



Memorandum

Date: January 30, 2017

To: Mayor Lucy Vinis and City Council Members

From: Eugene Toxics Board – Lisa Arkin (Chair), Derrick Thoma, Marcus Baxter, Jason Ormsby, Evan Shenkin, Andree Phelps

Subject: **EUGENE TOXICS BOARD'S 2016 ANNUAL REPORT**

Following is the 2016 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 any recommendations for improved implementation.

Reporting Manufacturers

The total number of Eugene manufacturers reporting under the program increased from 33 to 35 in 2016.

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

1. Be classified by the Standard Industrial Code as a manufacturer.
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.

In 2016, manufacturers submitted hazardous substance use reports for the calendar year 2015.

At the direction of the Toxics Board, staff developed and implemented an import and export function for the online data entry reporting application program. The goals of this enhancement are to reduce some of the reporting burden for industry, while making the reporting process more efficient.

Non-Reporting Manufacturers

Additionally, the number of businesses that pay a fee, that are not required to report under the Toxics Right-to-Know Program decreased from 51 to 47. These businesses use hazardous

substances, but 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, but 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 2016, the fee was \$48.29 per FTE up to the \$2,000 cap.

Compliance Continues at an Acceptable Level

In 2016, no businesses reported late.

Fees were duly assessed and all were paid, with the exception of three businesses: Childers Meat Co., Mid-Valley Metals LLC and Skopil's Eugene Cleaners, Inc., whose accounts have been placed on hold due to related pending litigation initially filed by Childers Meat Co. Co-Motion Cycles, Inc., Mid-Valley Metals, LLC, Gibson Steel Fabricating, Inc., Gibson Steel Basins, Inc., and Skopil's Eugene Cleaners, Inc. have since joined the lawsuit. The court considered this matter and ruled in favor of the City of Eugene, and against the plaintiffs. The plaintiffs have now filed a notice of appeal with the Oregon Court of Appeals. The nonpayment of fees by the plaintiffs 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 3, 2017.

Audits of Businesses Continue

The seventh 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 company subject to fines.

Composite Data

Public access to all data reported, and a list of reporting businesses is 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 2010, 2014 and 2015.

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

	2010	2014	2015	1-year % change	5-year % change
Number of reporting businesses	32	32	33	3.13%	3.13%
Total outputs	8,459,677	10,938,749	11,980,392	9.52%	41.62%
Transferred away ¹ in product or as waste	6,066,483	7,695,360	8,740,464	13.58%	44.08%
Released to environment ²	540,461	774,723	806,123	4.05%	49.15%

Among reporting businesses, the quantity of hazardous substances released to the environment as a percentage of total outputs has risen from 6.39 percent in 2010 to 6.73 percent in 2015.

Totals Reported in Specific Output Categories (quantities in pounds)

	2010	2014	2015	1-year % change	5-year % change
Shipped as waste	172,962	301,453	329,376	9.26%	90.43%
Emitted to air	441,687	486,790	500,448	2.81%	13.30%
Discharged to sanitary sewage treatment	98,558	276,351	301,639	9.15%	206.05%

Changes in reported totals for the output categories shown above could be due to changes in manufacturing processes or volume, improved environmental measures, reductions in the list 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, 2016 and December 31, 2016, there were a total combined 1,604 visits to the Toxics Program’s webpages (compared to 1,316 visits last year, which represents a 21.88 percent increase): 738 visits to the Toxics Application pages (Data Reports and the List of

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

Reportable Chemicals); and 866 to the Toxics Board and Program Information pages. Of the 1,604 total visits, 1,108 were based in Eugene, with Willamette Valley Co. and Qwest being the most common system service providers used.

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 the same as initially outlined in the Impact and Gap Analysis Report that was part of the 2014 Annual Report, and 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 \$2,000 state-imposed fee cap to keep pace with inflation and to more equitably distribute program costs among all businesses in the program, and lessen the financial burden on smaller businesses when there is a budget increase. After his term had ended, one of the Toxics Board's former Advocacy members initiated discussions with State Representatives Phil Barnhart and Val Hoyle to help seek a legislative remedy to address the program's structural funding problem caused primarily by the \$2,000 fee cap, which took effect in 2004. In the 2015 Legislative Session, Representative Phil Barnhart's office ordered drafting of a bill that increases the cap to reflect inflation, setting it at \$3,000. Language was also included to allow the cap to be adjusted to reflect changes in the Consumer Price Index. Legislative Counsel completed the task and a copy of the draft bill is attached. The bill is fully ready to be introduced at a future Legislative Session, once basic support for the bill is solidified at the City level and with the Eugene Chamber.
- Keep funding to support at least an 85 percent staffing level and maintain the program to current standards. To fund the program for Fiscal Year 2018 (FY18), the Toxics Board recommends that City Council adopt a fee of \$63.120 per full-time-equivalent employees (FTE), which will cover a budget of \$134,242.64 and funding at an 85 percent staffing level. The Toxics Board wants to emphasize that the 85 percent staffing level is the absolute minimal staffing level necessary to maintain the program, and is the current recommendation only to keep costs as low as possible to businesses, but does not reflect the need for an increase in FTE to manage the program more effectively. In the future, the Toxics Board would like to see more staff time spent on implementing a comprehensive audit process of businesses currently in the program to ensure accuracy of reporting hazardous substance use, continuing to identify businesses that meet the program requirements, improving outreach to the public and businesses that report under the program, and continuing work with Information Services Division staff.
- Do not revert to the program 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 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 newly implemented import and export function for the

online data entry reporting application program to better coordinate reporting at the federal, state and local levels. A conservative cost estimate for computer programming to write an interface for converting units of measure between the Eugene Toxics Right-to-Know Program and the Oregon State Fire Marshal's program is \$45,000.

General Observations

In 2016, City Council appointed Derrick Thoma to Industry Position 1 and Jason Ormsby to Advocacy Position 4 on the Toxics Board, which took effect in July and September, respectively. Additionally, the Toxics Board recently submitted a recommendation to appoint Mark Kruger to Industry Position 2, which is currently vacant. We acknowledge with thanks the service of departing members Amber Everly, Christine Zeller-Powell and Wendy Cecil.

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 Fire Department 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.

Attachment: Draft Bill to Increase the \$2,000 State-Mandated Fee Cap

cc: Jon Ruiz, Eugene City Manager
Joe Zaludek, Eugene Springfield Fire Chief
Al Gerard, Eugene Springfield Fire Marshal

D R A F T

SUMMARY

Increases maximum fee that may be charged by local community right to know regulatory program. Directs local government implementing local program to annually increase maximum fee based on increase in Consumer Price Index.

A BILL FOR AN ACT

Relating to local community right to know regulatory programs; amending ORS 453.370.

Be It Enacted by the People of the State of Oregon:

SECTION . ORS 453.370 is amended to read:

453.370. (1) In order to maintain and ensure the effectiveness of state programs established under ORS 453.307 to 453.414, as well as to ensure the effectiveness of local efforts, a local government may establish, enforce or enact a local community right to know regulatory program provided that the local program complies with the requirements of this section.

(2)(a) To the extent that a local program is supported in whole or in part by fees, those fees may be set, imposed or assessed only by the local government that is implementing the local program. Such fees are allowed only to the extent not otherwise prohibited or limited by law. Such fees:

[(a)] **(A)** Shall be adopted by ordinance as a fee schedule, after notice and public hearing; and

[(b)] **(B) Except as provided for in paragraph (b) of this subsection,** may not exceed [\$2,000] **\$3,000** for any single facility in any calendar year.

(b) The local government that is implementing the local program shall adopt an ordinance revising the fee specified in paragraph (a) of

1 **this subsection before January 1 of each year, based on changes in the**
2 **Portland-Salem, OR-WA Consumer Price Index for All Urban Con-**
3 **sumers for All Items as published by the Bureau of Labor Statistics**
4 **of the United States Department of Labor. The local government shall**
5 **round the amount to the nearest dollar. The revised fee shall take ef-**
6 **fect January 1 and apply for that calendar year.**

7 (3)(a) All local community right to know regulatory program enforcement,
8 including but not limited to penalties, may be imposed only by a local fire
9 official or a board established by the local government to implement the lo-
10 cal community right to know regulatory program.

11 (b) Penalties for violations of a community right to know regulatory
12 program may not exceed \$1,000 per day and shall be assessed according to a
13 schedule adopted by the local government after notice and public hearing.
14 Except when a local government has reasonable grounds to find that an
15 employer willfully and knowingly avoided compliance with the local pro-
16 gram, and as long as the employer submits the required information within
17 30 days following a written notification of noncompliance, penalties shall be
18 suspended if the employer has no history of violating the local program.

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19 (4) *[After notice and public hearing,]* **To establish or enact a commu-**
20 **nity right to know regulatory program,** the local government must de-
21 termine **after notice and public hearing** that:

22 (a) Existing reporting to local, state or federal agencies is inadequate to
23 meet the needs and concerns of the local government;

24 (b) The state or federal government does not collect data that will provide
25 substantially the same information desired by the local government;

26 (c) The local government has asked the appropriate state agency to oper-
27 ate the program desired by the local government and the state agency has
28 not committed to do so within 180 days;

29 (d) The Department of Environmental Quality, the State Fire Marshal and
30 the Oregon Health Authority have had an opportunity to comment on the
31 proposed program and the local government has responded to those com-

1 ments; and

2 (e) The local government has provided an opportunity for written and oral
3 public comment on the proposed program.

4 (5) Any local government that operates a local community right to know
5 regulatory program shall:

6 (a) Provide for an opportunity to report data electronically;

7 (b) Place data reported under the program on the Internet with in-
8 structions for the general public that explain the organization of the data;
9 and

10 (c) Keep records of data usage and otherwise document interest in the
11 collected data.

12 (6) Data and other information presented under a local community right
13 to know regulatory program:

14 (a) Shall clearly distinguish, where appropriate, public health interpreta-
15 tions from the raw data;

16 (b) May, where feasible, indicate specifically which hazardous substances
17 and toxic substances are being released into the local air, water and land;
18 and

19 (c) Shall include locations where a person may obtain epidemiological
20 statistics related to health effects of the hazardous substances and toxic
21 substances, if available.

22 (7) For any hazardous substance or toxic substance that a local govern-
23 ment proposes to require an employer to report under a local community
24 right to know regulatory program established pursuant to this section, the
25 local government shall seek written and oral public comment and provide
26 written notice to interested parties prior to adoption as a reporting require-
27 ment. The local government must provide the public with an opportunity to
28 comment on the appropriateness of reporting on the proposed hazardous
29 substance or toxic substance, including but not limited to commenting on
30 health and environmental considerations, economic concerns and feasibility
31 of compliance. The local government shall consider the comments before

1 adopting a list or making additions to a list of hazardous substances and
2 toxic substances to be reported.

3 (8) In administering a local community right to know regulatory program,
4 a local government shall establish procedures to exempt, when reasonable,
5 an entity from all or part of the local program for the purpose of protecting
6 trade secrets or where the local government determines that the operations
7 of the entity pose little or no risk to the public health or the environment.

8 (9) Except [*as prohibited*] **when required** by federal or state law, a local
9 program may not differentiate between public and private employers.

10 (10) Nothing in this section shall be construed to limit the authority of
11 a local government to:

12 (a) Distribute information collected under the state Community Right to
13 Know and Protection Act; or

14 (b) Adopt or enforce a local ordinance, rule or regulation strictly neces-
15 sary to comply with:

16 (A) The Uniform Building Code as adopted and amended by the Director
17 of the Department of Consumer and Business Services;

18 (B) A uniform fire code; or

19 (C) Any requirement of a state or federal statute, rule or regulation, in-
20 cluding but not limited to those controlling hazardous substances, toxic
21 substances or other environmental contaminants.

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