

# MINUTES

Toxics Board  
Public Works Conference Room--858 Pearl Street

November 19, 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, Fire Marshal's Office staff; Jerome Lidz, City Attorney's Office; Ken Luse, Andy Poynter, Brian Allen, guests.

Mr. Upson called the meeting to order.

## I. APPROVAL OF AGENDA

Ms. O'Brien indicated her interest in asking City Attorney Jerome Lidz how to proceed if the Toxics Board wished to expand the list of covered SIC codes to reflect action taken by the Environmental Protection Agency. She asked if the City Council could add to the list by ordinance. Mr. Upson suggested that the board discuss the issue before consulting with Mr. Lidz.

Mr. Potter suggested that the board defer the first item under IV, Staff Report, until Mr. Lidz's arrival at 4 p.m. The board concurred.

Ms. O'Brien noted that the next State task force meeting would be the last, and asked that the board discuss later in the meeting if it wished to recommend to the task force that the State change the rule related to local fees based on quantities of hazardous materials. The board agreed to discuss the matter after the remainder of the agenda was completed.

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

There were no public comments.

### **III. APPROVAL OF MINUTES**

Responding to a question from Mr. Poynter, Mr. Upson clarified that the board agreed not to include forklift fuels or maintenance greases in reporting for 1999 if the forklift was motorized. He added that if the subject came up again the board would discuss the consequences of such a change and whether it served the intent of the charter amendment.

The board accepted the minutes of October 15, 1998, as submitted.

### **IV. STAFF REPORT**

#### **A. FY00 Budget**

The board reviewed the draft budget and asked questions to clarify the information presented.

At the request of Mr. Upson, Mr. Potter agreed to investigate what precisely was involved in the funding allocated to the Eugene Public Library. He added that the library staff did not know at this point what to expect in terms of demand for right-to-know information, but it would track that use. The budget included personnel costs and computer maintenance. Mr. Upson questioned whether the computer involved was dedicated to toxics program use only.

Mr. Upson suggested that the budget for minutes recording could be decreased because the board was meeting less frequently than in the previous year. Mr. Potter agreed to bring additional information regarding the amount budgeted for minutes recording to the next meeting.

Mr. Potter said that if the board underbudgeted for the fiscal year, it would be constrained to increase fees the following year to cover any deficit. He said that the board could pare the budget to the "bare bones" if it chose, but he cautioned board members against approaching the budget by multiplying the first quarter's actual costs by four, because that calculation would not accurately reflect all program costs anticipated during the entire fiscal year. He encouraged the board to compare the proposed budget against the current budget.

Mr. Morgan suggested the board ask Mr. Lidz if having Internet access to the reports at the library satisfied the intent of the charter amendment. Mr. Johnson referred to the language of the charter amendment, which included the phrase "readily accessible." He questioned whether Internet access only was "readily accessible" to the public. Ms. O'Brien did not think it was. She said that it was the drafters' intention to make the material available in the library in a non-intimidating format. Mr. Morgan pointed out that staff was available in the Internet room to assist patrons. Mr. Johnson said that as

long as help at the library was available to all members of the public he was indifferent as to how the information was provided.

Mr. Potter reported that City Manager Jim Johnson wished to attend the next board meeting. He said that the charter amendment provided for the City Manager to consult with the board. He believed that it was appropriate for Mr. Johnson to meet with the board members at this time, even if there is already substantial agreement on an FY00 program budget.

Mr. Upson said that, based on the discussion, he was prepared to tentatively accept the draft budget as reasonable, pending receipt of the information requested of staff. Mr. Johnson suggested it was better to overbudget than underbudget, because carrying forward a surplus and reducing fees was preferable to raising fees to cover a deficit.

The board agreed to schedule adoption of the budget on the December agenda. Mr. Potter indicated he would provide updated information at that meeting concerning projected actual FY99 expenditures, and would follow-up on the questions previously posed by the board.

Mr. Upson noted his interest in including a small contingency fund in the budget. Mr. Potter suggested that the board consider using the surplus from FY99 for that purpose.

Responding to a question from Mr. Morgan, Mr. Potter said that the City began to determine budget numbers in January. He reminded the board that it must have a budget before it can bill, and the program budget must first be approved by the City Council before invoices can be generated.

## **B. Trade Secret Auditor Certification**

Mr. Potter referred the board to a letter to Pepsi-Cola Bottling Company of Eugene regarding options for selecting an independent auditor.

Responding to a question from Ms. O'Brien, Mr. Potter pointed out that the charter amendment did not specify that the auditor must be an individual rather than a firm. He clarified that the auditor position was not a City position but was a contractor hired by the affected company after certification by the board.

In response to a question from Mr. Luse, Mr. Upson described the process envisioned by the board for selection and certification of trade secret auditors.

## **C. Memorandum to City Council Regarding Recommendations to Reappoint Three Current Members**

Mr. Potter referred the board to a memorandum to the City Council from the board entitled *Appointments to the Toxics Board*. Responding to a question from Ms.

O'Brien, Mr. Potter concurred that the neutral board member must be nominated by at least four of the other six members, and cannot be appointed by the City Council absent such nomination. Ms. O'Brien did not want the council to act on the appointments under the assumption that it had the authority to appoint that member without board concurrence. She indicated her intent to contact a councilor with that information, in order to make clear that if the Council chose not to appoint the nominated individual, it could not act to appoint someone else without a prior nomination by the board.

Mr. Lidz arrived at the meeting at 4:04 p.m.

#### **D. Final Draft of 1999 Tracking Instructions**

Mr. Morgan identified several errors in the source list but indicated the list was much improved. Mr. Upson asked Mr. Morgan to forward the errors to Mr. Potter. The board discussed whether to publish the handbook without the source list or with the source list including errors. Ms. O'Brien wanted to retain the source list because it referred those making inquiries to the appropriate law. Mr. Morgan and Mr. Johnson concurred. Mr. Friese supported deleting the source list rather than publishing the handbook with errors. Mr. Upson suggested that the most important distinction on the list was whether a chemical was EHS or non-EHS, and other errors could be corrected in the future. There was consensus that Mr. Potter would work with Mr. Morgan to review the accuracy of the source list, and then make a decision as to whether the source list contained so many errors that it should be deleted, or few enough that it should be retained.

Ms. O'Brien suggested that the handbook include a note requesting users to contact staff with information about any errors they find. Mr. Johnson suggested that staff include a note indicating the applicable legal citation for each chemical, if that information was known. Ms. O'Brien agreed.

#### **E. Legislative Counsel Response Regarding Fees; Board 1999 Fee Discussion**

Mr. Lidz discussed the Legislative Counsel Office's response to a letter from Senator Susan Castillo inquiring about the legality of the board's proposed 1999 fee structure. He indicated the Legislative Counsel opinion was not responsive to the issues raised in the Senator's letter, and further contained several inaccuracies. In addition, while the opinion was not binding on the City, it was legal advice to the legislature and its existence was a problem, given the inaccuracies it contained. Mr. Lidz recommended that the board direct him to contact the head of the counsel's office and ask him to review the opinion.

Ms. O'Brien stressed the importance of ensuring that the opinion be withdrawn because it would be used against the City's law by legislators who opposed the program. Mr. Upson said that he wanted an answer to the questions posed in the initial letter from

Senator Castillo. Mr. Johnson advocated that the City seek an opinion from the Attorney General's Office. Ms. O'Brien said that the next step would be a legislative remedy.

Responding to a question from Ms. O'Brien regarding the impact of the State law on the fee basis for Eugene's right-to-know program, Mr. Lidz said that quantity as a basis for the fee was allowed if the fees were used solely to supplement, and not duplicate, the State Fire Marshal's program, and the fees were collected by the State Fire Marshal's Office under contract with Eugene. He said that if the City entered into such a contract, the only remaining issue was whether the program supplemented or duplicated State programs, and he believed that argument had been resolved.

Ms. O'Brien said that she wished to know if the board or City Council could recommend to the State task force that the rule in question be changed to remove the impediment to Eugene's approach. Mr. Lidz said yes.

Ms. O'Brien inquired about the possibility of seeking an opinion directly from the Attorney General's Office. Mr. Potter indicated that an opinion from the Attorney General was likely not available without taking further steps. Mr. Lidz added that Senator Castillo was the City's most direct route to the Attorney General's Office. Mr. Upson suggested asking Senator Castillo to seek clarification on the opinion from the Legislative Counsel's Office. Ms. O'Brien reiterated that she wanted the opinion retracted, and wanted Mr. Lidz to work with Senator Castillo to seek an answer from the counsel's office on the question the board wanted to have answered. There was general agreement that an opinion from the Attorney General's Office should be pursued if possible.

Mr. Upson questioned if anything had changed since Mr. Lidz had last provided an opinion to the board on the fee basis. Mr. Lidz responded that he continued to feel uncomfortable about the approach of basing the fee on quantity, but he believed it could be defensible given the board's rationale for its use. He suggested that revising the State statute might be the most reasonable outcome if it was politically feasible.

Mr. Lidz indicated he would both contact the head of the counsel's office and draft a response to the letter on behalf of the board and circulate it among board members for their review via e-mail. Mr. Potter said that he would keep Senator Castillo informed.

Regarding the issue of whether Pepsi-Cola Bottling Company of Eugene would be obliged to report for 1999, Mr. Lidz confirmed it was his opinion that if the company was no longer in Eugene's jurisdiction, it was no longer subject to the charter amendment's provisions.

#### **D. Final Draft of 1999 Tracking Instructions (Continued)**

The board continued its review of the handbook and members offered several corrections to Mr. Potter to incorporate into the handbook prior to publication.

Mr. Potter distributed and reviewed a revised flow chart entitled *When is a Hazardous Substance Reportable?* Board members offered several edits to the flow chart to clarify the information illustrated. Responding to a question from Mr. Potter, the board agreed that a new flow chart entitled *Do I Need to Report?* was appropriate and should be developed for subsequent editions.

#### **F. Key Documents/Decisions Notebook**

Members reviewed several “core” Toxics Board documents that had been provided with the agenda packet. Corrections were made to the roster and draft groundrules. Mr. Potter agreed to provide an updated roster at the next meeting. Mr. Upson suggested that the rationales document (explaining key board decisions not strictly reflecting charter amendment language) be added to this group of documents for the benefit of future board members.

Mr. Potter offered members copies of the City of Eugene Boards and Commissions Manual.

#### **G. Draft 1998 Annual Report**

Members reviewed the draft report. A number of editorial suggestions were made by members and accepted by the board. The board agreed to review and possibly act on a revised report at the December meeting.

#### **H. Draft 1999 Work Plan**

Members reviewed the draft work plan. At the request of Ms. O'Brien, work items were added relating to development of a public access handbook and providing enhancements to the public access software based on user feedback. The board agreed to review a revised 1999 work plan at the December meeting.

### **VI. BUSINESS REPORTING SOFTWARE**

Mr. Potter reported that corrections and improvements to the software, pursuant to suggestions made by individuals who had tested the system, were currently under way. He indicated that the software and instructions would be mailed to businesses along with the 1999 Tracking Instructions document in early December.

### **VII. CHANGES MADE/OTHER BOARD COMMENTS**

Item deferred.

### **VIII. AUDITING PROCESS**

Members reviewed a revised draft of a document describing the general procedure for conducting audits under the right-to-know program. Various editorial changes were agreed upon by the board. The board instructed Mr. Potter to develop an audit report form that would be approved by both the Fire Marshal and the Toxics Board. The board also decided that a letter should be sent to all reporting businesses describing, in general terms, the approach that will be taken and the procedure that will be used in conducting audits.

### **IX. ADJOURN**

The board scheduled its next meeting on December 10, 1998, at 3 p.m.

The meeting adjourned at 5:55 p.m.

(Recorded by Kimberly Young)  
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