extension. He continued referring to the booklet while saying that companies should make an honest and conscientious effort to comply with the law. He emphasized that this was not a case of blatant disregard.

Mr. Poynter repeated information previously made available to the board to the effect that the departure of two key staff and the death of another employee who had been responsible for last year’s report had contributed greatly to Newood’s failure to file on time. Mr. Poynter quoted Article 8 of the Charter Amendment as follows: *In determining the appropriate amount of the penalty, the following should be considered: the degree of the violator’s awareness, . . . the duration of the non-compliance, . . . and the attitude and conduct of the violator upon discovery.*

He said that it was clear that no one at Newood was aware of the infraction, that the duration was only one day, and that the company was quite willing to comply and meet the extended deadline. He pointed out that Newood had made significant reductions in its use of hazardous materials, had cut its acetone use in half, changed vendors for better products, and installed mechanisms to better track chemical usage. Training was underway to ensure that several employees were aware of the reporting regulations. He said that he hoped the board would take those items into account in its decision.

Mr. Potter reminded the board that not only was it considering a financial penalty, but that the Charter Amendment also provided for the publication of the names of non-complying entities in the daily newspaper.

In response to a question, Mr. Nichols said that he was aware of the April 1 deadline, but that the instructions were sitting in his in-box and that with the loss of key staff and the increase of his work load, he just did not remember or think to call about the deadline. He said that he was not even aware that it was April 1. Mr. Doll, who would be responsible for the report next year, was in attendance at the meeting.

Board members and Mr. Poynter made the following comments during their discussion:

- Ms. O'Brien commented that Newood had to pay a fine last year for the same infraction. She wondered why the company would not make sure to call this year. Mr. Friese said that he thought that it indicated that the deadline was just overlooked because of extenuating circumstances.
- Mr. Friese said that the program was in its formative stages and that companies were still learning.
- Mr. Johnson said that extenuating circumstances did not excuse the company and that it could have requested an extension without being late. He did not think the company was willfully flaunting the law, but that it was still a violation.
- Ms. Verrét thought that the company had experienced an incredible hardship with the loss of personnel.
- Ms. Holden was concerned about fairness and setting a precedent if the board did not find this a violation of the law.
- Mr. Poynter repeated that this was not a blatant disregard of the law.
- Mr. Poynter wondered if appropriate notice was given before the hearing as stated in the Charter Amendment. After some thought, Mr. Potter said that it had been given by him to Mr. Nichols and to Mr. Poynter.

Ms. O'Brien moved, seconded by Mr. Johnson, to consider Newood's failure to file in time a violation of the law and to impose a minimum fine of \$250.

Mr. Carson said that he thought that Newood had a legitimate defense and that the company had made an honest effort to comply. He thought that the board should be lenient.

Mr. Johnson said that the failure to contact the Toxics Board was a blatant disregard of the law to him, although not egregious. He said that was why he favored the minimum fine. Ms. Holden agreed and stated that she would reluctantly vote for the minimum fine.

Mr. Friese said that obviously Mr. Nichols was committed to making a good report. He thought that the board should consider the extenuating circumstances.

Mr. Morgan said that he would favor a \$250 fine.

The motion passed 4:3, with Ms. Verrét, Mr. Carson, and Mr. Friese

voting no.

Ms. O'Brien thanked Mr. Nichols for working on reducing toxics. Mr. Nichols, Mr. Poynter, and Mr. Doll left the meeting.

Ms. O'Brien said that she did not like the process of calling companies the day that the report was due. She thought that people should be called at least two weeks before to ask if the company wanted an extension. Ms. Holden suggested just reminding companies of the deadline rather than asking about an extension. Mr. Potter said that he could send an e-mail or a post card. The board agreed to add this item to its work plan for later this year.

V. STAFF REPORT

A. Materials Balance Reports

Mr. Potter reported that the bulk of the materials balance reports were in. To date, 37 of the reports had been entered in the data base.

B. Extensions

He said that there were three extensions that were still valid. He said that he had granted about 12 or 13 extensions this year, most for five days. He said that companies were asking fewer questions about the software and seemed to be more comfortable with the reporting procedures.

C. Fees

Mr. Potter said that he had almost completed the survey to determine what local companies met the charter criteria other than the chemical usage threshold. He said that approximately 1,000 employees would be added to the base. Mr. Friese asked Mr. Potter to verify information against the state and local Fire Marshal reports. Mr. Potter said that he was doing that. Members suggested that Mr. Potter re-contact the Burley and Green Gear companies to determine whether they meet the chemical usage threshold.

Mr. Potter said that with the new employee base, the fee would go to approximately \$15 per employee.

D. Other

Mr. Potter indicated that an updated roster had been included in the agenda packet, and asked members to forward any corrections to him.

VI. ORDINANCE REQUIRING REPORTING OF NEW TRI CHEMICALS/PBTs

Ms. O'Brien referred to the information included in the agenda packet and distributed copies of a draft ordinance adding additional chemicals to the list of hazardous substances required to be

reported under Amendment IV to the Eugene Charter of 1976, and a Table of Proposed Additions to Eugene List of Reportable Chemicals. She noted the explanations that she had gotten from the 64 *Federal Register* 58665-58753 for thresholds.

Mr. Morgan made a correction to the back page of the *Information RE: New Rules for Federal Reporting Thresholds for Persistent, Bioaccumulative Toxics*. In the third paragraph, he moved the last parenthesis so that the following words were included: (manufacturing; and the processing or otherwise use of dioxin and dioxin-like compounds).

Ms. O'Brien said that companies would know if they were required to report dioxins under the Eugene program because the proposed Eugene threshold is the same as the Federal threshold.

The following corrections were made to the ninth line of the table:

Incorrect:

polychlorinated biphenyl (PBT) oils	extremely PBT/10 lbs.	No	5 lbs.
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Correct:

polychlorinated biphenyl (PCB) oils	extremely PBT/10 lbs.	Yes/50 lbs	5 lbs.
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Ms. O'Brien asked that the correct spelling of 3-methylchloanthene be researched.

Mr. Carson noted that the threshold for reporting dioxins was below the Charter threshold. Ms. O'Brien said that could be addressed in the ordinance.

Board members discussed whether or not there were any incinerators in the Eugene area. They asked Mr. Potter to contact Sacred Heart Hospital regarding this.

After discussion, members suggested that section C of the proposed ordinance be changed to read as follows: The Toxics Board has recommended that certain chemicals and categories of chemicals that have been added during the last year to the lists referenced in Article III of the Amendment be required to be reported in accordance with the provisions of the Amendment, and the Council finds the board's recommendation to be in the public interest, and consistent with the intent of the voters.

Members also asked that the proposed 0.1-gram threshold for dioxin be addressed in the ordinance.

Mr. Morgan recommended that Mr. Potter give the board's voting record in the information presented to the City Council with the ordinance. Mr. Potter agreed to include this material in the next agenda packet.

VII. RESOLUTION REQUESTING CITY OF EUGENE RTK REPORTING

Mr. Potter distributed new draft copies of the resolution. Mr. Carson said that he was open to feedback and suggestions on the resolution. Ms. O'Brien suggested asking the City hazmat person to attend a Toxics Board meeting and indicate where the major uses of toxics were in the City. Mr. Carson agreed that it would be good to get the feedback on chemical use in the

City. Mr. Friese noted that the City did actually manufacture things such as street signs, clean water, streets, etc. Mr. Potter said that Chuck Solin, the City's Environmental Manager, would probably be the appropriate person to ask to the meeting.

Mr. Johnson said that the University of Oregon was researching what it would take for them to voluntarily report on hazardous materials. He was in favor of other large users reporting.

Members discussed the proposed resolution and the process of bringing the City and other large users in to report. Board members thought that a collaborative approach would probably be the best way to achieve this goal.

Mr. Potter agreed to invite Mr. Solin, and perhaps one or two other knowledgeable City employees, to the next meeting.

VIII. REPORTING OF SARA GENERIC CHEMICALS

Mr. Morgan explained that he had reported two chemicals that were trade secrets of the suppliers. The suppliers did not give a CAS number or indicate what the chemicals were; instead the chemicals were given generic names. He said that Eugene's reporting program did not have an appropriate category to enter these types of chemicals; they are known to be reportable, but their characteristics are not known. The board decided to ask the Information Services Division to create an additional reporting category for these types of chemicals.

IX. INVESTIGATION PROCEDURES

Mr. Potter referred to a memorandum in the agenda packet regarding the process for investigations. He said that most investigations were handled by phone. He recommended against creating a bureaucracy around investigations. He said that he received about two requests for investigation a month and that he handled them informally. Mr. Potter added that the form in the packet could be used if a person was not satisfied with Mr. Potter's response and wished to pursue the matter with the board.

Mr. Johnson agreed that the informal process worked well. Ms. O'Brien suggested that the form be included in the next update of the citizen guidebook.

Members discussed with Mr. Potter the fact that there were no records of the complaints and investigations. Members agreed that it was a good idea to have some sort of record of investigations and results.

Mr. Luse asked if a private consultant could plead a case to waive fees of a company that had not reported but was willing now to begin reporting. Board members said that could happen and that an amnesty period had been offered in the past.

Mr. Johnson said that the next meeting was scheduled for May 11, 2000, at 3 p.m. He said June 15 had also been scheduled if necessary.

Mr. Morgan raised a problem with the software program. Mr. Potter replied that he had reported this problem to the Information Services Division for correction. Mr. Potter solicited any further suggestions for enhancement of the reporting program. The meeting adjourned at 4:30 p.m.

(Recorded by Elise Self)
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