

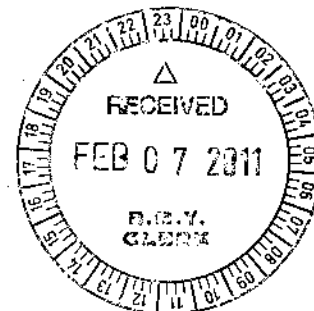
Clarington

Leading the Way

3155428
REGION OF YORK
CLERK'S OFFICE
FILE No. - P42

February 2, 2011

Pat Madill, Clerk
The Regional Municipality of Durham
605 Rossland Road East
Whitby, ON, L1N 6A3



Dear Ms. Madill:

**RE: DURHAM YORK RESIDUAL WASTE PROJECT
ENERGY FROM WASTE ADVISORY COMMITTEE (EFWAC)
FILE NO.: E07.EN**

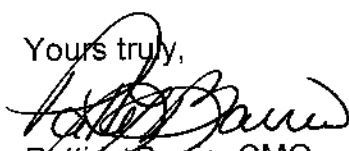
At a meeting held on January 31, 2011, the Council of the Municipality of Clarington considered the above matter and passed the following resolution:

"THAT Report PSD-011-11 be received;

THAT a copy of Report PSD-011-11 and Council's decision be forwarded to the Region of Durham, the Region of York, and Ministry of Environment; and

THAT all interested parties listed in Report PSD-011-11 and any delegations be advised of Council's decision."

Yours truly,


Patti L. Barrie, CMO
Municipal Clerk

PLB/ta

cc: D. Kelly, Regional Clerk, Region of York ✓
Gavin Battarino, Ministry of Environment
Wendy Bracken
Tracey Ali
Linda Gasser
Kerry Meydam
Doug Anderson
Jim Richards

CORPORATION OF THE MUNICIPALITY OF CLARINGTON

40 TEMPERANCE STREET, BOWMANVILLE, ONTARIO L1C 3A6 T 905-623-3379



REPORT

PLANNING SERVICES

Meeting: COUNCIL

Date: January 31, 2011

Resolution #:

By-law #: N/A

Report #: PSD-011-11

File #: PLN 33.3.10

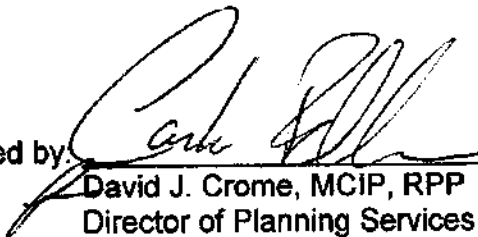
Subject: DURHAM/YORK RESIDUAL WASTE PROJECT
ENERGY FROM WASTE ADVISORY COMMITTEE (EFWAC)

RECOMMENDATIONS:

It is respectfully recommended to Council the following:

1. THAT Report PSD-011-11 be received;
2. THAT a copy of Report PSD-011-11 and Council's decision be forwarded to the Region of Durham, the Region of York, and Ministry of Environment; and
3. THAT all interested parties listed in Report PSD-011-11 and any delegations be advised of Council's decision.

Submitted by:



David J. Crome, MCIP, RPP
Director of Planning Services

Reviewed by:



Franklin Wu,
Chief Administrative Officer

FL/AA/sn/df

26 January 2011

CORPORATION OF THE MUNICIPALITY OF CLARINGTON

40 TEMPERANCE STREET, BOWMANVILLE, ONTARIO L1C 3A6 T (905)623-3379 F (905)623-0830

1.0 BACKGROUND

- 1.1 At the January 24, 2011 General Purpose and Administration Committee meeting, staff were directed to prepare a report for Council on January 31, 2011, as set out in the resolution below.

THAT the delegation of Wendy Bracken be referred to staff, including the Legal Services Department for a report on the following:

- requesting the Minister of the Environment for clarification on the intent of the draft Terms of Reference of the Energy from Waste Advisory Committee;
 - appointment of a Council liaison to the Energy from Waste Advisory Committee; and
 - Clarification on the future position of the Municipality of Clarington regarding having a peer review of the Certificate of Approval documents.
- 1.2 Faye Langmaid, Manager of Special Projects who was appointed by Council to participate on the Energy from Waste Advisory Committee (EFWAC) on January 17th, 2011, attended the initial meeting of the group on January 20th, 2011. The public was not permitted to enter the meeting. No reason was provided for this action.
- 1.3 The initial EFWAC meeting dealt with the draft terms of reference, draft complaint protocol, a review of the EA process and approval. Comments are due on the draft complaint protocol January 27th, 2011 and on the draft terms of reference February 10th, 2011.

2.0 ISSUES RAISED IN GPA RESOLUTION #GPA-052-11 JANUARY 24, 2011

- 2.1 It is recommended the Minister of Environment be sent a copy of this report. It is Staff's understanding that the draft terms of reference have to be reviewed and approved by the MOE Director and Regional Director, that will be after they have been further reviewed and vetted with the Project Team and presumably the EFWAC. As such, Staff have requested the Project Team forward the motion Council passed on January 17th, 2011 #C-016-11(Attachment 1) in conjunction with the comments provided to the Project Team (Attachment 2) on the Draft Terms of Reference (Attachment 3).
- 2.2 Appointment of a Council liaison to the EFWAC is at the discretion of Council. The Clerk has advised that it would be necessary to rescind the resolutions that have been passed being Resolutions #C-017-11 (Attachment 1) and #C-036-11 (Attachment 4 - appointment of an alternate) if Council's wishes to appoint a member of Clarington Council instead of either or both of the individuals appointed by those resolutions.

- 2.3 As part of the discussion on the draft complaint protocol at the EFWAC meeting, the committee was informed that the Certificate of Approval (C of A) is being submitted by the Operator, Covanta. The draft application for the C of A will be submitted in or around the end of January. It is to include the draft complaint protocol. Comments on the draft complaint protocol were requested by the Project Team by January 27th (Attachment 5).
- 2.4 The public members of EFWAC felt that the draft C of A application should come before the committee prior to submission to the MOE; however, the Project Team informed the committee that this is not part of their "advisory" role. Subsequently, public members requested the Project Team keep the EFWAC members informed of the application submission and any amendments to MOE. MOE does not notify interested parties, rather MOE posts information to the Environmental Bill of Rights (EBR) website.
- 2.5 For Council's information, review of a draft application is a lengthy process and amendments to the application can be made throughout the process. The Municipality will be requested to make comments by MOE on the C of A application.
- 2.6 The Municipality in the Host Community Agreement set out its requirements for the emission levels to be achieved in the C of A. The EA Approval has further restricted the emissions identified in the Host Community Agreement.
- 2.7 The Municipality has the ability and will be asked by MOE to comment on matters relating to the C of A and if as part of those comments the Municipality wishes to conduct a peer review of certain aspects of the C of A it can do so. Funds for such a peer review have not been identified in the 2011 budget nor is this part of the peer review funding that was provided by the Region during the EA Process.
- 2.8 This Report has been reviewed by the Municipal Solicitor.

Staff Contact: Faye Langmaid

Attachments:

- Attachment 1: Resolutions #C-016-11 and #C-017-11
Attachment 2: Draft Letter on Draft EFWAC Terms of Reference to Project Team
Attachment 3: Draft EFWAC Terms of Reference
Attachment 4: Resolution #C-036-11
Attachment 5: Letter on Draft Complaint Protocol to Project Team

List of interested parties to be notified of Council's decision:

Lyndsay Waller, EFWAC Facilitator, EFW Project Team
Gavin Battarino, Ministry of the Environment
Wendy Bracken
Tracey Ali
Linda Gasser
Kerry Meydam
Doug Anderson

Council Meeting Minutes

- 15 -

January 17, 2011

convenient for public participation, and to report directly to Council; and, suggesting that Regional Council be urged to appoint one or more of its members to the Advisory Committee so that there is a direct reporting relationship.

Resolution #C-016-11

Moved by Councillor Neal, seconded by Councillor Partner

THAT the Advisory Committee for the Energy from Waste Project and all necessary bodies including Durham Region be advised that the Municipality of Clarington concurs with the position of DurhamCLEAR that Advisory Committee meetings for the Energy from Waste Project should be open to the public and held at times that are convenient for public participation; and

THAT Correspondence Item D - 7 be referred to the Director of Planning Services.

"CARRIED"

- D - 8 Gioseph Anello, Manager of Waste Planning and Technical Services, Regional Municipality of Durham and Dave Gordon, Manager, Waste Management Program Planning and Policy, Regional Municipality of York, requesting that, in accordance with Condition 8 of the Notice of Approval of the Energy from Waste (EFW) Environmental Assessment requiring the establishment of an Advisory Committee to ensure that concerns regarding the design, construction and operation of the undertaking are considered and mitigation measures implemented where appropriate, one (1) representative member and one (1) staff/representative member be appointed to participate on the Energy from Waste Advisory Committee. The first meeting of the Advisory Committee will take place on January 20, 2011.

Resolution #C-017-11

Moved by Councillor Novak, seconded by Councillor Partner

THAT Faye Langmaid, Manager of Special Projects, be appointed to participate on the Energy from Waste Advisory Committee.

"CARRIED"

- D - 9 Carolyn Downs, City Clerk, City of Kingston, advising Council that on December 21, 2010, the City of Kingston adopted the following resolution pertaining to Heads and Beds payment:

February 1, 2011

Lyndsay Waller, Facilitator
Energy from Waste Advisory Committee (EFWAC)
Regional Municipality of Durham
605 Rossland Rd. East
Whitby, ON L1N 6A3

Dear Ms. Waller:

**RE: ASSIGNMENTS FROM JAN 20, 2011 EFWAC REGARDING
DRAFT TERMS OF REFERENCE
FILE NO.: PLN 33.3.10**

Please accept the following remarks in response to your request for comments by February 10, 2011 on the Draft Terms of Reference.

Draft Terms of Reference for EFWAC

Item 1 – "The purpose of the EFWAC is to provide a forum for the transfer of information between...various stakeholders...and the public..."

Given this as the purpose of the committee it is not logical that the Membership (3.1) is limited to only 3 environmental groups named by the Ministry in the EA Approval and that the meetings are closed to the public (8.1). While the 3 environmental groups are important members of the public they are not the entirety of the public. Further limiting the attendance of the public to only the appointed members and their alternates does not fulfill the mandate of providing information to the public.

There was discussion at the meeting that there would be other venues and advisory committees, however, given that this appears to be the only committee set out in the EA approval to satisfy the public advisory role these clauses in the Terms of Reference should be revised.

Item 3.1 – Please advise how clause 8.6 of the EA Approval is being addressed or can be in the future, given the limitations that have been included in the draft Terms of Reference.

"8.6 The proponent may also invite other stakeholders to participate in the advisory committee, including, but not limited to, interested members of the public, Aboriginal communities, and other federal or provincial agencies."

It is our understanding from 8.11 in the EA Approval that the Terms of Reference will be submitted to the MOE Director and Regional Director. Please advise the MOE Director and Regional Director of Clarington's objection to these clauses, as set out in Council's Resolution #C-016-11(attached).

Item 4 – The EFWAC shall "provide advice to help ensure that the commitments", please reword this section. The EFWAC is only advisory and does not have any approval authority. As such, they can only advise the Project Team and Regions, they cannot ensure that the Project Team or Regions follow their advice.

Item 8.1 – Meeting times from 8:30 a.m. to 4:30 p.m. Monday to Friday, while this accommodates the majority of the members of the EFWAC (as they are employees), it does not accommodate the public members or provide for wider public participation. Some meetings could be after hours, especially if the presentation topic is something that a wider group of the public might wish to attend. There could be a balance between daytime and nighttime meetings to better meet everyone's calendar and volunteer commitments.

"The meeting location may be subject to change once the EFW facility is operational and providing space is available." Following the meeting on January 20th, you called all the members asking if holding meetings in York was acceptable, there was no discussion of this at the meeting itself. Upon reflection since all the public members are from Durham it would make sense to hold the meetings in Durham to better accommodate their participation. Meetings could be held in York if there was a specific purpose (e.g. tour of a facility) but again an appropriate balance should be struck.

"Meetings will be closed to the public." There is no reason for this clause to be in the Terms of Reference and we request that it be deleted. The public attended the meetings of the EA Process Site Liaison Committee and were respectful, well informed and interested in the proceedings. Given their ongoing participation and the requirement by the EA approval to include certain groups as member stakeholders, their participation should be respected and welcomed.

Yours truly,

Faye Langmaid
Manager of Special Projects
FL:sn

cc: Mayor and Members of Council
Franklin Wu, CAO
Tony Cannella, Director of Engineering Services
Fred Horvath, Director of Operations
David J. Crome, Director of Planning Services



Energy from Waste Advisory Committee

Terms of Reference

(Per the Minister of the Environment's Conditions)

1. Purpose

The Energy from Waste (EFW) Advisory Committee (EFWAC) is established to provide a forum for the transfer of information between the facility design, build, operate (DBO) contractor, various stakeholders including The Regional Municipality of Durham (Durham) and The Regional Municipality of York (York) and the public during three distinct phases of the projects: design, construction and operation of the plant.

Mandate

Pursuant to Condition 8 of the Minister of the Environment's (Minister) Notice of Approval, the purpose of the EFWAC is to ensure that concerns about the design, construction and operation of the undertaking are considered and mitigation measures are implemented where appropriate. Additionally, EFWAC will discuss any other related strategic waste diversion and management issues.

2. Scope of Activities

The issues that the EFWAC may discuss and address information relevant to the Durham and York's (Regions) EFW facility include:

- a) Compliance Monitoring Program required by Condition 4;
- b) Annual Compliance Report required by Condition 5;
- c) Complaint Protocol required by Condition 6;
- d) Community Communications Plan required by Condition 7;
- e) The Annual Reports required by Condition 10;
- f) Ambient Air Monitoring and Reporting Plan required by Condition 11;
- g) Air Emissions Monitoring Plan required by Condition 12;
- h) Written report prepared and signed by the qualified professional required by Condition 16.5;
- i) Spill Contingency and Emergency Response Plan required by Condition 17;
- j) Odour Management and Mitigation Plan and the Odour Management and Mitigation Monitoring Reports required by Condition 18;
- k) Noise Monitoring and Reporting Plan required by Condition 19;

- l) Groundwater and Surface Water Monitoring Plan, the results of the groundwater and surface water monitoring program, the annual report on the results of the groundwater and surface water monitoring program required by Condition 20;

3. Membership and Code of Conduct

3.1 Membership

As per Conditions 8.3, 8.4, 8.5, the Minister has mandated that the Regions invite the following to participate on the Committee.

The EFWAC shall be comprised of one representative from each of the following:

- a) Each of the lower tier municipalities in the Regional Municipality of Durham
- b) Each of the lower tier municipalities in the Regional Municipality of York
- c) A staff member each from the Municipalities of Durham and York Regions
- d) Central Lake Ontario Conservation Authority
- e) DurhamCLEAR
- f) Durham Environmental Watch
- g) Zero Waste 4 Zero Burning

3.2 Invitations to attend EFWAC meetings will be provided to the following:

- Staff representative from Durham and York's Health Departments
- Staff representative from the Municipality of Clarington
- Staff representative from the Ministry of the Environment

3.3 Code of Conduct

In accordance with Condition 8.10, Committee members, guests and the facilitator shall:

- Strive to attend all meetings (excluding guests).
- Declare any situation which is, or has the potential to be, a conflict of interest before agenda items are presented.
- Carry out their functions with integrity, and act in the best interests of the mandate and the Minister's Conditions.

- Act responsibly and fairly with the care, diligence and prudence of a reasonable individual.
- Respect all viewpoints and follow rules of decorum.
- Ensure opinions expressed outside the Committee represent personal viewpoints versus those of the Committee.
- Not use any information provided to the Committee for personal gain.

3.4 Call for Membership

A letter will be sent to the Directors in each of the lower tier municipalities in Durham and York inviting them to select a member and an alternate to represent their seat. The non-government agencies will also be sent letters to the respective Administrator advising them of their seats as participants on the Committee.

4. Expectations of Committee Members/Roles

Durham and York acknowledge that membership on the Committee does not constitute support for the approved undertaking.

Members are expected to:

- Participate voluntarily.
- Adhere to the code of conduct (Section 3.3).
- Provide advice that is reflective of the views of the organization and/or the community to which they belong; members may actively solicit the viewpoints of their organization or community.
- Uphold the Committee purpose.
- Become familiar with what is in the approved Final Residual Waste Study Environmental Assessment Report and the Minister's Conditions.
- Make presentations if/where required.

In the assurance of the Minister's Conditions, the Committee shall:

- Review the implementation of the undertaking and provide advice to help ensure that the commitments made by the proponents in the approved Environmental Assessment are being met.
- Not be used as a venue for review of the decisions associated with the approved undertaking.
- Not be an approval body or steering committee.

- Not be a forum to solicit data or information on matters outside the mandate of the Committee.

5. Expectation of the Facilitator/Roles

In contrast to the previous Energy from Waste Site Liaison Committee established for the Environmental Assessment, the new Committee meetings will be lead by a facilitator instead of a Chair, to ensure they are efficient and effective. The facilitator will be appointed by Durham and York and can be removed or replaced only by the Regions. The facilitator is expected to:

- Provide guidance and support to the committee in setting meeting agendas and determining the frequency of meetings.
- Manage the meetings and adherence to protocols.
- Ensure the committee adheres to the mandate and that discussions are focused and in-scope.
- Moderate the discussion to ensure a balanced and inclusive exchange of ideas.
- Encourage advice and feedback from all members.
- There will be a no tolerance rule for members who make it difficult for others to have their opinions heard.
- Support and guide the Committee in determining options for managing disruptions to meetings.
- Call the meeting to a close if meeting etiquette can not be maintained.
- Periodically review and evaluate the membership. Membership will be evaluated based on the ability of members to carry out advisory duties, attendance and whether the current membership continues to meet the needs and requirement of fulfilling the Committee mandate and the Minister's Conditions.

6. Expectation of the Project Team (DBO contractor and Durham and York project team staff)

- Appoint a senior team member(s) to be a regular resource person at Committee meetings to provide project updates and respond to Committee questions and comments.
- Appoint a facilitator to ensure guidance, support and to maintain constructive meetings.

- Appoint a staff liaison to the EFWAC to provide administrative, procedural and technical support to the EFWAC. Durham liaison will be responsible for minutes, agendas, uploading meeting minutes, coordinating flow of information and other information which is deemed important to the project website
- Coordinate the attendance of other specialists as required to address specific issues or reports. Upon request, the representatives of the DBO Contractor and governmental / regulatory bodies shall ensure that all studies and other information relevant to the EFWAC's mandate are made available to the EFWAC.
- As per Condition 8.2 d) and Condition 5, the project team shall prepare an annual report summarizing the activities completed by the EFWAC.

7. Alternates and Resignations

Alternates can be replaced by the member's organization at any time.

If a member's alternate is present at a meeting at the same time as the member, the alternate will be an observer and not have speaking rights.

If an alternate is present at the meeting representing the member, the alternate will be assumed to be speaking on behalf of the member.

Resignations shall be given in writing to the facilitator.

8. Protocol for Disseminating and Review of Information

8.1 Meetings

As per Section 8.9 of the Minister's Conditions, the initial meeting is to take place within three months of the date of Environmental Assessment approval, on or about February 19, 2011. Meetings should be held more frequently through the design and construction stages.

- The EFWAC shall meet annually at a minimum, with one meeting scheduled after the DBO emissions and compliance reports have been released and reviewed by members. The EFWAC will establish a meeting schedule at its inaugural meeting. The EFWAC shall provide Durham and York with a meeting schedule once times and dates have been established.
- Meetings will take place during business hours, Monday to Friday from 8:30 a.m. to 4:30 p.m. Meeting dates must be determined such that they are synchronized with other committees.

- The meeting location may be subject to change once the EFW facility is operational and providing space is available.
- All meetings will be closed to the public. Only members, alternates, invited representatives, and guests making presentations may attend meetings.
- Meetings will follow a format of: review of comments from previous meeting, presentation, comments and questions.

8.2 Minutes

- Minutes will be taken for each meeting.
- Previous minutes will be circulated and reviewed prior to the subsequent meeting.
- Minutes will be approved at the subsequent meeting.
- Once the minutes have been reviewed and approved by the Committee, they should be forwarded posted on the project website. Final versions of other Committee materials will also be posted on the project website, within two weeks.
- Issues requiring follow-up will be addressed at the next meeting.

8.3 Agendas

- Final agendas will be circulated prior to the meetings.
- Agendas will be prepared for all meetings.
- Agendas will include a prescribed duration for discussion of items.
- Final agendas will be posted on the project website.

8.4 Presentations and Discussions at Meetings

- A quorum is not necessary for meetings to proceed.
- Significant reports and documents tabled for discussion at meetings will include a presentation by the DBO Contractor or designate
- Each meeting will include an agenda item for review of community feedback, concerns and complaints and complaint resolution.
- Where there is a need for further review and/or comment on reports or documents, members will be asked to provide comments two weeks prior the next meeting so that the DBO contractor or designate will have the opportunity to review and respond at the next meeting.

- The Committee will review member suggestions for invited guests who might make a presentation on a topic that is in keeping with the Committee mandate and the Minister's Conditions.
- Presentations should be vetted to the facilitator prior to the meeting two weeks in advance.
- One presentation should be included per meeting, limited to 15 minutes.
- The Committee facilitator will inform members of all requests for presentations during regular meetings.
- The facilitator will provide members or guests making presentations with advice, guidance and constructive suggestions on presentation content and materials.

9. EFWAC Dissolution

The Committee can be dissolved at any time by the members in recognition that there is no need to continue, having fulfilled the Minister's Conditions or upon the decommissioning of the facility.

Resolution #C-036-11

Moved by Councillor Novak, seconded by Councillor Partner

THAT David Crome, Director of Planning Services, be appointed as the Municipality's alternate member on the Energy from Waste (EFW) Advisory Committee.

"CARRIED"



January 24, 2011

Lyndsay Waller, Facilitator
Energy from Waste Advisory Committee (EFWAC)
Regional Municipality of Durham
605 Rossland Rd. East
Whitby, ON L1N 6A3

Dear Ms. Waller:

**RE: ASSIGNMENTS FROM JAN 20, 2011 EFWAC REGARDING
DRAFT COMPLAINT PROTOCOL
FILE NO.: PLN 33.3.10**

Please accept the following remarks in response to your request for comments by January 28, 2011 on the draft Complaint Protocol. Comments on the Draft Terms of Reference will be provided to you next week.

Draft Complaint Protocol

Introduction:

"6.3 The proponent shall submit the Complaint Protocol to the Director within one year from the date of approval or a minimum of 60 days prior to the start of construction, whichever is earlier."

We are being asked for comments on the draft Complaint Protocol and no schedule was presented for the overall project at the meeting, the EFWAC was informed that the draft complaint protocol had to be submitted as part of the initial C of A submission which was going forward at the end of January. As such this document is still draft and will continue to be until the appropriate software is purchased, customized and tested. Can the Project Team comment on how complaints will be handled in the interim? Also, once the software is acquired and up and running it would be beneficial to revisit this protocol with the EFWAC with an accompanying demonstration of the software.

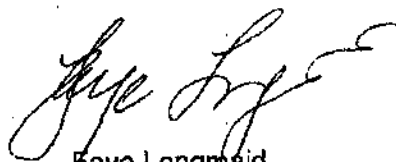
Item 1.1 – Since the Municipality of Clarington has been identified and it is anticipated that a number of complaints, concerns will be directed to the local municipality it would be appropriate for a Project Team representative, familiar with the complaint protocol to meet with and provide an overview to the Municipal Staff that it can be anticipated will be referring complaints and concerns.

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Appendix A – It would be worthwhile to include a box for "Referral from", and then the name of the referral agency/individual.

Yours truly,

A handwritten signature in cursive script, appearing to read "Faye Langmaid".

Faye Langmaid
Manager of Special Projects
FL:sn

cc: Mayor and Members of Council
Franklin Wu, CAO
Tony Cannella, Director of Engineering Services
Fred Horvath, Director of Operations
David J. Crome, Director of Planning Services