
Meeting: COUNCIL

Date: March 7, 2011

Resolution #:

By-law #: N/A

Report #: PSD-024-11

File #: PLN 33.3.10


Subject: DURHAM/YORK RESIDUAL WASTE PROJECT
ANALYSIS OF HOST COMMUNITY AGREEMENT ROLE IN THE
ENVIRONMENT ASSESSMENT APPROVAL FOR THE ENERGY FROM
WASTE PROJECT

RECOMMENDATIONS:

It is respectfully recommended to Council the following:

1. THAT Report PSD-024-11 be received; and
2. THAT all interested parties listed in Report PSD-024-11 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/sn/df
2 March 2011

1.0 BACKGROUND

1.1 At the February 14, 2011 Council meeting, Council adopted:

“THAT the Planning Services Department, in cooperation with appropriate staff, 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 an independent expert advice be set”.

1.2 Staff drafted “Instructions to Consultant” (Attachment 1) to clarify the questions to be addressed by the independent expert. The background material listed and this document were sent to a number of consultants with expertise in Environmental Assessments and Host Community Agreements. Mr. Steven Rowe was selected to undertake this assignment.

2.0 COMMENTS

2.1 Mr. Rowe will be presenting the results of his review to Council on March 7th, 2011. Mr. Rowe’s report, *The Role of the Clarington Host Community Agreement in the Environmental Assessment for the Proposed Clarington Energy from Waste Plant* is Attachment 2.

2.2 Staff have provided Mr. Rowe with clarification as to the Municipality’s role, Council Resolutions and other factual information. Staff have not commented on or vetted Mr. Rowe’s professional opinion or response to the questions.

Staff Contact: Faye Langmaid

Attachments:

Attachment 1: Instructions to Consultant
Attachment 2: Report – The Role of the Clarington Host Community Agreement in the Environmental Assessment for the Proposed Clarington Energy from Waste Plant, by Steven Rowe, Environmental Planner

List of interested parties to be notified of Councils decision:

EFW Project Team
Gavin Battarino, Ministry of Environment
Wendy Bracken
Tracey Ali

Linda Gasser
Kerry Meydam
Doug Anderson
Jim Richards

INSTRUCTIONS TO CONSULTANT

On February 14, 2011, Clarington Council adopted the following resolution:

“THAT the Planning Services Department, in cooperation with appropriate staff, 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 an independent expert advice be set.”

On the basis of your professional experience and judgement:

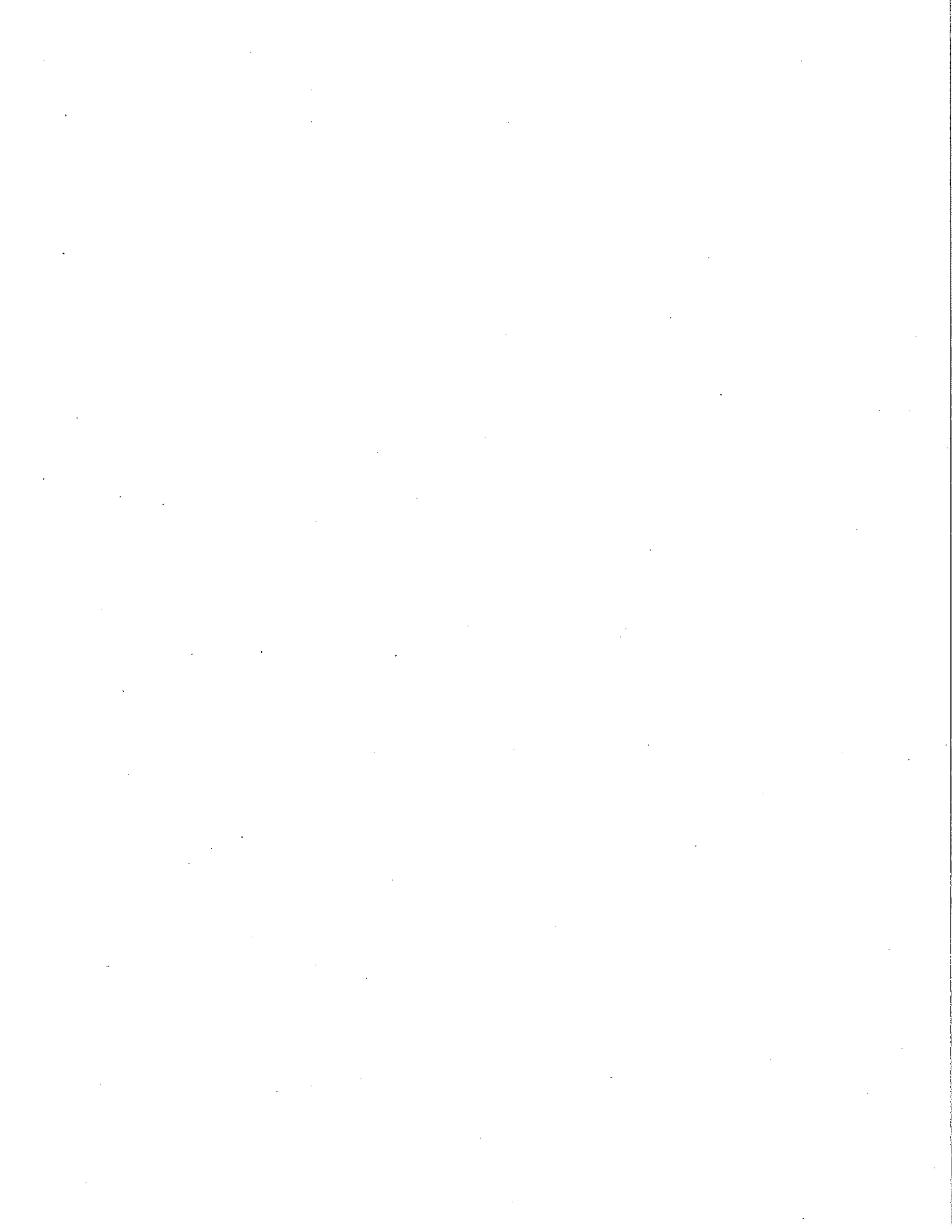
1. What role did the Host Community Agreement between the Municipality of Clarington and the Region of Durham play in the Minister’s approval of the Environmental Assessment for the Durham/York Incinerator (the Environmental Assessment) on October 21, 2010?
2. Is it likely that the Minister of the Environment would not have approved the Environmental Assessment if Clarington was not a willing host with a Host Community Agreement?
3. If the Municipality were to terminate the Host Community Agreement, would the Minister of the Environment reconsider the decision to approve the Environmental Assessment?
4. What role does the Host Community Agreement have with respect to the Minister’s consideration of possible future Environmental Assessment for the expansion of the Durham/York incinerator?

Reference Material:

1. Terms of Reference for the Durham York Residual Waste Study (March 31, 2006).
http://www.durhamyorkwaste.ca/ea_terms.php
2. York’s report on Host Community Agreement Principles dated April 19, 2007.
3. Durham’s report on Host Community Agreement Principles.
4. Durham’s report on the Host Community Agreement, dated June 16, 2009.
5. Final Environmental Assessment (EA) Study Document (July 31, 2009) – Full Report.
http://www.durhamyorkwaste.ca/ea_study_doc.php
6. Host Community Agreement dated February 18, 2010 between the Municipality of Clarington and the Region of Durham.
7. Notice of Approval to Proceed with the Undertaking re: the Amended Environmental Assessment for Durham and York Residual Waste Study, dated October 25, 2010.

Background Material:

1. Durham’s report of EFW Project Costs and Funding Report 2008-J-13, May 2008.
2. York’s report “Durham York Energy from Waste Project Update”, dated January 19, 2011.
3. Durham’s report “Durham/York Energy from Waste Project” 2011-J-15, dated February 3, 2011.



**THE ROLE OF THE CLARINGTON HOST COMMUNITY AGREEMENT IN THE
ENVIRONMENTAL ASSESSMENT FOR THE PROPOSED CLARINGTON ENERGY –
FROM WASTE PLANT**

PREPARED FOR

THE MUNICIPALITY OF CLARINGTON

BY

STEVEN ROWE ENVIRONMENTAL PLANNER

MARCH 2011

1.0 Introduction

On February 14, 2011 Clarington Council adopted the following resolution:

"THAT the Planning Services Department, in cooperation with appropriate staff, 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 an independent expert advice be set."

Steven Rowe Environmental Planner was retained by the Municipality of Clarington ("Clarington") on February 18, 2011 to undertake a review of relevant documentation and to provide responses to the following questions:

1. What role did the Host Community Agreement between the Municipality of Clarington and the Region of Durham play in the Minister's approval of the Environmental Assessment for the Durham/York Incinerator (the Environmental Assessment) on October 21, 2010?
2. Is it likely that the Minister of the Environment would not have approved the Environmental Assessment if Clarington was not a willing host with a Host Community Agreement?
3. If the Municipality were to terminate the Host Community Agreement, would the Minister of the Environment reconsider the decision to approve the Environmental Assessment?
4. What role does the Host Community Agreement have with respect to the Minister's consideration of possible future Environment Assessment for the expansion of the Durham/York incinerator?

To respond to these questions, relevant legislative provisions and guidance were consulted and background information was gathered from a review of documentation. I also drew from professional experience both in the practice of environmental assessment (EA) in general and in previously providing consulting services to Clarington on the environmental planning aspects of this EA process. A list of resources and Internet links utilized in undertaking this work is provided in Appendix 1.

The legislative, guidance and background information is summarized below, with a focus on those specific aspects of each document that assist in providing responses to the questions. General discussion is also provided regarding EA and comparable processes and decisions that have been modified by the Minister or Cabinet. This is followed by a discussion of the way the information applies to each of the questions.

A list of reference material provided with the instructions to the consultant is provided as Appendix 1, together with other resources used in preparing this report.

2. Legislation and Guidance

2.1 The Environmental Assessment Act

The Durham/York Incinerator EA is what is known as "full" or "individual" EA. It is subject to the full requirements of the Act and is not a streamlined or screening process. A new environmental screening process for waste management facilities including "thermal treatment" facilities (under Regulation 101/07) came into effect during this EA process. For future EA approvals the proponent has the option of applying this process to any expansion of the proposed facility.

Section 9. (2) of the *Environmental Assessment Act* (EA Act) specifies the following matters as considerations when the Minister decides on an EA:

"The Minister shall consider the following matters when deciding an application:

1. The purpose of the Act.
2. The approved terms of reference for the environmental assessment.
3. The environmental assessment.
4. The Ministry review of the environmental assessment.
5. The comments submitted under subsections 6.4 (2) and 7.2 (2).
6. The mediators' report, if any, given to the Minister under section 8.
7. Such other matters as the Minister considers relevant to the application. 1996, c. 27, s. 3."

The Minister is therefore not limited by the Act as to what he or she is to consider in making a decision on an EA. The Minister's Decision is subject to the approval of the Lieutenant Governor in Council.

Section 11.4 (1) of the Act also provides latitude to the Minister in revisiting Decisions made under the EA Act:

"If there is a change in circumstances or new information concerning an application and if the Minister considers it appropriate to do so, he or she may reconsider an approval given by the Minister or the Tribunal to proceed with an undertaking. 1996, c. 27, s. 3; 2000, c. 26, Sched. F, s. 11 (6)."

2.2 EA Codes of Practice

In 2007 and 2008 the Ministry of the Environment established Codes of Practice (COPs) for a number of aspects of EA planning. The COP for Preparing and Reviewing Environmental Assessments in Ontario ("EA COP") includes the following in its Statement of Purpose (page 1):

"This Code of Practice outlines the legislative requirements and the Ministry of the Environment's (ministry) expectations for the preparation and review of an environmental assessment."

It states on page 23 that:

The impact management measures that will be used to reduce the negative environmental effects must be provided in the environmental assessment. These measures may be either physical (for example, replacing trees which may have to be removed) or non-physical (entering into an agreement with an affected person).

Therefore it is an MOE expectation that an agreement that is regarded as an impact management measure must be provided in the EA.

Although different forms of agreements with communities have been proposed and ratified in conjunction with previous EA processes, references to agreements in MOE COPs (including the Consultation and Mediation COPs) are otherwise limited to agreements arising out of mediation. They do not include any further discussion or guidance regarding the relationship of between HCAs or similar agreements and EAs.

Regarding reconsideration of decisions under Section 11.4(1) of the Act, the EA COP gives no further guidance other than: "A decision to amend or revoke an approval can only be made in accordance with such rules and subject to such restrictions as may be prescribed." I am not aware of any such rules or regulations. There appears to be no provision for any process, considerations or timelines in reconsidering EA decisions.

3.0 The HCA and the Durham-York EFW EA Process

3.1 Terms of Reference

Terms of Reference (TOR) for this EA were approved by the Minister of the Environment on March 31, 2006. The proponent must comply with the TOR when conducting the EA. The TOR do not include any reference to an HCA, therefore Durham and York Regions were not required to engage in an HCA as part of the EA process.

3.2 Principles

The prospect of an HCA in relation to this process first emerged formally in April 2007, when the proponents had recently released their Draft Report on the identification of a "short-list" of alternative sites for the facility. At this time, both Durham and York Regions placed staff reports before their respective Councils regarding a proposed Memorandum of Understanding (MOU) between them as to how the energy-from-waste (EFW) project would proceed. The proposed MOU would include provision for an HCA to be negotiated between the host Region and the lower tier municipality in which the project is sited. The reports included a series of "Principles" of an HCA, "proposed to form the basis for negotiations between the Regions and the potential host community".

There are similarities and differences between these Principles and the HCA that was ultimately ratified between Durham and Clarington. One difference is that the Principles propose a royalty on the tonnage of waste processed at the facility payable to Clarington, whereas in the HCA a royalty would only be applied to waste from Toronto and instead, the proponents would provide land and finance a number of infrastructure projects that would benefit Clarington.

3.3 Preferred Site

The Draft Step 7 Consultants' Report proposing Clarington 01 as the preferred site for the incineration facility was released in September 2007, and a Final Consultants Recommendation was made in December 2007. Consultants had been retained by Clarington (with financial

support from the proponents) to peer review both the earlier process to identify a short list of sites (Steps 1-5) and the Step 7 process to select the preferred site. The peer reviews had raised a number of concerns regarding the site selection process. Clarington requested responses to the concerns regarding the Step 7 process in a Council resolution on December 12, 2007.

Neither the Step 7 Report nor the Steps 1-5 Short List Report referred to above make any reference to an HCA. Although the topic is discussed in Regional reports as discussed above, stakeholders were not provided with information in the EA about its relationship with the HCA. The mitigation measures later committed to by Durham in the HCA were not explicitly considered in the comparison of the shortlisted sites.

3.4 The Host Community Agreement

The HCA was endorsed by Clarington on May 11, 2009 and by Durham Region on June 24, 2009. Clarington and Durham executed the HCA on February 18, 2010. A copy of the HCA is provided as Appendix 2 to this report. The Agreement comprises a number of components. There is a good deal of overlap between the HCA and the MOE Notice of Approval for the EA, so the provisions of both have been summarized for the purpose of comparison in Table 1 of this review.

3.5 The Environmental Assessment

Clarington was provided with a draft EA for comment in May 2009. The Municipality coordinated peer review of this document and discussions took place between the peer review team and the proponent team. The results of this review were provided in a Staff Report to the Clarington General Purpose and Administration Committee dated Monday July 6, 2009. The comments indicate continued concerns with the site selection process and other matters. On July 13, 2009 Council declined to adopt these comments but resolved to forward the report, with the comments, to Durham Region and the Ministry of the Environment.

An initial EA was submitted to MOE in July 2009, and in December 2009 the proponents submitted an Addendum (dated November 27, 2009) and further technical appendices. The Addendum, among other things, modified the proposed undertaking so that the proposed facility would annually process up to 140,000 tonnes of post diversion residual municipal solid waste, rather than 400,000 tonnes as previously proposed. Any further expansion of the facility would be subject to environmental screening under the process prescribed by Regulation 107/07. This review focuses on the final EA which incorporates the Addendum.

The EA makes a number of references to the HCA, but does not actually include a copy of the document. While MOE would normally expect such an agreement to be included with the EA as indicated in the 1998 EA COP, as noted above, the EA does make reference to infrastructure and land, architectural enhancement and air quality monitoring commitments made by Durham in the HCA. No reference is made in the EA to Clarington's status as a "willing host", nor to Clarington's commitment not to object to the facility.

The technical reviewers' (i.e. commenting agencies) consultation comment tables submitted with the initial EA show that Clarington had no comments on the EA. The air quality monitoring provisions agreed to with Clarington in the HCA are referred to in response to some questions from agencies.

In the public comment summary tables submitted with the initial EA, where members of the public ask about issues raised through Clarington's peer review of the site selection process, the proponent responds that "It is the opinion of the Project Team that all of the comments submitted by Clarington's Peer Reviewers have been addressed. Following the comments received on the Draft EA, no comments have been received from Clarington on the Formal EA submission".

In response to a question from the public about the HCA, the proponent responded: "The Host Community Agreement is outside the scope of this EA study", however the HCA is referred to in responding to questions regarding bottom ash and air quality monitoring.

There are additional responses to questions regarding the addendum but they do not deal with the HCA.

3.6 Ministry Review

The Ministry Review of the EA, coordinated by MOE, was released in February 2010. The Review is considered by the Minister in making a Decision on the EA.

The Review confirms that the proposed facility will process up to 140,000 tonnes of post diversion residual municipal solid waste annually. While the capacity could be increased up to 400,000, any expansion beyond the proposed 140,000 tonnes will be considered a new undertaking, subject to applicable approval requirements under the EAA.

The main body of the review contains no reference to the HCA. Comment tables included with the review include comments and references to the HCA similar to those described above for the EA.

3.7 Comments on Ministry Review

A five – week comment period was provided for comments following publication of a Notice of Completion for the Review. I understand that Clarington did not adopt comments on the Ministry Review.

3.8 Notice of Approval

The EA was approved by the Minister of the Environment on October 21, 2010, and by Order in Council on November 3, 2010. The provisions of the Decision relevant to this discussion are summarized in Table 1. The complete Decision is included as Appendix 3. Overall:

- The "Reasons" make no reference to the HCA as having been a factor in reaching the Decision;
- Although the subject matter of much of the Decision is similar to that in the HCA, there are no cross-references;
- Generally speaking, environmental protection requirements in the Decision are more stringent, wider in scope and have more rigorous reporting requirements than in the HCA. They could be said to be subsumed by the EA approval.
- Commitments in the HCA relating to architectural enhancement and compensation through infrastructure and land provision that are mentioned in the EA could be said to be covered by the approval, although:

- These mitigation measures were not factored into the site comparison that resulted in the selection of Clarington Site 01 as the preferred site;
- The Approval is to proceed with the Undertaking which is defined as including only the Clarington 01 site, whereas these mitigation measures are proposed off-site;
- Neither the Ministry Review nor the Approval make reference to the mitigation measures being subject to an HCA and any uncertainty that this might involve.
- The Notice of Approval makes no reference to Clarington's position as a willing host, nor to its commitment not to object to the facility.

TABLE 1: COMPARISON OF HCA WITH NOTICE OF APPROVAL

Host Community Agreement (summarized)	Relevant Provisions in EA Notice of Approval (summarized)	Notes
	<p>Reasons: Proponent has complied with EA Act, EA was prepared in accordance with TOR. Ability to mitigate has been demonstrated. Consistent with the Purpose of the EA Act. No significant issues requiring a hearing.</p>	<p>There is no mention of the HCA as having been considered in making the Decision</p>
	<p>Definitions: "Site" means the Clarington 01 site "Undertaking" means the construction and operation of a thermal treatment waste management facility on the site, as set out in the EA.</p>	
<p>Preamble: Clarington will be the host community, to the benefit of communities in Durham, York, the industrial/commercial sector, and potentially municipal waste from other communities identified in the EA.</p>		
<p>1. Term The term of the agreement is for the operational lifespan of the EFW facility. If the facility is expanded beyond 400,000 tonnes and the expanded portions of the facility have a 25-year operation period, the term of the agreement will be expanded or there will be a new HCA.</p>		<p>The term does not specifically include construction or decommissioning.</p>
<p>2. Community Consultation and Communications A new EFW Site Liaison Committee (SLC) is to be established, and there are</p>	<p>No reference to SLC. Section 8 Requires an "advisory committee" – broader mandate than immediate site vicinity including representatives from all</p>	

Host Community Agreement (summarized)	Relevant Provisions in EA Notice of Approval (summarized)	Notes
commitments regarding meetings with Clarington and the SLC regarding the Certificate of Approval for the EFW facility.	municipalities – includes input, distribution of specifically identified documents. Director requires Community Communications Plan, notice, information, 4+ public meetings.	
<p>3. Protection of Human Health and the Environment Durham committed to state of the art emission control facilities, emission criteria that appear to be generally more stringent than the criteria for EFW facilities in the A7 Guideline currently in effect, and monitoring over a three-year term. Durham to ensure that the EFW Facility utilizes maximum achievable control technology (MACT).</p>	<p>13. Air Emissions Operational Requirements – in accordance with Schedule 1. MACT is not mentioned in the Notice of Approval. 11. Ambient Air Quality Monitoring and reporting – AAMR plan to be prepared, submit to Director, to be developed by working group – sampling locations – frequency – contaminants to be monitored – annual meeting – until Director says no longer required – MOE Audits – post info on web site 12. Emissions Monitoring – AEMP required to satisfaction of Director – post results on web site.</p> <p>The Notice of Approval also includes odour management and mitigation (18) and noise monitoring and reporting (19) requirements.</p>	Operational Requirements in the Notice of Approval appear to be as stringent or more stringent than those in HCA, except that HCA has requirements for hydrogen flouride, cadmium+thallium, aggregated arsenic and heavy metals. Overall provisions are generally more stringent than HCA.
<p>4. Facility Size The Agreement states that Durham is seeking EA approval for an EFW Facility with a capacity of 400,000 tonnes per year and an initial Certificate of Approval (C of A) for 140,000 tonnes per year. The facility may be expanded up to 400,000 tonnes per year through amendments to the C of A. Durham will not construct a transfer station for ICI waste in Clarington without the agreement of Clarington.</p>	<p>22 Amount of Waste - maximum non-hazardous municipal solid waste is 140,000 tonnes per year 25. Amending Procedure – for any changes to the undertaking, determine what EA requirements are to be met and fulfill those requirements.</p>	A new screening process under the EA Act is required for expansion beyond 140,000 tonnes per annum. The HCA was approved prior to the submission of the EA Addendum, which reduced the capacity of the EA undertaking from 400,000 to 140,000 tonnes.

Host Community Agreement (summarized)	Relevant Provisions in EA Notice of Approval (summarized)	Notes
<p>5. Architectural/Site Plan Considerations Durham committed to construct Energy Drive in the Clarington Energy Park and to allow for \$9 million for the provision of architectural treatments and upgrades to the EFW facility.</p>	<p>No related provisions in Notice of Approval.</p>	
<p>6. Commitment to a Comprehensive Waste Management Strategy Durham committed to a residential waste diversion program to achieve a 70% diversion rate for the entire Region, and provide Clarington with a hazardous waste collection facility.</p>	<p>10. Waste Diversion – reasonable effort to meet programs, policies and targets, Waste Diversion Monitoring Plan, annual reports, post on web site.</p>	
<p>7. EFW Facility Waste Sources</p> <ul style="list-style-type: none"> • The source is to be in accordance with the TOR. (i.e. municipal solid waste from residential sources in Durham and York, Industrial, commercial and Institutional (ICI) waste traditionally managed by Regions, municipal waste from neighbouring non-GTA municipalities providing ash disposal capacity-see TOR page 7) • ICI waste to be screened at transfer station • May process water pollution control plant biosolids waste generated in Durham, up to 10% of total annual tonnage • If City of Toronto waste is processed Clarington would receive a royalty of \$10.00 per tonne. 	<p>21 Types of Waste and Service Area – <u>only non-hazardous from municipal collection from Durham and York permitted</u> – no source separated materials – inspection of incoming waste No provision for ICI waste.</p>	<p>The EA approval is generally more stringent than the HCA – changes would require amendment to EA approval, not just C of As.</p>

Host Community Agreement (summarized)	Relevant Provisions in EA Notice of Approval (summarized)	Notes
<p>8. Payments in Lieu of Taxes Durham will not avoid taxes or payments in lieu of taxes. Amount estimated at \$650,000 per year, but amount is outside its direct control.</p>	<p>No related provisions in Notice of Approval.</p>	
<p>9. Economic Development Durham commits to:</p> <ul style="list-style-type: none"> • Providing surplus land, a stormwater management facility sized for the entire Energy park, (with reimbursement be benefitting landowners) • Begin an EA process for servicing of the Bowmanville Science Park • Private truck access lane to its facility • Provide additional lands west of Courtice Road, and • A segment of a paved waterfront trail. 	<p>No related provisions in Notice of Approval .</p>	<p>Approved EA makes reference to infrastructure projects agreed with Clarington through the HCA as mitigation.</p>
<p>10. Operational Issues</p> <ul style="list-style-type: none"> • Facility to meet ISO 14001 standard within 36 months • Operator will prepare, maintain and adhere to an emergency management plan • Bottom ash may be screened and stored outside, fly ash to be contained inside. No bottom or fly ash to be disposed of in Clarington • Clarington is to be an insured party and is indemnified from actions etc. in relation to the EFW plant 	<p>No related provisions in Notice of Approval.</p> <p>17. Spill Contingency and Emergency Response Plan – submit to Director.</p> <p>No related provisions in Notice of Approval.</p> <p>No related provisions in Notice of Approval.</p>	

Host Community Agreement (summarized)	Relevant Provisions in EA Notice of Approval (summarized)	Notes
<ul style="list-style-type: none"> • Waste vehicles will use truck access routes • Durham to provide Clarington with an annual report on emissions 	No related provisions in Notice of Approval. 11 and 12: air quality and emissions reports to be posted on web site.	
11. End Use Plan Durham will decommission within 5 years of ceasing operations	No related provisions in Notice of Approval.	
12. Issue Resolution Dispute resolution process	No matching provisions in Notice of Approval.	
13. Clarington's Commitments <ul style="list-style-type: none"> • Clarington will not oppose the development or operation of the facility • The facility will be considered a "public use" for the purpose of Clarington's Zoning By-law and will not require a zoning amendment • Applications will be expedited • South Service Road to be closed and conveyed to Durham if surplus • Will encourage utilization of district heating provided by the facility 	No matching provisions in Notice of Approval.	Also no reference to these commitments in the EA

4.0 Summary: History of Decision-Making on Environmental Assessments

During the late 1980's and 1990's it was common for EAs for large-scale and contentious projects to be referred to the EA Board, or to a Joint Board for hearings under the *Consolidated Hearings Act*. Some of these hearings resulted in non-acceptance or refusal of EAs, however two Energy-from-Waste plants (in London and Brampton) were approved by Boards during this period.

One of the EAs that was not accepted – for the North Simcoe Landfill (1989 – also known as the "Site 41" EA) – resulted in an Order-In Council that prescribed additional investigations to be undertaken. Although this site was approved following a second hearing the proponent eventually elected not to pursue it.

Since that time the Ontario Government has moved away from hearings on EAs and decisions are made by the Minister. There have been no hearings on individual EAs since 1998.

The current MOE website provides information on 58 EAs dealt with subsequent to 1996. Of these, 53 were approved, only two were denied approval, and a further three were withdrawn. None of these Decisions was revisited (as far as I know) based on new information as provided for by Section 11.4(1) of the EA Act.

An expansion to the EFW plant in Brampton was approved by the Minister in 2000.

There have been other EA processes that were terminated prior to a Decision being made – the three Interim Waste Authority processes to site landfills in the Greater Toronto Area were abandoned with a change of government in 1995. More recently, in 2010 the Ontario Government decided not to proceed with a proposed natural gas-fired electricity generation plant in Oakville, based on reduced demand for electricity. This proposal was under an environmental screening process for electricity facilities and not an individual EA. The Government's decision was to terminate the proponent's contract which indirectly resulted in the termination of the EA process.

There have been changes in direction by government in relation to other large-scale projects of similar scope to EAs. In April 2010 the Minister of Municipal Affairs and Housing issued a Zoning Order intended to prevent *Planning Act* and *Aggregate Resources Act* processes for proposed limestone quarry in the City of Hamilton from proceeding. This case is currently under appeal.

Also there have been two recent moratoriums to provide opportunities for additional study related to offshore windfarms. Windfarms are subject to the recently introduced Renewable Energy Approvals process under the Environmental Protection Act (EPA) and are no longer under the EA Act screening process for electricity projects.

From a general planning perspective there has been shift in favour of EFW over a period of years, partly evidenced by the introduction of the process under Regulation 101/07, which streamlines the EA process aspects of EFW approvals. At the same time the air quality standards for EFW facilities in Guideline A-7 have become more stringent and the requirements in the approval for the Clarington EFW facility are more stringent still.

5.0 Response to Questions

The circumstances described above lead to the following responses to the questions posed in this assignment:

1. What role did the Host Community Agreement between the Municipality of Clarington and the Region of Durham play in the Minister's approval of the Environmental Assessment for the Durham/York Incinerator (the Environmental Assessment) on October 21, 2010?

In terms of the technical aspects of the EA the role of the HCA appears to have been very limited:

- The selection of the preferred site preceded the HCA and so the Clarington 01 site was considered "preferred" prior to consideration of the additional mitigation arising from the HCA. If a different site had been selected, it also could have been enhanced through an HCA following its selection.
- Following approval of the HCA, Clarington resolved to forward the peer review comments to Durham and the Ministry unadopted rather than sending them as the adopted position of Council. This was interpreted in the comment response tables of the EA and the Government Review as Clarington not having made any comments. When members of the public raised these comments they appear to have been given no weight by the proponent. If the HCA had not been approved, the peer review comments may have been adopted and may have taken on a higher profile in the advice given to the Minister and in the Minister's own decision making, but this is not certain, since the proponent claimed that these concerns had already been addressed.
- The Minister would have found references to the HCA in the EA and the Ministry Review, in relation to additional mitigation measures and commitments, but this would not have drawn attention to the HCA as an entity in itself.

The Ministry Review did not examine the question of peer review information being excluded from consideration because of an agreement that, according to the proponents, is "outside the scope of this EA study", and whether that type of approach facilitates good decision-making and satisfies the purpose of the EA Act.

2. Is it likely that the Minister of the Environment would not have approved the Environmental Assessment if Clarington was not a willing host with a Host Community Agreement?

While the EA Ministry Reviewer and possibly the Minister would have known that Clarington had declared itself a "willing host" and had committed not to object to the facility, there are no references to this in the EA or the Ministry Review and it is not referred in the Reasons for the Decision. At the same time, a "willing host" (preferably the local community as well as the municipality) is generally considered a positive in an EA process, especially when compared with strong opposition. It suggests a degree of social equity in the outcome of the process, although this is not a matter that is discussed in the EA.

In a practical sense, a willing host helps manage the risk of disruption and delay to planning and implementation of a project through lack of cooperation and political, legal or other action.

Although it is not specifically identified in the Decision an implicit consideration could have been the issue of delay in finding a waste disposal solution given the cessation of waste exports to Michigan, the need for new disposal capacity, and difficulties in securing approvals for new capacity.

Most of the direct environmental benefits included in the agreement (particularly air quality and monitoring) have been subsumed by the more stringent requirements in the Notice of Decision, which also adds noise and odour management and reporting. In this regard the HCA provides no net gain.

The proposed infrastructure investments and provision of land committed to in the agreement are presented as economic benefits in the EA and can be regarded as an environmental effect within the broad scope of the EA Act. Again, however, these terms were negotiated after Clarington Site 01 had been selected through the site selection process and the lack of these benefits would likely not have affected the Minister's overall Decision.

If the project is considered to be beneficial to the environment as defined in the Act, then the prospect of delay could be seen as having a potential environmental effect – but none of this finds its way into the Decision.

Other considerations relating to the HCA are outlined above in relation to Question 1. While the infrastructure proposals in the HCA may have reinforced a view that the Clarington 01 site was preferred, they were not a factor in the initial site selection and the Ministry Review is not critical of the way the site selection process was conducted.

If Clarington had been in opposition to the proposal the Ministry may have encouraged the parties to make a greater effort to resolve outstanding issues. Section 8 of the EA Act provides for an opportunity for mediation and there is a separate Code of Practice in relation to this; however I am not aware of any circumstances in which this provision has been invoked.

No individual other than the Minister can know how much weight was given to different aspects of the Ministry Review and any further considerations in reaching a Decision, but the matters discussed above suggest that the Minister may well have approved the EA in the absence of an HCA.

3. If the Municipality were to terminate the Host Community Agreement, would the Minister of the Environment reconsider the decision to approve the Environmental Assessment?

It is open for Clarington or some other party to make a request for the Minister to reconsider the Decision under Section 11.4 (1) of the Act. There is no formal procedure for reconsideration; however the Minister can refer the issue to the Environmental Tribunal. I know of no other instances where this provision has been invoked, so there may be no precedents for this. It may be open to the Minister to decline to reconsider based on an initial review, or to institute a more formal process if this is deemed to be necessary. There is no provision in the Act that requires work on a project to be suspended while reconsideration is being reviewed.

Given the circumstances outlined above including the implications of delay, the loss of infrastructure investment that did not play a part in the initial selection of the preferred site as well as Clarington's previous position, there may not be a sufficiently compelling argument for the Decision to be revisited. If it was revisited, the outcome may not be favourable to Clarington.

4. What role does the Host Community Agreement have with respect to the Minister's consideration of possible future Environment Assessment for the expansion of the Durham/York incinerator?

For an expansion to the facility beyond 140,000 tonnes the proponent would likely choose the option of proceeding through the Environmental Screening Process prescribed by the Waste Management Projects Regulation (Regulation 101/07) rather than an individual EA. This is a proponent-driven process that would not come before the Minister for a decision unless there is a request that the process be "bumped up" to require an individual EA.

The capacity of the facility as approved is limited to 140,000 tonnes per year. Durham originally intended to obtain EA approval for a 400,000 tonne facility, to build a 140,000 tonne facility as a

first phase, and to phase expansion so that subsequent phases would be approved through technical approvals under the EPA. Under the approval granted by the Minister, further approvals under the EA Act would be required to expand the facility beyond 140,000 tonnes per year.

Section 1.2 of the Agreement makes provision for a new Host Community Agreement only if the capacity is expanded beyond 400,000 tonnes.

The signatories to the HCA understood at the time that the agreement related to a facility that would ultimately have a maximum capacity of 400,000 tonnes. As things have transpired, however, the approved capacity of the facility approved under the EA Act is 140,000 tonnes and the agreement has not been amended to reflect the new reality.

Because of the "no opposition" clause in the agreement Clarington would be constrained from opposing an expansion within the 400,000 tonne range. A request by Clarington for elevation of a process to expand the facility under the Regulation would likely be interpreted to be opposition to the project.

APPENDIX 1: RESOURCES AND INTERNET LINKS

Resources and References Provided with Instructions to Consultant

Terms of Reference for the Durham York Residual Waste Study (March 31, 2006). http://www.durhamyorkwaste.ca/ea_terms.php

York's report on Host Community Agreement Principles dated April 19, 2007.

Durham's report on Host Community Agreement Principles #2007-J-14 dated April 17, 2007

Durham's report on the Host Community Agreement # 2009-COW-02, dated June 16, 2009.

Final Environmental Assessment (EA) Study Document (July 31, 2009) – Full Report. http://www.durhamyorkwaste.ca/ea_study_doc.php

Host Community Agreement dated February 18, 2010 between the Municipality of Clarington and the Region of Durham.

Notice of Approval to Proceed with the Undertaking re: the Amended Environmental Assessment for Durham and York Residual Waste Study, dated October 25, 2010.

Background Material:

Durham's report of EFW Project Costs and Funding Report 2008-J-13, May 2008.

York's report "Durham York Energy from Waste Project Update", dated January 19, 2011.

Durham's report "Durham/York Energy from Waste Project" 2011-J-15, dated February 3, 2011.

Other Resources and References;

Environmental Assessment Act: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90e18_e.htm

MOE EA projects webpage at:

http://www.ene.gov.on.ca/environment/en/industry/assessment_and_approvals/environmental_assessments/STDPROD_076016

MOE EA Codes of Practice links found at:

http://www.ene.gov.on.ca/environment/en/industry/assessment_and_approvals/environmental_assessments/STDPROD_075715.html

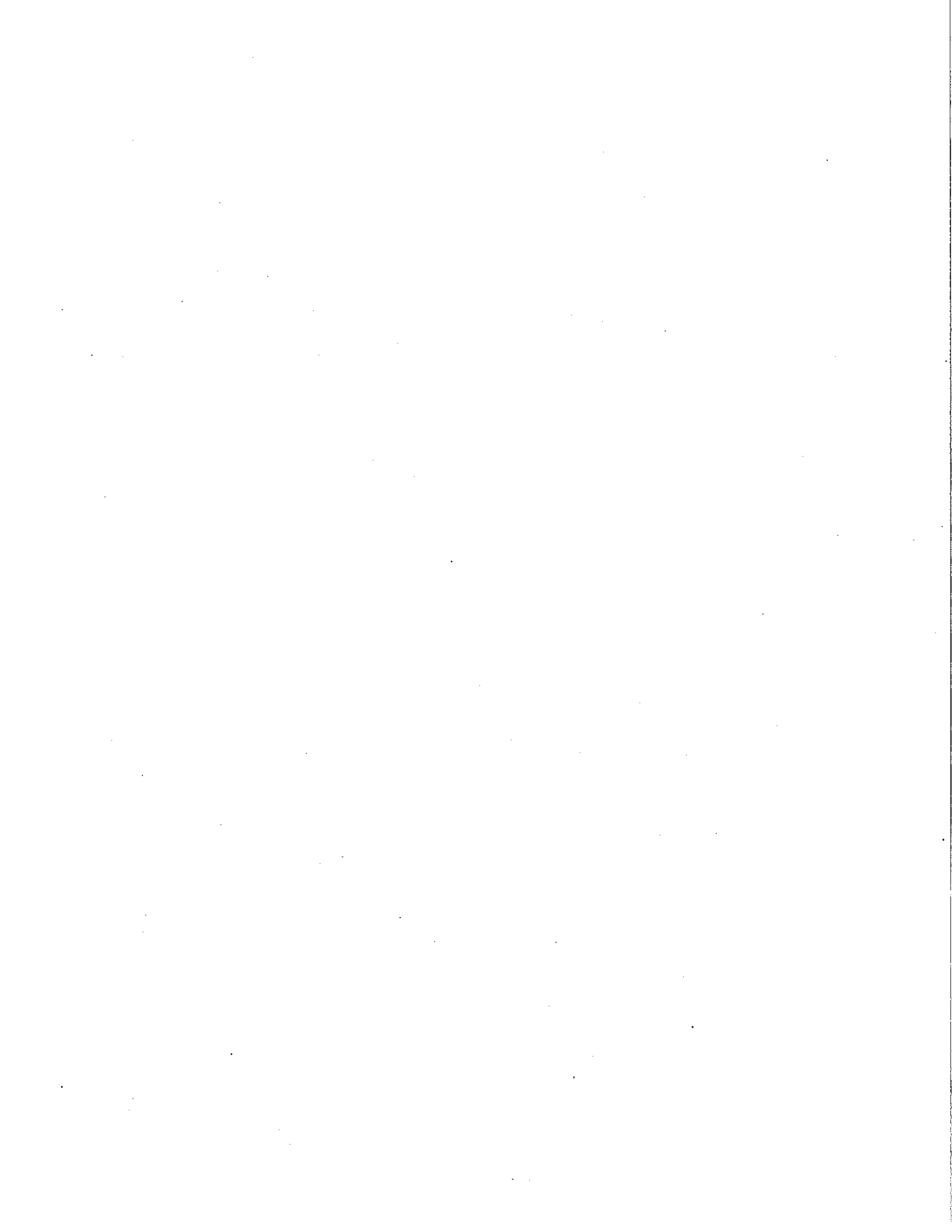
MOE Waste Management Projects Regulation and Guide linked at:

http://www.ene.gov.on.ca/environment/en/industry/assessment_and_approvals/environmental_assessments/STDPROD_075733

Step 3-5 and Step 7 Site Selection Reports and Ministry Review linked at

http://www.durhamyorkwaste.ca/study_index.htm

Clarington Reports PSD-021-10 AND PSD-071-09 and related resolutions



**APPENDIX 2: EXECUTED HOST COMMUNITY AGREEMENT FOR THE
PROPOSED CLARINGTON ENERGY-FROM-WASTE PLANT**

This Host Community Agreement dated the 18th, day of February, 2010 is made,

BETWEEN:

THE REGIONAL MUNICIPALITY OF DURHAM

("Durham")

-and-

THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON

("Clarington")

WHEREAS:

- (a) Durham jointly with The Regional Municipality of York, is in the midst of a procurement process designed to identify a preferred vendor capable of designing, building and operating an energy from waste ("EFW Facility") sufficient to meet their needs, as identified through an individual environmental assessment (the "EA") undertaken to identify a preferred method of processing post-diversion waste;
- (b) The EA process has resulted in the approval by Durham Regional Council of a preferred site for the EFW Facility within the Municipality of Clarington ("Clarington"), more particularly described in Schedule "A" hereto.
- (c) Durham is completing its requirements to finalize the EA for submission to the Minister of the Environment and to make application under the Environmental Protection Act for one or more Certificates of Approval.
- (d) Clarington will be the host community of the EFW Facility to the benefit of communities in Durham, York, the industrial/commercial/institutional sector, and potentially municipal waste from other municipalities identified in the EA.
- (e) Durham and Clarington wish to enter into this agreement in order to set forth their respective rights, duties, obligations and commitments regarding the development, construction and operation of the EFW Facility.

NOW THEREFORE the parties agree as follows:

1. Term

1.1 This agreement shall commence upon the date that it is last signed and shall last for the operational lifespan of the EFW Facility.

1.2 In the event that the facility is expanded beyond 400,000 tonnes per year and the expanded portions of the EFW Facility have a twenty five (25) year operating period, Durham and Clarington either shall extend the term of this agreement or enter into a new Host Community Agreement.

2. Community Consultation and Communications

2.1 Durham shall support the development and operation of an EFW Site Liaison Committee (SLC) for the purpose of facilitating input from the community and the distribution of relevant information in regards to the construction, operation and monitoring of the EFW facility.

2.2 The scope for a Terms of Reference for a new SLC shall be agreed upon by Durham and Clarington at the conclusion of the mandate of the initial SLC, which terms shall otherwise be generally analogous to the current committee.

2.3 Durham shall present to Clarington Council and hold one community information meeting prior to the submission of the final EA documentation to the Ministry of the Environment for approval. In addition, Durham shall make a presentation to Clarington Council and shall hold one community information meeting before the Site Liaison Committee regarding the terms of the Certificate of Approval for the EFW Facility subsequent to its issuance.

3. Protection of Human Health and the Environment

3.1 Durham shall ensure that the EFW Facility incorporates and utilizes modern, state of the art, emission control technologies that meet or exceed the Ontario A7 air emission guidelines and European Union standards as identified below:

**THE REGIONS' AIR EMISSION CRITERIA BASED UPON THE PROVINCE OF ONTARIO
AND EUROPEAN UNION AIR EMISSION REQUIREMENTS**

Total Particulate Matter	mg/Rm3	9	(2)
Sulphur Dioxide (SO ₂)	mg/Rm3	35	(3)
Hydrogen Chloride (HCl)	mg/Rm3	9	(4)
Hydrogen Flouride (HF)	mg/Rm3	0.92	(4)
Nitrogen Oxides (NO _x)	mg/Rm3	180	(4)
Carbon Monoxide (CO)	mg/Rm3	45	(4)
Mercury (Hg)	µg/Pµ3	15	(2)
Cadmium (Cd)	µg/Pµ3	7	(2)
Cadmium + Thallium (Cd + Th)	µg/Pµ3	46	(2)
Lead (Pb)	µg/Pµ3	50	(2)
Sum of (As, Ni, Co, Pb, Cr, Cu, V, Mn, Cl)	µg/Pµ3	460	(2)
Dioxins	pg/Rm3	60	(2)
Organic Matter (as CH ₄)	mg/Rm3	49	(2)

NOTES:

(1) = All units corrected to 11% O₂ and adjusted to Reference Temperature and Pressure

mg/Rm3 = Milligrams per Reference Cubic Metre (25°C, 101.3 kPa)

*g/Rm3 = Micrograms per Reference Cubic Metre (25°C, 101.3 kPa)

pg/Rm3 = Picograms per Reference Cubic Metre (25°C, 101.3 kPa)

(2) Calculated as the arithmetic average of 3 stack tests conducted in accordance with standard methods

(3) Calculated as the geometric average of 24 hours of data from a continuous emission monitoring system

(4) Calculated as the arithmetic average of 24 hours of data from a continuous emission monitoring system

3.2 Durham shall ensure that the EFW Facility utilizes maximum achievable control technology (MACT) for emissions control and monitoring systems. Durham and the operator shall seek to achieve normal operating levels significantly better than the emission limits identified in Section 3.1.

3.3 Durham shall ensure that, where technically possible, the EFW Facility utilizes 24/7 monitoring systems for such parameters as are deemed appropriate by the Ministry of the Environment. The results of such monitoring systems shall be made accessible to the public on a website or programmable display board designed for such purpose. In addition, Durham shall ensure that the operator monitors the ambient air in the immediate vicinity of the EFW Facility for a three year term commencing upon the commencement of operations.

4. Facility Size

4.1 Durham is seeking approval from the Ministry of the Environment to construct and operate an EFW Facility with a total processing capacity of up to 400,000 tonnes per year of municipal solid waste.

4.2 The parties hereto acknowledge and agree that EFW Facility will not immediately be constructed to the ultimate capacity. Durham will be seeking an initial Certificate of Approval for the construction and operation of a facility for approximately 140,000 tonnes per year. The capacity of the EFW Facility may be expanded, as required by Durham and York, up to the maximum permissible capacity set forth by the Ministry of the Environment in the Certificate of Approval which may be amended from time to time. The EFW Facility may not be expanded in excess of 400,000 tonnes per year.

4.3 At the time of any expansion, Durham will give consideration to improvements to the emission control system to meet the then current MACT standards and shall apply for a new or amended Certificate of Approval if required by the Province of Ontario.

4.4 Durham will not construct a transfer station for ICI waste in Clarington without the agreement of Clarington.

5. Architectural/Site Plan Considerations

5.1 Clarington shall be consulted with respect to the architectural and site plan requirements section(s) of the Request for Proposals.

5.2 Clarington and Durham shall negotiate in good faith the terms of a site plan agreement for the development of the EFW Facility site which shall include the lands required for the private truck access lane referred to in paragraph 9.5. Durham shall comply with normal site plan and building code permit requirements and shall construct Energy Drive through their lands identified on Schedule "A".

5.3 Durham shall incorporate a cash allowance of no less than Nine Million Dollars (\$9,000,000) in the Request for Proposals ("RFP") for the provision of architectural treatments and upgrades to the EFW Facility. Durham shall consult with Clarington on the proposed architectural treatments received from the preferred bidder and prior to submitting their site plan application to Clarington for approval.

5.4 At the time of any expansion, Durham will include similar and consistent architectural treatments and upgrades to any new portions of the EFW Facility. Durham shall consult with Clarington on the proposed architectural treatments during the finalization of the arrangements with the Operator for the expansion and prior to submitting their site plan application to Clarington for approval of the expansion.

6. Commitment to a Comprehensive Waste Management Strategy

6.1 Durham shall continue to implement and support an aggressive residual waste diversion and recycling program to achieve and/or exceed a 70% diversion recycling rate for the entire Region.

6.2 Durham shall establish a hazardous waste depot to serve the residents of Clarington within one (1) year of commissioning of the EFW Facility.

7. EFW Facility Waste Sources

7.1 Durham shall ensure that the source of the waste processed at the EFW Facility is consistent with that identified in the EA Terms of Reference and supporting documentation.

7.2 The Parties agree that Industrial, Commercial and Institutional ("ICI") Waste, with a similar composition to municipal solid waste, may be processed at the EFW Facility provided that said ICI Waste is first screened at a transfer station to ensure the removal of any undesirable and hazardous materials.

7.3 The EFW Facility may be utilized to process biosolid wastes generated from water pollution control plants located within Durham Region on an emergency basis in order to support Durham's other operations provided that biosolid wastes do not comprise more than 10% of the total annual tonnage of waste processed at the EFW Facility in a calendar year.

7.4 Notwithstanding the provisions of 7.1 hereof, in the event that the source of waste processed at the EFW Facility at any subsequent time includes the City of Toronto, then Clarington shall be paid the sum of Ten Dollars (\$10.00) per tonne for each tonne of waste from that source.

8. Payments in Lieu of Taxes

8.1 Durham shall not structure the ownership of the EFW Facility in any way designed to attain tax exempt status or to avoid the Payments in Lieu of Taxes (PIL's).

8.2 Durham acknowledges that the PIL will be in the vicinity of \$650,000 per year. However Durham cannot guarantee the exact amount as that is a matter outside of its direct control.

9. Economic Development

9.1 Durham shall acquire title by way of agreement or expropriation to the properties described in Schedule "B". Upon the properties described in Schedule "B" being determined by Durham Regional Council to be surplus to the present or future requirements of the Regional Municipality of Durham, then Durham shall convey, at nominal consideration, some part of the lands described in Schedule "B" to The Municipality of Clarington.

9.2 Prior to the commissioning of the EFW Facility, Durham shall complete construction of Energy Drive from Courtice Road to Osbourne Road as a Type "C" Arterial road, complete with

all applicable services including: sanitary sewerage, watermains, storm drainage, district heating, and street lighting and shall dedicate Energy Drive to Clarington as a public highway.

9.3 Durham shall construct a storm water management facility of a sufficient size to accommodate development of the Energy Park and Clarington shall execute a front-ending agreement in order to receive and reimburse Durham for the proportional costs of same from any benefiting landowners within the Energy Park. Provided approval to cross the CN Railway line with the necessary drainage works can be reasonably obtained from the Canadian National Railway, then Durham shall construct the storm water management facility on the lands described in 9.7 hereof.

9.4 Durham shall commence an environmental assessment process to support the provision of municipal services to the east Bowmanville science park which is located north of Highway 401.

9.5 Durham shall construct a private truck access lane with landscaping or other screening on its lands on the north side of the Canadian National Railway line connecting with Courtice Road to be utilized, where possible, for all deliveries of waste to the EFW Facility.

9.7 Durham shall convey to Clarington at a nominal cost the lands on the west side of Courtice Road identified in Schedule "C".

9.8 Concurrent with the construction of the EFW Facility, Durham shall construct a segment of a paved asphalt waterfront trail on a mutually agreed upon alignment from Courtice Road to the eastern limits of Durham's lands south of the Courtice Water Pollution Control Plant.

10. Operational Issues

10.1 Durham shall require the operator of the EFW Facility (the "Operator") to have the EFW Facility compliant with the International Standards Organization 14001:2004 Environmental Management Standard (ISO 14001) within thirty six (36) months of its commencing operations and to maintain such compliance thereafter.

10.2 Durham shall ensure that the Operator prepares, maintains and adheres to an Emergency Management Plan (including spills) for the EFW Facility which Plan shall be reviewed and approved by the Clarington Emergency and Fire Services Department.

10.3 Deleted

10.4 Durham shall ensure that the bottom and fly ash generated at the EFW Facility are dealt with in a manner which complies with all applicable legal and regulatory requirements and approvals. Bottom ash can be stored outside if fully screened. Fly ash shall be stored internally in a building until the time of transfer to a disposal site. No bottom ash or fly ash shall be disposed of in a landfill site in Clarington.

10.5 Durham will require the Operator of the EFW Facility to provide a certificate of insurance showing the Municipality of Clarington as an additional insured thereon.

10.6 Durham hereby agrees to indemnify and hold Clarington harmless from all manner of actions, causes of action, suits, demands, and claims whatsoever in connection with any and all injuries up to and including death, or damages to its property, which may occur as a result of the design, construction or operation of the EFW Facility save and except when such injury, loss or

damage is occasioned by the negligent acts or omissions or willful misconduct of Clarington, or those for whom it is at law responsible..

10.7 Durham shall ensure that all waste haulage vehicles accessing and egressing the EFW Facility site will use the truck access routes.

10.8 In addition to all public information, the Operator shall on or before March 31st in each calendar year provide the Clerk of Clarington with a report related to the emissions output from the EFW Facility for the previous calendar year.

11. End Use Plan

11.1 Durham shall decommission and dismantle the EFW Facility within five (5) years of its ceasing of operations to a standard suitable for re-use as an industrial/commercial site.

12. Issue Resolution

12.1 In the event of any dispute, disagreement, or claim arising under or in connection with this Agreement, then the parties hereto shall, upon written notice from either party, meet as soon as reasonably possible in order to resolve said dispute.

12.2 In the event that informal discussions are not effective in resolving any disputes or differences of opinion arising between the parties which concern or touch upon the validity, construction, meaning, performance or effect of this Agreement, then said dispute shall first be mediated within a sixty (60) day time period prior to any dispute proceeding to arbitration. The parties shall determine a mutually agreeable location for the mediation to occur. The parties shall make all reasonable efforts to resolve their disputes by amicable negotiations and agree to provide, without prejudice, frank, candid, and timely disclosure of relevant facts, information, and documents to facilitate these negotiations. Any resolution of the dispute in mediation shall be kept confidential by all parties.

12.3 By giving a notice in writing to the other party, not later than ten (10) working days after the date of termination of the mediated negotiations, all matters remaining in difference between the parties in relation to this Agreement shall then be referred to the arbitration of a single arbitrator, if the parties agree upon one, otherwise to three arbitrators, one to be appointed by each party and a third to be chosen by the first two named before they enter upon the business of arbitration. The award and determination of the arbitrator or arbitrators or two of the three arbitrators shall be binding upon the parties and their respective heirs, executors, successors, administrators and assigns.

13. Clarington's Commitments

13.1 Clarington agrees, in consideration of the aforementioned commitments on the part of Durham, to be a willing host to the EFW Facility and to acknowledge that willingness as follows:

.1 It shall not oppose the development or operation of the EFW Facility;

.2 It acknowledges that, provided that there is public ownership of the EFW Facility and the site by one or more municipalities, it will be considered a "public use" for the purposes of the Zoning By-law and that is not necessary to amend the Clarington Official Plan or Zoning By-law;

.3 It shall expedite the review of all applications for approval submitted by, or on behalf of, the Operator or Durham related to the construction, maintenance and operation of the EFW Facility; and,

.4 Should the existing South Service Road ever be deemed to be surplus due to the construction of Energy Park Drive, the South Service Road shall be closed and conveyed to Durham for nominal consideration; and,

.5 It shall strongly encourage and promote development within the Clarington Energy Business Park and other areas of Clarington to utilize district heating and cooling provided by the EFW Facility.

14. Miscellaneous

14.1 This agreement is entered into solely between Durham and Clarington and is not intended or designed, and in fact it explicitly excludes the creation of any rights or beneficial interests in any third party save and except the Regional Municipality of York in so far as its interest exists in the EFW Facility, from time to time.

15. Further Assurances

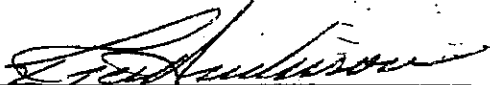
The parties hereby covenant and agree, after a request in writing by one party to the other parties, to forthwith execute and provide all further documents, instruments and assurances as may be necessary or required in order to carry out (and give effect to) the true intent of this Agreement, and to effect the registration against and release from title to the lands subject to this Agreement of such notices or other instruments in accordance with the provision of this Agreement.

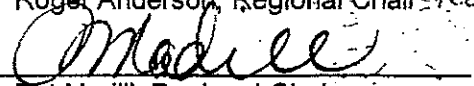
16. Enurement

This Agreement shall enure to the benefit of and bind the parties hereto and their respective successors and assigns.


IN WITNESS WHEREOF Durham and Clarington have executed this Host Community Agreement.


THE REGIONAL MUNICIPALITY OF DURHAM

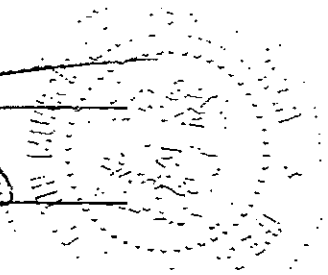
Per: 
Roger Anderson, Regional Chair - CEO

Per: 
Pat Madill, Regional Clerk

THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON

Per: 
Jim Abernethy, Mayor

Per: 
Patti L. Barrie, Clerk



Schedule "A"

Legal Description of Proposed Site of EFW Facility

Part of Lot 27, Concession Broken Front, Darlington, designated as Parts 1 and 2 on 40R-19984, save and except Parts 1 and 2 on 40R-20362, Municipality of Clarington, Regional Municipality of Durham, being all of PIN 26605-0082(LT)

Schedule "B"

Legal Description of Lands Proposed to be acquired

FIRSTLY: PT LTS 27 & 28 BROKEN FRONT CONCESSION, DARLINGTON, AS IN N41298 SAVE & EXCEPT PART 1 PL 40R21517 NORTH OF THE CANADIAN NATIONAL RAILWAY; MUNICIPALITY OF CLARINGTON, REGIONAL MUNICIPALITY OF DURHAM, being all of PIN 26605-0086 (LT)

SECONDLY: PT LT 28 BROKEN FRONT CONCESSION, DARLINGTON BEING PTS 2 & 3 on 10R2689; MUNICIPALITY OF CLARINGTON, REGIONAL MUNICIPALITY OF DURHAM, being all of PIN 26605-0030 (LT)

THIRDLY: PT LT 28 BROKEN FRONT CONCESSION, DARLINGTON being PT 1, 10R2689; MUNICIPALITY OF CLARINGTON, REGIONAL MUNICIPALITY OF DURHAM, being all of PIN 26605-0031 (LT)

Schedule "C"

Legal Description of Lands to be Transferred to Clarington

FIRSTLY: PT LT 29 AND 30 BROKEN FRONT CONCESSION, DARLINGTON being PTS 1, 2, AND 3, 40R20750; MUNICIPALITY OF CLARINGTON, REGIONAL MUNICIPALITY OF DURHAM, being all of PIN 26604-0017 (LT)

SECONDLY: PT LT 29 BROKEN FRONT CONCESSION, DARLINGTON being PT 1 on 10R571; MUNICIPALITY OF CLARINGTON, REGIONAL MUNICIPALITY OF DURHAM, being all of PIN 26604-0016 (LT)

**APPENDIX 3: MOE NOTICE OF APPROVAL TO PROCEED WITH THE
CLARINGTON ENERGY-FROM-WASTE PLANT UNDERTAKING**

ENVIRONMENTAL ASSESSMENT ACT

SECTION 9

NOTICE OF APPROVAL TO PROCEED WITH THE UNDERTAKING

RE: The Amended Environmental Assessment for Durham and York Residual Waste Study

Proponent: The Regional Municipalities of Durham and York

EA File No.: 04-EA-02-08

TAKE NOTICE that the period for requiring a hearing, provided for in the Notice of Completion of the Review for the above-noted undertaking, expired on April 2, 2010. I received 185 submissions requesting a hearing by the Environmental Review Tribunal before the expiration date.

I consider a hearing to be unnecessary in this case. Having considered the purpose of the *Environmental Assessment Act*, the approved terms of reference, the environmental assessment, the ministry Review of the environmental assessment and submissions received, I hereby give approval to proceed with the undertaking, subject to the conditions set out below.

REASONS

My reasons for giving approval are:

- (1) The proponent has complied with the requirements of the *Environmental Assessment Act*.
- (2) The environmental assessment has been prepared in accordance with the approved Terms of Reference.
- (3) On the basis of the proponent's environmental assessment and the ministry Review, the proponent's conclusion that, on balance, the advantages of this undertaking outweigh its disadvantages appears to be valid.
- (4) No other beneficial alternative method of implementing the undertaking was identified.
- (5) The proponent has demonstrated that the environmental effects of the undertaking can be appropriately prevented, changed, mitigated or remedied.
- (6) On the basis of the proponent's environmental assessment, the ministry Review and the conditions of approval, the construction, operation and maintenance of the undertaking will be consistent with the purpose of the *Environmental Assessment Act* (section 2).
- (7) The ministry's review of the government, public and Aboriginal community submissions on the environmental assessment; the environmental assessment; and the ministry Review has indicated no outstanding concerns that have not been addressed or that cannot be addressed through commitments made during the environmental assessment process, through the conditions set out below or through future approvals that will be required.
- (8) The submissions received after the Notice of Completion of ministry Review was published are being addressed through commitments made during the environmental assessment process, through the conditions set out below or through future approvals that will be required, where appropriate. I am not aware of any significant outstanding issues with respect to this undertaking which suggest that a hearing should be required.

CONDITIONS

The approval is subject to the following conditions:

1. Definitions

For the purposes of these conditions:

"advisory committee" means the committee established pursuant to Condition 8 of this Notice of Approval.

"CEM" means an air emissions monitoring system which continually monitors concentrations of certain contaminants emitted by the facility.

"date of approval" means the date on which the Order in Council was approved by the Lieutenant Governor in Council.

"Director" means the Director of the Environmental Assessment and Approvals Branch.

"District Manager" means the Manager of the Ministry of the Environment's York-Durham Office.

"EAAB" means the Environmental Assessment and Approvals Branch of the Ministry of the Environment.

"environmental assessment" means the document titled Durham/York Residual Waste Study Environmental Assessment Study Document (As Amended November 27, 2009).

"ministry" means the Ontario Ministry of the Environment, or successor, unless specific reference is made to another Ministry.

"non-hazardous municipal solid waste" means the waste that is generated within the municipalities of Durham and York and collected as part of the proponents municipal collection process.

"proponent" means the Regional Municipality of Durham and the Regional Municipality of York.

"Qualified, Independent Professional Engineer" means a person who holds a licence, limited licence or temporary licence under the *Professional Engineers Act* who is not an employee of the Regional Municipality of Durham, the Regional Municipality of York, the operator of the undertaking, or the ministry, who has not been involved in the design of the undertaking or preparation of documentation as part of an application for approval of the undertaking but who is knowledgeable about the *Environmental Protection Act*, Regulation 347 and Ontario Regulation 419/05, ministry guidelines affecting thermal treatment facilities, any other ministry approval issued for the undertaking as well as being experienced at assessing compliance with environmental legislation and requirements of certificates of approval issued under the *Environmental Protection Act*.

"receipt" means the arrival and acceptance of waste at the site, whether remaining in the vehicles used to transport the waste to the site or unloaded from the vehicles used to transport the waste to the site.

"Regional Director" means the Director of the ministry's Central Regional Office.

"site" means the 12.1 hectare parcel of land referred to as Clarington 01 in the environmental assessment and is located south of Highway 401 on the west side of Osbourne Road and north of the CN Rail corridor in the Municipality of Clarington.

"start of construction" means physical construction activities including, site preparation works, but does not include the tendering of contracts.

"undertaking" means the construction and operation of a thermal treatment waste management facility on the site, as set out in the environmental assessment.

2. General Requirements

- 2.1 The proponent shall comply with the provisions in the environmental assessment which are hereby incorporated in this Notice of Approval by reference except as provided in these conditions and as provided in any other approval or permit that may be issued for the site or the undertaking.

2.2 These conditions do not prevent more restrictive conditions being imposed under other statutes.

2.3 A statement must accompany the submission of any documents, reporting requirements or written notices required by this Notice of Approval to be submitted to the Director or Regional Director identifying which conditions the submission is intended to address in this Notice of Approval.

3. Public Record

3.1 Where a document, plan or report is required to be submitted to the ministry, the proponent shall provide two copies of the final document, plan or report to the Director: a copy for filing in the specific public record file maintained for the undertaking and a copy for staff use.

3.2 The proponent shall provide additional copies of the documents required for the public record file to the following for access by the public:

- a) Regional Director;
- b) District Manager;
- c) Clerks of the Regional Municipality of Durham, the Regional Municipality of York, and the Municipality of Clarington; and,
- d) Advisory Committee (as required in Condition 8 of this Notice of Approval).

3.3 The EAAB file number EA-08-02 shall be quoted on all documents submitted by the proponent pursuant to this Condition.

4. Compliance Monitoring Program

4.1 The proponent shall prepare and submit to the Director a Compliance Monitoring Program outlining how it will comply with conditions in the Notice of Approval and other commitments made in the environmental assessment.

4.2 A statement shall accompany the submission of the Compliance Monitoring Program indicating that the submission is intended to fulfil Condition 4 of this Notice of Approval.

4.3 The Compliance Monitoring Program shall be submitted within one year from the date of approval, or a minimum of 60 days prior to the start of construction, whichever is earlier.

4.4 The Compliance Monitoring Program shall describe how the proponent will monitor its fulfilment of the provisions of the environmental assessment pertaining to mitigation measures, public consultation, and additional studies and work to be carried out; the fulfilment of all other commitments made by the proponent during the environmental assessment process; and the conditions included in this Notice of Approval.

4.5 The Compliance Monitoring Program shall contain an implementation schedule.

- 4.6 The Director may require amendments to the Compliance Monitoring Program, including the implementation schedule. If any amendments are required by the Director, the Director will notify the proponent of the required amendments in writing.
- 4.7 The proponent shall implement the Compliance Monitoring Program, as it may be amended by the Director.
- 4.8 The proponent shall make the documentation pertaining to the Compliance Monitoring Program available to the ministry or its designate in a timely manner when requested to do so by the ministry.

5. Compliance Reporting

- 5.1 The proponent shall prepare an annual Compliance Report which describes its compliance with the conditions of approval set out in this Notice of Approval and which describes the results of the proponent's environmental assessment Compliance Monitoring Program required by Condition 4.
- 5.2 The annual Compliance Report shall be submitted to the Director within one year from the date of approval, with the first report being due in 2011, and shall cover all activities of the previous 12 month period.
- 5.3 Subsequent compliance reports shall be submitted to the Director on or before the anniversary of the date of approval each year thereafter. Each Compliance Report shall cover all activities of the previous 12 month period.
- 5.4 The proponent shall submit annual Compliance Reports until all conditions in this Notice of Approval and the commitments in the environmental assessment are satisfied.
- 5.5 Once all conditions in this Notice of Approval have been satisfied, or have been incorporated into any other ministry approval, the proponent shall indicate in its annual Compliance Report that the Compliance Report is its final Compliance Report and that all conditions in this Notice of Approval have been satisfied.
- 5.6 The proponent shall retain either on site or in another location approved by the Director, a copy of each of the annual Compliance Reports and any associated documentation of compliance monitoring activities.
- 5.7 The proponent shall make the Compliance Reports and associated documentation available to the ministry or its designate in a timely manner when requested to do so by the ministry.

6. Complaint Protocol

- 6.1 The proponent shall prepare and implement a Complaint Protocol setting out how it will deal with and respond to inquiries and complaints received during the design, construction and operation of the undertaking.
- 6.2 The Complaint Protocol shall be provided to the advisory committee for review prior to submission to the Director.

- 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.
- 6.4 The Director may require the proponent to amend the Complaint Protocol at any time. Should an amendment be required, the Director will notify the proponent in writing of the required amendment and date by which the amendment must be completed.
- 6.5 The proponent shall submit the amended Complaint Protocol to the Director within the time period specified by the Director in the notice.

7. Community Involvement

- 7.1 The proponent shall prepare and implement a Community Communications Plan. The plan shall be prepared, in consultation with the EAAB and to the satisfaction of the Director.
- 7.2 The proponent shall finalize and submit the Community Communications Plan to the Director prior to the initial receipt of non-hazardous municipal solid waste at the site.
- 7.3 The Community Communications Plan shall include at a minimum details on:
 - a) How the proponent plans to disseminate information to interested members of the public and any Aboriginal communities;
 - b) How interested members of the public and any Aboriginal communities will be notified and kept informed about site operations; and,
 - c) The procedures for keeping interested members of the public and Aboriginal communities informed about information on documents related to the undertaking, and when and how the information will be made available.
- 7.4 The proponent shall give notice of and provide information about the undertaking to interested members of the public and Aboriginal communities through an internet web site and by other means. Such information shall include:
 - a) Activities that are part of the undertaking, including monitoring activities;
 - b) Reports and records related to the undertaking that are required to be submitted under this Notice of Approval or under any other ministry approvals that apply to the undertaking; and,
 - c) Information on the Complaint Protocol required by Condition 6 of this Notice of Approval.
- 7.5 The proponent shall hold public meetings to discuss the design, construction and operation of the undertaking, including, but not limited to:
 - a) At least one meeting prior to the start of construction;
 - b) At least one meeting prior to the receipt of non-hazardous municipal solid waste on site; and,
 - c) At least one meeting a minimum of six months but not later than 12 months after the initial receipt of non-hazardous municipal solid waste on the site.

- 7.6 The proponent shall provide notice of the public meetings a minimum of 15 days prior to the meeting.
- 7.7 The proponent shall give the Director written notice of the time, date and location of each of the required community meetings a minimum of 15 days prior to the meeting.

8.. Advisory Committee

- 8.1 The proponent shall establish an advisory committee to ensure that concerns about the design, construction and operation of the undertaking are considered and mitigation measures are implemented where appropriate.
- 8.2 The proponent shall provide administrative support for the advisory committee including, at a minimum:
- a) Providing a meeting space for advisory committee meetings;
 - b) Recording and distributing minutes of each meeting;
 - c) Preparing and distributing meeting notices; and,
 - d) Preparing an annual report about the advisory committee's activities to be submitted as part of the Compliance Reports required by Condition 5 of this Notice of Approval.
- 8.3 The proponent shall invite one representative from each of the following to participate on the advisory committee:
- a) Each of the lower tier municipalities in the Regional Municipality of Durham; and,
 - b) Each of the lower tier municipalities in the Regional Municipality of York.
- 8.4 The proponent shall invite one representative from Central Lake Ontario Conservation Authority, and any other local conservation authorities that may have an interest in the undertaking to participate on the advisory committee.
- 8.5 The proponent shall invite one representative from each of the following local community groups to participate on the advisory committee:
- a) DurhamCLEAR;
 - b) Durham Environmental Watch; and,
 - c) Zero Waste 4 Zero Burning.
- 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.
- 8.7 A representative from the ministry shall be invited to attend meetings as an observer.
- 8.8 The advisory committee shall be provided with a copy of the documents listed below for information and may review the documents as appropriate and provide comments to the proponent about the documents, including the:

- 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 and the results of the ambient air monitoring program 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 as required by Condition 19;
- l) Groundwater and Surface Water Monitoring Plan, the results of the groundwater and surface water monitoring program, and the annual report on the results of the groundwater and surface water monitoring program required by Condition 20; and,
- m) Notice in writing of the date that municipal solid waste is first received as required by Condition 23.

8.9 The proponent shall hold the first advisory committee meeting within three months of the date of approval. At the first meeting, the advisory committee shall develop a Terms of Reference outlining the governance and function of the advisory committee.

8.10 The Terms of Reference shall, at a minimum, include:

- a) Roles and responsibilities of the advisory committee members;
- b) Frequency of meetings;
- c) Member code of conduct;
- d) Protocol for dissemination and review of information including timing; and,
- e) Protocol for dissolution of the advisory committee.

8.11 The proponent shall submit the advisory committee's Terms of Reference to the Director and Regional Director.

9. Consultation With Aboriginal Communities

9.1 The proponent shall continue to consult with any interested Aboriginal communities during the detailed design and implementation of the undertaking.

10. Waste Diversion

- 10.1 The proponent shall make a reasonable effort to work cooperatively with all lower tier municipalities to ensure that waste diversion programs, policies and targets set by the Regional Municipalities are being met.
- 10.2 The proponent shall prepare and implement a Waste Diversion Program Monitoring Plan.
- 10.3 The Waste Diversion Program Monitoring Plan shall provide a description of monitoring and reporting which shall at minimum include:
 - a) Results of at source diversion programs and policies to determine the waste diversion rates and practices at both the regional and lower tier municipal level within the Regional Municipalities of Durham and York.
 - b) Progress in the diversion programs, policies, practices and targets described in the environmental assessment, at both the regional and lower tier municipal level within the Regional Municipalities of Durham and York.
 - c) Monitoring results for any additional diversion programs, policies, practices and targets carried out within the Regional Municipalities of Durham and York, which are not described in the environmental assessment.
- 10.4 The proponent shall prepare and submit to the Director and Regional Director, commencing one year after the approval of the undertaking, annual reports detailing the results of the Waste Diversion Program Monitoring Plan.
- 10.5 The proponent shall post the Waste Diversion Program Monitoring Plan and the annual reports required on the proponent's web site for the undertaking.

11. Ambient Air Monitoring and Reporting

- 11.1 The proponent shall prepare, in consultation with the ministry's Central Region Office and to the satisfaction of the Regional Director, an Ambient Air Monitoring and Reporting Plan for the undertaking.
- 11.2 The proponent shall submit the Ambient Air Monitoring and Reporting Plan to the Director and Regional Director a minimum of nine months prior to the start of construction or by such other date as agreed to in writing by the Regional Director.
- 11.3 The proponent shall establish a working group that will provide advice on the development of the Ambient Air Monitoring and Reporting Plan. The Regions will, at a minimum, extend an invitation to Health Canada, the Durham Region Health Department, York Region Public Health Services, one participant from the advisory committee, and any other relevant federal or provincial government agencies including the ministry.
- 11.4 The Ambient Air Monitoring and Reporting Plan shall include at minimum:
 - a) An ambient air monitoring program which includes an appropriate number of sampling locations. Siting of the sampling locations shall be done in accordance with the Ministry of the Environment's Operations Manual for Air Quality Monitoring in Ontario, March 2008, as amended from time to time;

- b) The proposed start date for and frequency of the ambient air monitoring and reporting to be carried out;
 - c) The contaminants that shall be monitored as part of the Ambient Air Monitoring and Reporting Plan; and,
 - d) At least one meeting on an annual basis between the proponent and the Regional Director to discuss the plan, the results of the ambient air monitoring program and any changes that are required to be made to the plan by the Regional Director.
- 11.5 The proponent shall implement the ambient air monitoring program prior to the receipt of non-hazardous municipal solid waste on the site or at such other time that may be determined by the Regional Director and communicated to the proponent in writing and shall continue the monitoring until such time as the Regional Director notifies the proponent in writing that the Ambient Air Monitoring Program is no longer required.
- 11.6 The Regional Director may require changes to be made to the Ambient Air Monitoring and Reporting Plan and the proponents shall implement the plan in accordance with the required changes.
- 11.7 The proponent shall report the results of the ambient air monitoring program to the Regional Director in accordance with the Ambient Air Monitoring and Reporting Plan.
- 11.8 Audits will be conducted by the ministry, as outlined in the Ministry of the Environment's Audit Manual for Air Quality Monitoring in Ontario, March 2008 to confirm that siting and performance criteria outlined in the Operations Manual are met. The proponent shall implement any recommendations set out in the audit report regarding siting of the sampling locations and performance criteria. The proponent shall implement the recommendations in the audit report within three months of the receipt of an audit report from the ministry.
- 11.9 The proponent shall post the Ambient Air Monitoring and Reporting Plan and the results of the ambient air monitoring program on the proponent's web site for the undertaking upon submission of the plan or results of the program to the ministry.

12. Emissions Monitoring

- 12.1 The proponent shall install, operate and maintain air emissions monitoring systems that will record the concentrations of the contaminants arising from the incineration of waste.
- 12.2 The air emissions monitoring systems shall be installed and operational prior to the receipt of non-hazardous municipal solid waste at the site.
- 12.3 The proponent shall prepare and implement an Air Emissions Monitoring Plan. The Plan shall be prepared, in consultation with the ministry and to the satisfaction of the Director.
- 12.4 The Air Emissions Monitoring Plan shall include, at a minimum:
- a) Identification of all sources of air emissions at the site to be monitored;

- b) Identification of which contaminants will be monitored by continuous emissions monitoring and which by stack testing;
 - c) The proposed start date for and frequency of air emissions monitoring;
 - d) The frequency of and format for reporting the results of air emissions monitoring;
 - e) The contaminants that shall be monitored, which shall include at a minimum those contaminants set out in Schedule 1 to this Notice of Approval; and,
 - f) A notification, investigation and reporting protocol to be used in the event that the concentration(s) of one or more of the contaminants released from an emission source that requires approval under Section 9 of the *Environmental Protection Act* exceed the relevant limits.
- 12.5 The proponent shall submit the Air Emissions Monitoring Plan to the Director, a minimum of six months prior to the start of construction or by such other date as agreed to in writing by the Director
- 12.6 The proponent shall implement the Air Emissions Monitoring Plan such that the monitoring commences when the first discharges are emitted from the facility to the air or at such other time as the Director may agree to in writing and shall continue until such time as the Director notifies the proponent in writing that the Air Emissions Monitoring Plan is no longer required.
- 12.7 The proponent shall post the reports of the air emissions monitoring systems on the proponent's web site for the undertaking.
- 12.8 For those contaminants that are monitored on a continuous basis, the proponent shall post on the proponent's website for the undertaking the results of the monitoring for each of those contaminants in real time.

13. Air Emissions Operational Requirements

- 13.1 The proponent is expected to operate the undertaking in accordance with Schedule 1 of this Notice of Approval. If the facility is not operating in accordance with Schedule 1, the operator is required to take steps to bring the facility back within these operational requirements.
- 13.2 Schedule 1 sets out the operational requirements the ministry expects the facility to meet during the normal operating conditions of the facility when operating under a steady state but does not include start up, shut down, or malfunction.
- 13.3 The timing and frequency of monitoring for a contaminant in Schedule 1 shall be as required by the approval granted to the facility under the *Environmental Protection Act*, should approval be granted.

14. Daily Site Inspection

- 14.1 The proponent shall conduct a daily inspection of the site including the non-hazardous municipal solid waste received at the site, each day the undertaking is in operation to confirm that:
- a) The site is secure;

- b) The operation of the undertaking is not causing any nuisance impacts;
 - c) The operation of the undertaking is not causing any adverse effects on the environment;
 - d) The undertaking is being operated in compliance with the conditions in this Notice of Approval and any other ministry approvals issued for the undertaking; and,
 - e) Only non-hazardous waste is being received at the site.
- 14.2 If, as a result of the daily inspection, any deficiencies are noted by the employee in regard to the factors set out in Condition 14.1 above, the deficiency shall be remedied immediately by the proponent. If necessary to remedy the deficiency, the proponent shall cease operations at the site until the deficiency has been remedied.
- 14.3 A record of the daily inspections shall be kept in the daily log book required in Condition 15. The information below must be recorded in the daily log book by the person completing the inspection and includes the following information:
- a) The name and signature of the person that conducted the daily inspection;
 - b) The date and time of the daily inspection;
 - c) A list of any deficiencies discovered during the daily inspection;
 - d) Any recommendations for action; and,
 - e) The date, time and description of actions taken.
- 14.4 The proponent shall retain either on site or in another location approved by the District Manager, a copy of the daily log book and any associated documentation regarding the daily site inspections.

15. Daily Record Keeping

- 15.1 The proponent shall maintain a written daily log which shall include the following information:
- a) Date;
 - b) Types, quantities and source of non-hazardous municipal solid waste received;
 - c) Quantity of unprocessed, processed and residual non-hazardous municipal solid waste on the site;
 - d) Quantities and destination of each type of residual material shipped from the site;
 - e) The record of daily site inspections required to be maintained by Condition 14.3;
 - f) A record of any spills or process upsets at the site, the nature of the spill or process upset and the action taken for the clean up or correction of the spill or process upset, the time and date of the spill or process upset, and for spills, the time that the ministry and other persons were notified of the spill pursuant to the reporting requirements of the *Environmental Protection Act*;

- g) A record of any waste that was refused at the site, including: amounts, reasons for refusal and actions taken; and,
 - h) The name and signature of the person completing the report.
- 15.2 The proponent shall retain, either on site or in another location approved by the District Manager, a copy of the daily log book and any associated documentation.
- 15.3 The proponent shall make the daily log book and any associated documentation available to the ministry or its designate in a timely manner when requested to do so by the ministry.

16. Third Party Audits

- 16.1 The proponent shall retain the services of a Qualified, Independent Professional Engineer to carry out an independent audit of the undertaking.
- 16.2 Within six months from the date of approval or other such date as agreed to in writing by the Regional Director, the proponent shall submit to the Director and the Regional Director, the name of the Qualified, Independent Professional Engineer and the name of the company where he/she is employed.
- 16.3 The proponent shall submit an audit plan to the satisfaction of the Regional Director that sets out the timing of and frequency for the audits, as well as the manner in which the audits are to be carried out.
- 16.4 The audit shall include, at a minimum, the following:
- a) A detailed walkthrough of the entire site;
 - b) A review of all operations used in connection with the undertaking; and,
 - c) A detailed review of all records required to be kept by this Notice of Approval or under any other ministry approvals for the undertaking.
 - d) The proponent shall obtain from the Qualified, Independent Professional Engineer, a written report of the audit prepared and signed by the Qualified, Independent Professional Engineer that summarizes the results of the audit.
- 16.5 The proponent shall submit the written report summarizing the result of the audit to the Regional Director no later than 10 business days following the completion of the audit.
- 16.6 The proponent shall retain either on site or in another location approved by the Regional Director, a copy of the written audit report and any associated documentation.
- 16.7 The proponent shall make the written audit report and any associated documentation available to the ministry or its designate in a timely manner when requested to do so by the ministry.
- 16.8 The proponent shall post the written audit report on the proponent's web site for the undertaking following submission of the report to the ministry.

17. Spill Contingency and Emergency Response Plan

- 17.1 The proponent shall prepare and implement a Spill Contingency and Emergency Response Plan.
- 17.2 The proponent shall submit to the Director, the Spill Contingency and Emergency Response Plan a minimum of 60 days prior to the receipt of non-hazardous municipal solid waste at the site or such other date as agreed to in writing by the Director.
- 17.3 The Spill Contingency and Emergency Response Plan shall include, but is not limited to:
- a) Emergency response procedures, including notification procedures in case of a spill, fires, explosions or other disruptions to the operations of the facility;
 - b) Cell and business phone numbers and work locations for all person(s) responsible for the management of the site;
 - c) Emergency phone numbers for the local ministry office, the ministry's Spills Action Centre, and the local Fire Department;
 - d) Measures to prevent spills, fires and explosions;
 - e) Procedures for use in the event of a fire;
 - f) Details regarding equipment for spill clean-up and all control and safety devices;
 - g) Shut down procedures for all operations associated with the undertaking including alternative waste disposal site locations;
 - h) Maintenance and testing program for spill clean-up equipment and fire fighting equipment;
 - i) Training for site operators and emergency response personnel; and,
 - j) A plan, identifying the location and nature of wastes on site.
- 17.4 The proponent shall provide the Spill Contingency and Emergency Response Plan to the District Manager, the local Municipality of Clarington and the local Municipality of Clarington Fire Department a minimum of 30 days prior to the initial receipt of non-hazardous municipal solid waste at the site or such other date as agreed to in writing by the Director.
- 17.5 The proponent shall take all necessary steps to contain and clean up a spill on the site. A spill or upset shall be reported immediately to the ministry's Spills Action Centre at (416) 325-3000 or 1-800-268-6060.

18. Odour Management and Mitigation

- 18.1 The proponent shall prepare, in consultation with the ministry's Central Region Office and to the satisfaction of the Regional Director, and implement an Odour Management and Mitigation Plan for the undertaking.
- 18.2 The proponent shall submit the Odour Management and Mitigation Plan to the Regional Director a minimum of six months prior to the start of construction or at such other time as agreed to in writing by the Regional Director.

- 18.3 The Odour Management and Mitigation Plan shall include at a minimum:
- a) Standard operating and shut down procedures;
 - b) Maintenance schedules;
 - c) Ongoing monitoring for and reporting of odour;
 - d) Corrective action measures and other best management practices for ongoing odour control and for potential operational malfunctions;
 - e) A schedule for odour testing at sensitive receptors; and,
 - f) A section that specifically addresses odour control measures should operation of the undertaking be disrupted or cease.
- 18.4 The proponent shall prepare and submit the Odour Management and Mitigation Monitoring Reports annually to the Regional Director with the first report submitted beginning six months following the initial receipt of non-hazardous municipal solid waste at the site or such other date as agreed to in writing by the Regional Director.
- 18.5 The Odour Management and Mitigation Monitoring Reports shall be submitted every 12 months from the date of the submission of the first report or until such time as the Regional Director notifies the proponent in writing that the Odour Management and Mitigation Monitoring Reports are no longer required.
- 18.6 The proponent shall post the Odour Management and Mitigation Monitoring Reports on the proponent's web site for the undertaking following submission of the reports to the Regional Director.

19. Noise Monitoring and Reporting

- 19.1 The proponent shall prepare and implement a Noise Monitoring and Reporting Plan for the undertaking.
- 19.2 The proponent shall submit the Noise Monitoring and Reporting Plan to the Director a minimum of 90 days prior to the start of construction or such other date as agreed to in writing by the Director.
- 19.3 The Noise Monitoring and Reporting Plan shall include a protocol to ensure that the noise emissions from the facility comply with the limits set out in the Ministry of the Environment's Publication NPC-205 "Sound Level Limits for Stationary Sources in Class 1 & 2 Areas (Urban)", October 1995, as amended from time to time.
- 19.4 The proponent shall post the Noise Monitoring and Reporting Plan and on the proponent's web site for the undertaking following submission of the plan to the Director.

20. Groundwater and Surface Water Monitoring and Reporting

- 20.1 Prior to the start of construction, the proponent shall identify any areas where the undertaking may affect groundwater or surface water. For those areas, the proponent shall prepare and implement, in consultation with the ministry's

Central Region Office and to the satisfaction of the Regional Director, a Groundwater and Surface Water Monitoring Plan.

- 20.2 The proponent shall provide the Groundwater and Surface Water Monitoring Plan to other any government agencies for review and comment, as may be appropriate.
- 20.3 The Groundwater and Surface Water Monitoring Plan shall include at a minimum:
 - a) A groundwater and surface water monitoring program;
 - b) The proposed start date and frequency of groundwater and surface water monitoring;
 - c) The contaminants that shall be monitored as part of the groundwater and surface water monitoring program; and,
 - d) At least one meeting each year between the proponent and the Regional Director to discuss the plan, the results of the monitoring program and any changes that are required to be made to plan by the Regional Director.
- 20.4 The proponent shall submit the Groundwater and Surface Water Monitoring Plan to the Regional Director a minimum of 90 days prior to the start of construction or such other date as agreed to in writing by the Regional Director.
- 20.5 The Regional Director may require changes to be made to the Groundwater and Surface Water Monitoring Plan and the proponent shall implement the plan in accordance with the required changes.
- 20.6 The groundwater and surface water monitoring program shall commence prior to the receipt of non-hazardous municipal solid waste at the site or such other time as agreed to in writing by the Regional Director, and shall continue until such time as the Regional Director notifies the proponent in writing that the groundwater and surface water monitoring program is no longer required.
- 20.7 Thirty days after waste is first received on site, the proponent shall prepare and submit to the Director and Regional Director, a report containing all of the results of the groundwater and surface water monitoring program.
- 20.8 The proponent shall prepare and submit to the Director and Regional Director, an annual report containing the results of the groundwater and surface water monitoring program. The first report shall be submitted 12 months from the start of the monitoring program and every year thereafter.
- 20.9 The proponent shall prepare and submit to the Director and Regional Director, a report containing the results of the groundwater and surface water monitoring program within 30 days of any of the following events:
 - a) A spill occurs on site;
 - b) A fire or explosion occurs on site;
 - c) A process upset; or
 - d) Any disruption to normal operations that may directly or indirectly have an impact on groundwater or surface water.

20.10 The proponent shall post the Groundwater and Surface Water Monitoring Plan and all reports required by this condition on the proponent's web site for the undertaking following submission of the plan and reports to the ministry.

21. Types of Waste and Service Area

21.1 Only non-hazardous municipal solid waste from municipal collection within the jurisdictional boundaries of the Regional Municipality of Durham and the Regional Municipality of York may be accepted at the site.

21.2 Materials which have been source separated for the purposes of diversion shall not be accepted at this site. This prohibition does not apply to the non-recyclable residual waste remaining after the separation of the recyclable materials from the non-recyclable materials at a materials recycling facility or other processing facility.

21.3 The proponent shall ensure that all incoming waste is inspected prior to being accepted at the site to ensure that only non-hazardous municipal solid waste is being accepted.

21.4 If any materials other than non-hazardous municipal solid waste are found during inspection or operation, the proponent shall ensure that management and disposal of the material is consistent with ministry guidelines and legislation.

22. Amount of Waste

22.1 The maximum amount of non-hazardous municipal solid waste that may be processed at the site is 140,000 tonnes per year.

23. Notice of the Date Waste First Received

23.1 Within 15 days of the receipt of the first shipment of waste on site, the proponent shall give the Director and Regional Director written notice that the waste has been received.

24. Construction and Operation Contracts

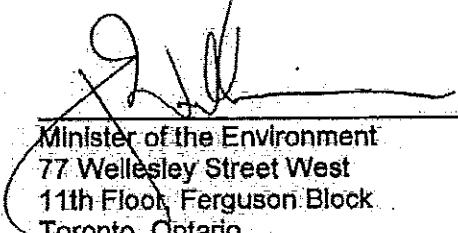
24.1 In carrying out the undertaking, the proponent shall require that its contractors, subcontractors and employees:

- a) fulfill the commitments made by the proponent in the environmental assessment process, including those made in the environmental assessment and in the proponent's responses to comments received during the environmental assessment comment periods;
- b) meet applicable regulatory standards, regarding the construction and operation of the undertaking;
- c) obtain any necessary approvals, permits or licenses; and,
- d) have the appropriate training to perform the requirements of their position.

25. Amending procedures

25.1 Prior to implementing any proposed changes to the undertaking, the proponent shall determine what *Environmental Assessment Act* requirements are applicable to the proposed changes and shall fulfill those *Environmental Assessment Act* requirements.

Dated the 21st day of October 2010 at TORONTO.


Minister of the Environment
77 Wellesley Street West
11th Floor, Ferguson Block
Toronto, Ontario
M7A 2T5

Approved by O.C. No. 1514 / 2010

Date O.C. Approved NOVEMBER 3, 2010

Schedule 1 –Air Emissions Operational Requirements

Item	Contaminant	Operational Requirements
1.	Particulate Matter	9 mg/Rm3
2.	Cadmium	7 ug/Rm3
3.	Lead	50 ug/Rm3
4.	Mercury	15 ug/Rm3
5.	Dioxins & Furans	60 pg/Rm3
6.	Hydrogen Chloride	9 mg/Rm3
7.	Sulphur Dioxide	35 mg/Rm3
8.	Nitrogen Oxides	121 mg/Rm3
9.	Organic Matter	50 ppm _{dv} (33 mg/Rm3)
10.	Carbon Monoxide	35 ppm _{dv} (40 mg/Rm3)
11.	Opacity	5% (2-hour average) 10% (6-minute average)

Notes:

mg/Rm³-milligrams per reference cubic metre; ug/Rm³-micrograms per reference cubic metre; pg/Rm³-picograms per reference cubic metre; ppm_{dv}-parts per million by dry volume