



Fire & Emergency  
Medical Services

Toxics Right-to-Know

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# MEMORANDUM

**Date:** February 4, 2011

**To:** Mayor Kitty Piercy and City Council Members

**From:** Eugene Toxics Board – Stephen Flanagan (Chair), David Beede, Diana Bollenbaugh, Dave Doll, Holly Jacobson, Cynthia Kokis, Randy Prince

**Subject:** **EUGENE TOXICS BOARD 2010 ANNUAL REPORT**

Following is the 2010 Annual Report of the Eugene Toxics Board, prepared and submitted pursuant to Section 6.2(B)(3) of Eugene Charter Section 54 (Amendment IV).

## **Number of Reporting Manufacturers Continues to Decline**

The total number of Eugene manufacturers required to report under the Toxics Right-to-Know Program declined from 34 to 32 in 2010. At its peak, in the late 1990s and early 2000s, the number of reporting businesses was above 50.

Additionally, there are 28 businesses that only pay a fee. (Businesses that only pay a fee do use hazardous substances, but not enough (more than 2,640 pounds 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 only 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.)

To be required to report, a business must: 1) be classified by the Standard Industrial Code as a manufacturer; 2) operate a stationary facility within the Eugene city limits; 3) employ the equivalent of 10 or more full-time employees during the course of a calendar year; and 4) have total inputs of at least 2,640 pounds of reportable hazardous substances in a calendar year.

The number of reporting businesses is one factor among many that influence the overall chemical usage figures reported to the public under the Toxics Right-to-Know Program. Other factors include production, processes, chemicals used, and environmental protection measures employed by the reporting businesses.

### **Program Fees**

The Eugene Toxics Right-to-Know Program is required by City Charter to be fully fee-supported. Fees are based on number of persons employed, with the City barred by state law from assessing fees based on chemical usage. Also, fees are capped at \$2,000 per entity. Last year's fee was \$55.48 per FTE up to the \$2,000 cap; this is expected to decline slightly in 2011 due to reduced staffing costs.

### **Compliance Continues at Acceptable Level**

In 2010, three businesses reported late. Emerald Forest Products, as a first offender, was subject only to publication of its violation in The Register-Guard (along with loss of its first-offender status). Since both A & K Development Company and Gheen Irrigation/Willagillespie did not intentionally file late reports, the Toxics Board moved to suspend the penalty for reporting after the deadline. (\$1,000 per day is the maximum. Eugene voters originally provided for a maximum penalty of \$25,000 per day, but this was subsequently reduced by State legislative action.)

As of April 5, 2010, all required 2009 reports had been received. Fees were duly assessed and all were paid. It should be noted that arrangements were made with Green Gear Cycling, Inc. to pay their fees in installments, and their account was paid in full as of December 2, 2010.

### **Audits of Businesses Continue**

The fifth 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 typical 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 has not yet been a case involving any suspicion of deliberate omissions

or intentionally forged reports.

The Toxics Board has adopted the policy that 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**

Full public access to all data reported, with an array of sorting capabilities, are available on the City's Internet site at [www.eugene-or.gov/toxics](http://www.eugene-or.gov/toxics). Data are also available in printed form at the Eugene Public Library as required by the City Charter.

Composite figures for all companies combined (quantities in pounds):

	2004		2008	2009	1-year change	5-year change
Total outputs	18,680,087		10,766,945	8,441,949	-21.6%	-54.8%
Transferred away in product or as waste	9,124,786		7,451,093	5,900,076	-20.8%	-35.3%
Released to environment	1,561,612		576,356	428,783	-25.6%	-72.5%

Among reporting businesses, the quantity of hazardous substances released to the environment as a percentage of total outputs has dropped from 8.36 percent in 2004 to 5.08 percent in 2009, indicating a trend toward greater environmental efficiency.

Totals reported in specific output categories have been as follows (quantities in pounds):

	2004		2008	2009	1-year change	5-year Change
Shipped as waste	531,174		212,915	152,359	-28.4%	-71.3%
Emitted to air	912,027		497,482	357,956	-28.0%	-60.8%
Discharged to sanitary sewage treatment	649,526		78,801	70,698	-10.3%	-89.1%

Changes in reported totals for the output categories shown above are due to such things as changes in manufacturing processes or volume, improved environmental measures, reductions in the list of reporting entities, or other factors.

It is important to remember that for all reporting businesses substances transferred away as waste may (or may not) have been recycled.

### **General Observations**

In 2009, City Council changed its cycle for appointing citizens to boards and commissions, with the new cycle beginning July 1, 2010, to match the City's fiscal year. As a result, term lengths for current Toxics Board members were extended by six months.

Council recently appointed David Beede (business representative/A & K Development

Company) and Randy Prince (right-to-know advocate) to the Toxics Board. We wish to acknowledge with thanks the service of departing members Elizabeth Weaver and Maeve Sowles.

We also wish to acknowledge the many years of service provided by Glen Potter, who retired on October 31, 2010. Additionally, we welcome our new staff person, Joann Eppli, of the Fire Marshal's Office, who will provide assistance and support to the Toxics Board.

Finally, our thanks go to the Mayor and Council for your continued interest in this program and your support of citizens' right to know. If you have any questions or comments regarding this report please contact any Toxics Board member, or program staff in the Fire Marshal's Office at 541-682-7118.