

MINUTES

Toxics Board
Saul Room--Atrium Building

October 1, 1997
Noon

PRESENT: Mary O'Brien, Chair; Sam Frear, Vice Chair; Tim Foelker, Steve Johnson, Steve Morgan, Don Upson, Cathy Verret, members; Phil Prince, Glen Potter, Linda Grenz, Fire Marshal's Office staff; Jerry Lidz, City Attorney; Gerritt Rosenthal, EMCON (Consultant to the Toxics Board); Governor John Kitzhaber; State Senator Susan Castillo; State Representative Cynthia Wooten; Eugene Mayor Jim Torrey; Eugene City Manager Vicki Elmer; Eugene City Councilors Bobby Lee and Betty Taylor; and members of the public.

Ms. O'Brien called the meeting to order.

I. APPROVAL OF AGENDA

Ms. O'Brien requested that the agenda be reordered such that *Recruitment of New Members and Process for Responding to Suggestions/Questions re: Handbook* follow the *Discussion with Governor Kitzhaber*.

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

II. PUBLIC COMMENT

There was no public comment.

III. STAFF REPORT

Phil Prince, Special Operations Chief, introduced himself as Acting Fire Marshal. He said a new Fire Marshal will likely be appointed in January 1998.

Newly appointed Toxics Board member Tim Foelker, of J.H. Baxter & Company, introduced himself.

A. Progress on Identifying Affected Businesses

Mr. Potter reported that, based on responses to the recently mailed survey of Right-To-Know Law applicability and on staff follow-up, 50 businesses, including the most recent respondent P.W. Pipe, have been identified as potentially subject to the provisions of the law.

B. Other

Mr. Potter confirmed that the Toxics Board will meet on November 26, as scheduled.

IV. RATIONALES

Referring to an October 1 memorandum included in the meeting agenda packet, Mr. Upson led the board in a page-by-page review of revised rationales for the various Toxics Board policies and decisions reflected in the handbook.

The board suggested several minor revisions to the rationales. The board agreed to forward additional suggested changes to Mr. Upson by October 8 for inclusion in the next Toxics Board meeting agenda packet.

Noting that in addition to rationales, there are several instances where handbook text revisions were suggested, Mr. Upson solicited feedback as to whether the handbook should be republished as opposed to distributing replacement pages.

Mr. Foelker moved, seconded by Mr. Morgan, that the Right-To-Know Law Handbook be republished. The motion passed unanimously.

V. NEW MEMBERS

Ms. O'Brien noted that Mr. Foelker's current term would expire January 22, 1998.

Noting that he probably would not apply for re-appointment to the Toxics Board, Mr. Frear recommended that Norma Greer be considered as his replacement.

Members reviewed the standard City process for filling board and commission vacancies. Per the board's request to provide input into the questions that will be asked of Toxics Board member candidates, Mr. Potter agreed to include in the next meeting agenda packet the questions asked during the last Toxics Board interview process.

(Mr. Lidz joined the meeting at 12:40 p.m.)

VI. TRADE SECRET REPORTING FORM

Referring to a September 18 memorandum included in the meeting agenda packet, Mr. Lidz requested clarification regarding the statement that a notarized report, submitted to the Fire Marshal by a manufacturer, documenting the trade secret status of each substance for which trade secrecy is claimed, is not a public document.

Following extensive discussion, Mr. Morgan agreed to research the trade secret procedure used by the State Fire Marshal and forward a report to Mr. Potter for inclusion in the next Toxics Board meeting agenda packet.

Ms. O'Brien distributed copies of two draft trade secret reporting forms: 1) *Notice to Toxics Board of Trade Secret Reports Filed with the Office of the Fire Marshal*; and 2) *Public Report of Precautions in Use and Alternatives to Use of Trade Secret Hazardous Substances*. She requested feedback regarding the inclusion of these forms in the handbook.

Mr. Potter recorded one suggested change to draft Form One changing the charter amendment designation from "20-75" to "IV." The board agreed to include Form One in the revised handbook.

(Mayor Torrey, Councilors Lee and Taylor, and Ms. Elmer joined the meeting at 1 p.m.)

With regard to Form Two, members expressed concern regarding the appropriateness of questions "B," "C," and "F." Mr. Upson suggested rewriting the questions so that they are open-ended.

Mr. Foelker moved to table a decision on Form Two until the Toxics Board has developed procedures for a qualified auditor. The motion died for lack of a second.

Mr. Upson, Ms. Verret, and Ms. O'Brien agreed to draft a new version of Form Two prior to the next meeting of the Toxics Board.

VII. EMCON CONTRACT

Noting that the Board appears to agree that the Toxics Board's consulting agency, EMCON, has added little value to the board's process, Mr. Upson distributed and reviewed an October 1 memorandum presenting a proposal regarding the Toxics Board's future utilization of EMCON as well as suggested objectives for EMCON to address. He suggested that ensuring sound utilization of this resource will require establishing agreement between the board and EMCON regarding specific objectives and time lines.

Following considerable discussion, the board agreed determining *how* EMCON might assume tasks would be of value. Mr. Johnson agreed to draft a memorandum in which EMCON's tasks are both identified and prioritized and a time line for completion is established. He agreed to forward the memorandum to Mr. Potter for inclusion in the next Toxics Board meeting agenda packet. Mr. Potter reported that the current contract with EMCON would expire on October 16, 1997.

(Governor Kitzhaber, Senator Castillo, and Representative Wooten joined the meeting at 1:17 p.m.)

Mr. Foelker moved that the Toxics Board 1) require EMCON to submit a cost estimate of each task it is assigned prior to commencing work; and 2) vote on whether to allocate funds for EMCON-assigned tasks. The motion died for lack of a second.

VIII. DISCUSSION WITH GOVERNOR KITZHABER

A. Remarks from Governor

Ms. O'Brien welcomed Governor Kitzhaber. Toxics Board members briefly introduced themselves.

Governor Kitzhaber read a prepared speech conveying his support for mandatory hazardous substance reporting programs, including Eugene's Toxics Right-To-Know Law, while indicating an interest in avoiding the development of a "patchwork" of inconsistent legislation by establishing a statewide reporting law. To this end, the governor stated that he has appointed a 13-member task force to research and assess existing reporting statutes, including Eugene's Toxics Right-To-Know Law, and make recommendations based on its findings to the 1999 legislature.

Toxics Board members responded to Governor Kitzhaber's remarks by offering the following comments, questions, and suggestions:

- Dislike 25-cent-per-page charge assessed by State Fire Marshal's Office for all written information requested (*Morgan*).
- State regulatory requirements are in need of improvement (*Johnson*).
- Concerned that due to timing, the State task force will not have the benefit of the Toxics Board's initial findings with regard to materials accounting when it forwards its recommendations to the 1999 legislature (*O'Brien*).
- Until implemented in manufacturing environments, the appropriateness of 50-pound (hazardous materials) and 5-pound (extremely hazardous materials) thresholds will not be known (*Johnson*).
- Businesses will likely support a statewide reporting requirement, provided it excludes the element of threat (*Upson*).
- Support Right-To-Know reporting requirements, provided they do not result in serious fines and lawsuits (*Morgan*).
- Suggest task force utilize the expertise of Massachusetts (*O'Brien*).
- Suggest task force consider the Toxics Board's procedure in which a business is assessed a fine only if four members agree it is warranted (*Johnson*).

(Governor Kitzhaber, Mayor Torrey, Councilors Lee and Taylor, and Ms. Elmer left the meeting at 1:55 p.m.)

Bob Albers, State Fire Marshal's Office, clarified that written information from the State Fire Marshal's Office is available at no charge via the public library and a direct-dial program. He

said the Fire Marshal's Office does ask that the party requesting information divulge the purpose for which the information will be used.

(Senator Castillo and Representative Wooten left the meeting at 1:57 p.m.)

(The Toxics Board took a short break)

IX. PROCESS FOR RESPONDING TO SUGGESTIONS/QUESTIONS REGARDING HANDBOOK

Mr. Upson moved, seconded by Mr. Frear, to incorporate all suggestions received by October 28, 1997, into the 1998 Reporting Guide published November 1, 1997; and to incorporate suggestions received thereafter into the 1999 Reporting Guide as appropriate.

Mr. Morgan distributed and reviewed a September 29 memorandum proposing four possible additions to the handbook once the chemical list is added.

Mr. Johnson moved, seconded by Ms. Verret, to request that Molecular Probes spend eight hours to include synonyms in the chemicals list. The motion passed unanimously.

The board agreed to inform businesses that the chemicals list is available in disk form on request.

Ms. Verret, Mr. Morgan, and Mr. Foelker agreed to track suggestions received from businesses and draft solutions for review during the October 15 Toxics Board meeting. Ms. O'Brien, Mr. Johnson, and Mr. Upson agreed to track suggestions received from businesses by October 27 for review during the October 29 meeting of the Toxics Board.

The board agreed to provide copies of the revised edition of the handbook free of charge.

X. INERT INGREDIENT ISSUE

The board determined that there was no need to resolve this issue.

XI. SET AGENDA FOR NEXT MEETING

The board established the agenda for its next meeting, as follows: 1) Approval of Agenda 2) Public Comment; 3) Staff Report; 4) Rationales; 5) Recruitment of New Members; 6) Trade Secrets; 7) State Fire Marshal Procedure; 8) Revised Independent Auditor Form; 9) Handbook Revisions; 10) Steve Johnson's Memorandum on Outsourcing; and 11) Set agenda for next meeting.

The meeting adjourned at 2:50 p.m.

(Recorded by Kim Kunkel)
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