

# **MINUTES**

Toxics Board  
Saul Room--Atrium Building

March 11, 1998  
3 p.m.

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

Mr. Upson called the meeting to order.

## **I. APPROVAL OF AGENDA**

The board agreed to discuss finalizing the fee structure under item IV, Staff Report.

Mr. Upson asked the board to discuss an issue raised by the public related to the public contact telephone number proposed for inclusion in the electronic reporting form.

Mr. Upson said that Mr. Potter had an issue to bring to the board related to whether a particular company should be reporting.

## **II. PUBLIC COMMENTS ON ITEMS NOT LISTED ON THE AGENDA**

The board acknowledged questions from businesses submitted by Ken Luse and formed a work group composed of Mr. Friese, Ms. O'Brien, and Mr. Morgan to respond to the questions.

## **III. APPROVAL OF MINUTES**

The board discussed an issue raised by Ms. O'Brien related to a statement in the minutes regarding whether the board would allow businesses to calculate a year-long average in employment levels in the current billing cycle if it would provide a more realistic figure. Ms. O'Brien encouraged the board to employ the approach next year and avoid giving companies vague options. Mr. Upson concurred, suggesting that the board retain the figures it had been working with and develop a policy for the following year.

Ms. O'Brien referred to page 2 of the February 25 minutes and suggested that the word "memoranda" be substituted for "memorandums" in paragraph 8.

Ms. O'Brien asked that first sentence in paragraph 2 on page 4 ("Ms. O'Brien suggested assessing a flat per-employee fee in the amount that is determined necessary to generate the budget") be struck from the minutes as she did not believe she had made that suggestion.

Ms. Holden arrived at the meeting at 3:15 p.m.

Ms. Verret said that the word "product" in paragraph 2 on page 1 should be changed to "chemical" in both instances.

Responding to a question from Ms. Verret, Mr. Upson said that ground rules had not been developed. He said that the board could add it to the work program but he considered it a low priority. Mr. Johnson had previously compiled some operating guidelines that had been agreed to by the board. Mr. Potter noted that he had supplied those guidelines to Mr. Friese and Ms. Holden.

Returning to the topic raised previously by Ms. O'Brien, Mr. Friese asked if the board was going to allow companies to average employees in the current billing cycle. He said that his firm had begun the year with 400 employees and had grown to 895 employees. The board discussed the question. Mr. Potter noted that the year for which the board was billing was not resolved. He suggested that the board might want to retain the year-end employee numbers, given that the board had that information in hand.

Responding to a question from Ms. O'Brien, Mr. Potter confirmed that the bills would be issued on or about April 1 and the funds collected would support the program for fiscal year 1999 (July 1, 1998, to June 30, 1999). Ms. O'Brien said that the board could logically use the employee numbers for the end of the 1997, and later determine, for the next billing cycle, if it wished to look forward into 1999 or look back to 1998. Mr. Potter concurred, adding the board could choose to drop the number of employees as a basis for the fee in the following year.

Mr. Friese moved, seconded by Mr. Johnson, to approve the minutes of February 25, 1998, as amended. The motion passed unanimously, 7:0.

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

##### **A. Update on Trade Secret Filings**

Mr. Potter reported that no trade secret claims had been received by the Fire Marshal's Office.

## **B. Update on Costs/Budget**

Mr. Potter reviewed a memorandum regarding program costs that had been submitted to the board by the members representing reporting businesses. He responded to the concerns raised in the memo.

Mr. Potter indicated he would follow up on a request from Ms. O'Brien regarding the amount of money the City had spent defending the Toxics Law. Mr. Morgan asked if the City was absorbing those costs. Mr. Potter said yes; the City's General Fund was absorbing the cost at the direction of the Executive Management Team.

The board discussed the information presented by Mr. Potter. Mr. Upson asked if the Fire Marshal believed the program could be run in the next fiscal year with the level of resources identified by staff. Mr. Potter said that budgeting for the program was difficult because of a lack of prior experience. The budget that had been prepared by Mr. Potter and the Fire Marshal -- in response to the direction from the Executive Management Team to offer a reduced budget to the City Council -- was sufficient to support a full-time management analyst, 1/8-time administrative support, and 1/4-time deputy fire marshal for the final quarter of the fiscal year, plus materials and supplies and \$10,000 in legal fees.

Mr. Potter recommended a budget of between \$108,000 and \$117,000 as sufficient to support the program, including 1/4-time administrative support and 1/2-time deputy fire marshal for the final quarter. He noted that funds could be shifted among line items during the year if necessary.

Ms. O'Brien preferred not to budget for the 1/2-time deputy fire marshal at this time. She favored adding funding for additional administrative support. Mr. Potter encouraged the board to allow for contingencies and create an opportunity for the program to end the fiscal year within its budget.

Responding to a question from Ms. O'Brien, Mr. Potter said that the City had budgeted approximately \$18,000 at the Library to provide for public access to information reported under the Toxics Program.

The board discussed the FY99 program budget.

Mr. Johnson moved, seconded by Ms. Verret, to forward a budget totaling approximately \$113,000 to the City Council; the budget would be based on the \$104,442 reduced-budget figure that had been previously submitted to the City Council, but would increase administrative support to 1/4 time and add \$5,000 for printing and/or

other possible program contingencies. The motion passed unanimously, 7:0.

### **C. Update on City Council Activities**

The board discussed options for the fee base and fee structure in light of the testimony received by the City Council at its public hearing on March 9 and its budget recommendation to the council.

Mr. Upson said that if a company had 14 employees, the fee would be about \$700. If the base was \$1,000, the fee would be about \$1,150. He said that he spoke to the owner of a 14-employee company who noted that the fee, at the higher base, would exceed any of the other regulatory fees he had to pay.

Mr. Friese acknowledged that a larger company was better able to absorb the fee but he continued to be opposed to the use of FTEs as a basis for the fee. He said that his firm would support approximately ten percent of the program under that scenario.

Keith Dahle, a member of the audience, pointed out that small businesses had a limited amount of time to dedicate to the requirements established by the program and would be more affected by the fees than larger companies.

Mr. Upson said that the board had discussed the fee structure extensively and in the absence of other proposals he suggested that the board move forward.

Mr. Friese noted testimony from the business community suggesting that board recommend to the City Council that the program be supported by the General Fund. He said that the program was still in the early stages and he supported that approach. Ms. O'Brien pointed out that the charter amendment stipulated the program must be self-supporting.

Mr. Friese said that he had been struck by the testimony of the representative of PSC Scanning, who described how his firm had worked toward reducing the amounts of toxic materials used, but would probably have to bear eight percent of the costs of the program. Mr. Johnson said that an equitable program would recognize those efforts. Ms. O'Brien agreed. She said that she had spoken to the PSC representative after the meeting to let him know she was working at the State level on changes that would allow that approach.

Ms. O'Brien moved, seconded by Ms. Holden, to use \$500 as the base fee. The motion passed, 6:1; Mr. Friese voting no.

Mr. Potter reported that staff would like guidance from the board concerning a grace period for payment of fees and a period after which penalties would cease to accrue. After brief discussion, the board deferred this item to a subsequent meeting.

Mr. Potter reported that the City Council was scheduled to act on the fee structure and budget on March 16, and on the ordinance adopting the reporting instructions on April 6.

#### **D. Roster**

Mr. Upson noted his new work telephone number and new e-mail address.

#### **E. Other**

Mr. Potter reported that the City had accepted a bid for the programming needed for the reporting software. Programming was expected to begin on March 16.

Mr. Potter asked the board to consider the following question:

*Company A employs nine people and uses reportable quantities of hazardous substances. It manufactures an intermediate product which it ships to several companies including Company B. Company B employs 26 people and is located on the same site as Company A. Company B manufactures a finished product using the intermediate product of Company A. Company B does not use reportable quantities of hazardous substances. Companies A and B are legally separate entities but are both owned by Company C. **Question: Is Company C a hazardous substance user under Eugene Charter Amendment IV?***

Mr. Potter noted that the City Attorney had indicated that a “yes” answer was probably defensible under the Charter Amendment.

The board asked several questions to clarify the business relationships described. Ms. O’Brien asked if a case could be made for a “no” answer. Mr. Upson said that he would like the City Attorney to provide the board with arguments for either response. The board agreed to invite the City Attorney to the April 1 meeting to discuss this issue.

Mr. Friese asked Mr. Potter to investigate data reported to the Eugene Fire Marshal’s Office Hazardous Materials Management Program to help determine whether *The Register-Guard* had to report hazardous materials under the Toxics Right-to-Know Program.

#### **V. DRAFT 1997 REPORT TO CITY COUNCIL**

The board agreed to forward the report, as drafted by Ms. O’Brien and amended by board members, to the City Council.

## **VI. 1998 WORK PLAN**

The board reviewed the revised work plan and made certain modifications to the timing of items. Mr. Upson noted that he attempted to structure the work plan so the board did not need to meet so frequently during the summer.

Ms. Verret and Mr. Friese agreed to serve as a work group to draft a process for handling Fire Marshal denials of trade secret claims.

The board directed Mr. Potter to forward both the 1997 report and the 1998 work plan to the City Council.

The board discussed a request from Mr. Dahle that the company's public contact name and public contact telephone number be made an optional field in the software. Mr. Dahle argued that such information should not be made public and should only be used by the Fire Marshal. He said that he did not have time to respond to questions and inquiries from curious members of the public attempting to find out about the materials his company used. The board agreed that Mr. Dahle's request was not inconsistent with the law and directed Mr. Potter to make the programmer aware that those fields, as well as the technical contact fields, should be optional.

## **VII. DETERMINE DATES FOR APRIL AND MAY MEETING**

The board set its next meetings for April 1, April 29, and May 20, from 3 to 6 p.m. The board agreed to add scheduling of summer meeting dates to the April 1 agenda.

The meeting adjourned at 5:05 p.m.

(Recorded by Kimberly Young)  
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