

MINUTES

Eugene Toxics Board
Sloat Conference Room—The Atrium Building—99 West 10th Avenue

August 9, 1999
3 p.m.

PRESENT: Cathy Verret, Chair; Mary O'Brien, Steve Morgan, Madronna Holden, Mike Friese, Steve Johnson, Don Upson, members; Glen Potter, Fire & EMS Department; Jerry Lidz, Eugene City Attorney's Office; Steve Chipman, Information Services Division.

I. APPROVAL OF THE AGENDA

Ms. Verret determined there was consensus to approve the agenda, as written.

II. PUBLIC COMMENT ON ITEMS NOT LISTED ON THE AGENDA

There was no public comment.

III. RESPONSE TO HOUSE BILL 2431

Referring to *Enrolled House Bill 2431*, copies of which were included in the meeting agenda packet, City Attorney Jerry Lidz presented a brief overview of the bill, noting that, if signed by the Governor, Sections 3.3 and 3.8 of the bill would become effective on September 1, 1999. The sections referred to by Mr. Lidz read as follows:

- 3.3(a) *All local community right to know regulatory program enforcement, including but not limited to penalties, may be imposed only by a local fire official or a board established by the local government to implement the local community right to know regulatory program.*
- 3.3(b) *Penalties for violations of a community right to know regulatory program shall not exceed \$1,000 per day and shall be assessed according to a schedule adopted by the local government after notice and public hearing. Except when a local government has reasonable grounds to find that an employer willfully and knowingly avoided compliance with the local program, and as long as the employer submits the required information within 30 days following a written notification*

of noncompliance, penalties shall be suspended if the employer has no history of violating the local program.

- 3.8 *In administering a local community right to know regulatory program, a local government shall establish procedures to exempt, when reasonable, an entity from all or part of the local program for the purpose of protecting trade secrets or where the local government determines that the operations of the entity pose little or no risk to the public health or the environment.*

In response to a question from Mr. Potter regarding what steps the City of Eugene must take in the event the bill is signed into law, Mr. Lidz said the City must adopt a fee schedule, issue public notice, and hold public hearings on the schedule.

Following considerable discussion regarding what might constitute a "schedule," the board requested that Mr. Potter compile, for the purpose of review and consideration by members, documentation of past board decisions on this matter.

With regard to the requirement that the City establish a procedure by which an exemption from participation in the program is possible, Ms. O'Brien argued that the board is not obligated to state that one entity poses little or no risk to the public health or environment, because the purpose of the Charter Amendment is to consider the *cumulative* risk. Mr. Lidz responded that the new law would require only that the City establish a procedure by which an exemption is possible. He said the board could provide the exemption based on a business falling below the established threshold for hazardous substances.

The board expressed support for utilizing the 2,640-pound threshold as the criterion for exempting a business from participation in the program. Mr. Potter agreed to draft a procedure for exemption on that basis.

IV. REPORTING OF SUBSTANCES IN MIXTURES

Ms. O'Brien stated that if a company only knows that a mixture is ignitable, then the entire mixture should be reported as "ignitable." She recalled that she had previously suggested that such mixtures, given that they are not identified by a chemical name, might simply be pooled into an "ignitable mixtures" category with other such ignitable mixtures; however, it was her belief that the law clearly states that if a company knows that an individual chemical in a mixture is listed or characteristic, that chemical must be identified and reported.

Ms. O'Brien recalled that she had also suggested that in the case of a characteristic mixture in which at least one individual characteristic substance was identified and reported as such, although it was not clear whether any or all of the remaining substances were also characteristic,

the *remainder* of the mixture might be reported in a category called “other chemicals in an ignitable mixture,” for example.

Ms. O’Brien stated that a number of companies had reported mixtures under essentially meaningless trade names, when in fact those mixtures contained both listed reportable and characteristic reportable substances. She said she now believes that the Toxics Board inadvertently allowed companies to report in manner which was in violation of the law. She said the board should rectify this situation as soon as possible so that the April 2000 reports are not in violation of the law. In addition to rectifying the situation, Ms. O’Brien suggested that the Toxics Board issue a memorandum to all participating companies noting the clarified policies regarding both listed and characteristic substances in mixtures.

Members discussed this matter at length. The board agreed to not pursue the “remainder” issue.

Ms. O’Brien moved, seconded by Ms. Verret, to distribute a memo instructing businesses to report individual substances in mixtures when it is known that those individual substances are listed or characteristic. The motion passed, 4:3, with Mr. Upson, Mr. Morgan, and Mr. Friese opposed.

Mr. Potter agreed to draft the memo; Ms. O’Brien and Mr. Morgan agreed to review it.

With regard to the court case involving the Toxics Right-to-Know Law, Mr. Lidz reported that the Court of Appeals denied reconsideration of the matter. He predicted that within the next few weeks, the Court of Appeals will remand the issue back to Circuit Court. He said the Circuit Court may request additional input; however, it might simply issue a final judgment. Mr. Lidz said he anticipates that the Circuit Court’s ruling will be consistent with that of the Court of Appeals.

(Mr. Lidz left the meeting at 4:12 p.m.)

V. ADJUSTMENTS TO WEBSITE AND REPORTING SOFTWARE

Members reviewed and discussed programming enhancements suggested by Mr. Chipman, including the capacity for multi-year comparisons. Mr. Chipman recorded members’ comments and observations. The board agreed that programming should go forward on the basis of Mr. Chipman’s proposals and the board’s discussion.

VI. APPROVAL OF MINUTES

Members reviewed the minutes of the July 6, 1999, meeting of the Toxics Board.

Mr. Friese moved, seconded by Mr. Johnson, to approve the minutes of the July 6, 1999, meeting of the Toxics Board. The motion passed unanimously.

VII. STAFF REPORT

A. Amnesty Program

Mr. Potter reported that there was significant media coverage of the Toxics Right-to-Know amnesty program. He said approximately 250 notices of the amnesty were distributed.

Mr. Potter introduced Kent Asbra, General Manager of Henry Manufacturing Company. Mr. Potter reported that Mr. Asbra had contacted the Fire Marshal's Office requesting additional information pursuant to the amnesty notice. Although Henry Manufacturing meets the other criteria for reporting, the 1998 Handbook stated that only zinc fumes and dust must be reported. Because Henry Manufacturing uses solid zinc, the company did not report for 1998. Noting that the updated Handbook was clarified to require reporting of solid zinc, Henry Manufacturing is now prepared to report.

Mr. Johnson moved, seconded by Mr. Upson, that Henry Manufacturing not be penalized for failing to report or declare its hazardous substance user status until this time. The motion passed unanimously.

Mr. Potter reported that he recently conducted the second program's second audit. The company was the *Register-Guard*. Responding to comments from board members, Mr. Potter reported that the *Register-Guard* had acknowledged that the company's beginning and ending inventories were identical because the figures were reconstructed in 1999, after the company had learned that it would be required to report. Although the *Register-Guard* is prepared to report more accurate figures for 1999, company officials suggested to Mr. Potter that a 1999 report might not be necessary because the company is switching to a non-reportable substance for cleaning of presses.

VIII. OPTIONS RELATED TO APPEALS COURT DECISION

Referring to a draft memorandum from the Toxics Board to the Mayor and City Council, copies of which were included in the meeting agenda packet, Mr. Potter requested additional revisions.

Members offered a number of revisions which Mr. Potter recorded. Noting that the board must approve a final version of the memo at its September 29 meeting, he requested that members e-mail to him any additional revisions prior to September 22.

The meeting adjourned at 5:35 p.m..

(Recorded by Kim Kunkel)