

## DURHAM/YORK ENERGY-FROM-WASTE PROJECT

### RESIDENTS AND FRIENDS

It's been a year since Council was sworn into office and it's been a very busy year at that. Council has dealt with a number of controversial issues since the inaugural meeting and the incinerator has been the most controversial. Over the past twelve months, Clarington Council has heard from staff about the implications of the Host Community Agreement (HCA), reviewed studies, listened to delegations and carefully considered many motions surrounding the EFW.

The intent of this publication is try and answer questions and clear up some misunderstandings that you may have.

The biggest question is probably "What happened?" During the election candidates hoped to stop the incinerator. In spite of our best efforts, it became apparent that the facility was going to be built regardless of any action that Council might take. Read on for more detail in the following pages, but, in a nutshell, key decisions were made at the Province and at the Region between the time of the municipal election in October and the installation of Council in December that has firmly set the project in place.

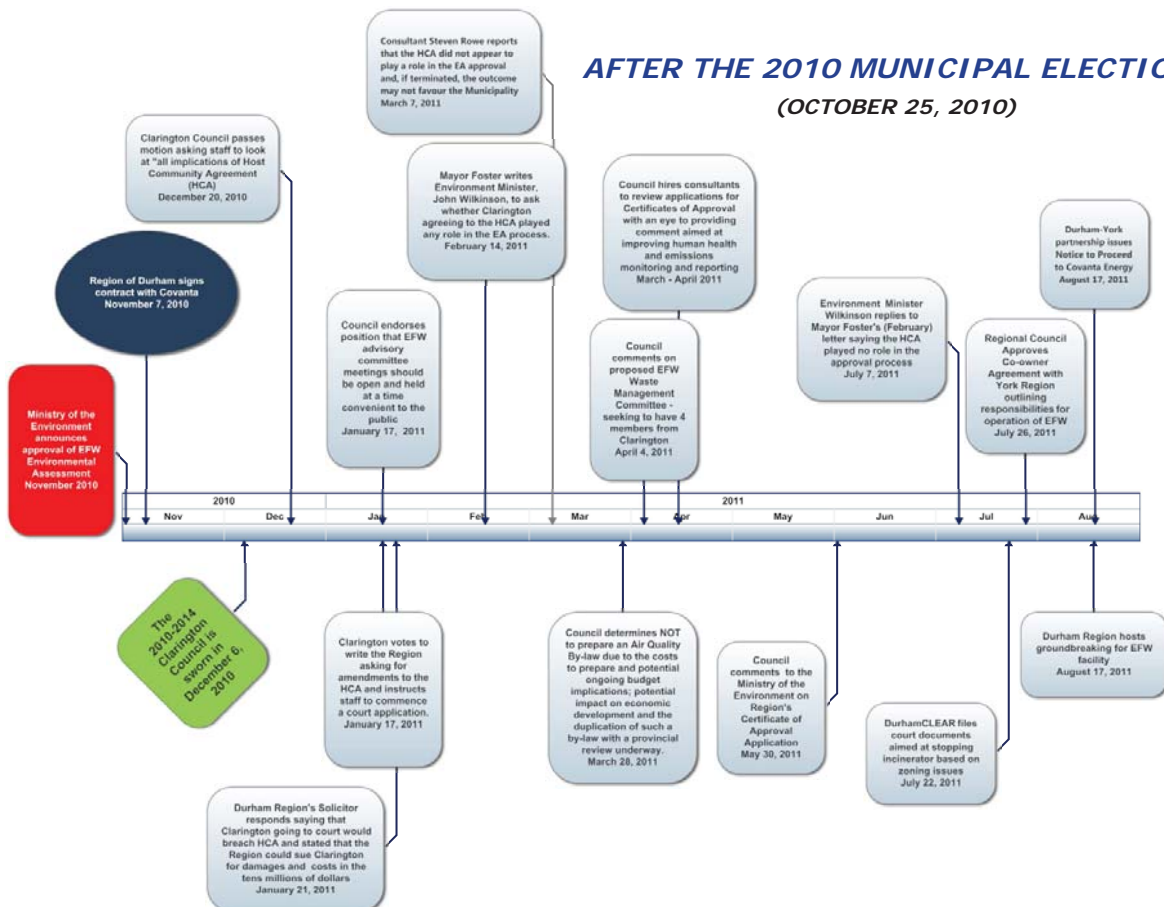
Council is by no means unanimous in this understanding but debate is a part of a healthy democratic process. When discussing the potential of successfully mounting a legal challenge to the Host Community Agreement, Council sought the opinion of municipal staff. Mayor Foster also turned to the then-current Minister of the Environment, the Honourable John Wilkinson. The Former Minister wrote back stating that "any challenge to the validity of the Host Community Agreement will ... not have an impact on the approval of the undertaking or of any future approvals...in regard to the undertaking."

Although, the majority of Council concluded that the incinerator is going to move ahead regardless of any local efforts Council continued to expend time and effort working with the Province and the Region of Durham to raise issues of concern to Clarington and to ensure that they are addressed.



Members of Clarington Council:  
Back Row/Left to Right: Ron Hooper (Ward 2), Corinna Trill (Ward 3), Wendy Partner (Ward 4), Joe Neal (Ward 1). Front Row/Left to Right: Mary Novak (Wards 1 & 2), Mayor Adrian Foster, Willie Woo (Wards 3 & 4)

### AFTER THE 2010 MUNICIPAL ELECTION (OCTOBER 25, 2010)



## **WHAT HAS CLARINGTON DONE – QUESTIONS & ANSWERS**

### **DOES CLARINGTON COUNCIL HAVE THE ABILITY TO STOP THE EFW FROM MOVING FORWARD?**

By the time this Council was sworn in (December 6, 2010), two critical steps had already been taken.

1. On November 7, 2010, just days after to the last municipal election, the Minister of the Environment announced the approval of the Environmental Assessment (EA) for the EFW facility.
2. A couple of weeks later, after the election but before the new Clarington Councillors were sworn in, the Region of Durham signed the \$270 million contract with Covanta Energy for design, construction and operation of the facility.

For all intents and purposes, these two steps meant the EFW facility was approved and the Region, by entering the contract with Covanta, was moving forward with the project.

### **DID CLARINGTON HAVE ANY SAY IN WHETHER THE REGION OF DURHAM WAS ABLE TO USE THE SITE FOR AN ENERGY FROM WASTE FACILITY? WAS REZONING NECESSARY?**

The site was selected through an environmental assessment by the two Regions (Durham & York). The previous Council considered reports from Peer Reviewers and provided this information to the Province. They **did not** approve the site selected. In the Host Community Agreement, the previous Council acknowledged that no amendments to Clarington's Official Plan or Clarington's Zoning By-law 84-63 would be required to permit the facility.

### **WHAT HAS CLARINGTON COUNCIL DONE SINCE TAKING OFFICE IN DECEMBER, 2010?**

Before taking office, Mayor-Elect Foster wrote a letter to the Ministry of the Environment asking the Minister to hold off on making a decision on the Environmental Assessment until the newly-elected Regional Council had a chance to revisit the matter.

Upon taking office in December, 2010, one of the first orders of business for Clarington's new Council was to direct staff to prepare a report that considered the implications of the Host Community Agreement authorized by the previous Council. After considering staff's confidential report, Council voted to ask the Region to clarify the meaning of certain sections of the HCA and commence a court application to determine the validity of other sections.

The Region's immediate response was that any such court action would be considered a breach of the HCA, the potential legal ramifications of which were potentially significant to municipal taxpayers. The Region could seek damages and costs in the neighbourhood of \$46 million, or \$1,500 per Clarington household - and the only benefit would be a potential delay of the project. The best that could be hoped for was that the Region would quash the project due to escalating costs. Given the contract with Covanta Energy and the agreement with York Region, this was considered a very unlikely outcome.



### **SO, WHAT DID CLARINGTON DO THEN?**

Notwithstanding the potential legal ramifications of trying to stop the project, Clarington Council continued to look at all possibilities.

On Council direction, Clarington hired Environmental Planner Steven Rowe, to look into whether the Ministry of Environment would possibly have made a different decision if the previous Council had not narrowly voted to have Clarington declared a "willing host" to the EFW facility.

Mr. Rowe concluded that Clarington's position on the matter would have held little sway with the Ministry. Beyond that, he stated that getting out of the Host Community Agreement would be unlikely to stop the facility and would only have the effect of throwing away any benefit to Clarington found in that agreement.

In addition, Council hired a consultant to peer review the Certificate of Approval application for air emissions. Clarington's comments resulted in the implementation of better monitoring requirements.

As well, Clarington asked for changes to both the mandate and make-up of the facility's Community Advisory Committee, eventually ensuring four of nine members of the group would be appointed by Clarington Council.

### **WHAT DO THE HEALTH EXPERTS SAY?**

The field of human health risk assessment is complex and it is advisable to read the entire reports so that the statements are in context. The studies recognize that the current air quality is affected by pollutants from multiple sources - including motor vehicles and home heating. Most of the sources for the baseline contaminants in our air are external to Clarington. The updated report from the Medical Officer of Health (2011-MOH-24) dated July 26, 2011 concluded that the EFW facility will not pose an unacceptable health risk. The Medical Officer of Health's opinion is based on reports from Stantec and the Director of Environmental and Occupational Health at Public Health Ontario. Stantec concluded that the human exposure to facility-related emissions will not result in adverse health effects for people living or visiting the area. Public Health Ontario concluded that the risks estimated are deemed acceptable by the regulatory agencies. It was further noted that acceptability is very much in the "eye of the beholder" and for some groups and individuals it is unlikely that any degree of risk is acceptable.

## CLEARING THE AIR . . . ABOUT THE ENERGY FROM WASTE FACILITY

Throughout the process leading to this point in the history of the Durham/York Energy From Waste facility, Councillors have had to turn to experts to help them sort through an array of questions about the facility. Here are some answers, provided by staff, consultants and other experts.

COMMENT	FACT
The Courtice air shed is already "over-burdened"	<b>Current air quality levels</b> in the Courtice area, as monitored over the long term at the Ministry of the Environment (MOE) Oshawa monitoring station, <b>are typical of those throughout southern Ontario.</b>
Courtice already has elevated levels of particulate matter (PM2.5).	The Canada-wide standard for particulate matter is 30 µg/m <sup>3</sup> (micrograms per cubic metre). Numbers collected at the Oshawa monitoring station show consistent decreases over the last several years. For the period of 2006 - 2009, the number was 21 µg/m <sup>3</sup> . <b>Particulate matter readings in Courtice are typical of urban areas throughout Southern Ontario.</b> For current levels, visit <a href="http://www.airqualityontario.com">www.airqualityontario.com</a> .
Courtice had the highest levels of nitrogen dioxide compared to Hamilton, Toronto, Windsor, Oakville and Sarnia.	Not true! Research involving 31 different monitoring stations shows that Oshawa is <b>actually the 10th lowest.</b> Monitoring stations for Hamilton, Toronto, and Oakville all show higher levels of nitrogen oxide. All measured nitrogen oxide concentrations were below the Ministry of the Environment 24-hour Ambient Air Quality Criteria ( <a href="http://www.ene.gov.on.ca/environment/en/resources/STD01_076461.html">www.ene.gov.on.ca/environment/en/resources/STD01_076461.html</a> ).
Ozone levels already exceed applicable MOE limits and the EFW facility will worsen the situation.	The EFW facility <b>will not emit ozone</b> into the atmosphere.
The site selection report indicated that the Courtice site had far greater industrial burden than the York site that was on the short list of "preferred sites" for the EFW, but Courtice was chosen anyway.	Industrial emissions are only a portion of the total air emissions in any area. South Durham has a greater industrial base than the York site, so industrial emissions would be higher. However, the contribution from industrial sources is only a small portion when compared to those from non-industrial sources. <b>Studies have shown that the facility will contribute only one-half of one percent (0.5%) to existing background.</b> The Environmental Assessment concluded that building the facility on either site would not pose a burden to the air shed.
The incinerator will emit heavy metals which will persist in the environment and the population.	The risk assessment does not predict significant loading because <b>large amounts of heavy metals will not be released.</b>  The Human Health and Ecological Risk Assessment (completed as part of the EA) used the theoretical maximum loadings into the environment over its 30 years operation to determine there would be no undue risk to humans or the environment when continuously exposed to maximum accumulated levels for their entire life. Beyond that, <b>the facility's proposed monitoring plan includes collection of soil and vegetation samples to ensure that risk estimates are accurate.</b>
The EFW will emit significant amounts of new dioxins and furans.	The facility will adhere to the Ontario dioxin and furan emissions guidelines ( <a href="http://www.ene.gov.on.ca/environment/en/resources/STD01_078852.html">www.ene.gov.on.ca/environment/en/resources/STD01_078852.html</a> ) which are among the strictest in the world. That threshold <b>will not be</b> crossed. In Canada dioxins and furans are considered a "threshold chemical" which means that below a specific level they would not create undue risk to people or the environment.
The EFW will emit a long list of polycyclic aromatic hydrocarbons (PAH).	All combustion processes - including automobiles and residential furnaces - cause emissions of combustion products like PAHs. Anticipated <b>emission levels from the facility will be low and will have negligible impacts on local air quality.</b>
The EFW will emit huge amounts of Greenhouse Gas (GHG)	For every tonne of waste processed in the EFW, one tonne of GHG will be avoided. The operation of the facility will result in an <b>overall reduction in GHG</b> as compared to the current practice of landfilling waste.
Documents showed the incinerator posed a significant risk to human health.	Three <b>Peer Reviews</b> conducted during the EA process concluded that the facility is unlikely to pose a risk to human health. The Regional Medical Officer of Health, Clarington's Peer Review Team, and Ministry scientists agree it will not have any significant impact on human health or the environment.
Health Canada identified numerous areas of concern and advised that the Environmental Assessment examine additional mitigative actions.	The Minister's decision on the Environmental Assessment considered many additional mitigative actions. The facility has been designed to <b>meet and surpass the most stringent requirements available</b> - including Ontario's Ministry of the Environment Guidelines for emissions. All of these standards are based on maximum achievable control technologies to ensure minimization of health risks.
Money spent on architectural enhancements could have been spent on better emissions control equipment or monitoring.	<b>The funding set aside for emissions control and monitoring is unrelated to the architectural costs of the structure.</b> The Provincial standards in the Certificate of Approval are the governing rules for the operation of the plant and they must be met.  The \$9 million was originally set aside as an architectural allowance in the Regions's tender for the facility. This process was established to ensure that the technical considerations, including emission controls, would be the key criteria evaluated in the bids. In this way, the exterior design of the building did not influence the selection of the contractor. <b>Only after the contractor was selected</b> , was the exterior design considered as upgrades to a basic box structure and landscaping.  The architectural enhancements are important to Clarington to mitigate the visual impact of this large industrial structure as it affects the marketing of other lands in the Clarington Energy Park.

## CHRONOLOGY OF COUNCIL DECISIONS (POST-2010 MUNICIPAL ELECTION)

### December 20, 2010 Council

**Resolution C-474-10 (Carried as Amended):** Directing staff to prepare a report that analyzes all implications of the Host Community Agreement for the January 10th, 2011 GPA meeting. *Amended by Resolution C475-10 (Carried):*

Resolving that the report be submitted to Council directly, and not through the Chief Administrative Officer.

### January 10, 2011 GPA

Solicitor's Report LGL-001-11 Host Community Agreement Analysis of Implications.

**Resolution GPA-022-10 (Carried):** That Confidential Report LGL-001-11 be received for information.

### January 17, 2011 Council

**Resolution C-016-11 (Carried):** To advise the EFW Advisory Committee, and all necessary bodies including Durham Region that the Municipality concurs with the position of DurhamCLEAR that the Advisory Committee meetings should be open to the public and held at times that are convenient for public participation.

**Resolution C-017-11 (Carried):** To appoint Faye Langmaid (Manager of Special Projects, Planning Services) to the EFW Advisory Committee.

**Resolution C-033-11 (Carried as Amended):** To receive Confidential Report LGL-001-11, request the Region amend the Host Community Agreement, commence mediation/arbitration if an agreement not reached by February 14, 2011, and to commence an application in the Superior Court. *Amended by*

**Resolution C-035-11 (Carried):** Amending C-033-11 by adding to the amendment of the HCA to include consistency with regard to the maximum amount of waste, type of waste, waste sources and air emission criteria.

**Resolution C-036-11 (Carried):** To appoint David Crome, Director of Planning Services as the Municipality's alternate member on the EFW Advisory Committee.

### January 24, 2011 GPA

**Resolution GPA-051-10 (Motion Withdrawn):** That the Municipality ask the Minister of the Environment to clarify under the EA approval if his intent was that the EFW Advisory Committee meetings be open to the public.

**Resolution GPA-052-11 (Carried Later in Meeting):** To refer delegation of Wendy Bracken to staff, including Legal Services for a report on the intent of the draft Terms of Reference for the EFW Advisory Committee, the appointment of a Council liaison and clarification on the Municipality's future position on a peer review of the Certificate of Approval documents.

**Resolution GPA-053-11 (Carried):** To refer Wendy Bracken's delegation on ongoing EA Process/EFW Advisory Committee issues to a closed session to seek a legal opinion from the Solicitor.

**Resolution GPA-054-11 (Carried):** THAT the Municipal Solicitor prepare a report to Council regarding correspondence from the Region of Durham, dated January 21, 2011, on how the Municipality can avoid legal action in the matter of the Host Community Agreement.

**Resolution GPA-055-11 (Motion Lost):** THAT the correspondence from the Region of Durham, dated January 21, 2011 be referred to closed session.

**Resolution GPA-086-11 (Motion Lost):** To direct staff to obtain outside legal opinion as to whether the Resolution #C-033-11, regarding the HCA, exposes the Municipality to the risks outlined in the "With Prejudice" letter, written by Matthew Gaskell, Region of Durham, and specifically Section 2 of the said resolution.

### January 31, 2011 Council

Planning Services Staff Report PSD-011-11: Durham/York Residual Waste Project, Energy From Waste Advisory Committee (EFWAC)

**Resolution C-062-11 (Carried):** Concurring with the recommendations in staff report PSD-011-11

**Resolution C-065-11 (Carried):** To adopt C-033-11 regarding the Host Community Agreement

**Resolution C-066-11 (Carried as Amended):** Requesting the Region of Durham to amend the Host Community Agreement by February 28, 2011 after which staff be directed to commence mediation/arbitration

process. *Amended by*

**Resolution C-067-011 (Carried):** To amend Resolution C-066-11 by deleting a portion thereof.

### February 14, 2011 Council

**Resolution #C-084-11 (Carried):** THAT Correspondence from Sally Thurlow, providing comments with respect to transparency regarding the Energy From Waste Facility, be received.

**Resolution #C-094-11 (Carried):** Planning Services Department prepare a report on the role that the Host Community Agreement plays in the granting of the Environmental Assessment for the incinerator; and that a \$5000.00 limit on expenses for independent expert advice be set.

### March 7, 2011 Council

**Resolution C-122-11 (Carried as Amended):** Staff to prepare a report for March 21, 2011 GPA addressing the drafting and implementation of an Air Quality By-law. *Amended by*

**Resolution C-123-11 (Carried):** Amending C-122-11 to add an estimate of generated revenue related to trading of carbon credits.

Planning Services Staff Report PSD-024-11: Analysis of Host Community Agreement Role in the EA Approval for the EFW Project Report from Steven Rowe, Environmental Planner.

**Resolution C-124-11 (Carried):** PSD-024-11 be received and all interested parties be advised of Council's decision.

**Resolution C-125-11 (Motion Lost):** THAT Resolution C-124-11 be tabled to the March 21, 2011 GPA Meeting.

**Resolution C-126-11 (Carried):** To refer Confidential Verbal Report of the Municipal Solicitor on the Host Community Agreement be referred to closed session. Advice received in camera and no resolutions were passed.

**Resolution C-128-11 (Tabled to March 28, 2011):** To authorize staff to retain consultants and experts regarding general assessment and air modelling and to draft a by-law regarding fine particulate matter regulation.

### March 21, 2011 GPA

Planning Services Staff Report PSD-028-11: Drafting and Implementing an Air Quality By-law

**Resolution GPA-245-11 (Carried as Amended):** To receive PSD-028-11, to monitor the Ministry of Environment progress on cumulative impact assessment PM 2.5 policy framework and development of the Comprehensive Air Management System (CAMS), request the Durham Region to become more involved in air quality issues, and that if Council determines that air quality improvement should be identified as a priority in the Strategic Plan, the issue be referred to the 2012 budget. *Amended by*

**Resolution GPA-247-11 (Carried):** That GPA 245-11 be amended by deleting "in the Strategic Business Plan".

**Resolution GPA-249-11 (Carried):** Directing the Director of Planning Services to re-engage SENES Consultants to prepare comments to the Ministry of the Environment for the Certificates of Approval for the EFW.

**Resolution GPA-250-11 (Motion Lost):** To amend GPA 249-11 to formally adopt the comments by SENES Consultants of 2009 (on the approved Environmental Assessment).

**Resolution GPA 251-11 (Motion Lost):** To amend GPA 250-11 to address the 2009 SENES comments at the time of their report on the Certificate of Approval.

### March 28, 2011 Council

**Resolution C-150-11 (Carried as Amended):** Regarding availability of the hard copies of the Certificate of Approval documents for residents. *Amended by*

**Resolution #C-151-11 (Carried):** THAT the foregoing Resolution #C-150-11 be amended by deleting the last paragraph and replacing it with: that two hard copies of the Certificate of Approval documents be made available in the Municipal Clerk's Department for interested parties to sign out for two week periods.

**Resolution C-175-11 (Carried):** That Resolution C-128-11 be lifted from the table.

## CHRONOLOGY (Continued from page 4)

**Resolution C-176-11 (Motion Lost):** (Resolution C-128-11 from March 7, 2011) To authorize staff to retain consultants and experts regarding general assessment and air modelling and to draft a by-law regarding fine particulate matter regulation.

**Resolution C-178-11 (Motion Lost):** Amending C-128-11 to replace "Air modelling" with "Airshed Modelling" and add "air monitoring."

**Resolution #C-180-11 (Carried):** THAT the Confidential Memorandum from the Municipal Solicitor – Host Community Agreement be tabled until the next General Purpose and Administration Committee Meeting.

**Resolution C-181-11 (Carried):** To receive PSD-028-11, to monitor the Ministry of Environment progress on cumulative impact assessment PM 2.5 policy framework and development of the Comprehensive Air Management System (CAMS), request the Durham Region to become more involved in air quality issues, and that if Council determines that air quality improvement should be identified as a priority, the issue be referred to the 2012 budget.

### April 4, 2011 GPA

Planning Service Staff Report PSD-033-11: Durham/York Residual Waste Project Integrated Waste Management Committee, revised Terms of Reference

**Resolution GPA-297-11 (Carried):** To forward PSD-033-11 to the Regions of Durham and York and MOE, endorse Clarington's comments and advise all interested parties.

**Resolution GPA-307-11 (Carried):** Directing the Director of Planning Services to advise Senes to expand scope of Peer Review of Certificate of Approval to address health impacts related to PM 2.5 as requested by Wendy Bracken.

**Resolution GPA-310-11:** To advise Durham Region of Municipality's position on HCA.

### April 11, 2011 Council

**Resolution C-188-11 (Carried):** In support of rescheduling of future EFW Advisory Committee meetings and the Certificate of Approval presentation to evening meetings and that the public be notified of meetings.

### May 30, 2011 GPA

Planning Services Staff Report PSD-052-11 Durham-York Energy From Waste Project, Clarington Comments on Certificate of Approval Application. Peer review of Air Emissions. Abby Salb, Senior Environmental Engineer, was present from SENES Consultants Limited, regarding Report PSD-052-11, Durham-York Energy from Waste Project Clarington comments on Certificate.

**Resolution #GPA-394-11 (Carried as Amended):** Durham-York Energy from Waste project Clarington comments on Certificate of Approval (CofA) application (air) and requesting four conditions in the CofA. Amended by

**Resolution #GPA-395-11 (Carried):** Amending GPA-394-11 by adding details for continuous monitoring of cartridge system sampling for dioxins, furans and mercury.

**Resolution #GPA-396-11 (Carried):** Amending GPA-394-11 recommendation No. 1 regarding adoption of SENES.

**Resolution #GPA-397-11 (Carried):** Amending GPA-394-11 recommendation No. 3 requesting the Ministry of the Environment to provide the draft CofA for review and comment.

**Resolution #GPA-398-11 (Carried):** Allowing SENES Consultants to answer further questions from Members of Council.

### June 20, 2011 Council

**Resolution #C-318-11 (Carried):** THAT SENES recommendation be adopted as Clarington's comments on the Application for a Certificate of Approval and requesting seven conditions to the Ministry of Environments CofA to make them legally binding.

### July 18, 2011 Council

**Resolution C-363-11 (Motion Withdrawn):** Requesting the Host Community Agreement honour commitment re: total particulate matter, timing of EFWAC review of plans, and dealing with reviewing monitoring plans.

**Resolution C-366-11 (Motion Lost):** To divide C-363-11 and deal with particulate matter separately.

**Resolution C-367-11 (Motion Lost):**

To amend C-363-11 to delete phrase "as required by the HCA" and delete reference to when EFWAC will review plans.

**Resolution C-368-11 (Carried):** That the Region be requested to operate the EFW with a performance condition for total particulate matter (filterable and condensable is a max of 9 mg/Rm3) and that EFWAC meetings be held in the evening.

### July 26, 2011 Special Regional Council

**Resolutions 192 to 194:** Regarding the approval of the Durham/York EFW Co-owner's Agreement after receiving certain background material on Human Health Risk Assessment and PM2.5 emissions.

### September 19, 2011 Council

**Resolution C-422-11 (Carried as Amended):** Mayor's office and staff prepare for publication in Orono Times and Metroland with funds from Clarington.net (publication). Amended by

**Resolution C-423-11 (Carried):** Replacing words Orono Times and Metroland with the "last edition" of Clarington.net.

Solicitor's Report LGL-010-11 : Durham Citizens Lobby for Environmental Awareness and Responsibility vs The Regional Municipality of Durham, the Municipality of Clarington and Covanta.

**Resolution C-427-11:** To receive LGL-010-11, and authorize the solicitor to file a Notice of Appearance and maintain a watching brief.

### October 3, 2011 COUNCIL

Appointment of Members to the EFW – Waste Management Advisory Committee (WMAC)

**Resolution C-433-11 (Carried):** To have staff respond to the following questions:

- Will ICI waste be accepted or not;
- Will the Monitoring Program Records be public records;
- Is there a prescribed limit for PM2.5 and PM10 contaminants?

**Resolution C-444-11 (Carried):** To receive CLD-025-11 and appoint Marven Whidden, Kathy Coupland, Michelle Speelman-Viney and Sophia Wouters as members to the EFW-WMAC.

### October 17, 2011 GPA

Planning Report PSD-082-11 on the three questions (see **Resolution C-433-11**).

**Resolution GPA-605-11:** That the report be received for information.

## CONTACTS & LINKS



### REGION OF DURHAM

**Regional Headquarters**  
605 Rossland Rd. E.  
P.O. Box 623, Whitby, ON L1N 6A3  
1-800-372-1102  
[chair@durham.ca](mailto:chair@durham.ca)

**Waste Management**  
4600 Garrard Road  
P.O. Box 623, Whitby, ON L1N 6A3  
1-800-667-5671  
[waste@durham.ca](mailto:waste@durham.ca)

### DURHAM YORK ENERGY CENTRE

[www.durhamyorkwaste.ca/](http://www.durhamyorkwaste.ca/)

### COVANTA ENERGY

Covanta Holding Corporation  
445 South Street  
Morristown, NJ 07960  
(862)345-5000  
[info@covantaenergy.com](mailto:info@covantaenergy.com)

### AIR QUALITY ONTARIO

[www.airqualityontario.com/](http://www.airqualityontario.com/)

## FUTURE INFORMATION ON THE EFW PROJECT

As time goes by there will be further information on the incinerator and on other issues posted on Facebook at [www.facebook.com/MunofClarington](http://www.facebook.com/MunofClarington) and the Clarington blog at <http://clarington.wordpress.com>.

Please check out these pages frequently for ongoing updates on what's going on in Clarington and what your Council is doing on behalf of our community.

You are free to ask questions via the blog and/or facebook pages. Please note that these pages are moderated.

## CITIZEN ADVISORY COMMITTEE

Under the terms of the Host Community Agreement, the Region has established a committee known as the Energy from Waste Management Advisory Committee. (EFW-WMAC). The EFW-WMAC will act in an advisory role to the Durham Works Committee on issues or concerns which arise with waste diversion, waste management, environmental performance and monitoring of the EFW facility, including the construction and operational phases.

The EFW-WMAC is comprised of volunteers appointed by Durham Regional Council and Clarington Council. Clarington's representatives are Marven Whidden, Kathy Coupland, Michelle Speelman-Viney and Sophia Wolters. The chair of the Committee is Margaret Clayton. Non-voting members include Councillor Novak (Regional Councillor Wards 1 and 2), Councillor Neal (Local Councillor Ward 1) and a Clarington Planning Services Department staff person.

The Committee will meet at least quarterly to review waste diversion activities, review environmental performance and monitoring data, identify issues of concern regarding the EFW facility, develop community outreach and information programs, discuss matters related to environmental and human health and provide a forum for residents' questions and concerns.

More information is available at: [www.durhamyorkwaste.ca/project/efwwmac-committeemeetings.htm](http://www.durhamyorkwaste.ca/project/efwwmac-committeemeetings.htm)



## LEGALLY SPEAKING

One of the first orders of business for Clarington's current Council, on taking office in December, 2010, was to consider the implications of the Host Community Agreement (HCA) between Durham and Clarington that approved by the previous Council. The HCA was seen as Clarington's acceptance of "willing host" status for the Energy-from-Waste (EFW) facility.

In December 2010, the current Council directed staff to look at all of the implications of the HCA, including possible legal challenges to the agreement.

On January 17, 2011, Council voted to ask the Region to clarify the meaning of certain sections of the HCA and to commence a court application to determine the validity of other sections.

The response from the Region of Durham's lawyer was swift and direct – he indicated that any attempt to initiate a court application could result in Clarington winding up "on the hook" for tens of millions of dollars in damages and costs. In a letter dated January 21, 2011, Regional Senior Solicitor Matthew Gaskell was very clear on the Region's legal position on the matter, saying initiation of court proceedings would be a "clear and unequivocal breach of the HCA."

"The Region of Durham will not discuss the terms of the HCA while under a threat of litigation," Mr. Gaskell's letter went on to say. The two sides could have discussed Clarington's concerns, "rather than (Clarington) threatening to litigate the enforceability of a contract that was freely entered into by the previous council."

According to Mr. Gaskell, the entire exercise could delay the Region's time line for the EFW project, and that could mean significant costs, including:

- \$15 million spent by Durham and York Regions on the Residual Waste Environmental Assessment;
- termination costs on the project agreement, possibly in the neighbourhood of \$30 million; and
- legal costs of upwards of a million dollars.

"If the Region were subject to any of these costs as a result of Clarington's breach of the HCA, then the Region would undoubtedly pursue recovery from Clarington," Mr. Gaskell's letter stated.

That could leave Clarington's taxpayers on the hook for paying the damages -- in the neighbourhood of \$1,500 per Clarington household. Even getting out of the HCA was unlikely to stop the EFW from moving forward. At most, many Councillors felt it would only delay the project while making it significantly more expensive, in particular, to Clarington taxpayers.

Still, Councillors looked further into the potential ramifications of Clarington's "willing host" status under the HCA. They sought opinions, including those of an outside consultant and the then-Minister of the Environment, to determine if accepting the HCA and therefore being seen as a "willing host" had factored into the Minister's decision to approve the Environmental Assessment. Mayor Adrian Foster took the step of writing to then-Minister, John Wilkinson.

"Members of the public, and some members of Council, wish to formally challenge the validity of the Host Community Agreement in an effort to prevent the EFW from being built," Mayor Foster wrote. "Such a challenge carries with it the potential for significant costs to our ratepayers; as such, it is only prudent that we understand if in fact a successful challenge to the Host Community Agreement would impact the decision of the Ministry."

It would not, Minister Wilkinson replied. "Although the Host Community Agreement was submitted as part of the EA documentation, my decision to grant approval for the undertaking was not based on the Municipality of Clarington being a willing host to the undertaking," he wrote. "Any challenge to the validity of the Host Community Agreement will, therefore, not have an impact on the approval of the undertaking or any future approvals . . . in regard to the undertaking."

*"Although the Host Community Agreement was submitted as part of the EA documentation, my decision to grant approval for the undertaking was not based on the Municipality of Clarington being a willing host to the undertaking," he wrote. "Any challenge to the validity of the Host Community Agreement will, therefore, not have an impact on the approval of the undertaking or any future approvals . . . in regard to the undertaking."*

*Honorable John Wilkinson  
Then-Minister of the Environment  
July 7, 2011*

## AND WHAT HAPPENS NOW?

According to the Region's time line, construction is to take place in 2012 and 2013. The Site Plan (site layout and architectural design) of the facility to implement the Minister's decision and the Region's contract, was approved by municipal staff on November 4, 2011. In light of the size of the project, the issuance of building permits will be phased. The first building permit application was received December 15, 2011. To this point, actual construction has not begun. The facility, according to Regional time lines, is to be commissioned in the spring of 2014, with an anticipated Fall 2014 operational start-up.

There is the potential of delay, should DurhamCLEAR's court application with regard to the need for a zoning amendment of the site be successful. Any construction that had begun could be ordered stopped pending further planning approvals.



## EMISSION LIMITS AND MAXIMUM ACHIEVABLE TECHNOLOGY (MACT)

The Host Community Agreement with Clarington required the Regions to design the Energy from Waste Facility to Maximum Achievable Control Technology. MACT is technology-based standards based on the best-performing similar facilities in operation.

### HOW DO THE EFW EMISSION LIMITS COMPARE TO OTHER JURISDICTIONS?

At the time of negotiations for the Host Community Agreement, the stack emission limits in Ontario were the Ministry of Environment (MOE) A-7 Guideline 2004. Also at that time, the European Union (EU) Directive Standards for EFW facilities and the United States Environmental Protection Agency (EPA) had more stringent standards than Ontario. The standard guaranteed in the Host Community Agreement was the most stringent of all standards, even the revised MOE A-7 which came out later in 2010.

Ontario now has some of the most stringent emission limits in the world. Through the approvals process, the Ministry of the Environment imposed even more stringent standards on emissions.

Contaminant	Units @11% Oxygen	Ontario A-7 2004	Ontario A-7 2010	Canadian Council of Ministers of the Environment 2007	US Standards 2006	EU Directive Standards 2000	Durham/York EFW Emission Limitations 2010 (HCA)	Durham/York EFW Emission Limitations 2011 (C of A)
Total Dust (Particulate Matter, PM)	mg/Rm <sup>3</sup>	17	14	20	14	9.2	9	9
Sulphur Dioxide (SO <sub>2</sub> )	mg/Rm <sup>3</sup>	56	56	260	55	45.5	35	35
Hydrogen Chloride (HCl)	mg/Rm <sup>3</sup>	27	27	75	26.1	9.2	9	9
Nitrogen Oxides (NO <sub>x</sub> , expressed as NO <sub>2</sub> )	mg/Rm <sup>3</sup>	207	198	400	197.5	183.2	180	121
Carbon Monoxide (CO)	mg/Rm <sup>3</sup>	*ND	*ND	57	41 - 200	45.8	45	40
Cadmium (U) and Thalium	µg/Rm <sup>3</sup>	*ND	*ND	*ND	*ND	45.8	46	46
Lead (v)	µg/Rm <sup>3</sup>	142	60	50	98.0	458	50	50
Mercury	µg/Rm <sup>3</sup>	20	20	20	35.0	45.8	15	15
Dioxins and Furans (PCDD/F TEQ)	µg/Rm <sup>3</sup>	0.08	0.08	0.08	9.1	0.092	0.06	0.06
Cadmium	µg/Rm <sup>3</sup>	14	7	100	7.0	*ND	7	7
Organic Matter (CH <sub>4</sub> )	mg/Rm <sup>3</sup>	65.6	50	*ND	*ND	*ND	49	33
Hydrogen Fluoride (HF)	mg/Rm <sup>3</sup>	18	18	*ND	*ND	0.92	0.92	0.9
Combined Trace Metals	mg/Rm <sup>3</sup>	*ND	*ND	*ND	*ND	458.1	458.1	460

\*NOTE: ND= Not      µg = micrograms

The Certificate of Approval (C of A) from the Ministry of Environment (MOE) includes a number of monitoring and operational details. The C of A is available at [http://www.durhamyorkwaste.ca/project/cert\\_doc.htm](http://www.durhamyorkwaste.ca/project/cert_doc.htm).

The type of monitoring required includes emissions, the waste feed stock, sampling of dioxins and furans, ambient air monitoring, noise, soil, ground and surface water. MOE has also included a complaints protocol requirement to address issues that arise with operational aspects of the Energy from Waste facility.

## **HOST COMMUNITY AGREEMENT (HCA) BENEFITS**

During the term of the previous Council, Clarington Councillors agreed to a **Host Community Agreement (HCA)**, a document widely seen as making the Municipality a "willing host" to the incinerator.

Clarington's newly elected Council initially studied the document, and sought information on whether getting out of the HCA would impair the Region's ability to move ahead with the facility.

After receiving input from staff, the Minister of the Environment, and outside consultants, the majority of Council determined that even if Clarington could get out of the agreement, the facility would still be built. They felt that getting out of the HCA could expose Clarington to enormous costs and could also have the impact of denying Clarington the benefits to be found in the HCA.

Topping the list is the commitment to public safety promised to Clarington. For example, in the HCA the Region has committed to using 'maximum achievable control technology' for emissions control and monitoring systems. In some cases, this will mean 24/7 monitoring.

The agreement also requires that the Region incorporate \$9 million in architectural upgrades and treatments to the facility. Further, it commits Durham to the continuation of implementation and support for aggressive waste diversion and recycling, with the goal of meeting or exceeding a 70 per cent diversion recycling rate for all of Durham.

It also indicates Durham will pay either taxes or payments-in-lieu of taxes. It's not currently known how much that will be, but initial estimates indicate about **\$650,000** will flow annually to Clarington's coffers.

Also key to the document were a number of clauses that would help Clarington with what has long been seen as a barrier to economic development in the Municipality: a lack of serviced lands on which businesses and industries could set up shop. As part of the agreement, the Region is to convey to Clarington lands it acquires for the EFW that are determined to be "surplus". This allows Clarington to promote the availability of serviced lands in the area - long been proposed as an **"Energy Park."**

The vision for this Park sees it filled with numerous energy-related businesses. As well, the Region is to invest **\$3.5 million** in offsite roads and improvements to link the area. A number of servicing-related costs would be paid up-front by the Region, and Clarington will be able to recoup those costs from future tenants or owners of the Energy Park lands.

Further, the HCA commits the Region to kick-starting another economic development proposal, near Bennett Road and Hwy. 401 in east Bowmanville, which Clarington has long intended to see developed as the **Technology Business Park** in east Bowmanville. Under terms of the deal, the Region is required to begin the Environmental Assessment process aimed at solving a servicing problem that has stalled development of the park.

Beyond that, the agreement calls for the Region to install a separate truck entrance, so truck traffic is relatively hidden. Such traffic was seen as a potential disincentive to the type of business Clarington is attempting to attract to the area, which is also to be home to a new Ontario Power Generation Energy Centre.

At the same time, Clarington is bound by some portions of the Host Community Agreement. For example, it contains a clause stating that Clarington "shall not oppose the development or operation of the EFW facility." At the request from Council, staff have since sought clarification of that clause, and have determined it does not stop Clarington from providing comment aimed at improving the facility. The document also states that Clarington considers the EFW facility to be "public use" under the zoning bylaw, which would permit it to go ahead without the need for a rezoning or an amendment to Clarington's Official Plan. This matter is currently the subject of a court application by an organization called DurhamCLEAR. The Region is defending against the lawsuit at its expense.

Under the Host Community Agreement, Clarington will encourage future tenants of the Energy Business Park to take advantage of the potential for district heating and cooling that results from an EFW facility.

## **LAWSUIT PENDING BY GROUP OPPOSED TO INCINERATOR**

In July 2011, a group opposed to the proposed Energy-From-Waste (EFW) facility launched a court application aimed at stopping its construction. The application is based mainly on whether the site is appropriately zoned for the proposed use. In August of this year, an affidavit sworn by Douglas Anderson, President of DurhamCLEAR, was filed in support of the application.

DurhamCLEAR's allegations, which have not been proven in court, largely focus on whether the EFW facility should be considered a "public use" thus exempting the site from the need for a rezoning. It argues that co-ownership of the facility with the Region of York and the design-build-operate agreement with Covanta negates the "public use" exemption. It argues that the lands are currently zoned in such a way that it would preclude an energy-from-waste facility being built where it is proposed to be built.

That the facility will be operated by a private corporation, Covanta, and part-owned by York Region, cause the facility not to achieve the requirements of "public use", Mr. Douglas Anderson alleges in his affidavit.

The Host Community Agreement between Clarington and Durham stipulates that Clarington recognizes the EFW as a "public use." The "public use" provision of the Clarington Zoning By-law is similar to that found in many zoning by-laws. It states that the by-law does "not apply to prohibit the use of any lot or the erection or use of any building or structure for the purpose of public services provided by Clarington, any school board, or any Public Authority including any Department of the Regional Municipality of Durham..." "Public Authority is further defined to include "Federal, Provincial, Regional or Town agencies and includes any commission, board, corporation, authority or department established by such agency."

DurhamCLEAR's suit challenges the validity of the "public use" definition.

The suit is being vigorously defended by the Region of Durham and Covanta. The Municipality is not defending against the application.

## **MORE WAYS FOR YOU TO COMMUNICATE WITH US!**



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