

MINUTES

Eugene Toxics Board
1st Floor Conference Room--Public Works Building--858 Pearl Street

October 15, 1998
3 p.m.

PRESENT: Don Upson, Chair; Mike Friese, Madronna Holden, Steve Johnson, Steve Morgan, Mary O'Brien, Cathy Verret, members; Glen Potter, Judi Ivy, staff; Brian Allen, Clyde Carson, Julie Craddock, Diane Henkels, Ken Luse, guests.

Mr. Upson called the meeting of the Eugene Toxics Board to order at 3 p.m.

I. APPROVAL OF THE AGENDA

Mr. Upson determined there were no requests to adjust the agenda.

II. PUBLIC COMMENT

Mr. Luse stated that he had sent an electronic mail message to the chair expressing concern regarding potential penalties which could be assessed against businesses that had not participated in the Eugene Hazardous Substance Reporting Program because of a previously assumed definition of "article."

In response to a question from Mr. Upson, Mr. Luse explained that the business had previously operated under an assumption that the program used the definition of "article" authorized by the federal government. He said that the definition adopted by the board at its August meeting had established the requirement for the business to participate in the program.

Mr. Morgan pointed out that the definition of "article" established by the board was intended to apply beginning in 1999. He agreed that it was different from the definition used by the federal government.

Mr. Upson stated that the response of Mr. Morgan was accurate and that if the business was not required to report in 1998 using the federal definition, no fines would be levied, and it would not be required to participate in the program until 1999.

Mr. Potter reported that he had received a response from the Office of the City Attorney regarding penalties to be assessed in the program. He said it had been stipulated that penalties should be assessed for an entire reporting year (if the business operated for the entire year), no matter when it was realized that a business was subject to requirements of the Hazardous Substance Reporting Program. However, Mr. Potter added that the ordinance providing the penalties also provides for reduction of penalties at the discretion of the board.

III. APPROVAL OF MINUTES

In response to a question from Ms. Verret, the board requested clarification of the fourth paragraph on page 4 of the minutes, in which Steve Chipman of the Information Services Division stated that "the Web page would be complete in approximately two to three months." Mr. Upson determined there was consensus to approve the minutes of the September 16, 1998, meeting of the Eugene Toxics Board, subject to Mr. Chipman's clarification.

IV. STAFF REPORT

A. Attorney General Response Regarding Fees

Mr. Potter reported that the response of the Attorney General's Office to State Sen. Susan Castillo's request for the opinion was that Sen. Castillo should first request an opinion from the Office of Legislative Counsel. He reported that Sen. Castillo had now forwarded the request to Legislative Counsel, and had requested a response by November 13. Mr. Potter indicated that the 1999 fee structure should be included on the board's November 19 agenda.

B. Trade Secret Auditor Qualifications

Mr. Potter referred to his memorandum dated September 25, 1998, regarding certification of trade secret auditors, which was distributed with the agenda for the meeting.

Members discussed qualifications proposed in the memorandum and agreed on changes, as follows:

1. Advance documentation, *including a resume*, of relevant experience and references . . .

A four-year degree in *chemistry*, chemical engineering, ~~or~~ *environmental health and safety, or a related field* may substitute for some (but not all) experience.

2. *Favorable action by the Toxics Board on a review of the candidate's documentation.*

23. Satisfactory completion of ~~an face-to-face~~ interview ~~before~~ *with* the Toxics Board . . .

Ms. O'Brien said she believed the ability of auditors to understand appropriate precautions to be taken in handling hazardous substances in a manufacturing environment, and alternatives to the use of hazardous substances in manufacturing, were the most important standards.

Mr. Upson said he did not believe many qualified candidates for the role of trade secret auditor were available in the Eugene area.

Mr. Johnson said he believed the most important qualification of a trade secret auditor was the ability to determine whether hazardous substances were handled in the most appropriate way.

Mr. Morgan suggested it was possible that jurisdiction over the Glenwood area would be transferred from Eugene to Springfield by April 1, 1999, when the first reports from trade secret auditors were due. He said that change could remove the requirement for a report from the one business which had identified a trade secret substance covered by Eugene's Toxics Right-to-Know Program. Mr. Johnson replied that he believed the business would continue to be required to make a report since it would have been within the jurisdiction of Eugene during 1998.

C. Fiscal Year 2000 Budget

Mr. Potter reminded members that the Toxics Right-to-Know Charter Amendment provided that the City Manager consult with the Toxics Board regarding budget preparation. He said he had been designated by the City Manager to serve in that role, that such designations were normal operating procedure in the City organization, and that he had accepted the responsibility. However, he also indicated that it would be appropriate for the City Manager to personally attend a board meeting later this year to discuss the FY2000 program budget and possibly other matters.

Mr. Upson determined there was consensus that Mr. Potter prepare a draft FY2000 program budget for the board's consideration and continue to seek a visit from the City Manager to a meeting of the Toxics Board.

Ms. O'Brien suggested that the budget proposal include a clarification of how financial issues related to the Toxics Board were managed. The board's consensus was that these two matters could be kept separate, but that a direct discussion with the Fire Marshal concerning budget administration would be beneficial.

D. Other

Ms. Holden stated that she had a new address for the receipt of electronic mail, as follows:
holdenma@ucs.orst.edu.

Mr. Morgan requested that members be provided updated copies of rosters and other basic documents related to the board.

Mr. Potter distributed copies of feedback received from Tim Foelker of J. H. Baxter and Bruce Bale of Molecular Probes regarding testing of the business reporting software.

After a short period of discussion, Mr. Upson determined there was consensus that Mr. Potter would seek comments from members via electronic mail regarding the most problematic issues raised in the testing reports, that changes would be limited to programming errors and those items that could be corrected in a timely and affordable manner for 1998 reporting, and that other suggested changes would be evaluated for incorporation in the 1999 reporting software.

V. 1999 HAZARDOUS SUBSTANCE TRACKING INSTRUCTIONS

Mr. Potter referred to the draft "1999 Hazardous Substance Tracking Instructions" distributed with the agenda of the meeting.

Members provided feedback, as follows:

- The 1999 version shows significant improvement over that of 1998. (*Morgan*)
- References to the questions-and-answers appendix should appear in boxes to the side of the relevant text. (*O'Brien*)
- The list of questions and answers should be reviewed to help determine appropriate references in the tracking instructions. (*O'Brien*)
- "Section XXXXX" in paragraph 4 on page 9 should be replaced with the actual number. (*O'Brien*)
- Examples of substances used for fuel and maintenance of motorized vehicles and for maintenance of non-motorized vehicles used in manufacturing processes on page 10 should be identified as reportable or not reportable. (*O'Brien*)

Mr. Friese left the meeting at 3:55 p.m.

Members discussed issues related to the reportability or non-reportability of the examples referred to by Ms. O'Brien. Following discussion, Mr. Johnson suggested an exemption in 1999 for fuel used in "motors on mobile vehicles." The board concurred.

Additional feedback on the tracking instructions was provided, as follows:

- The example on page 10 of substances for which neither the identity nor CAS number is available to the facility should be eliminated. (*O'Brien*)
- The final sentence of paragraph B.1 on page 11 should be revised, as follows:

~~Newly generated~~ **Hazardous and extremely hazardous substances *generated during consumption of another substance*** must be reported as inputs of Type 3 in the section above.

- The example of products containing hazardous substances used for the purpose of maintaining and operating motor vehicles at the facility on page 10 should be eliminated. (*Potter*)
- A new sentence should be added at the beginning of paragraph H.4 on page 17, as follows:

When no data exists and document-driven estimation methods are not available, a business may use its best engineering judgment in calculating reportable quantities. (*Upson*)

- The underlining should be removed from the word “only” in sentence 3, paragraph 1, on page 22. (*Upson*)

Mr. Potter referred to a document entitled “Questions from Businesses/Answers from Toxics Board” distributed with the agenda of the meeting.

Members provided feedback, as follows:

- A Table of Contents for the document is needed. (*O'Brien*)
- The word “answer” beginning paragraph 5 on page 5 should be in boldface type. (*O'Brien and Upson*)
- The first sentence of the answer to Question 16 on page 5 should be eliminated. (*Potter*)
- The answer to Question 29 on page 10 should be changed to reflect changes made to related sections in the tracking instructions. (*Potter*)
- In the first paragraph of Question 24 on page 8, the word “***the***” should be added before the term “total mixture.” (*Upson*)
- The words “Section IV-I of the 1998” should be replaced with the word “***the***” in the answer to Question 41 on page 13.

Mr. Potter determined there was consensus that the question-and-answer document should be distributed with the 1999 tracking instructions, and that the 1999 handbook should use the same binding and cover style as the 1998 handbook, but that the cover should be a different color.

Mr. Upson declared a five-minute recess in the meeting.

Ms. Holden left the meeting at 4:45 p.m.

VI. MATERIALS ACCOUNTING AUDITING

A. Subcommittee Report

Mr. Upson referred to the printed version of an electronic mail message from Mr. Potter dated September 10, 1998, regarding a meeting that same date of the Toxics Board subcommittee on the Fire Marshal auditor function. He noted that the message was intended to serve as minutes of the meeting. He invited members to provide feedback.

Ms. O'Brien asked if there would be a conflict of interest for Mr. Potter to serve both as staff to the Toxics Board and as auditor. Mr. Potter replied that he did not anticipate any conflict of interest because the role of the auditor was only to report findings not advocate any board position regarding the findings.

In response to a question from Mr. Morgan, Mr. Potter stated that the Eugene Fire Marshal had expressed concern that an adequate "paper trail" of all audits performed for the program be maintained.

Mr. Upson asked how it would be verified whether a business followed recommendations of the auditor. Members discussed the question. Mr. Upson determined there was consensus that procedures to verify whether businesses followed recommendations would need to be developed on a case-by-case basis and that credible evidence of non-compliance would be considered by the board. There was also support for following up recommendations with "mini-audits" to verify that recommendations were being followed.

B. Training Report

Mr. Potter referred to his report on his recent talks with persons involved in the Right-to-Know and Pollution Prevention programs administered by the states of New Jersey and Massachusetts, which was included with the agenda packet. He invited questions from the board.

In response to a question from Mr. Upson, Mr. Potter stated that the most significant things he learned on the trip included:

1. Right-to-know programs operate best if staff does not convey the impression that they are the enemy of business, but rather a willingness to assist businesses in meeting legal requirements.
2. A lay person could in most cases adequately audit the reports of businesses under a toxics right-to-know program; assistance from university students was also suggested. Common sense is the single best skill to apply in audits. Auditors tend to learn as they go.

In response to a question from Mr. Upson, Mr. Potter stated that it was the experience of those working in the New Jersey and Massachusetts programs that it takes several years of operation before the data collected is of high quality. He also reported that "normalization" of data is important in measuring trends. (It was noted during discussion of this issue that the Eugene program does not require reporting businesses to provide information that would be necessary for the normalization of data.)

In response to a question from Ms. O'Brien, Mr. Potter stated that both New Jersey and Massachusetts require businesses to identify discrete steps in their manufacturing processes and to apply materials balance reporting to each step. Proper identification of these steps was seen by officials in those two states as the greatest difficulty that businesses had encountered in attempting to comply.

In response to another question from Ms. O'Brien, Mr. Potter said that the lower reporting threshold of the Eugene ordinance was seen as highly questionable by business representatives with whom he spoke, but was recognized as necessary by program staffers in order to create a reporting universe of reasonable size within a local jurisdiction.

In response to a request from Mr. Upson, Mr. Potter said that his visits had convinced him that the positive approach of the Eugene program should be continued and that a large program bureaucracy should not be created.

In response to a question from Ms. O'Brien, Mr. Potter said that he had become aware of how to access a large number of valuable resources for businesses participating in the program.

VII. FEE DISCUSSION

Mr. Upson determined there was agreement to postpone discussion of 1999 program fees until the board received a legal opinion from the State concerning the fee structure the board was considering.

VIII. RECRUITMENT FOR REPLACEMENT TOXICS BOARD MEMBERS

Mr. Upson determined that all three Toxics Board members whose terms were due to expire would be willing to apply for reappointment. Mr. Potter explained that the City Council has authority over the process and ultimately makes the appointments, but that the Council normally gives favorable consideration to recommendations made by boards and commissions regarding appointments.

Mr. Potter was instructed to seek the concurrence of Mr. Friese and Ms. Holden, and then, given their concurrence, to forward to the City Council the unanimous recommendation of the Toxics Board that Mr. Johnson, Mr. Morgan, and Ms. Verret be re-appointed.

Ms. Holden re-joined the meeting at 5:30 p.m. She indicated her concurrence with the recommendation.

The meeting adjourned at 5:35 p.m.

(Recorded by Dan Lindstrom)

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