

MINUTES

Toxics Board
Saul Room--Atrium Building

November 26, 1997
11:30 p.m.

PRESENT: Mary O'Brien, Chair; Tim Foelker, Sam Frear, Steve Johnson, Steve Morgan, Don Upson, Cathy Verret, members; Glen Potter, Linda Grenz, Judy Ivy, Fire Prevention staff; Keith Dahle, Ken Luse, Andrew Poynter, guests.

Ms. O'Brien called the meeting to order at 11:30 a.m.

I. APPROVAL OF AGENDA

Mr. Upson suggested that members consider postponing discussion of fees until the next meeting of the board.

II. PUBLIC COMMENT

Mr. Poynter expressed a concern that hazardous substance reporting instructions could be interpreted to mean that steel fabricators were required to report trace alloy metals used in various processes. He said many smaller fabricators did not have specifications for such alloys and would be unable to complete reports.

Mr. Upson stated that he had addressed the issue raised by Mr. Poynter in a memorandum to be considered by the board later point in the meeting. He said he had suggested that it was unrealistic to expect accurate records of individual shipments by such users and proposed to ask for an annual "defendable grand average" of in- and outputs, considering the full range of values of alloys used.

Mr. Luse stated that he assumed substances were not required to be reported which had no Chemical Abstract Service (CAS) number in the List of Reportable Chemicals of the Eugene Hazardous Substance Reporting Program. He pointed out that such substances could, however, produce a hazardous chemical substance as a waste byproduct.

Mr. Upson stated he believed that in such situations the "50 and 5 rule" would apply, in which reporting of inputs only was required when more than 5 pounds but less than 50 pounds of a hazardous substance was used in a year's time. He noted that no reporting was required when less than 5 pounds of a hazardous substance was used and that reporting of both inputs and outputs was required when more than 50 pounds of a hazardous substance was used.

III. APPROVAL OF MINUTES

Mr. Upson requested that paragraph 6 on page 2 of the minutes of the November 12 meeting of the board be changed, as follows:

Mr. Potter reported that two applications for appointment to the Toxics Board *right-to-know* advocacy position had been received, that an additional application for the same position was anticipated, and that it was likely the deadline would be extended to encourage submission of applications for the industry position to be filled.

Mr. Upson requested that bullet 4 in paragraph 5 on page 3 of the minutes of the November 12 meeting be changed, as follows:

The "flow chart" will face the page ~~that~~ gives the instructions regarding who is required to report.

Ms. O'Brien determined there was consensus to accept the minutes of the November 12, 1997, meeting of the Eugene Toxics Board, as amended.

IV. STAFF REPORT

Ms. Grenz reported that Mike Thrapp would assume the role of Eugene Fire Marshal in January 1998. She noted that Toxics Board staff person Glen Potter, Acting Fire Marshal Phil Prince, and City Attorney Jerry Lidz would join the meeting at a later time.

Mr. Morgan asked if it was necessary to have the City Attorney present at the meeting. He said he did not believe a legal opinion was needed about board deliberations regarding trade secret chemicals.

Ms. O'Brien said she believed it was important to have committee recommendations regarding information request forms be legally defensible.

Ms. O'Brien determined there was consensus to inform the Office of the City Attorney that a representative was not needed at the meeting of the board, unless there was a compelling reason for such a representative to be present.

Mr. Foelker said that he has supported the consensus because there had not been a formal vote by the board to invite a representative of the City Attorney to the meeting, and that he opposed having the City Attorney attend out of concern for the expense involved.

Ms. O'Brien determined there was consensus that a representative of the Office of the City Attorney would be invited to a meeting of the board only on the formal vote of the members, or if the City Attorney determined there was a compelling reason for such attendance.

Ms. Grenz reported that Michael Friese of HMT Technology Corporation had applied for appointment to the industry representative position on the Toxics Board and that the deadline for additional applications to be received had been set for December 12, 1997.

Ms. Grenz reported that the Toxics Right-to-Know Program office had been officially relocated to Suite 300 of the Atrium Building.

V. HANDBOOK REVISIONS

Ms. O'Brien referred to an electronic-mail memorandum from Mr. Upson to Mr. Potter dated November 24, 1997, regarding recommended revisions to the hazardous substance reporting instructions distributed to members before the meeting.

Ms. O'Brien determined there was consensus to approve most of the suggested changes of Mr. Upson, and invited discussion of possible exceptions.

Mr. Morgan said he disagreed with Suggestion #24 of Mr. Upson. Members agreed to not accept the suggestion.

Mr. Morgan said he disagreed with Suggestion #26 of Mr. Upson. Members determined that it was acceptable.

Ms. Verret said she disagreed with Suggestion #9 of Mr. Upson. Members agreed to not accept the suggestion.

Ms. Verret said she disagreed with Suggestion #14 of Mr. Upson. Members determined that it was acceptable.

Ms. Verret said she disagreed with Suggestion #42 of Mr. Upson. Members determined that it was acceptable, but also agreed to add the words "of the 1998 Instructions" following the section number in the two notes on the same page.

Ms. O'Brien distributed copies of a proposed substitute for Paragraph G on page 13 of the Hazardous Substance instructions handbook, as follows:

Report any "characteristic" hazardous substance for which there is more than 50 pounds of input in the reporting year, and that your facility's own data, in the case of a material produced at your facility, or the supplier's MSDS indicates the material possesses the characteristics of ignitability, corrosivity, reactivity or toxicity as defined in 40 CFR 261.20 through 40 CFR 261.24 (see Appendix E). Businesses are not required to test materials for which such information is not readily available to them. Businesses are expected to conscientiously identify non-listed substances that fall into these categories, and to amend future year reporting if informed during or after the Fire Marshal's audit that a material must be reported, or if the Toxics Board publishes a list of materials known to fall under these regulations. It is an interim policy of the Toxics Board to only enforce blatant disregard for this provision of the law until a more experience-based

policy can be devised. The Toxics Board will inform businesses of any policy changes in the Instructions that will be published on October 1 of each year.

Members agreed that Suggestions 30, 31, and 32 of Mr. Upson were not acceptable and that the proposed substitution of Ms. O'Brien for Paragraph G on page 13 of the Hazardous Substance instructions handbook was acceptable.

Mr. Potter joined the meeting at 12:30 p.m.

Ms. O'Brien referred to a memorandum from Mr. Morgan to the board dated November 26, 1997, regarding proposed changes to Section IX-F of the hazardous substance reporting instructions distributed to members before the meeting.

Members discussed the proposals.

Mr. Morgan moved, seconded by Mr. Johnson, that the first paragraph in Section IX-F of the hazardous substance handbook instructions be replaced with the Paragraph 1 proposed by Mr. Morgan. The motion was defeated 4:1:2, with Mr. Morgan voting yes, and Mr. Foelker and Mr. Upson abstaining.

Members discussed the issues raised by the proposal of Mr. Morgan.

Ms. O'Brien determined there was consensus that the board would confer using electronic-mail initiated by Mr. Upson and seek to develop instructions for reporting of metals and metal compounds in the hazardous substance handbook which were supported by a majority of members.

Mr. Potter agreed to e-mail or otherwise convey a final draft of the handbook to board members for final review and possible correction. Board members agreed to get comments back to Mr. Potter within 24 hours of receipt of the final draft.

Mr. Johnson moved, seconded by Mr. Upson, that the Toxics Right to Know Board accepted the hazardous substance reporting instructions as amended at this meeting, subject to last-minute corrections or objections. The motion was adopted, 6:1, with Mr. Morgan voting no.

VI. TRADE SECRET CHEMICALS HANDBOOK

Ms. O'Brien referred to the memorandum to City Attorney Jerry Lidz from her and Ms. Verret dated November 19, 1997, regarding documentation of trade secrecy claims, which was distributed with the meeting agenda.

Members discussed a draft document entitled "Substantiation to Accompany Claims of Trade Secrecy Under Eugene Charter Amendment IV" attached to the memorandum. Attention was concentrated on the final sentence of Section 3 of the document which was amended and expanded to read as follows:

I understand that if it is determined by the Eugene Fire Marshal that this trade secret claim is inappropriate, the chemical(s) must be reported. I further understand that if I object to the determination of the Fire Marshal, I may appeal the determination to the Toxics Board, stating the reasons for the appeal. The Toxics Board's decision stands, except that under Section 8.1.B of the Charter Amendment, any person may appeal the decision to the Circuit Court for Lane County.

Mr. Johnson moved, seconded by Mr. Upson, that the proposed trade secrecy document, as amended and expanded, be evaluated by the City Attorney. The motion was adopted unanimously, 7:0.

The meeting adjourned at 1:30 p.m.

(Recorded by Dan Lindstrom)

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