

MINUTES

Eugene Toxics Board
Fire Conference Room, Second Floor
Eugene Emergency Services Center
1705 West Second Avenue, Eugene

April 3, 2012
3:30 p.m.

PRESENT: Randall Prince, Chair; Tom Carmichael, Stephen Flanagan, Sheena Gardner, Rick Nicol, members; Joann Eppli, Fire and Emergency Services staff; Steve Johnson, Andy Poynter, Ken Luse, guests.

ABSENT: Christine Zeller-Powell, Alison Guzman.

Mr. Prince called the meeting of the Toxics Board to order at 3:33 p.m.

I. WELCOME NEW BOARD MEMBER

Mr. Prince welcomed new board member Rick Nicol.

II. INTRODUCTIONS/APPROVAL OF AGENDA

Those present introduced themselves. Mr. Prince reviewed the agenda and changed the order of agenda items V. and VI.

III. PUBLIC COMMENT

Mr. Poynter asked why the new reporting software went to nine zeros when the charter called for only two zeros?

Ms. Eppli stated the software program was in the process of being refined.

Mr. Poynter said he had an issue with how metals are being reported. He opined it was inconsistent with the U.S. Environmental Protection Agency (EPA) reporting requirements for companies that had to report their processing of metals through a facility. If the Lane Regional Air Protection Agency (LRAPA), the EPA and other regulatory agencies were comparing the numbers reported under the Toxics Right-to-Know Program there would be inconsistencies. He suggested the Toxics Board review its requirements for more accurate reporting of metals and consistencies with other agencies.

Following a brief discussion by board members on the reporting requirements, Ms. Eppli said she would research who reported metals and how the metals were reported for a future board discussion on whether a footnote should be added to the online reporting indicating the numbers reported were based on estimates.

Mr. Johnson stated if a business began production of a metal, they would be bound to report any raw materials they brought in that were on the reporting list unless there were also fabrication issues. He noted while titanium was not on the list, the ore may contain radioactive byproducts and other things.

IV. APPROVAL OF MEETING MINUTES—February 8, 2012

Noting no corrections to the February 8, 2012 minutes, Mr. Prince deemed them approved as submitted.

VI. TOXICS PROGRAM HISTORY AND PESTICIDES REPORTING

Mr. Prince introduced Steve Johnson, a former member of the Toxics Board.

Mr. Johnson stated his professional career consisted of 15 years teaching political science and operating a public opinion survey center at the University of Oregon (UO), 20 years working at Decision Research where human judgment and decision making was studied, and ownership of a private company with 50 employees that gathered data for public opinion. He currently operated a small consulting business.

Mr. Johnson said he was one of two chief petitioners for the charter amendment that created the Toxics Board and the Toxics Right-to-Know Program. He served on the Toxics Board for a five year period and six year period. Much of the implementing language was created during the early years of the board, including the language that addressed metal filings and shavings. He asserted the “law is what the law is” and may or may not totally reflect the original intent of the charter amendment. The original impetus was environmental concerns with Hyundai Semiconductor America, Inc. which became Hynix Semiconductor Manufacturing, Inc. Some people were interested in what could be done at the city level to regulate this type of manufacturing. He and others thought regulation was outside the scope of what the city had the legal authority to do, was very difficult to do, and probably politically not feasible because there were many regulators.

Mr. Johnson thought rather than conducting a regulatory scheme which would be extremely difficult in many ways, the law should focus on requiring reporting the use of toxic materials on the theory reporting would reveal concerns about the materials used in the manufacturing process and releases of toxic materials to the environment. Some proponents of the charter amendment thought there would be additional benefits. If companies did the reporting, they would reduce their use of toxic materials because they were expensive and should be used as efficiently as possible. If reporting showed inefficiency of use, excess amounts going to waste or being released, there would be some incentives in political and economic pressures.

Mr. Johnson said while it was beyond the petitioners’ ability to make scientific decisions about whether a material was toxic, the federal government had created a series of lists that were incorporated into the law. The lists were used as arbiters as to whether something was toxic. As the lists changed, the local toxic law was updated to incorporate changes and remain current with the federal lists. When he served on the Toxics Board, the City Council periodically modified the ordinance when those lists changed. The toxics law purposefully excluded use of pesticides because there were other organizations involved with pesticide reporting and because the toxics law was primarily concerned with manufacturing.

Mr. Johnson said while he was on the board, occasionally people would become upset because the board had no regulatory power. It was never the intent of the petitioners to make the board a regulatory agency. He noted LRAPA had limited regulatory power.

Mr. Johnson said he and Mary O'Brien initially wrote the law, which was extremely difficult. They then worked with attorneys and other experts who had worked for city governments and produced ordinances and/or statutes, and understood what language needed to be included in ordinances to enable them to work. He was pleased that there had been little legal argument raised that the city could not enact the ordinance, or that the language was vague or misleading. He added the board did an incredible job during the first couple of years to work out any problems. He had worked with a board member who was employed by Molecular Probes to develop enabling language to deal with radioactive materials since that company tested radioactive isotopes. There was the potential in the future for hospitals to begin to produce some of their own radioactive isotopes. He opined hospitals may use small fusion reactors to produce hospital isotopes because the isotopes had relatively short half-lives and getting them to hospitals in time to use them was difficult. This was a form of manufacturing and would require hospitals to list itself under the applicable SIC code.

Mr. Prince asked how many chemicals were used in the manufacturing sector opposed to the service sector.

Mr. Johnson said some service sectors like painting would release significant amounts of air borne releases of solvents when considering all of the small painting contractors. Conversely, many of the toxic materials reported were only used in manufacturing, and the amount used in the service sector was a small subset. However, he thought the users had less control and it was more likely they would be released into the air, and perhaps into the water.

Mr. Prince said the railroad produced a lot of pollution and thought it was excluded because it was considered a service industry.

Mr. Johnson said combustion in the transportation sector was significant, most of which was air pollution. Numbers for industry use of automobiles were readily available. He added mining produced significant pollution in some parts of the world. He thought people were still supportive of reporting and if someone wanted to initiate an additional ordinance related to reporting of other business sectors, he did not think that would be impossible. It did require an interest group and a lot of effort. In response to Mr. Prince, Mr. Johnson said other than health and safety regulations the city was limited in its regulatory authority. The railroad and the interstate freeway were beyond the city's regulatory authority. The State of Oregon had other powers, including air pollution authority. In the past, there had been lots of pollution related to chip manufacturing, but there was relatively little released by Hyundai in relation to the large amount of materials they used in the manufacturing process.

Mr. Poynter said there had been significant amounts of ground water pollution in the early days of chip manufacturing but the development of Article 80 of the Uniform Fire Code related to hazardous materials occurred during the Hyundai construction. Under Article 80, Hyundai was required to redesign the plant to conform to the new regulations related to storage and containment of hazardous materials at a huge cost.

Mr. Johnson said he recently toured an Intel plant under construction and the containment efforts and control technology was stunning. He commended Toxic Board members for their service.

V. STAFF REPORT

Ms. Eppli provided the staff report. She said the aggressive survey had been removed from the Toxics program website as requested. The launch date for the City's new website was scheduled for May/June 2012. The Toxics Program website would include an optional comment form. She is still working with Central Services staff to develop a report on the number of hits to the Toxics Program website and the domains from which they came. She distributed a document entitled *FY11 Internet (Communities and Pages)* from www.webtrends.com which provided information currently available which was not useful.

Ms. Eppli had made no site visits since the February 2012 Toxics Board meeting and had completed a few audits. She had received a telephone call from Beyond Toxics staff requesting permission to use information on the Toxics website.

Mr. Poynter said there were inconsistencies in the requirements for reporting gasses such as propane and argon. He said calling them toxics was a stretch and having a flash point to define was a misapplication of the law.

In response to Mr. Prince, Ms. Eppli said she would need direction from the board on what she should do with information reported on gasses. When performing audits, she looked at discrepancies between yearend inventories compared to beginning inventories for the next year as required by the program. She also reviewed the total input and output charts. The list of reportable chemicals came from federal regulatory agencies.

The board discussed how some materials had erroneously been included in lists of materials companies were required to report on. Ms. Eppli said the materials companies were required to report on for the Toxics Right-to-Know Program comes from the federal list of reportable substances as specified in Article III of the charter.

Mr. Flanagan understood that if something was inaccurately reported in the past, it became a part of the database. He opined the list, including gasses, should be reviewed for accuracy based on the charter language. He added if it was not the purview of the program to report gasses, an educational effort would be needed to inform reporting businesses.

Ms. Gardner commented that the reporting instructions were difficult to understand and interpret.

Ms. Eppli asked for a couple of board members to review the tracking instructions, which she believed were last updated in 2007, with her to improve clarity. She would forward them to board members to review.

VII. 2012 REPORTING UPDATE

Ms. Eppli distributed a memorandum dated April 2, 2012 to the Eugene Toxics Board, subject *2011 Toxics Right-To-Know Program Reporting*. She noted 29 of 31 businesses reported on time and their reports were posted on the Toxics Program website. The website included the City's voluntary reporting of chlorine used in swimming pools and pesticides used by Parks and Open Space, and Public Works at the airport and wastewater treatment plant. A & K Development and Oregon Ice Cream had not reported by the deadline. Both companies had been granted

extensions to April 8, 2012. After all of the reports are posted to the website, she will provide a paper copy to the Eugene Public Library for public use as required by the charter.

VIII. TOXICS BOARD MEMBERSHIP UPDATE

Ms. Eppli reported terms for Position 3 currently filled by Mr. Nicol and Position 6 filled by Mr. Prince were due to expire on June 30, 2012. There was a citywide recruitment process currently underway to fill all vacancies for boards and commissions. Both Mr. Nicol and Mr. Prince had submitted applications, and no other applications had been received. The City Council would interview candidates on May 1 and 2. The Toxics Board would make a recommendation to the City Council.

Ms. Gardner, seconded by Mr. Flanagan, moved that the Toxics Board recommend Mr. Nicol and Mr. Prince be reappointed to their positions. The motion passed unanimously, 5:0.

Ms. Eppli said Toxics Board chair rotation was scheduled for July 1, 2012. Mr. Prince would step down as chair, Mr. Carmichael would step up as chair, and Mr. Flanagan would assume the vice chair position. She had sent an updated roster to board members.

IX. SCHEDULE NEXT MEETING/FUTURE FOCUS DISCUSSIONS

Ms. Eppli stated invoices had been mailed and payments were due by May 1, 2012. The board would need to discuss what actions if any would be taken for late payments. The fee schedule had been accepted by the City Council as recommended by the board. The board discussed possible topics for future meeting agendas. Ms. Eppli would survey board members at a later date for a meeting in late-July or early-August.

The meeting adjourned at 5:54 p.m.

(Recorded by Linda Henry)