

# MINUTES

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

August 21, 2013  
3:30 PM

**PRESENT:** Stephen Flanagan, Chair; Sheena Gardner, Vice Chair; Wendy Cecil, Rick Nicol, Randall Prince, Christine Zeller-Powell, members; Joann Eppli, Fire and Emergency Services staff; Ken Luse, Andy Poynter, Ben Sappington, guests.

Mr. Flanagan called the meeting of the Toxics Board to order at 3:31 PM.

## **I. INTRODUCTIONS/APPROVAL OF AGENDA**

Those present introduced themselves.

## **II. PUBLIC COMMENT**

Mr. Luse spoke about reducing program costs. He observed that the Charter specified that information about toxics be available at the Eugene Public Library, but mentioned nothing about posting information on the Internet. He urged the Toxics Board to discontinue its presence on the Internet and save on the associated IT costs. He also was concerned about the potential terrorist threat if information about areas in Eugene where explosive and toxic materials were housed was readily available on the Internet.

The group briefly discussed the fact that the Fire Marshal restricted access to their data on the website by requiring people to provide the reason they wished to view it before they were granted access.

Mr. Poynter brought up funding issues and asked why 28 companies that did not meet the reporting requirements of the ordinance were included in the program and charged a fee. Ms. Eppli responded that this second tier of businesses that had to pay the fee but not report was a trickle-down effect from the lawsuit filed early in the program's existence, and that a number of documents beyond the Charter governed the program as it currently existed.

Mr. Poynter expressed his frustration with this situation and considered it unfair.

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

Members offered no corrections or comments on the minutes.

Ms. Gardner moved, seconded by Ms. Cecil, to approve the May 8, 2013 and July 17, 2013 meeting minutes as presented. The motion carried unanimously, 6:0.

## **IV. STAFF REPORT**

Ms. Eppli announced that effective July 1, 2013, Mr. Flanagan had become Toxics Board Chair and Ms. Gardner Toxics Board Vice Chair.

Ms. Eppli reported that since the last meeting she had received a call from one of the small businesses in the program who questioned the payment inequity between larger and smaller businesses and indicated support for any effort to eliminate the program.

Ms. Eppli reviewed the topics of several memorandums and emails she had submitted to the Toxics Board in the past few weeks, which included the reporting exclusion of chemicals used for research and development, the appointment of Ms. Cecil from Life Technologies and the reappointment of Ms. Zeller-Powell to an advocacy position, the recommendation to appoint Lisa Arkin to Position 5, and the Globally Harmonized System of Classification and Labelling of Chemicals (GHS).

## V. CHARACTERISTIC CHEMICALS RECOMMENDATION

Ms. Eppli reminded the group that at a previous meeting representatives from Life Technologies had provided a list of chemicals to consider adding to the Toxics Program's List of Reportable Chemicals. A number of those chemicals were R&D substances, which under the Toxics Program were nonreportable. Since learning this information, Life Technologies submitted an updated list of characteristic chemicals, which were provided in a May 14, 2013 memo from Ms. Eppli to the Toxics Board, and included the recommendation that the following characteristic chemicals be added to the List of Reportable Chemicals:

- thimerosal (CAS #000054-64-8)
- decane (CAS #000124-18-5)
- hydrochloric acid (CAS #007647-01-0)
- hydrogen peroxide 30% (CAS #007722-84-1)
- sodium nitrate (CAS #007631-99-4)
- sodium borohydride (CAS #016940-66-2)

Ms. Gardner moved, seconded by Mr. Flanagan, to accept the list of chemicals as recommended by Ms. Eppli. The motion carried unanimously, 6:0.

Ms. Eppli asked for direction on how to differentiate hydrochloric acid (CAS #007647-01-0) and hydrogen peroxide 30% (CAS #007722-84-1) from those already on the List of Reportable Chemicals with the same CAS number: hydrochloric acid / hydrogen chloride (EHS in gaseous form only) and hydrogen peroxide (conc>52%).

Ms. Cecil pointed out that the effects of hydrochloric acid in gaseous form, which was already on the list differed from those of the same chemical in liquid form. Ms. Gardner observed that the threshold amounts would be different for liquid and gaseous forms so a separate listing of both made sense.

Ms. Eppli agreed to check further on whether there was a regulatory reason to list hydrogen peroxide both as 30 percent and greater than 52 percent and if not, it would only be listed once.

In October of 2012, the Toxics Board had proposed to the City Council that oxygen (CAS #007782-44-7), acetylene (CAS #000074-86-2), hydrogen (CAS #001333-74-0), and propane (CAS #000074-98-6) be removed from the list. Since then, additional research found that three of those were now regulated by the Clean Air Act (CAA), leaving oxygen as the only one that should be removed.

Answering Mr. Poynter's question about notifying those businesses currently reporting oxygen, Ms. Eppli said they would receive a memo about changes to the List of Reportable Chemicals in January.

Mr. Prince moved, seconded by Ms. Gardner, to authorize Ms. Eppli to relist acetylene (CAS #000074-86-2), hydrogen (CAS #001333-74-0), and propane (CAS #000074-98-6) on the List of Reportable Chemicals. The motion carried unanimously, 6:0.

Ms. Eppli reported that the City Attorney advised that the list approved in October should be forwarded to the City Manager this week for a 90-day public comment period and the revisions recommended by the Toxics Board could then be included in the final Administrative Order.

Mr. Prince and Mr. Luse requested copies of the Administrative Order that amended the fee structure for the Toxics Program. Ms. Eppli clarified that it was a section of Eugene Code that created the second tier of businesses that were included in the program, but not required to report, and said she would provide copies to Mr. Luse, Mr. Poynter and Toxics Board members.

## **VI. HAZARDOUS SUBSTANCE TRACKING INSTRUCTIONS RECOMMENDATIONS**

Ms. Eppli referred to a May 16, 2013 memo that suggested a revision to the Hazardous Substance Tracking Instructions relative to chemicals used for research and development being exempt from reporting requirements. The initial Toxics Board had created the instructions as part of the reporting rules and the current board could consider making changes.

Mr. Prince took issue with exempting potentially hazardous substances based on their intended use and considered this a loophole in the reporting requirements that should be reviewed. Toxics Board members discussed this briefly with some saying that research and development typically used small quantities. They agreed that the Toxics Board might look at improving the definition of R&D in the future.

Ms. Eppli reminded the Toxics Board of last year's decision to review the instructions at least every five years or when a reasonable need arose. She had taken Toxics Board recommended changes to the City Council last year and would do that again in October of this year. She hoped not to repeat the process for another couple of years.

Ms. Gardner noted that the Toxics Board had discussed the changes as part of its in-depth review of the Hazardous Substance Tracking Instructions during the past year. The only proposed change at this time was a clarification in the general guidelines' reference to R&D.

Ms. Gardner moved, seconded by Ms. Cecil, to accept the wording proposed in Ms. Eppli's May 16, 2013 memorandum to the Toxics Board and to add a comment to the "cheat sheet" table reflecting the same information. The motion carried unanimously, 6:0.

In response to Mr. Flanagan, Ms. Eppli clarified that the static and searchable chemical lists had been merged on the Toxics Program's website so maintenance was now required for only one list instead of two. Ms. Eppli stated she would reference this change of having only one URL to the List of Reportable Chemicals in the update to the Hazardous Substance Tracking Instructions.

Ms. Eppli referenced the August 13, 2013 memo regarding Globally Harmonized System of Classification and Labelling of Chemicals (GHS). Ms. Cecil commented that the UN was working to

standardize language for classifying, defining and communicating hazards. Toxics Board members saw no problem with updating language in the Hazardous Substance Tracking Instructions to be consistent with the GHS Initiative.

## **VII. TOXICS PROGRAM REASSESSMENT RECOMMENDATIONS**

Ms. Eppli said that she would meet with the City Manager the following week to review the options identified by the City Council and City Manager to address the funding problem caused by there being too few businesses participating to pay the costs of the program. She asked for Toxics Board input on the listed options:

1. Raise the \$2,000 State-Imposed Fee Cap
2. Maintain the Program as Status Quo
3. Combine Eugene's Program with the Oregon State Fire Marshal's Program
4. Reduce the Program to Only Meet Requirements of the Charter Amendment
5. Eliminate the Program

Ms. Gardner and Mr. Flanagan did not support the first option and said it would be a logistical nightmare and difficult to attain.

Ms. Gardner doubted the viability of Option 3 and wondered what Eugene's program would contribute. She questioned whether the State program had the capacity for growth at this point. Ms. Eppli clarified that an initial conversation with the State Fire Marshal's office led her to believe it would be possible to discuss collaboration on some level, but total merging would require tremendous compromise on both sides.

Mr. Poynter observed that a recent significant increase in the Fire Marshal's reporting threshold made the two programs too dissimilar to be merged.

Mr. Prince saw the Fire Marshal's mission as different than that of Eugene's Toxics Program, which he believed was intended to provide information on an ongoing basis. He maintained that businesses not engaged in production could still create a public hazard through their use of hazardous substances, and he supported a quantity-based fee system that would reduce the burden on smaller manufacturers.

Ms. Eppli responded that this was another one of the trickle-down effects of the lawsuit, and emphasized that the fee cap was imposed by the state. Mr. Prince suggested that it would be reasonable to ask the Legislature to reverse the law and allow big manufacturers to pay a bigger fee. He strongly encouraged the Toxics Board to challenge the existing fee structure and cap.

Mr. Flanagan observed that a legislative change could not happen before 2015 and Mr. Prince noted that neither options 1 nor 3 were short-term fixes.

Ms. Zeller-Powell noted the huge difference between the quantity threshold locally (2.2 pounds) and at the state level (previously 50 gallons liquid, 500 pounds solids, 200 cubic feet gases; recently increased to 500 gallons for liquids, 500 pounds for solids, 500 cubic feet for non-liquefied gases, 500 gallons for liquefied gases). She supported increasing the fee for program participation.

At this point Mr. Flanagan reviewed each of the five options, saying they were all fairly complicated and that Ms. Eppli was seeking comments on each even though Toxics Board members may not be able to reach a single recommendation on each option.

There seemed to be general consensus that adjusting the fee cap would require long-term effort and legislative action; and that the budget of the status quo program was driven by salary and IT overhead. The differing reporting criteria and volumes of the Oregon State Fire Marshal's Program were discussed earlier in the meeting. Reducing the program to meet only the requirements of the Charter had been discussed at previous meetings in terms of directing Ms. Eppli's time.

Mr. Flanagan stated that for the period he has served on the Toxics Board, most of the Toxics Board's discussions have focused on setting the fee structure. He recalled that the initial impetus for the program was the presence of Hynix which no longer manufactured in Eugene. He said members of the reporting industries saw local reporting as duplicative while right-to-know advocates saw it as essential. Mr. Flanagan suggested that both sides collect information so the Toxics Board could determine what reporting actually was duplicative and whether it should be continued.

Ms. Cecil wanted more information about the similarities and differences between what was reported to the State Fire Marshal, and what was reported under the local program. She noted there were a number of toxics right-to-know acts in the U.S and she was curious about programs and reporting requirements in other cities and states, as well as how much information was made available to the public.

In addition, Mr. Nicol wanted to look at what was reported to other agencies. Ms. Cecil added that LRAPA, the DEQ, EPA, and State Fire Marshal all had similar data but different cut-offs, timelines, and criteria.

Mr. Prince commented that he was proud of Eugene for having its own toxics right-to-know law and considered it a noteworthy environmental accomplishment. Mr. Nicol said he had no problem with the right-to-know concept and acknowledged a sense of mistrust of higher levels of government for not doing the job necessary to protect people from hazardous substances.

Mr. Prince wondered about the staff time and cost to businesses for reporting. He saw great benefit from the program on human health and environmental concerns.

Mr. Nicol expressed concern for Eugene's ability to attract small businesses when they learned of the duplicative reporting and associated costs that would be imposed if they located in this area.

Ms. Zeller-Powell supported eliminating duplication. She believed that the EPA was interested in Eugene's Toxics program due to its uniqueness.

Ms. Gardner summarized that of the five listed options, the only viable short-term solution was to continue the program at status quo. Mr. Flanagan stated he was under the impression that the Toxics Board had previously selected option 4, to reduce the program to the level required by the Charter. Ms. Eppli reminded the group that the City Manager and Fire Marshal had instead asked the Toxics Board to reconsider funding the program at 90 percent because the work plan included work for 90 percent of her time, which was the final recommendation that was forwarded to City Council last year.

Ms. Eppli noted that in October of this year, the Toxics Board would begin to discuss the next year's fees and a decision would be needed by early February. The five options were not the only ones possible, but were those the City Council and City Manager had asked the Toxics Board to consider at this time. She said the Toxics Board also needed to think about the program's future in light of the current funding issues.

Mr. Prince wondered why the program needed to be totally fee-supported and he proposed that a City gas tax be used to supplement fee revenue.

Ms. Zeller-Powell observed that a small number of businesses identified earlier this year would provide some additional fee revenue for the program. She also suggested that some businesses that met the definition of manufacturing but did not have Standard Industrial Classification (SIC) codes within the range given in the Charter could be added to the program.

Ms. Eppli responded that in the past, the Toxics Board had looked extensively at expanding into other industries and concluded that the effort would not produce enough revenue to justify the cost. Use of the SIC codes was specified in the Charter, so it would require a Charter Amendment to change that.

Mr. Flanagan summarized that the Toxics Board's discussion led to the conclusion that the options presented were long-term and complex, and the program should continue at a status quo level while the Toxics Board developed more information about the program's utility and ultimately an assessment of whether it needed to continue. Toxics Board members concurred with Mr. Flanagan's summary.

After some further discussion, members agreed that it would be useful to conduct a gap analysis of where members of the Toxics Board representing industry saw duplication and where Toxics Board members representing advocacy saw potential holes if the program were eliminated. Mr. Prince suggested that a UO or Lewis and Clark student of law or public policy might be interested in taking on such a project. Ms. Cecil also believed that students in environmental studies might find such a project interesting and that it might provide an internship opportunity.

Mr. Flanagan wanted to be sure that Lisa Arkin was part of the gap analysis discussion and he also suggested that some funding might be available from the EPA.

Ms. Eppli agreed to send the same memorandum to the City Council that she had sent to the Toxics Board, but would add that the Toxics Board considered the listed options long-term and complex and had decided to pursue a gap analysis for next year. She would reiterate that the Toxics Board generally supported eliminating duplicative reporting.

#### **VIII. SCHEDULE NEXT MEETING/FUTURE AGENDA ITEMS**

- Presentation of Beyond Toxics: Review of Recent Reports that Include Data from Eugene's Toxics Right-to-Know Program
- Lane County Local Emergency Planning Committee (LEPC) Presentation

After reviewing their calendars, Toxics Board members agreed to schedule the next Toxics Board meeting for Thursday, November 14, 2013 at 3:30 PM.

Ms. Cecil, Ms. Gardner, and Mr. Nicol all said they would bring information about reporting duplications to the next meeting.

Answering Mr. Nicol's question, Ms. Cecil said that Life Technologies manufactured tools for microbiology research.

The meeting adjourned at 5:02 PM.

*(Recorded by Mary Feldman)*