

MINUTES

Toxics Board
Public Works Conference Room--858 Pearl Street

July 16, 1998
3 p.m.

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

Mr. Upson called the meeting to order.

I. APPROVAL OF AGENDA

Mr. Potter suggested that the board consider agenda items IV(C) and VI in that order to accommodate the schedule of City Attorney Jerome Lidz. There was no objection to Mr. Potter's suggestion.

II. PUBLIC COMMENTS ON ITEMS NOT LISTED ON THE AGENDA

The board heard from representatives of Grain Millers, Elaine Lewis and Steve Broich. Ms. Lewis and Mr. Broich discussed their company's use of methyl bromide as a fumigating agent at its Eugene grain mill. The board asked questions to clarify the purpose and frequency of the chemical's application. Mr. Potter clarified that the question before the board was whether the fumigation was a manufacturing activity or a building maintenance activity, and noted that the company may not reach the reporting threshold in any case.

Ms. O'Brien did not distinguish between the storage facilities fumigated and the manufacturing process given one's necessity to the other. Mr. Upson did not perceive that the chemical was used in the manufacturing process but rather for maintenance. Ms. O'Brien said that the chemical was used in and on the manufacturing equipment.

Ms. Lewis said that the chemical's application was for maintenance rather than manufacturing purposes.

Mr. Johnson arrived at the meeting.

Ms. O'Brien said that methyl bromide was highly toxic and was an example of why the right-to-know law was developed. She said that if the chemical's use was solely for maintenance purposes, many businesses would use it. Instead, she said, it was very closely tied to the manufacture of grain products.

Mr. Potter clarified that the company would have to fumigate three rather than two times each year to reach the threshold amount for reporting. Mr. Upson said that even then, a board determination that 100 percent of the methyl bromide was reportable would be required. He believed that the issue was in question for some board members.

Ms. O'Brien argued that in the present case, the entire volume of the chemical was focused on removing insects from the grain, which was the manufacturing product in the process in question. She agreed that if the volume of chemical was insufficient for reporting, the question was moot.

Ms. Lewis indicated that the company could likely keep the volume of chemical use below the annual reporting threshold. Mr. Broich added that the issue should probably be clarified anyway because he believed that other companies faced the same issue.

Mr. Morgan suggested that the company merely report its chemical use if it used more than 2,640 pounds of methyl bromide. Mr. Broich indicated the company had no problem waiting to make that report if necessary. Mr. Potter believed that a board decision was preferable. Ms. O'Brien concurred, saying the board should clarify the situation for other companies.

Ms. O'Brien reiterated her belief that the chemical was intrinsic to the manufacturing process as it would not be used if the facility involved were not a grain manufacturing facility. Mr. Morgan did not see how fumigation of storage facilities related to the manufacturing process. Ms. O'Brien maintained that the manufacturing process could not occur without storage, which was also integral to the manufacturing process. Mr. Morgan suggested a situation in which the company merely stored and distributed grain products and used the chemical for fumigation. Ms. Lewis said that situation occurred on occasion. Ms. O'Brien reiterated her previous argument related to the relationship between storage and manufacturing.

Mr. Friese asked if the company was considering alternatives to the use of methyl bromide. Ms. Lewis said yes, given that the use of the chemical was scheduled to be phased out in 2001. Mr. Broich added that the company was exploring the use of CO² fumigation, but that application required that the building being fumigated be relatively airtight, and the facility under discussion was aging and difficult to seal. He said that the company recognized that methyl bromide would no longer be available for use at some point in time and was exploring other methods.

Responding to a question from Mr. Broich, Mr. Upson said that the law applied to manufacturing, not storage. Ms. Lewis said that it was possible for the company to separate the storage and manufacturing components of the facility and avoid storage on site.

Mr. Johnson said that all kinds of manufacturing companies store materials on site prior to use, and the board was not proposing a blanket exemption for a part of a facility used as storage prior to manufacturing. He noted the implication of such an action on other companies.

Mr. Morgan did not share Ms. O'Brien's perception that grain storage was integral to the manufacturing process given that storage could be provided by rail cars outside the facility.

Mr. Upson suggested that the board schedule the topic for further discussion in August. Mr. Johnson concurred, adding that the board needed to reach some decisions on the distinctions between manufacturing and storage.

III. APPROVAL OF MINUTES

Ms. O'Brien asked that the first paragraph in item V(A) be changed to attribute the second sentence in the paragraph to Mr. Potter.

The board accepted the minutes of June 16, 1998, as revised.

IV. STAFF REPORT

A. Checks Received

Mr. Potter announced that 43 of the 44 invoices had been paid. The firm Scientific Developments had declared itself subject to the law on July 10, which was 10 days after the deadline provided by ordinance. Mr. Potter indicated that he was prepared to send the company a regular invoice without penalty in the absence of other direction from the board. After brief discussion about the size that such a penalty would be, the board agreed to a suggestion from Mr. Upson that Mr. Potter would mail a regular invoice to the company, but would also contact the company and explain that it was subject to ten days' penalty unless it could offer a valid reason for its late declaration. Mr. Potter indicated he would research the precise penalty involved.

Mr. Potter said that Ms. O'Brien had suggested that the board issue a public service announcement updating the public about fee collections and discussing the

fee-supported status of the program. The board agreed that Mr. Potter would draft and circulate such an announcement.

B. Response of Four Businesses to Reminder Letter

Mr. Potter said that his follow-up letter to three businesses produced fee payments from two. It was reported by an audience member that the third company also had recently paid or was about to pay.

C. Report—City Attorney Response to Board Question Regarding Substance Exemption

Mr. Lidz summarized the questions posed to him by Mr. Potter: 1) could the board exempt companies from reporting a particular substance because requiring them to report would not be consistent with the intent of the charter amendment; and 2) how to define "article." He added that he was unsure of the relationship between the two questions.

Mr. Upson explained the board's dilemma about the issue of metals. He said that metals can weigh quite a bit, making it easy for a company to reach the 2,640 pound reporting threshold, and many companies process metals. However, in many cases, a large fraction of the total metal used in a manufacturing process was unchanged in form. Mr. Upson said that part of the issue concerned what part of the metal a manufacturer must report: all of it; releases (filings, grindings, fumes, and dust) and waste only; or releases only.

Mr. Lidz said that in the case of the first question, the board must consider whether it could adopt an article exemption in a manner consistent with the charter amendment and, if so, does a facility's use of a piece of metal fall under the article exemption. He said that both questions were very difficult, and he did not have a ready answer. Mr. Lidz requested further board discussion of the topic. As a basis for that discussion, he suggested that it could be reasonably suggested that if an article did not go through a manufacturing process, it was not subject to reporting.

The board discussed whether the larger piece of metal that was stamped or divided into smaller shapes during the manufacturing process represented the reportable amount of a toxic material, or whether the smaller articles that resulted from the manufacturing process represented what was reportable under the charter amendment. Mr. Upson argued for the latter point of view, saying that it was the smaller, high-surface-area articles that would pose a release potential to the community. Mr. Lidz asked if that approach was consistent with the board's approach to a material such as paint, where a portion of the paint was actually used but the entire amount purchased by a company and brought on site was reportable.

Responding to a comment from Mr. Friese, Ms. O'Brien reminded board members that copper was a reportable substance in itself. She said that other metals, such as stainless steel dumped under acidic conditions, could produce toxics.

Mr. Lidz said that the board appeared to be heading toward a principle that stated that small articles taken from a larger piece of metal were reportable.

Responding to a question from Ms. O'Brien about why the topic was back before the board as it was her recollection that the board had resolved the issue as it addressed questions from the public, Mr. Potter reminded the board that it lacked a definition for "article," Mr. Morgan had suggested the addition of cuttings and waste to filings and grindings, and the board had not yet resolved the question concerning reporting of the kerf vaporized during the manufacture of metal products versus the reporting of the entire quantity of metal.

Mr. Lidz said that the type of material under discussion did not appear to meet the definition of article attached to the previous meeting's agenda. Mr. Morgan said that the definition was the federal definition, and under that definition all the material would be reportable.

Mr. Morgan said that the board's question-and-answer manual addressed the issue in part when it discussed copper wire. Copper wire, when cut into sections, was still an article that was not reportable; he suggested that the issue was one of toxic exposure.

The board briefly discussed a question from audience member Andy Poynter regarding how to estimate emissions in materials accounting. Ms. O'Brien suggested that different companies would estimate emissions differently, and that over time companies would get better at making such estimates. Mr. Johnson agreed. He said that initially, he anticipated that estimates would be "all over the map." Mr. Morgan said that emissions could be estimated according to an EPA formula, or the manufacturer of laser-cutting devices might have such information.

The board discussed the impact of requiring small businesses dealing with metals to report the larger amounts from which the smaller articles were derived. Mr. Poynter termed such a requirement a "monumental task" for such businesses. Mr. Johnson said that the task was not complex or monumental as it involved the same estimation process a business would have to use to calculate the dust, filings, and grindings. He did not think the board would penalize a business for making a good-faith effort to report using its best engineering judgment, and the board and staff might over time be able to assist businesses in making better estimates.

Mr. Lidz said that the fact a requirement was burdensome did not exempt companies from it, but might be cause for the board to reexamine the requirement at a later time. Ms. O'Brien did not perceive that the required reporting would be excessively burdensome to any company.

Mr. Morgan suggested that the board keep in mind the small size of some of the affected job shops when it considered the manner in which such materials were reported and the associated penalties for error. Ms. O'Brien said that given the board was not requiring precise measurements, she did not believe that the issue would be a problem for such businesses.

Mr. Morgan said that the board might want to consider a separate reporting system for small businesses with lower materials use, similar to Form A (Alternative) employed by TRI, a much less burdensome reporting method. Mr. Poynter said that one such local business has up to 250 MSDSs for different steels and alloys. Each has a different composition of reportable metals, and materials were constantly being shipped and received. Breaking out those different materials and what was used where and when was extremely complex. Ms. O'Brien suggested that such businesses work out an averaging system based on general estimates of what was in the inventory. She continued to believe that the burden on businesses was not excessive. Mr. Johnson said that the board would have to prove a business wrong. He agreed with Mr. Poynter that such assumptions were hard to prove or disprove, particularly in terms of metal emissions. However, businesses do have inventory records of what they purchase.

Mr. Upson suggested that the board include a hypothetical example of how to report such materials in the question-and-answer manual for future reporting years. There was general concurrence. Mr. Morgan suggested that the board consider establishing a minimum threshold for releases of materials to the environment. Below that threshold, a business would report the inputs but not the outputs to reduce the record-keeping burden.

Mr. Lidz referred the board to the definition of "article" from TRI Reporting Form R, specifically the clause reading "that has end use functions dependent in whole or in part on its shape or design during end use," and asked members how they interpreted the clause. Mr. Upson interpreted it to mean that the article had not been changed in shape during the manufacturing process, such as nuts and bolts. The board concurred. Mr. Upson indicated the board would refine the definition for local use.

Mr. Lidz asked if the board had a common understanding of the meaning of "fumes, dust, filings, or grindings," and in particular the distinction between filings and grindings. Mr. Upson anticipated that the board would further refine the phrase for more common interpretation. Responding to a question from Mr. Johnson, Ms. O'Brien suggested the board add "cuttings" to the list in the next reporting year.

Responding to a request for clarification from Mr. Potter, Mr. Upson said that he believed that for 1998, the board could only reasonably expect businesses to report their fumes, dust, filings, and grindings. Mr. Upson further expressed the belief that, in the absence of a local definition of "article" for the 1998 reporting year, the City should

be prepared to accept definitions and interpretations offered by reporting businesses; the board should not expect businesses to report articles in 1998. He said that if a business's metal fumes, dust, filings, and grindings did not total 2,640 pounds in aggregate with all other hazardous substances used, it did not have to report this year.

However, Mr. Upson proposed that the board form a subcommittee to define the term "article" and refine the phrase "fumes, dust, filings, and grindings." Mr. Morgan suggested that Mr. Upson and Ms. O'Brien join the subcommittee that had worked on previous questions related to metals. Mr. Upson and Ms. O'Brien agreed to the suggestion.

Mr. Lidz reminded the board that meetings of board-authorized subcommittees of two or more members deliberating toward a recommendation or decision were public meetings and subject to Oregon's Open Public Meetings Law.

Mr. Lidz left the meeting at 4:40 p.m.

VI. ELECTRONIC REPORTING SYSTEM

A. Report by Board Members who Tested the System

Ms. O'Brien discussed some problems during her testing, which Mr. Potter had been unable to duplicate on his City computer. Mr. Wostmann indicated he would attempt to duplicate the results and would make a site visit to observe a demonstration on Ms. O'Brien's personal computer if necessary.

Mr. Morgan said that the software worked better than he had expected but raised an issue regarding the size of the smallest accounting unit. Mr. Potter confirmed that the smallest accounting unit was 2.2 pounds but the computer warned the user if there was a difference of 2 pounds. Mr. Wostmann indicated that he would fix that discrepancy if he was required to make other changes to the software.

B. Programming Bid for Public Access Software--Status

Mr. Wostmann introduced Mr. Chipman, noting that he had changed job responsibilities and Mr. Chipman would assume the task of providing software support to the Fire & EMS Department. The board welcomed Mr. Chipman and introduced themselves.

Mr. Chipman and the board reviewed and discussed a memorandum prepared by Mr. Johnson and Ms. O'Brien entitled "Draft Thoughts on Programming for Public Access to Materials Accounting Data."

Mr. Potter said that Mr. Chipman would prepare draft specifications for the software for the board to review in September.

VI. METALS SUBGROUP REPORT

The board agreed that it had addressed this agenda item under agenda item IV(C).

VII. BRAINSTORM OPTIONS FOR BASING FEES IN 1999 ON A REPORT-BASED FORMULA

Mr. Potter recommended that the board direct him to prepare a memorandum listing some options, as a starting point for discussion.

Ms. O'Brien said that she and Mr. Upson could carry the board's recommendations to the Governor's Task Force as an example of how a community implementing a materials accounting approach proposed to institute fees, since the preferred approach could require a change in state law. She advocated for that discussion to occur soon given that the task force would soon be developing its recommendations.

Mr. Upson suggested that the board consider approaches to fee setting that assumed both changed and unchanged state law.

Mr. Morgan said he would like to hear from the Fire Marshal about the possibility of combining the City's hazardous materials and toxics right-to-know programs. Mr. Potter indicated he would ask Fire Marshal Mike Thrapp to attend an upcoming board meeting. Mr. Upson said that he would like to know more about what it would take to combine the programs and the structure of a combined program. Ms. O'Brien wanted to know more about the pros and cons of combining the programs. The board briefly discussed the possible outcomes of combining the programs.

Mr. Poynter observed that the Department of Environmental Quality had different fee structures based on how a company chose to dispose of its waste. Mr. Friese said that the current program fee structure did not recognize the value of recycling, and he indicated he would like to revisit the topic during the discussion of fees. Mr. Morgan suggested the board consider a credit for pollution prevention activities. Mr. Johnson cautioned the board that reductions in one company's billing could mean increases in another company's billing given that the program was self-supporting and the budget was a set amount collected from a static number of companies. Ms. O'Brien pointed out that administrative costs could decrease over time, possibly resulting in an overall fee reduction.

The board directed Mr. Potter to prepare a memorandum listing fee basis options for the purpose of further discussion.

VIII. FORM SUBGROUPS

A. Draft an Instructional Guide for use by the Public in Accessing and Understanding Materials Accounting Reports

Mr. Upson postponed consideration of this item pending completion of the public access software.

B. Draft Guidelines for use by the Materials Accounting Auditor

Ms. O'Brien suggested that she contact the Massachusetts Toxics Use Reduction Institute for information on guidelines that organization may have developed. Mr. Upson endorsed the suggestion as a starting point for discussion at the next meeting. Mr. Potter said that he would solicit input from the Fire Marshal on the agenda topic as well. Mr. Upson asked Mr. Potter to prepare a memo on the subject.

IX. TRADE SECRET AUDITOR

The board agreed to establish a subcommittee at the next meeting to discuss the qualifications for trade secret auditors.

X. ADJOURN

The board scheduled its next meeting to occur at 3 p.m. on August 13, and tentatively agreed to September 16 as the following meeting date. Mr. Potter indicated the August 13 meeting would occur in the Public Works Conference Room.

The meeting adjourned at 6 p.m.

(Recorded by Kimberly Young)

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