

 Corporate Services Department Legislative Services Division	
Date & Time Received:	October 22, 2024 12:19 pm
Original To:	CIP
Copies To:	
Take Appropriate Action	<input type="checkbox"/> File <input type="checkbox"/>
Notes/Comments:	

Correspondence to Durham Region Council via email to Clerks@Durham.ca

October 22, 2024.

Regional Chair John Henry and Durham Region Council
 605 Rossland Rd East
 Whitby ON

Re: Bill C-59 Greenwashing Legislation and October 25th 2024 DYEC Tours

Durham Region councillors and staff should have been made aware that on June 20, 2024, Bill C-59, Canada’s, *Fall Economic Statement Implementation Act, 2023*, received Royal Assent and became law. Among many other things, this legislation makes significant amendments to the Canadian *Competition Act* (the “Act”).

Of immediate concern, who will monitor and/or vet the staff responses to the public’s questions and the “Information Material” at the October 25th DYEC tour to ensure that this not another exercise in “greenwashing”?

See below extracts from two law firms around what Bill c-59 entails.

<https://www.blq.com/en/insights/2024/07/false-advertising-and-greenwashing-bill-c-59-changes-to-competition-act>

BORDEN LADNER GERVAIS extract

New provisions on greenwashing claims – including a reverse onus

Businesses already face litigation risk for alleged greenwashing under existing federal and provincial laws. Adding to this, Bill C-59 expands the potential liability for greenwashing in two ways. First, Bill C-59 amends section 74.01 of the Competition Act to expressly address misleading environmental benefits claims made to the public:

- *Any statement, warranty or guarantee of a product’s benefits for protecting or restoring the environment or mitigating the environmental, social and ecological causes or effects of climate change that are not based on an adequate and proper testing; and*
- *Any representations with respect to the benefits of a business or business activity for protecting or restoring the environment or mitigating the environmental and ecological causes or effects of climate change that are not based on adequate and proper substantiation in accordance with internationally recognized methodology.*

Secondly, the onus is placed on the advertiser making such claims to prove, if they are challenged, that the claims are based on adequate and proper testing or substantiation.

These changes will make it significantly easier for the Commissioner of Competition (the Commissioner), **and soon private parties, to take enforcement action against greenwashing**. Previously, the Commissioner needed to rely on the general misleading advertising provisions of the Competition Act and bore the burden of proving that the environmental claims were materially false or misleading. These new provisions expressly identify types of problematic environmental claims, and force the advertiser, if challenged, to effectively bear the burden of proving that the claims are not misleading. This is a major change.

.....General provisions on false or misleading claims under the Competition Act

In recent years, businesses in Canada and abroad have faced increasing scrutiny for “greenwashing,” which the Bureau generally [refers to as false or misleading environmental advertisements or claims](#). Notwithstanding the new explicit provisions under Bill C-59, **greenwashing claims** are also subject to the general provisions on deceptive marketing in the Competition Act and in provincial consumer protection legislation.

Section 52 of the Competition Act makes it an offence for a person to make a representation knowingly or recklessly to the public that is false or misleading in a material respect for the purpose of promoting a business interest. Upon conviction for an indictable offence, a court can impose a fine without restrictions, imprisonment for up to 14 years, or both.

Also, section 74.01 of the Competition Act prescribes civil consequences for representations that are false or misleading in a material respect. Unlike the criminal provision under section 52 of the Act, section 74.01 does not require a person to have “knowingly or recklessly” made a false or misleading statement. Also, an offence under section 52 requires proof beyond a reasonable doubt, whereas the Commissioner need only prove misconduct under section 74.01 on a balance of probabilities.

Private rights of action for greenwashing claims

The changes that Bill C-59 bring will not only make it easier for the Commissioner to take action against greenwashing, but it will soon be easier for private parties to do so too. As of June 20, 2025, private parties can seek leave to bring actions for deceptive advertising directly before the Tribunal if they can show “public interest”. Therefore, individuals and businesses would no longer need to rely on the Bureau to act on their greenwashing complaints.

<https://gowlingwlg.com/en/insights-resources/articles/2024/new-greenwashing-laws-under-the-competition-act>

GOWLINGS extract:

In the absence of clear guidelines on what qualifies as an "internationally recognized methodology," and with expanded private access to the Competition Tribunal, green marketing in Canada may carry heightened risks, potentially leading to a chilling effect known as "greenhushing." Businesses are encouraged to conduct internal audits of their claims, including those on product packaging, advertisements and statements about their environmental practices, to ensure they are substantiated and aligned with international standards. Businesses may also wish to provide submissions to the Competition Bureau as it conducts public consultation in respect of potential revised environmental guidance on the new provisions aimed at greenwashing.

Navigating the complexities of greenwashing demands a robust strategy and meticulous attention to detail to mitigate reputational risks and potential legal liabilities. Ensuring the credibility and transparency of environmental claims, slogans and brands will be critical to maintaining consumer trust, as well as compliance with the new greenwashing provisions.

Notices re October 25th, 2024 Tour at DYEC

Below are two notices that Durham sent out re an October 25, 2024 tour of the DYEC.

The first was forwarded to me by a Pickering resident. I received the second notice by subscribing to Durham news.

From: noreply@esolutionsgroup.ca <noreply@esolutionsgroup.ca>
Sent: October 18, 2024 12:12 PM
To:
Subject: City of Pickering - What's happening next week!

Hello

You have subscribed to receive updates from the calendar.

Below is a snapshot of what's happening in the coming week.

Date	Event
October 25 2024, 10:00 AM to 3:00 PM	<p data-bbox="444 1591 911 1627">Transforming Waste Into Energy!</p> <p data-bbox="444 1654 1398 1808">Residents are invited to bring their children to the Durham York Energy Centre (DYEC) for a free public event on Friday, October 25 and learn how the Region of Durham is transforming household waste into valuable resources.</p> <p data-bbox="444 1835 1133 1871">When: Friday, October 25 from 10 a.m. to 3 p.m.</p>

Where: Durham York Energy Centre at 1835 Energy Drive in Courtice.

Why: Activities include:

- Guided tours to our control room to view the waste pit and see the “claw”.
- Interactive waste sorting games.
- Activity books and colouring pages.
- Stickers, temporary tattoos, photo opportunities, and button making.
- Meet the staff and have your questions answered by our team.
- **Informational displays.**

Note: No pre-registration is required. All children must be accompanied by an adult. Accessible parking and access will be available

Oct. 7.2024 Durham Notice:

Region of Durham News

Join us at the Durham York Energy Centre for our upcoming family-friendly events

Whitby, Ontario – Durham Region residents are invited to bring their children to the Durham York Energy Centre (DYEC) for a **free** public event on Friday, October 25 and Friday, November 15 [REDACTED]

When: Friday, October 25 and Friday, November 15 from 10 a.m. to 3 p.m.

Where: Durham York Energy Centre at 1835 Energy Drive in Courtice.

Why: Activities include:

- Guided tours to our control room to view the waste pit and see the “claw”.
- Interactive waste sorting games.
- Activity books and colouring pages.
- Stickers, temporary tattoos, photo opportunities, and button making.
- Meet the staff and have your questions answered by our team.

Note: [REDACTED]

[REDACTED]. No pre-registration is required. All children must be accompanied by an adult. Accessible parking and access will be available.

For more information, please visit durham.ca/WasteEvents.

The two notices above are crafted to create the impression that the DYEC “transforms” waste materials into something positive without also providing sufficient details for readers to know whether that is true or not.

These two notices fail to advise readers that the DYEC IS a major source of air pollution AND is Durham’s single largest source of corporate GHG emissions.

The notice doesn’t state where testing reports and other DYEC documents could be accessed.

Will the tour leaders/speakers mention that the non-hazardous household waste burned is converted to gases emitted through the stack, some of which are toxic, carcinogenic, respiratory irritants, thus polluting air, land and water, of which contaminants only a tiny fraction is monitored continuously?

Will the tour speakers advise attendees that Durham ships ash residues laced with toxics to landfills in the U.S. and southwest Ontario?

Will tour leaders and/or Durham staff mention that they applied to burn yet more garbage just three years after start up, an increase from 140,000 to 160,000 tpy?

Will the tour speakers mention that the DYEC 2023 Soil Test Results show dioxins and furans loadings higher than predicted? See Slide 13 of Wendy Bracken's Oct. 2. 24 PowerPoint to Works Committee, something that Durham staff should have brought to the attention of Works Committee and Council. See: <https://pub-durhamregion.escribemeetings.com/filestream.ashx?DocumentId=5163>

Greenwashing & Inappropriate Statements in staff report 2024 INFO 55 re DYEC Spring Source Test

On October 2nd at Works Committee, I stated concerns about Works staff language in their report about the Spring Compliance Stack test results and in their report 2024 INFO 55 repeated use of the word "safe. Those statements are inaccurate, not supported by evidence and misleading.

This is a concern because some Durham waste staff routinely use similar language in different settings to leave impression all is well with DYEC testing.

See Slides 3 & 4 my PowerPoint to Works Committee for examples of other misleading claims that I cited at: <https://pub-durhamregion.escribemeetings.com/filestream.ashx?DocumentId=5160>

At October 2nd Works meeting I delegated about the "issues" Durham had with their spring compliance source test, which were not referenced in the Durham staff report 2024-INFO-55 which can be found in the consultant's reports attached.

See INFO 55 Attachment 1, page 2: <https://pub-durhamregion.escribemeetings.com/filestream.ashx?DocumentId=5158>

Extract:A second issue developed during the repeat test as steam production on Boiler 2 started to decline. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] when steam production achieved approximately 90% of the target (33.6 thousand kilograms per hour (kg/h)).

So basically, the DYEC could not make it through a three four-hour stack test with without a process upset and stopped measuring during the 16-minute test pause were not measured? Isn't that kind of like cheating? Is MECP okay with this nonsense?

There were also stack testing issues described in 2024 INFO 17 about the Fall Compliance Source Test: See Ausenco Attachment 2 page 2 at: <https://pub-durhamregion.escribemeetings.com/filestream.ashx?DocumentId=3705>

Extract: *Source tests for dioxin and furans for both Units 1 and 2 are typically run concurrently. However, it was necessary to take Unit 2 offline due to plugging of the feed chute for Boiler 2. The timing of this incident prevented Unit 2 from being tested concurrently with Unit 1. Unit 1 was tested on September 21st and 22nd , while Unit 2 was tested on October 3rd and 4th , 2023.*

I really hope that Council AND the MECP Minister and staff copied with this letter are paying close attention to these concerns, which again relate to dioxins and furans emissions which can result in adverse human health and environmental impacts.

Greenwashing DYEC's GHGs and Durham's GHGs reporting

I delegated to Durham Council last April that the DYEC GHGs staff reported to you in 2024 COW 12 are different than what reported to Ontario and NPRI and also that the DYEC annual GHGs are increasing.

See my April 24, 2024 PowerPoint at: <https://pub-durhamregion.escribemeetings.com/filestream.ashx?DocumentId=4020>

Also, given Bill C-59, will amendment(s) be required to the Durham's Host Community Agreement with Clarington, which is referred to in Report 2024 COW 1. Would Durham require Clarington Council to engage in misleading greenwashing about the DYEC? (Obviously this is something Clarington needs to sort out as well.)

From page 3 of Durham's 2024-COW-1: <https://pub-durhamregion.escribemeetings.com/filestream.ashx?DocumentId=2998>

Through the negotiations associated with the development of the Durham York Energy Centre (DYEC), Durham Region and the Municipality of Clarington signed a Host Community Agreement in 2010 which included agreement by Clarington to "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 energy from waste (EFW) Facility".

Sources of low carbon heat are in proximity to planned higher density transit-oriented mixed-use development within the Courtice MTSA, including the DYEC and the Courtice Water Pollution Control Plant (WPCP).

The DYEC Produces Dirty Power Subsidized by Ontario Ratepayers

Some of you would have recently seen the BBC article from last week, which reinforced many of the concerns residents have brought forward to Durham council over many years, both before and post approval.

<https://www.bbc.com/news/articles/cp3wxqje5pwo> **Burning rubbish now UK's dirtiest form of power**

See Energy Justice in the US: **Trash Incineration More Polluting than Coal**

<https://www.energyjustice.net/incineration/worsethancoal#:~:text=Trash%20incinerators%20are%20the%20dirtiest,per%20unit%20of%20energy%20produced>

Extract:

Trash incinerators are the dirtiest way to make electricity by most air pollution measures. Even with air pollution control equipment, trash incinerators emit more pollution than (less controlled) coal power plants per unit of energy produced. Coal power plants are widely understood as the most air-polluting energy source, but few realize how much worse trash incinerators are for air quality.

To make the same amount of energy as a coal power plant, trash incinerators in 2018 released 65% more carbon dioxide (CO₂), as much carbon monoxide, three times as much nitrogen oxides (NO_x), five times as much mercury, nearly six times as much lead and 27 times more hydrochloric acid (HCl).

How will Durham describe the power produced at the DYEC and in light of Bill C-59?

What Actions Will Durham Region Take to Comply with Bill C-59?

Have Durham staff and Council been briefed and do they fully understand Durham's obligations under Bill C-59?

Since the earliest days of the first EA through to recent Works staff reports, we have heard responses to councillor, advisory committee questions and read staff reports that included statements that at times misrepresented, minimized and/or dismissed concerns about the adverse impacts of burning of garbage.

Without providing any evidence, Works staff have repeatedly stated that burning garbage is better than landfill, though ignoring that burning means you need a landfill for the ash, and as if there were no better ways of addressing waste.

You can watch to EFW WMAC September 24th meeting and the Works Committee October 2nd meetings as just two recent examples how concerns continue to responded to after the passing of Bill C-59.

On a related note, see the recent complaint about Nuclear industry greenwashing, another form of power production that Durham has made greenwashing statements about. [https://www.ccnr.org/Competition Bureau submission Oct 15 2024.pdf](https://www.ccnr.org/Competition_Bureau_submission_Oct_15_2024.pdf)

What action(s) will Durham take to ensure that NO PUBLIC DOLLARS are expended on DYEC and other greenwashing?

Who will vet Durham's waste related educational materials, presentations to schools and when hosting DYEC or other tours, to ensure they are accurate and not greenwashing?

When would the Durham and DYEC websites be updated to ensure they comply?

Who will vet Durham staff reports/memos/plans to ensure they no longer contain greenwashing language?

Conclusion and Request

Of immediate concern, who is going to vet the tour leader/staff presentations/ "Information Material" and caution staff about their responses to the public's questions at the October 25th DYEC tour?

I urge Chair Henry, Durham Councillors and Senior Management to consider the many changes that Durham might be required to implement to comply with Bill C-59.

I respectfully request that Council advise of actions to address greenwashing and Bill C-59 and do so via a staff report that appears on a public agenda.

Thank you for your attention.

Linda Gasser

Whitby, Ontario

Email: gasserlinda@gmail.com

Cc: Elaine Baxter Trahair, Durham CAO

Jason Hunt Durham Legal

Ramesh Jagannathan Durham Commissioner of Works

Andrew Evans, Durham Director Waste

B. Goodwin, Durham Commissioner of Corporate Services

Sandra Austin, Durham Executive Director, Strategic Initiatives

York Region Council c/o York Clerks

Erin Mahoney , York Region CAO

Mayor Adrian Foster & Clarington Council c/o Clarington Clerks

Jamil Jivani, Durham MP

Todd McCarthy, Durham MPP

Hon. Andrea Khanjin Minister MECP Ontario

Dr. Rachel Fletcher MECP Director Central Region

Katherine O'Neill, MECP Director Environmental Assessment Branch

Celeste Dugas, MECP Durham York District Office

Durham Clerks: please distribute this letter to Durham's:

Energy from Waste, Waste Management Advisory Committee

Energy from Waste Advisory Committee

Durham Environment and Climate Advisory Committee