

DURHAM REGION ENERGY FROM WASTE (EFW) PROJECT -
PRELIMINARY BUSINESS CASE AND FINANCIAL IMPACT
ASSESSMENT (2007-J-13)

RECOMMENDATIONS TO COUNCIL (AS AMENDED)

- a) THAT Regional Council receive the results of the preliminary business case assessment conducted by Deloitte and Touche LLP (provided as Attachment 1 to Report No. 2007-J-13) with recognition that Energy From Waste (EFW) will cost under a best case scenario approximately 55% to 90% higher on a per unit basis than current Michigan landfill disposal costs, subject to a confirmation of service delivery/ownership, tonnage commitments, location, sizing, capacity utilization, electricity revenues and other factors noted herein;
- b) THAT Regional Council advance the EFW project to the Request for Qualifications (RFQ) stage of procurement, subject to approval of the recommendations of Report 2007-J-14, with the understanding that a more detailed project-specific analysis will be conducted as part of the RFP process approval, once tonnage supply commitments, power purchase agreement, service delivery/ownership, location, sizing and utilization of the facility are confirmed;
- c) THAT the thermal treatment of residual waste be formally recognized as a viable potential option to secure a future long-term local solution for Durham residual waste disposal, subject to Recommendation b), and successful negotiations to secure a power purchase agreement (PPA) with the Province/Ontario Power Authority; and
- d) THAT the Regional Chair be authorized to send a letter to the Ontario Premier the Honourable Dalton McGuinty, copying the Honourable Dwight Duncan, Minister of Energy, the Honourable Laurel Broten, Minister of Environment, and the Honourable Sandra Pupatello, Minister of Economic Development and Trade, to request that the Minister of Energy immediately send a directive to the Ontario Power Authority regarding the following resolution to be endorsed by Durham Regional Council:

Whereas the Region of Durham has been shipping its municipal solid waste to Michigan, under a competitive contract, which has options for extensions to 2020 at continued low relative disposal rates;

and,

Whereas, the Durham Regional Council has nevertheless, recently passed a resolution to stand behind the Minister of the Environment's agreement with Michigan Senators to halt the shipment of waste by Ontario municipalities to Michigan after 2010;

and,

Whereas, in honouring this agreement made by the Minister on behalf of Ontario municipalities, Durham is facing operational and financial risk, due to lack of available landfill disposal capacity and anticipated higher future disposal costs (landfill or EFW) and uncertainty around the ability to attain a Power Purchase Agreement which is deemed necessary to make the EFW Project a viable economic option by 2011;

Therefore, given the above, and given the environmental benefits of establishing a more localized Durham/York EFW, which meets A-7 or better environmental air emission standards, as a potential solution to the garbage crisis, the Province be requested to issue a Minister of Energy Directive requiring the Ontario Power Authority to immediately commence negotiations with York and Durham Regional staff to establish a Power Purchase Agreement for the proposed EFW facility, recognizing that a PPA must be attained prior to issuance of a Request for Proposals, currently scheduled for late 2007/early 2008.

- e) THAT an Environmental Consultant be jointly retained by the Region of Durham and the Region of York, with the selection participation from the Municipality of Clarington and Township of East Gwillimbury, for the following purposes:
 - i) to satisfy the Councils of both Durham and Clarington that a state of the art EFW facility will not impact the health of present and future residents of the host community;

- ii) to confirm that, on the basis of current scientific evidence, a state of the art EFW facility is an environmentally responsible solution to waste disposal in Durham, and
- iii) to communicate this information through the public information processes in Clarington, Durham Region and York Region.

REGIONAL COUNCIL APPROVALS TO PROCEED WITH THE
DURHAM AND YORK REGION ENERGY FROM WASTE (EFW)
PROJECT (2007-J-14)

RECOMMENDATIONS TO COUNCIL

Memorandum of Understanding (MOU) Agreement with the Region
of York

- a) THAT the current Memorandum of Understanding with York Region does not address any matters beyond the completion of the Environmental Assessment (EA) process. As a result, prior to the issuance of a Request for Qualifications ("RFQ"), it is recommended that staff be authorized to negotiate the terms of a new Memorandum of Understanding (MOU) with York Region. This new MOU will define the roles, responsibilities and guiding principles for each party with respect to the Energy From Waste Project (EFW). It is anticipated that the new MOU will be similar to the draft *MOU and Addendum*, attached as Attachment 1 to Report #2007-J-14, amended to add the following new section 20, with the remaining sections renumbered accordingly:

"20. That each respective Region shall provide adequate funding to any of the potential host communities located within their respective Region. And further, that such adequate funding shall include the costs of all necessary studies and legal advice incurred by the potential host community to investigate and complete its due diligence in arriving at its decision whether or not it will become a host community for the EFW facility. And further, the total of such costs shall be deducted from the combined royalty fee, if any, and not otherwise.";

and shall include the following principles:

- i) The processes by which the two Regions will undertake next steps in the EFW project, including procurement, legislative approvals, siting and selection of a service delivery/business ownership model;
- ii) The fundamental principle that all costs incurred by either Region related to the joint EFW undertaking will be shared equally;
- iii) York and Durham will make minimum waste tonnage commitments to the EFW for the operating term of the EFW on a 'put-or-pay' basis prior to the issuance of the RFQ;
- iv) Agreement to proceed with the EFW facility on an equal ownership basis with the EFW designed, built, and operated by a private entity for a 25-year term, as recommended in the "Analysis of Private Sector Involvement for an Energy-from-Waste Facility" prepared by Deloitte & Touche LLP;
- v) Commitments by York and Durham to jointly enter discussions with the Province of Ontario to secure a Power Purchase Agreement for the EFW;
- vi) The identification of significant project milestones which shall serve as defined opportunities for each Region to decide whether to continue the partnership envisioned herein, or to terminate the MOU and proceed otherwise;

Service Delivery Analysis: The Role for Private Sector Involvement

- b) THAT the results and recommendations of Deloitte and Touche LLP's report "*Analysis of Private Sector Involvement for an Energy from Waste Facility*," included as "Attachment 2 to Report 2007-J-14: Analysis of Private Sector Involvement," be received and approved, including the recommended business model for private sector involvement, being public ownership with a contract for the private sector to design, build and operate the facility under a single 25-year contract, and approval of other recommendations as follows:

- i) Procurement should follow a two-step Request for Qualifications (RFQ) and Request for Proposals (RFP) process;
- ii) The RFQ should include appropriate requirements for financial capacity (construction, bonding, operations) together with technical requirements;
- iii) The RFP should be issued together with the design-build-operate contract to reduce need for protracted negotiations prior to financial close;
- iv) All commercial contracts and arrangements for waste supply and energy revenue, should be in-place prior to issuance of the RFP and Contract; and,
- v) York and Durham should make financial commitments for waste supply on a 'put or pay' basis, since these long-term commitments will mitigate the financial risk borne by capital providers;

Issuance of a Request for Qualifications

- c) THAT subject to the negotiation and approval by both Regions of the terms of the MOU, and corresponding ownership model, as per recommendations a) and b) above, that, the Region of Durham proceed to issue a "*Request for Qualifications (RFQ) for Thermal Treatment of Residual Waste for the Regions of Durham and York*" for vendors of thermal waste treatment technologies. Said RFQ shall incorporate the principles for submission requirements and the anti-lobbying clause, described in "Attachment 3 to Report 2007-J-14: RFQ Requirements and Anti-lobbying Clause";

Durham Region Consultant Agreements

- d) THAT given the significance, complexity and precedent setting nature of this project (the first facility of its kind to be established in Canada in over 15 years), Regional Council authorize staff to negotiate and execute consulting agreements with specific firms to retain the expertise required to ensure optimal contractual agreements and minimize financial risk and exposure, including the implementation of the service delivery model, negotiation of the necessary Power Purchase Agreement (PPA), procurement documentation and implementation, and development of

favourable and comprehensive business contract agreements prior to the issuance of the RFP with legal, business and technical consulting costs to be funded from the 2007 Business Plans and Budget and cost-shared with York Region, as per the following:

- i) The Regional Solicitor be authorized to execute a contract to retain the law firm Borden Ladner Gervais LLP, with a budget of up to \$300,000 (excluding applicable taxes), to provide the requisite legal expertise to the Regional Municipality of Durham in connection with the Durham/York Regional Energy from Waste project;
- ii) The Commissioner of Finance be authorized to execute a contract to retain Deloitte and Touche LLP, with a budget of up to \$400,000 (excluding applicable taxes) to:
 - a) Manage/coordinate the work flow between Regional, legal and technical advisors in the development of the RFQ and RFP documentation, under the direction of the procurement management team;
 - b) Provide financial advisory services related to the RFQ and RFP processes, including evaluation of financial components;
 - c) Advise on commercial business matters for consideration in establishing and implementing the ownership model;
 - d) Provide advice to support negotiations with other municipalities to secure necessary supply contracts;
 - e) Provide advice to support negotiations with the Province of Ontario to secure a Power Purchase Agreement; and
 - f) Develop the detailed business case to support the release of the RFP and project agreement(s);

- iii) The Commissioner of Finance be authorized to negotiate an extension of the current contract with KPMG to act as the Fairness Commissioner through the RFP process, at a cost not to exceed \$100,000;
- iv) The Commissioner of Works be authorized to expedite the execution of a contract to retain a technical advisor with expertise to assist in development of technical specifications, assist with contract development and procurement documentation, with a budget of up to \$400,000 (excluding applicable taxes);

Principles for a Host Community Agreement

- e) THAT the Principles for a Host Community Agreement, included as "Attachment 4 to Report 2007-J-14: Host Community Agreement Principles," be approved as a starting point for the commencement of EFW host municipality negotiations;

Landfill Versus Incineration

- f) THAT the Joint Works and Finance Committee and Regional Council receive for information a summary of the report released by the Ministry of the Environment in July 1999 titled "Environmental Risks of Municipal Non-hazardous Waste Landfilling and Incineration" included as "Attachment #5 to Report 2007-J-14: Landfill versus Incineration."