

MINUTES

Toxics Board
2nd Floor Conference Room--Aster Building

February 12, 1998
3 p.m.

PRESENT: Mary O'Brien, Chair; Steve Johnson, Steve Morgan, Don Upson, Cathy Verret, Madronna Holden, Michael Friese, members; Glen Potter, Judi Ivy, Fire Marshal's Office staff; Jan Wostmann, Information Services Division; and various members of the public.

Ms. O'Brien called the meeting to order.

I. INTRODUCTIONS

Those present introduced themselves. Ms. Holden and Mr. Friese briefly discussed their professional backgrounds and their interest in the work of the committee.

II. APPROVAL OF AGENDA

Ms. O'Brien obtained board consensus to defer consideration of item IX, 1998 Work Plan, to the next meeting.

Ms. O'Brien determined there was consensus to approve the agenda, as amended.

III. PUBLIC COMMENT

Ken Luse indicated he had submitted questions for board response. Mr. Upson, Ms. O'Brien, and Ms. Verret agreed to meet as a subcommittee of the board to work on the responses.

Ms. O'Brien corrected her e-mail address, included in the meeting packet: mob@darkwing.uoregon.edu.

IV. APPROVAL OF MINUTES

The board discussed the fact that the question concerning the reportability of lubricants used on manufacturing equipment remains unresolved.

Mr. Upson moved, seconded by Mr. Johnson, to approve the minutes of January 20, 1998, as submitted. The motion passed unanimously, 7:0.

V. ELECTION OF 1998 CHAIRPERSON/VICE CHAIRPERSON

Ms. O'Brien nominated Mr. Upson to be board chairperson and Ms. Verret to be board vice chairperson. Mr. Morgan seconded the nominations.

Responding to a suggestion from Mr. Upson that the board alternate between right-to-know advocates and industry representatives as chair, Mr. Johnson pointed out that the neutral member could also serve as chair. He suggested that willingness to serve and capability were more important factors to consider.

Ms. Holden referred to Ms. O'Brien's memorandum in the meeting packet, entitled "Toxics Board Processes, 1997," and said that some of the observations in the memo could be used as an outline for how the chair should operate.

In light of his nomination to serve as Toxics Board chair, Ms. O'Brien asked Mr. Upson to discuss his involvement in the lawsuit filed by Molecular Probes and others who were asking to have the right-to-know law struck down, as well as his testimony at the Oregon Legislature against local right-to-know laws. Mr. Upson indicated that the company, not he, was named in the lawsuit. He acknowledged that he had offered testimony representing his position on local right-to-know laws to the State Legislature. However, Mr. Upson believed that his eligibility to serve as Toxics Board chair was not an issue since the chair had no power or influence that exceeded that of any other board member. He said that he had discussed the issue with Jerry Lidz of the City Attorney's Office, who had indicated to him that as long as the chair did not abuse the position or misrepresent the position of the board, there was no conflict.

Responding to a question from Ms. Holden, Mr. Upson said that he was willing to assume the chair and believed his record spoke for itself. He anticipated that he would continue to work to make the Toxics Board successful. He believed that the lawsuit examined a point of law that must eventually be resolved.

Ms. O'Brien said that Mr. Upson sought solutions that addressed all members' concerns.

The nominations were approved, 6:0:1; with Mr. Upson abstaining.

VI. STAFF REPORT

Mr. Potter reported that, subject to Toxics Board decisions, the City Council would hold a work session on the ordinance adopting the reporting instructions on March 4 and a public hearing on March 9, and would have an opportunity to take final action on the ordinance on March 16. Mr. Upson and Ms. O'Brien volunteered to be present at the work session to answer questions. Ms. O'Brien encouraged other board members to attend also.

Mr. Potter said that he had also tentatively scheduled time on the City Council agenda of March 11 for council approval of the 1998 fee structure.

Mr. Potter said that he was on the mailing list of the Governor's Task Force on Community Right-to-Know and would be happy to share the materials he received with board members.

Mr. Potter distributed a letter from David H. Patrick, General Manager of Regulatory Compliance for Pepsi-Cola Company, outlining Federal regulations and rules related to trade secret protection for the company's cola formula. The letter indicated that the identity of the chemicals involved was not shared with the management of the local bottling plant, in which the company had a minority share.

The board discussed the letter, focusing on the ownership of the company as distinguished from the operation of the company and whether the involved chemicals were corrosive to the degree that they were covered by the law. Mr. Potter said that the company had indicated to him that the involved material was corrosive.

Mr. Upson suggested that Pepsi first establish if the involved chemicals met the criteria for corrosive substances in the Federal law. Another question to answer was how the local company received the material: was it already formulated or did it arrive as component elements?

Ms. O'Brien agreed that if the material was corrosive in the form it was used in Eugene, there was a legal question as to whether the company could refuse to file with the board or work with the board.

Ms. O'Brien asked Mr. Potter to draft a letter to the company outlining the board's questions. Mr. Morgan questioned the need for a letter, suggesting instead that the board wait until the company filed a report and was inspected. Ms. O'Brien pointed out that the company would run the risk of violating the law. She believed the board should address such questions as they arose. Mr. Upson concurred, suggesting it was better to work with companies and come to a common view of the best approach. Ms. O'Brien also believed it was better to work with the companies, noting that the board

would not necessarily require a company to disclose a trade secret if there were special circumstances.

Mr. Potter asked if the board was stating a policy that if a mixture containing a corrosive material was never corrosive during its lifecycle in Eugene, then it was not reportable as a characteristic (corrosive) substance. Mr. Johnson said that if a material was not on the list of reportable chemicals and never met the characteristics in any form while it was in Eugene, it was not of concern to the board.

Mr. Potter noted that the meeting packet included a draft Toxics Board roster, and he invited corrections. Ms. Holden indicated she preferred that meeting packets come to her home address. Mr. Potter said he would also add Ms. Holden's e-mail address to the roster. Mr. Friese indicated his business zip code was 97402.

VII. ELECTRONIC REPORTING SYSTEM

Mr. Wostmann joined the board. He indicated the board could participate in a demonstration of the program any time after it has been delivered, and suggested that the board convene at the Information Services Division classroom for a demonstration. Mr. Wostmann indicated that he anticipated the programming involved would take approximately one week's worth of work and the cost would be less than \$3,000.

The board reviewed a draft document in the meeting packet entitled "Eugene Toxics Board Data Entry Program Specifications." The board made several revisions to the draft specifications.

The board discussed a question raised by an audience member regarding the availability of company telephone numbers to the public. Ms. O'Brien suggested that the form include public contact and public telephone numbers provided by the company.

Mr. Wostmann clarified that the information being collected was for board purposes, and the board could decide at a later time if it wished to make the information available to the public.

Mr. Johnson pointed out that the data requested merely mirrored the form that was already available to the public in the handbook. He suggested that the board could change the form next year if it wished. The board flagged the item for follow-up when the form was reconsidered.

Mr. Johnson moved, seconded by Mr. Friese, to accept the specifications as amended and the time line as submitted. The motion passed unanimously, 7:0.

VIII. FEES

The board deferred the item to a later point in the meeting.

IX. ORDINANCE ADOPTING REPORTING INSTRUCTIONS

Mr. Upson moved, seconded by Ms. Holden, to recommend to the City Council that it adopt the ordinance regarding reporting instructions. The motion passed, 6:1; Mr. Morgan voting no.

X. REVIEW OF ANSWERS TO QUESTIONS FROM BUSINESSES

The board deferred the item to the next meeting, acknowledging that the subcommittee comprised of Mr. Upson, Ms. O'Brien, and Ms. Verret would work on responses to the questions in the interim.

XI. 1998 WORK PLAN

Ms. O'Brien said that she hoped to work with Mr. Upson on the 1998 Work Plan for review by the board at its next meeting.

XII. AGENDA FOR NEXT MEETING/UPCOMING TASKS/FEBRUARY MEETING DATE

The board briefly discussed its regular meeting schedule. Mr. Upson expressed a desire to move meeting times to a time later than 11:30 a.m. He preferred a 3 p.m. meeting time. There was no objection from other board members. Due to the fact the next meeting of the Toxics Board was already scheduled, the board agreed to meet at 11:30 a.m. on February 25 and to schedule the March 11 meeting to start at 3 p.m.

VIII. FEES

Mr. Upson presented the board with a proposal to adopt, for 1998, a base fee plus a fee amount based on the number of employees working for a company. He distributed and reviewed a memorandum he had prepared entitled "Fee Assessments." The memorandum identified three options for implementation of the proposal. The three

options illustrated examples of a \$1,500 base fee (Option A), a \$1,000 base fee (Option B), and a \$500 base fee (Option C), all assuming a program cost of \$150,000 in the upcoming fiscal year and a total of 7,500 employees working for the affected companies.

Mr. Morgan favored Option C, but indicated he could accept Option B as a compromise.

Responding to a question from Mr. Johnson, Mr. Upson said that he had estimated the number of employees. Mr. Potter indicated that the City had some information from the State Fire Marshal's Office about the number of employees working for the affected companies, but it was from 1996. He said that he could research more precise figures through the State Employment Division or through a private database supplier. Another alternative was to contact the companies that have been identified as potentially being required to report, ask them if they in fact expect to report for 1998, and inquire about their number of employees.

Ms. O'Brien favored Option B as a starting point and suggested that the board direct staff to do more work on the option using available data.

Mr. Friese questioned the approach, suggesting that it did not seem to be reflective of the intent of the charter amendment. Mr. Johnson pointed out that the selected option was a one-year stop-gap approach.

The board concurred with Ms. O'Brien's suggestion, and directed staff to draft a letter to businesses asking them if they believe they will be submitting a report for 1998, and if so, the number of employees working at each business at the end of 1997.

The meeting adjourned at 5 p.m.

(Recorded by Kimberly Young)
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