



Memorandum

Date: January 25, 2018

To: Eugene Mayor Lucy Vinis and City Council Members

From: Eugene Toxics Board – Andree Phelps (Chair), Derrick Thoma, Mark Kruger, Marcus Baxter, Jason Ormsby, Krystal Abrams, Evan Shenkin

Subject: **EUGENE TOXICS BOARD'S 2017 ANNUAL REPORT**

Following is the 2017 Annual Report of the Eugene Toxics Board, prepared and submitted pursuant to Section 6.2(B)(3) of the Eugene Charter Section 54 (Amendment IV), which requires the Toxics Board to file a public report on the effectiveness of the Eugene Toxics Right-to-Know Program, and make any recommendations for improved implementation.

Reporting Manufacturers

The total number of Eugene manufacturers reporting under the program remained at 35 in 2017, during which manufacturers submitted hazardous substance use reports for the calendar year 2016.

To be required to report under the Eugene Toxics Right-to-Know Program, a business must meet the following four criteria:

1. Be classified as a manufacturer by the Standard Industrial Classification Code.
2. Operate a stationary facility within Eugene city limits.
3. Employ the equivalent of 10 or more full-time employees during the course of a calendar year.
4. Have total inputs of at least 2,640 pounds of reportable hazardous substances in a calendar year.

On November 21, 2017, based on recommendations from the Toxics Board, the City Manager signed Administrative Order 52-17-03-F *Amendment of Hazardous Substance Tracking Instructions, Adopted by Ordinance No. 20518, for Reports due Beginning April 1, 2018* and Administrative Order 52-17-04-F *Amendment of Administrative Rule R-3.696 to Add and Remove Reportable Chemicals Pursuant to Section 54 of the Eugene Charter, 2002*. Following is a summary of the revisions:

- Amend the Hazardous Substance Tracking Instructions to reflect that the City Manager was granted authority by Ordinance No. 20551 to revise the Instructions pursuant to the rulemaking process of Eugene Code 2.019.
- Make minor amendments to the Instructions to provide additional specificity regarding

- certain points and add information that was previously missing.
- Amend the process for Reporting Exemptions and provide a Reporting Exemption Request Form.
- Amend the List of Reportable Chemicals by adding chemicals to, and removing chemicals from as recommended by the Toxics Board so that the City's list is consistent with Federal and State law.

Non-Reporting Manufacturers

Additionally, the number of businesses that pay a fee, and are not required to report under the Toxics Right-to-Know Program remained at 47. These businesses use hazardous substances, however, not enough (2,640 pounds or more in a calendar year) to meet the requirement for having to report.

A 1999 decision by the Oregon Court of Appeals held that the City of Eugene had been assessing fees in violation of ORS 453.402(6), which precludes local governments from assessing fees on the basis of chemical quantity if their programs in any way duplicate the reporting requirements of the Oregon State Fire Marshal's Office. In response, the City Council adopted an Ordinance essentially abandoning the 2,640-pound threshold for purposes of fees, and requiring fees to be paid by all businesses meeting the other three Toxics Right-to-Know Program criteria. This created a second tier of businesses that pay a fee, and are not required to report, while allowing the City to adhere as closely as possible to the intent of the voters as expressed in Eugene Charter Amendment IV.

Program Fees

The Eugene Toxics Right-to-Know Program is required by City Charter and Eugene Code to be fully fee-supported. Fees are based on number of full time equivalent (FTE) employees reported by all businesses in the program, with the City barred by state law from assessing fees based on chemical usage. Also, due to a state mandate that took effect in 2004, fees are capped at \$2,000 per entity. In 2017, the fee was \$63.120 per FTE up to the \$2,000 cap.

Compliance Continues at an Acceptable Level

In 2017, no businesses reported late.

Fees were duly assessed and all were paid, with the exception of five businesses: Childers Meat Co., Co-Motion Cycles Inc., McKenzie Stone & Tile, Mid-Valley Metals LLC and Skopil's Eugene Cleaners, Inc.

Childers Meat Co., Co-Motion Cycles Inc., Gibson Steel Basins, Inc., Gibson Steel Fabricating, Inc., Mid-Valley Metals LLC and Skopil's Eugene Cleaners, Inc. are all plaintiffs in a lawsuit challenging the City's hazardous materials user fee. Accounts for Childers Meat Co., Co-Motion Cycles Inc., Mid-Valley Metals LLC and Skopil's Eugene Cleaners, Inc. have been placed on hold due to the lawsuit. Even though Gibson Steel Basins, Inc. and Gibson Steel Fabricating, Inc., are also plaintiffs in the lawsuit, they have paid their fees. The trial court's judgement in favor of the City is currently on appeal to the Oregon Court of Appeals. On December 11, 2017, the City

participated in oral argument before the Court of Appeals, however, it will likely be some time before the Court of Appeals issues its decision.

McKenzie Stone & Tile is not involved in the lawsuit, and they have not paid their fee.

The nonpayment of fees by the businesses mentioned above, does not impact costs to the other businesses in the program.

It should also be noted that arrangements were made with Green Gear Cycling, Inc. to pay their fee in installments, and their account was paid in full as of January 22, 2018.

Audits of Businesses Continue

The eighth three-year cycle of reporting audits is under way. Because the Charter requires that businesses be audited at random within each three-year cycle, some companies go nearly six years between audits while others may go only a few months. Naturally, audit findings and required corrections tend to be more significant for the former group.

As in past cycles, the most common audit findings are discrepancies between year-end inventories (or waste) for one year and beginning-year inventories for the next, as well as a normal number of simple reporting errors (reporting in the wrong category, etc.) and omissions. Occasionally an audit identifies a large number of required corrections. However, there have not yet been any cases involving suspicion of deliberate omissions or intentionally forged reports.

Failure to respond to an audit in a timely fashion constitutes a violation of the Charter Amendment, and such violations (which are rare) are recorded and may render a business subject to fines.

Composite Data

Public access to all data reported, and a list of reporting businesses are available on the Toxics Program’s website at www.eugene-or.gov/toxics. Data are also available in printed form at the Eugene Public Library as required by the City Charter.

The following tables show Composite Figures for All Reporting Companies Combined, and Totals Reported in Specific Output Categories, comparing data between years 2011, 2015 and 2016.

Composite Figures for All Reporting Companies Combined (quantities in pounds)

	2011		2015	2016	1-year % change	5-year % change
Number of reporting businesses	30		33	35	6.06%	16.67%
Total outputs	9,429,496		11,980,392	9,397,547	-21.56%	-0.34%
Transferred away ¹ in product or as waste	6,895,665		8,740,464	5,954,305	-31.88%	-13.65%
Released to environment ²	647,341		806,123	659,494	-18-19%	1.88%

¹ Transferred Away: Shipped as Product + Shipped as Waste

² Released to Environment: Emitted to Air + Discharge to Sanitary Sewage Treatment + Surface Water Release + Disposed On-Site

Among reporting businesses, the quantity of hazardous substances released to the environment as a percentage of total outputs has risen from 6.87 percent in 2011 to 6.73 percent in 2016.

Totals Reported in Specific Output Categories (quantities in pounds)

	2011		2015	2016	1-year % change	5-year % change
Shipped as waste	229,887		329,376	278,782	-15-36%	21.27%
Emitted to air	413,186		500,448	419,381	-16.20%	1.50%
Discharged to sanitary sewage treatment	233,730		301,639	231,991	-23.09%	-0.74%

Changes in reported totals for the output categories shown above could be due to changes in manufacturing processes or volume, improved environmental measures, additions or reductions to the number of reporting entities, or other factors.

Website Analytics

The Toxics Board uses website analytics to track visits to the Toxics Program’s webpages. Between January 1, 2017 and December 31, 2017, there were a total combined 1,092 visits to the Toxics Program’s webpages (compared to 1,604 visits last year, which represents a 31.92 percent decrease). There were 616 visits to the Toxics Application pages (Data Reports and the List of Reportable Chemicals); and 476 to the Toxics Board and Toxics Program information pages. Of the 1,092 total visits, 675 were based in Eugene, with Willamette Valley Co. being the most common system service provider used.

Reporting Improvements

In an effort to ease some of the reporting burden on businesses in the Eugene Toxics Right-to-Know Program, the Toxics Board implemented an import / export function for reports due beginning April 1, 2017. This new feature saved one business approximately six hours of data entry time in completing last year’s hazardous substance use report.

Toxics Board Program Recommendations

The Toxics Board’s recommendations to City Council in determining the future of the Eugene Toxics Right-to-Know Program remains mostly the same as initially outlined in the Impact and Gap Analysis Report that was part of the 2014 Annual Report, which included a comprehensive analytical review of the program from an industry perspective, an advocacy perspective, and a neutral perspective. Therefore, the Toxics Board recommends that the City Council:

- Support legislative action to increase the state-imposed fee cap of \$2,000 per entity to keep pace with inflation as tied to a recognized index, and to lessen the financial burden on businesses that have not reached the \$2,000 state-mandated fee cap. However, the Board no longer supports legislative action that increases the fee cap to a flat rate as was proposed in House Bill 2669 in 2017. Currently, there is no legislative action to increase the Eugene Toxics Right-to-Know fee cap. In addition, the Board would appreciate the opportunity to provide recommendations on future individual legislative bills.
- Restore funding to support at least a 90 percent staffing level. This change in staffing level allows the Toxics Board more staff time to spend on implementing a comprehensive audit

process of businesses currently in the program to ensure accuracy of reporting hazardous substance use and reporting full-time equivalent (FTE) employees, continuing to identify businesses that meet the program requirements, and improving outreach to the public and businesses that report under the program.

- Do not revert to the program to being managed under a reduced model. This would again result in a lack of monitoring program compliance with applicable laws, rules and regulations, a lack of continuous analysis and process improvement, as well as a lack of collaboration with the business community that causes confusion and frustration amongst the reporting businesses.
- To better comply with the Charter Amendment, and as staff time allows, continue discussions with the Oregon State Fire Marshal's Community Right-to-Know Program staff to determine areas to combine (e.g., equalize reporting requirements, develop the same units of measure, etc.). Reporting under both programs would be a lot less burdensome on businesses if the two programs had at least one consistent factor.
 - For example: Expand on the recently implemented import and export function for the online data entry reporting application program to better coordinate reporting at the federal, state and local levels.

General Observations

In March of 2017, City Council appointed Mark Kruger to Industry Position 2, which took effect immediately. City Council then reappointed Mark Kruger to Industry Position 2, which took effect in July. Additionally, City Council reappointed Andree Phelps to the Neutral Position 7 and appointed Krystal Abrams to Advocacy Position 5, both which also took effect in July. We acknowledge with thanks the service of departing member Lisa Arkin.

We also wish to acknowledge the work of Jo Eppli, the staff person for the Eugene Toxics Right-to-Know Program. In particular, we wish to thank her for her work updating and modernizing various aspects of the program, and the outreach she has done both to businesses covered by the program and the public. The Toxics Board also wishes to acknowledge and express appreciation for the Fire Chief, Fire Marshal and other City of Eugene staff who assist Ms. Eppli and the Board in our work.

Finally, our thanks go to the Mayor and City Council for your continued interest in the Toxics Program and your support of our community's right to know. If you have any questions or comments regarding this report please contact us at toxics@ci.eugene.or.us, or our Program Manager, Jo Eppli at 541-682-7118.

cc: Jon Ruiz, Eugene City Manager
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