

# MINUTES

Toxics Board  
Saul Room--Atrium Building

September 17, 1997  
11:30 a.m.

PRESENT: Mary O'Brien, Chair; Sam Frear, Steve Johnson, Steve Morgan, Don Upson, Cathy Verret, members; Jerry Lidz, City Attorney; Glen Potter, Linda Grenz, Fire Marshal's Office.

Ms. O'Brien called the meeting to order.

## I. APPROVAL OF AGENDA

Ms. O'Brien suggested addressing the *City Attorney Response* item earlier the agenda.

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

## II. APPROVAL OF MINUTES

The board reviewed the minutes of the August 28, 1997, and September 3, 1997, meetings of the Toxics Board.

Referring to paragraph 4 under *Reporting & Auditing of Trade Secret Chemicals* on page 4 of the August 28 minutes, Ms. O'Brien requested that sentence two be amended to read, "He agreed to review different procedures for determining fees, including a quantity-based fee as proposed by Ms. O'Brien."

Referring to page 3 of the September 3 minutes, Ms. Verret requested that paragraph 5 be amended to read, "The board assigned tasks as follows: 1) Preparation of rationales (Mr. Upson, Ms. O'Brien, Ms. Verret); 2) Development of member replacement process (Mr. Potter); and 3) Inert ingredient issue (Ms. Verret)."

## III. PUBLIC COMMENT

There was no public comment.

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

##### **A. Projected Program Budget**

Referring to the revised *Right-To-Know Program Budget Projections* for fiscal years 1998 and 1999 included in the meeting agenda packet, Mr. Potter solicited questions, comments, and the board's approval.

Ms. O'Brien asked why \$8,000 for programming was included the FY99 projected budget rather than the FY98 projected budget. Mr. Potter explained that it was included in the FY99 projected budget in order to provide additional implementation time; however, it can instead be included in the FY98 projected budget and, if not allocated, carried over to the FY99 budget. The board expressed support for including the \$8,000 for programming in the FY98 projected budget.

Mr. Johnson moved, seconded by Mr. Frear, to recommend City Council approval of the Right-To-Know Program Budget Projections for fiscal years 1998 and 1999.

Mr. Morgan requested that the board defer voting on the motion until completing its review of City Attorney Jerry Lidz' advice concerning the use of fees to pay for the costs of defending litigation.

Referring to a September 16 memorandum included in the meeting agenda packet, Mr. Lidz reviewed and discussed his answer to question 4 of 9 submitted by the Toxics Board. He confirmed that fees paid by hazardous substance users may be used to pay for the costs of defending litigation that challenges the Charter Amendment or its implementation. He explained that the clear intent of the Charter Amendment is that the cost of implementation is to be paid from fees. Defending litigation is part of implementing the Charter Amendment and no federal, state, or local law prohibits using fees for that purpose, he said. Mr. Lidz said that as a legal matter, there is no "conflict" in using fees collected from businesses that may be plaintiffs in the litigation to pay for the costs of defense.

The board debated whether the cost of defending litigation brought against the City in connection with the Toxics Right-To-Know Law should be considered part of the Toxics Right-To-Know Law implementation process.

With regard to members' concerns about legal fees and about the projected costs of EMCON's contract for services, Ms. O'Brien suggested that the board approve the projected FY98 and FY99 budget with the understanding that it will address those concerns at a later date.

The motion passed unanimously.

##### **B. Progress on Identifying Affected Businesses**

Referring to a September 11 memorandum included in the meeting agenda packet, Mr. Potter reported that 46 businesses have now been tentatively identified as covered or possibly covered by the Toxics Right-to-Know Program. He distributed a list of those businesses to members.

### **C. Consultant Activities**

Mr. Potter referred the board to a September 10 memorandum included in the meeting agenda packet, which was a report on the activities of the consultant to the Eugene Toxics Right-To-Know Program, Gerritt Rosenthal, and colleagues at his firm, EMCON.

## **V. CITY ATTORNEY RESPONSE**

Referring to a September 16 memorandum included in the meeting agenda packet, City Attorney Jerry Lidz reviewed and discussed his answers to questions concerning appointments to the board; Handbook provisions; and the City Council's role.

In response to Mr. Lidz' answer to a question concerning reporting required for radioactive materials, the board agreed to restore earlier Handbook language pertaining to this matter.

In response to Mr. Lidz' answer to a question regarding what the Handbook should say about trade secrets, the board agreed to simply identify trade secrets as item "M" in this version's table of contents; Ms. O'Brien and Ms. Verret agreed to draft language regarding trade secrets for inclusion in the next version of the Handbook.

In response to Mr. Lidz' advice that portions of the Handbook be enacted as ordinances, Ms. O'Brien noted that certain reporting thresholds may change from year-to-year. Mr. Lidz said the board may recommend amendments to ordinances from year-to-year to reflect such changes.

Regarding the process for filling the vacancy created by Jeff Smith's resignation, Mr. Potter reported that the City Council was being asked to decide on a process.

(Mr. Lidz left the meeting at 1 p.m.)

## **VI. HANDBOOK FOR BUSINESSES**

### **A. New Language**

Two draft sections for possible addition to the Handbook were included in a September 11 memorandum from Mr. Lidz that was distributed with the meeting agenda packet. The board adopted the recommended language, which addressed reporting thresholds and appeals of penalties.

### **B. Draft Reporting Forms**

Mr. Potter reviewed changes made to the draft *Hazardous Materials Reporting Form*. The board agreed to make explicit in the Handbook the fact that only businesses having compounds of equal or greater value than the smallest accounting unit are required to report radioactive materials.

The board agreed to distribute with the Handbook the example *Hazardous Substance Reporting Forms* and *Extremely Hazardous Substance Reporting Forms*, copies of which were included in the meeting agenda packet. In addition, the board agreed to note in the cover letter to businesses that an electronic reporting system will be developed with a view toward simplicity of reporting.

### **C. Response Form**

Members approved the response form included in the meeting packet, and suggested improvements to the cover letter, including language indicating that, subject to amendments to be promulgated by November 1, this version of the Handbook should be considered sufficient to allow businesses to begin tracking procedures.

### **D. Timing of Distribution/Status of Chemical List**

Mr. Potter reported that the chemical list has not yet been purchased. Mr. Upson and other members expressed frustration with the delays in the purchasing process. Following discussion, the board agreed to release the Handbook without the list, but to note in the cover letter that the list would be forthcoming as soon as possible.

Ms. O'Brien and Mr. Upson volunteered to work with Mr. Potter to finalize new Handbook language prior to release of the Handbook.

## **VII. SET AGENDA FOR NEXT MEETING**

The board established the agenda for its next meeting, as follows: 1) Approval of agenda; 2) Public comment; 3) Rationales; 4) Trade Secret Reporting Forms; 5) EMCON contract; 6) Recruitment of new members; and 7) Set agenda for next meeting.

Distributing a memorandum dated September 17, Mr. Potter announced that Fire Marshal Dave Petersen will resign his position with the City effective September 30, 1997.

The meeting adjourned at 1:32 p.m.

(Recorded by Kim Kunkel)  
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