

Via Email to: Clerks@Durham.ca

October 30, 2024.

Works Committee Chair Dave Barton and Committee Members
Regional Municipality of Durham
605 Rossland Road East
Whitby ON

Re: Further to Councillors' Questions October 2nd – History & Overview of Durham's Monitoring Commitments re DYEC Air & Soil monitoring

Dear Chair Barton and Works Committee Members:

At the October 2nd, 2024 Works meeting, councillors asked questions about monitoring at the DYEC but were provided limited information. Many of the staff and councillors involved at the time monitoring commitments and plans were developed are no longer at the Region.

Below I provide some history and an overview of DYEC monitoring for **Air and Soil only**.

For input about water-related monitoring plans and reports, CLOCA's staff have attended the annual Energy from Waste Advisory Committee meeting over the last few years and could be asked for an update.

Because many of the documents I reference are no longer accessible via direct link to same, I provide extracts of relevant portions. This unfortunately adds to the length of this overview.

Consultants Retained by Durham for the Environmental Assessment (EA) & Environmental Compliance Approval (ECA) studies and EA Screening

A concern raised repeatedly by the public, and by some councillors, was that several consultants retained to develop the EA and ECA studies, reports, submissions, monitoring plans were members of the former, now defunct, Canadian Energy from Waste Coalition (CEFWC) which lobbied governments and promoted "energy from waste", aka garbage incineration.

CEFWC consultant firms would be very familiar with the limitations of incinerator technology and performance, including problems around dioxin and furan emissions and were aware that the incinerator industry wanted to pitch to new clients and build more incinerators. Of several incinerators proposed during the mid-2000s, e.g. Halton and Niagara, ONLY Durham and York proceeded to build an incinerator.

Below see the extract of CEFWC members. Covanta was one of the CEFWC funders at the time of the EA and Durham retained as consultants the firms I have highlighted in yellow over the course of the EA and ECA, with Golder also retained to produce Air Quality reports in advance of and for Durham and York's EA Screening process (2019-2024). Borden Ladner Gervais (BLG) was one firm Durham retained as

external legal counsel including for a period after EA Approval. I don't know if Durham continues to retain BLG.

[Canadian Energy-From-Waste Coalition registers provincial lobbyist](#)

July 18, 2007



Ontario Lobbyist Registry

The Coalition's members are as follows:

- AlterNRG, Suite 334, 466 Speers Road, Oakville, Ontario, Canada, L6K 3W9;
- **Covanta Energy**, 40 Lane Rd., Fairfield, New Jersey, United States, 07004;
- Veolia-Montenay, 5150 Riverbend Drive, Burnaby, British Columbia, Canada, V3N 4V3;
- Waste Management inc., P.O.Box 3027, Houston, Texas, United States, 77253;
- **Borden Ladner Gervais**, Scotia Plaza, 40 King Street West, Toronto, Ontario, Canada, M5H 3Y4;
- Canadian Plastics Industry Association, 5915 Airport Rd., Suite 712, Mississauga, Ontario, Canada, L4V 1T1;
- Cement Association of Canada, 1500 Don Mills Road, Suite 703, Toronto, Ontario, Canada, M3B 3K4;
- Canadian Union of Public Employees, 244 Eglinton Avenue East, Toronto, Ontario, Canada, M4P 1K2;
- **Golder Associates**, 2390 Argenta Road, Mississauga, Ontario, Canada, L5N 5Z7;
- **Jacques Whitford**, P.O. Box 38212, Dartmouth, Nova Scotia, Canada, B3B 1X2;
- **Genivar**, 600 Cochrane Drive, Suite 500, Markham, Ontario, Canada, L3R 5K3;

Limitations of 2019-2024 EA Screening Process to Burn more Garbage at DYEC

Works Committee should understand the many limitations of the self-directed EA Screening process.

There was no public consultation other than 3 “drop in” events in 2019 but these occurred when few EA documents were available for review. Though requested there was NO public consultation after the EA Screening Report Submission was posted at the end of December 2021.

The April 22, 2024 MECP Minister’s letter to those who had submitted Elevation Requests dismissed these requests, which had not been responded to within the 30-day deadline for Ministry response in effect at the time (Feb. 2022). Concerns were raised about issues not identified/addressed in the EA Screening documents, with requesters asking that the self-directed EA Screening process be elevated to an Individual EA – i.e. same level of study as the initial EA had been.

Concerns and deficiencies submitted by elevation requesters were dismissed not because they were without merit, but because the province had amended Environmental Assessment Act legislation. So there has not been a thorough examination of many issues during the EA Screening. See April 22.24 letter to Elevation requesters at: <https://pub-durhamregion.escribemeetings.com/filestream.ashx?DocumentId=4126>

The MECP Minister gave the Regions the “go ahead” in her letter dated April 22,2024. See: <https://pub-durhamregion.escrimeetings.com/filestream.ashx?DocumentId=4125>

Durham Region Council’s 2008 Monitoring & Emissions Controls Commitments

When opposition to the incinerator started to heat up in 2007, the Durham Chair and staff at the time made multiple promises to Durham and Clarington councils and the community that emission controls and monitoring would be state of the art, “the best of the best”.

Public concerns noted the outdated regulatory environment in Ontario and that the minimal monitoring likely to be required by the Ministry as well as the outdated Air Standards would not be sufficient to measure and identify adverse impacts to public health and the natural environment. Various promises, including by staff who promised the “best of the best” monitoring and controls, helped to bring around some councillors who might have been on the fence to ultimately support proceeding with the EA submission, which vote passed by a very close 16-12 on June 24, 2009.

It's important to note that Durham’s Monitoring/Operational commitments in 2008 went beyond the minimal monitoring that was expected and ultimately required, by the Ministry of the Environment in the Environmental Compliance Approval of June 28, 2011.

January 23, 2008 Council Motion became Durham Region Commitments

Minutes - Regional Council

- 80 -

January 23, 2008

MOVED by Councillor Nicholson, SECONDED by Councillor Neal,
(73) "THAT the foregoing motion (72) of Councillors Trim and Johnson be amended by adding the following as a new part b):

- 'b) THAT the Joint Waste Management Group of the Regions of York and Durham be requested to agree to protect the health and safety of the residents of Clarington and Durham by incorporating into the design and installation of the EFW facility the most modern and state of the art emission control technologies that meet or exceed the European Union EU monitoring and measurement standards;"
- CARRIED UNANIMOUSLY ON THE
FOLLOWING RECORDED VOTE:

MOVED by Councillor Nicholson, SECONDED by Councillor Neal,
(74) "THAT the foregoing motion (72) of Councillors Trim and Johnson be further amended by adding the following as a new part c):

- 'c) THAT the Joint Waste Management Group of the Regions of York and Durham be requested to commit to including in the Request for Proposals and Certificate of Approval, Maximum Achievable Control Technology (MACT) for the emission standards and monitoring of the EFW facility; and."
- CARRIED

MOVED by Councillor Nicholson, SECONDED by Councillor Neal,
(75) "THAT the foregoing motion (72) of Councillors Trim and Johnson be further amended by adding the following as a new part d):

- 'd) 'THAT the Region of Durham agrees to continue to support an aggressive residual waste diversion and recycling program in order to achieve and/or exceed on or before December 2010, a 70% diversion recycling rate for the entire Region and that such aggressive programs shall continue beyond 2010."
- CARRIED

Three members still on Durham Council supported the above motions: Chair Henry and councillors Nicholson & Neal

Environmental Assessment (EA) & Environmental Compliance Approval (ECA) Requirements/Conditions

- 1) EA Notice of Approval dated Oct.21.2010, OC approved Nov. 3.2010 at:

[https://www.durhamyorkwaste.ca/en/education-and-resources/resources/Documents/Environmental Assessment Notice of Approval.pdf](https://www.durhamyorkwaste.ca/en/education-and-resources/resources/Documents/Environmental%20Assessment%20Notice%20of%20Approval.pdf)

See pages 9 – 11 for descriptions of conditions and requirements for monitoring plans related to Waste Diversion, Emissions Monitoring and Air Emissions Operational Requirements. References to other monitoring also in EA.

See EA Schedule 1 on page 19, states Air Emissions Operational Requirements. Some operational requirements set out in EA Schedule 1 are more stringent than those in Table 1 on page 7 of A7 Guideline.

A7 Guideline October 2010 : <https://www.ontario.ca/page/guideline-7-air-pollution-control-design-and-operation-guidelines-municipal-waste-thermal>

Note that Section 3.2 on page 14, of A-7 Guideline also references continuous and long-term monitoring that MECP did not require AND that Durham did not adopt. Related details found in 2013 monitoring report section below.

2) Environmental Compliance Approval dated June 28, 2011.

Multiple conditions. Testing, Monitoring, Auditing start Page 25, Condition 7
Environmental Compliance Approval (ECA) dated June 28, 2011 at:

<https://www.durhamyorkwaste.ca/en/facility-approvals/resources/Documents/EnvironmentalComplianceApproval.pdf>

Jacques Whitford's February 2009 Environmental Surveillance Report

The February 2009 Environmental Surveillance Report re monitoring recommendations was produced by consulting firm Jacques Whitford, which firm (as mentioned above) was a member of the Canadian Energy from Waste Coalition. See extracts of their recs. about continuous sampling of dioxins.

Extract of Recommendations from Summary page xi:

FINAL REPORT

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

Option 1c) Inclusion of New Stack Sampling Technology for Dioxins and Furans not Routinely Implemented in Ontario EFW or Incineration Facilities

Stack emissions of dioxins and furans have historically been measured by periodic stack testing (along with other contaminants of concern). Since there is a heightened public awareness of dioxin and furan emissions from EFW facilities, a considerable amount of research has been focused on development of methods for more frequent sample collection and analysis of stack emissions of dioxins and furans.

Technology now exists for continuous sampling (not monitoring) of dioxins and furans in stacks. In-stack dioxins and furans concentrations are sampled for a period of time at regular intervals (e.g., once a month, quarterly, or semi-annually). The sample media is removed, sent for laboratory analysis of dioxins and furans and replaced in the stack. The advantage of this technology is that more frequent sampling of dioxins and furans can be achieved for an EFW facility.

Based on a motion passed at Durham Regional Council, the Request for Proposal (RFP) for vendors stipulates that some form of continuous dioxins and furans sampling and periodic analysis must be included in the design and operation of the proposed EFW facility.

Although this technology was not included as part of this review, the Study Team believes that it would provide additional information to ensure that dioxins and furans concentrations used in the risk assessment are being achieved.

ADDITIONAL LEVELS OF ENVIRONMENTAL SURVEILLANCE NOT RECOMMENDED BY THE STUDY TEAM

Although the Study Team concluded that the most scientifically defensible environmental surveillance option to ensure the protection of public and environmental health was stack monitoring and testing (Option 1), there are additional environmental surveillance options being employed around the world at individual incineration facilities.

These options include:

- Option 2: ambient air monitoring;
- Option 3: environmental monitoring (soil, vegetation, agricultural products); and,
- Option 4: human biomonitoring.

During the review, the Study Team concluded that a modern municipal waste incinerator that would employ the maximum achievable pollution control technology (MACT), would not significantly increase contaminant levels in the environment. This was supported by the scientific literature, the grey literature and the external contact interview process.

Additional recs from page xii:

In addition to meeting the minimum stack emissions requirements laid out in Guideline A-7, the Study Team supports the decision of Durham Regional Council to:

- Adopt the more stringent of the Guideline A-7 and EU Directive chemical emissions standards; and,
 - Implement an in-stack dioxins and furans sampling technology.
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2009 COW-1 Dr. Kyle's Report to Council Extract of Dr. Kyle's Recommendations

Block



Report No.: 2009-COW-01

Date: June 16, 2009

SUBJECT: EFW Risk Assessment and Environmental Surveillance

RECOMMENDATION:

That the Committee of the Whole recommends to the Regional Council that:

- a) **The final Site Specific Human Health Risk Assessment (SSHRA) for the proposed 140,000 tonnes EFW facility is accepted and submitted to the Ontario Ministry of the Environment for its review, if and when the EFW environmental assessment is approved, subject to it being in concordance with the caveats expressed in Appendix D of this report;**
- b) **That if the EFW environmental assessment is approved and the proposed EFW facility is constructed, once operational, an environmental surveillance program is implemented in accordance with all applicable legislation, policies, guidelines, and instruments and the following guiding principles:**
 - i. **That continuous and periodic stack testing of chemical emissions, including dioxins and furans, that meet or exceed the more stringent of the Ontario Guidelines A-7 and EU Directive chemical emissions standards forms the basis of environmental surveillance in accordance with the International Best Practices Review,**
 - ii. **That stack testing be supplemented by independent ambient air and soil testing for a minimum of three years at which time its effectiveness will be evaluated,**
 - iii. **That independent testing of flora and fauna be considered if in-stack, ambient air and soil test results regularly exceed levels predicted by the SSHRA,**
 - iv. **That stack testing not be supplemented by human biomonitoring,**
 - v. **That the environmental surveillance results are communicated to the public in as an accessible, accurate, open, timely, transparent, and understandable a manner as possible,**

- vi. That a Durham waste diversion and management advisory committee, or similar advisory group, which is appointed by and is accountable to the Regional Council, is in place to act as a forum for, and comprises Clarington and Durham residents and representatives from Clarington, the EFW facility, Ontario Ministry of the Environment (MOE), and the Region of Durham to assess, monitor, review, and advise the Region on the effectiveness of the environmental surveillance program, independent environmental testing, the quality of public reporting of environmental surveillance data, the environmental performance of the facility, and other related strategic waste diversion and management issues,
- vii. That the Health Department is consulted by the MOE before it finalizes its requirements for the Region's environmental surveillance program;
- c) That the Region continues to pursue the goal of 70% waste diversion and to advocate for amendments to the *Waste Diversion Act, 2002* to be enacted and implemented;
- d) That the Region adequately supports the environmental surveillance program, independent environmental testing, the public reporting of environmental surveillance data, and the work of the proposed Durham waste diversion and management advisory committee;
- e) That the Minister of the Environment, Durham's MPPs and municipalities, Joint Waste Management Group, Site Liaison Committee, and the Regional Municipality of York are so advised.

Durham-Clarington Host Community Agreement (HCA) re Monitoring & Diversion commitments

HCA, Section 3.2, *"Durham shall ensure that the EFW facility utilizes maximum achievable control technology (MACT) for emissions control and monitoring systems."*

HCA Section 3.3, *"Durham shall ensure that, where technically feasible, the EFW Facility utilizes 24/7 monitoring systems for such parameters as are deemed appropriate by the Ministry of the Environment..."*

HCA Section 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."*

July 26, 2011 – Durham – York Co-Owners Agreement Poison Pill

Durham Works staff recommended that Durham adopt a Co-Owners agreement that included a poison pill, which makes monitoring improvements in addition to what required by MECP, at the initiating municipality's cost. This was a terrible recommendation for Durham, which majority of Durham councillors then (some still on council today) but it's a sweet deal for York who is unlikely to initiate requests for better monitoring to protect Durham.

Section 4.7 of Report June 2011 WR-10 also included in subsequent 2011 WR-11.

- 4.7 If either Co-Owner chooses to enhance the environmental monitoring program of the Facility, either on-site or off, beyond that required under the Certificate of Approval issued by the Ministry of the Environment from time to time, then the initiating Co-Owner shall be responsible for payment of any costs related thereto.

Co-Owners Agreement Report 2011-WR-10 posted on DYEC site:

https://www.durhamyorkwaste.ca/en/facility-approvals/resources/Documents/Durham_York_Co-Owners_Agreement.pdf

(Version posted DYEC website (2011-WR-10) is not the most current. See 2011-WR-11 referenced later in July 26, 2011 Council agenda extract:

UNFINISHED BUSINESS

1. At a Council meeting held on June 29, 2011 the following item, (Item 4 of the Eighth Report of the Works Committee) was referred back to staff for a subsequent consolidated report to Regional Council:

4. ENERGY FROM WASTE FACILITY: DURHAM/YORK CO-OWNER'S AGREEMENT (2011-WR-10)

RECOMMENDATION TO COUNCIL

THAT the Durham/York Energy from Waste Co-owners' Agreement be approved.

The following resolution was adopted with respect to the foregoing:

MOVED by Councillor Diamond, SECONDED by Councillor Collier, (268) "THAT the foregoing motion (172) of Councillors Pidwerbecki and Mercier to adopt the recommendation contained in Item 4 of the Eighth Report of the Works Committee be referred back to staff for further analysis, including: consolidation with all relevant related issues including the Certificate of Approval; a written report from the Medical Officer of Health; an explanation as to why staff recommend that any environmental safety enhancements would be solely at Durham Regions' expense; and with a subsequent consolidated report to Regional Council."

On July 26, 2011 the motion below to amend Section 4.7 of Co-Owners Agreement failed – see amendment and vote below.

MOVED by Councillor O'Connell, SECONDED by Councillor England,
 (192) "THAT the recommendation contained in Item 1. b) of Unfinished Business, being Report No. 2011-WR-11 of the Commissioner of Works, be amended by adding the following as a new part i) and re-lettering the existing recommendation to a new part ii):

- 'i) THAT Section 4.7 of the Co-owners' Agreement, as outlined in Attachment No. 1 to Report No. 2011-WR-11 of the Commissioner of Works, be deleted and replaced with the following:

4.7 - If either Co-Owner chooses to enhance the environmental monitoring program of the Facility, either on-site or off, then the responsibility for payment of any cost thereto shall be limited to the percentage, corresponding to each Co-Owners' ownership interest with respect to the facility'."

MOTION DEFEATED
 ON THE FOLLOWING RECORDED VOTE:

	<u>YES</u>	<u>NO</u>
COUNCILLORS	Drumm	Aker
	England	Ballinger
	Jordan	Bath
	McLean	Chapman
	Neal	Clayton
	O'Connell	Coe
	Parish	Drew
	Rodrigues	Foster
		Henry
		Mercier
		O'Connor
		Perkins
		Pidwerbecki
		Ryan
		Woo

Members Absent
 Collier
 Diamond
 Marimpietri
 Mitchell
 Novak

DYEC Air Emissions Monitoring Plans & Reports

After EA & ECA approvals, between 2011 and 2013 Durham retained consultants to develop the required monitoring/testing plans.

Air Emissions Monitoring tab at: <https://www.durhamyorkwaste.ca/en/environmental-monitoring/air-emissions.aspx>

AEMP Monitoring Plan at: <https://www.durhamyorkwaste.ca/en/environmental-monitoring/resources/Documents/AirEmissions/Air Emissions Monitoring Plan AEMP.pdf>

Reports at: <https://www.durhamyorkwaste.ca/en/environmental-monitoring/air-emissions.aspx#Reports>

No AMESA Monitoring Plan Developed or Posted to DYEC Website

Unlike with other air monitoring plans, there was no monitoring/sampling plan produced for the long term sampling of dioxins and furans by a qualified external consultant that I am aware of.

We first learned in 2019 that Durham seemingly delegated to Covanta to conduct the AMESA sampling, to receive the lab analyses of cartridges, do the calculations. Note that AMESA sampling is intended to monitor Covanta plant's operations and performance and provide data between stack tests.

See Covanta AMESA Investigation checklist at: https://www.durhamyorkwaste.ca/en/environmental-monitoring/resources/Documents/AirEmissions/2021/AMESA_Investigation_Checklist_Rev.0_ACCpdf.pdf

I have seen no evidence there is ongoing oversight by a third party qualified consultant over the sampling program and/or verification of the sampling results reported.

Durham staff withheld ALL AMESA data from 2015-2019, which staff claimed was being conducted.

There was an AMESA Workplan letter to MECP dated Feb. 11. 2021 at: https://www.durhamyorkwaste.ca/en/environmental-monitoring/resources/Documents/AirEmissions/2021/20210211_RPT_DYEC_AMESA_Report_20210203_ACC.pdf

Durham Staff Reports 2021 WR-5 and 2021 WR-10 provided some explanations of what Durham was to report going forward.

In March 2021, Durham reported 2020 sampling results on page 31 of the 2020 ECA Report at: https://www.durhamyorkwaste.ca/en/operations-documents/resources/2020/20210330_RPT_2020_DYEC_ECA_Annual_ACC.pdf

Since 2021 Durham has produced undated and unsigned quarterly "reports" though with numerous sampling periods invalidated and not reported. See slide 7 from W. Brackens's Oct. 2nd Presentation to Works at: <https://pub-durhamregion.escribemeetings.com/filestream.ashx?DocumentId=5163>

In addition to W. Bracken's list, see Page 6-7 of Q 1 2024 "report" for additional result invalidated at: https://www.durhamyorkwaste.ca/en/environmental-monitoring/resources/Documents/AirEmissions/2024/20240618_RPT_DYEC_LTSS_2024_Q1_DRFT_FNL.pdf

Ambient Air (AA) Monitoring Plan and Reports

Initially there were three Ambient Air sites. A Fenceline AA station was decommissioned after some time – I don't know specific date. Only TWO Ambient Air sites required remain.

Further to a motion at Oct. 9, 2013 Council meeting, one additional AA site was established for a short period with monitoring conducted at that site (Crago Road) between 2014-2018

AA Plan at: https://www.durhamyorkwaste.ca/en/environmental-monitoring/resources/Documents/AmbientAir/Ambient_Air_Monitoring_Plan.pdf

AA Reports at: <https://www.durhamyorkwaste.ca/en/environmental-monitoring/ambient-air.aspx#Ambient-Air-Reports>

Crago AA reports at: <https://www.durhamyorkwaste.ca/en/environmental-monitoring/ambient-air.aspx#Additional-Monitoring>

Source (Stack) Testing

Though in their 2008 business case Durham staff wrote there could be quarterly stack testing, on Oct. 9, 2013, ONE additional voluntary stack test was added to the ONE test required by MECP, for a total of two per year.

Soil Testing

Post DYEC start up soil testing conducted for years 2015, 2016 and 2017. After that only every three years. Testing done in 2020 and 2023.

Soil Testing Plan July 10, 2020 Revision 4 at: https://www.durhamyorkwaste.ca/en/environmental-monitoring/resources/Documents/Soil/Soil_Testing_Plan.pdf

Soil Testing Reports at: <https://www.durhamyorkwaste.ca/en/environmental-monitoring/soil.aspx#Reports>

Note concerns. DYEC 2023 Soil Testing Report shows **2023 Dioxin Concentrations More than Double 2013 Pre-DYEC Levels.** That's a 114% Increase in Soil Concentration (Percent Loading).

See slide 13 from W. Bracken PowerPoint to Works Oct.2.2024 at: <https://pub-durhamregion.escribemeetings.com/filestream.ashx?DocumentId=5163>

Durham should review the 2023 Soil test and Dr. Kyle's recommendation re Soil Testing in b)iii and further to the October 9, 2013 staff commitment to review monitoring plans -see more details below.

October 2013 Joint Committee/Council approval of monitoring & testing-Report 2013-J-26 – Referenced Project Agreement Constraints re Monitoring

Staff produced Report 2013-J-26 which included their monitoring recommendations.

Staff and their consultants recommended AGAINST continuous monitoring for Particulate Matter (PM) and Continuous sampling for Mercury, though this was included in Section 3.2 of Guideline A-7 and was technically feasible at the time.

Despite Council's commitments to the public made on January 23, 2008, the Project Agreement Durham signed with Covanta may constrain improvements. Council should inform themselves around if there are constraints and what they may be. See below last paragraph page 8 of Report 2013-J-26:

Monitoring program modifications also have potential to impact the contractual terms and conditions detailed in the Project Agreement with Covanta, and would be subject to negotiations with Covanta that could significantly increase capital and operational costs beyond this estimate. This is particularly relevant to any additions to the CEM suite. As previously noted, any transfer of risk back to the Regions, through added measures not contemplated within the existing Project Agreement, could result in additional costs and liabilities to the Region over the term of the Project Agreement.

Clarington Council motions re Monitoring from September 30, 2013 with extract below:
<https://weblink.clarington.net/WebLink/DocView.aspx?id=63000&dbid=0&repo=Clarington>

Council Meeting Minutes - 24 - September 30, 2013

Item #13

Resolution #C-322-13

Moved by Councillor Woo, seconded by Councillor Traill

THAT the Municipality of Clarington request that the Regional Municipality of Durham amend the Regional Report, regarding the Energy-from-Waste (EFW) incinerator plant, as it appears on the October 9, 2013 Regional Council Agenda, to undertake continuous sampling of mercury and continuous emission monitoring of all total particulate matter at the incinerator stack.

"CARRIED AS AMENDED LATER IN THE MEETING"
 (See following motion)

Resolution #C-323-13

Moved by Councillor Neal, seconded by Councillor Traill

THAT the foregoing Resolution #C-322-13 be amended by adding the following paragraph:

"THAT Clarington seek a legal opinion from an environmental lawyer at a cost not to exceed \$10,000 as to whether the Region's final monitoring plan will comply with sections 3.2 and 3.3. of the Host Community Agreement and if not, what remedies Clarington can avail itself to enforce the Community Agreement."

"CARRIED ON THE FOLLOWING RECORDED VOTE:"

Council Member	Yes	No	Declaration of Pecuniary Interest	Absent
Councillor Neal	√			
Councillor Novak				√
Councillor Partner	√			
Councillor Traill	√			
Councillor Woo	√			
Councillor Hooper	√			
Mayor Foster	√			

The Monitoring motions recorded in the minutes of the Oct. 9, 2013 Durham Council meeting are multiple pages long and are attached to this document.

One additional Ambient Air monitoring location was approved on Oct. 9th 2013 – it operated from 2014-2018. The public learned from staff that MECP did not review that Crago monitoring data and we don't know if Durham staff did.

At Oct. 9, 2013 council ONE additional voluntary stack test was added for three years, to the single test required by MECP, for a total of two source tests per year.

There was an attempt to kill off the voluntary source test. I can't remember the exact meeting date but it could have been around 2019. Your staff should know.

Suggested Matters for Works Committee to Consider When Evaluating the staff Throughput Increase "Update" Report

- a) Works members and ALL Durham councillors should review the complete (unredacted) project agreement with Covanta. You must be informed enough to be able to determine whether or not, and to what degree, the project agreement does, or does not, limit or preclude monitoring improvements that would allow better protection of public health and the natural environment.

In 2010, Durham Chair at the time signed the project agreement with Covanta just days after EA Approval, and did so before the incoming Council convened though several incoming councillors wrote asking him that he hold off signing.

A redacted agreement is posted at: <https://www.durhamyorkwaste.ca/en/facility-approvals/resources/Documents/DurhamYorkCovantaProjectAgt.pdf>

- b) You should also request and review a report from Oct. 9, 2013 Council agenda described as Confidential Report 2013-J-27, described as Confidential Report from the Commissioner of Works, Confidential Memorandum containing legal advice from the Regional solicitor with respect to potential legal liability and contractual implications arising from proposals for additional monitoring.
- c) Councillors who were around during the 2015 and 2016 stack test exceedances for dioxins should also recall that MECP didn't shut the DYEC down after the second massive stack test exceedance in May 2016. Covanta stated they wanted to continue to operate. It was the Regions that decided to shut down one boiler. Multiple issues were identified at the DYEC and repairs were required. There are staff reports and citizens' letter to MECP and their responses to concerns raised in the Sept. 30, 2016 CIP at: <https://www.durham.ca/en/regional-government/resources/Documents/Council/CIP/093016.pdf>
- d) The MECP has been underfunded for years. MECP lags other jurisdictions around incinerator testing and monitoring. In 2023 the State of Oregon in required continuous emissions monitoring and/or continuous sampling at incinerators -see list below.

- e) Oregon Senate Bill 488 at:
<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB488/Enrolled>

Extract from page 1:

(2)(a) The owner or operator of a municipal solid waste incinerator shall develop a plan to **continuously monitor or sample emissions** of:

- (A) Carbon monoxide;
- (B) Sulfur dioxide;
- (C) Nitrogen oxides;
- (D) Opacity;
- (E) PCB;
- (F) Dioxin/furan;
- (G) Cadmium;
- (H) Lead;
- (I) Mercury;
- (J) Arsenic;
- (K) Total chromium;
- (L) Manganese;
- (M) Nickel;

Section 3 (b:) Make emissions data available to the Department of Environmental Quality **and the public.**

- f) See related news articles re Oregon incinerator monitoring requirements at links below:

Updated Aug. 7, 2023

Oregon becomes first state to require higher standard of continuous emissions monitoring at incinerators <https://www.wastedive.com/news/oregon-incinerator-emissions-law-sb-488-covanta-marion/689838/>

“An Oregon bill that requires waste incinerators to continuously monitor a broader range of emissions became law on Aug. 4 with the signature of Gov. Tina Kotek.”

.....

*Environmental groups have praised the bill’s passage, saying **continuous monitoring “provides a more accurate depiction of the levels of toxic emissions discharged into our air and atmosphere on a daily basis.”** They cite studies of European incinerators that found dioxin emissions were anywhere from 32 to 1,290 times higher than is reported through short-term sampling.*

*“**Continuous monitoring and continuous sampling technologies have been tested and verified by the U.S. Environmental Protection Agency since 2006, and are available for a wide range of regulated air pollutants from waste incinerators**”..... “Dioxins and furans — the most toxic chemicals known to science — are probably the most underestimated.”*

- g) Reworld to close Oregon facility, further limiting West Coast incinerator presence
Published Oct. 16, 2024 (Covanta now known as Reworld)
<https://www.wastedive.com/news/reworld-marion-oregon-closure-letter-incinerator/729984/>
“Reworld sent a letter to local officials informing them of its plan to close a facility in Marion County. It comes shortly after the company also made public plans to close a California site.
- h) From Report 2013-J-26 see staff recommendation, page 13, commitment to evaluating EACH monitoring plan:
- **Each monitoring plan will be evaluated at least annually and amended as required to ensure environmental protection and the well-being of the public;**
 - **The value of additional monitoring is best evaluated following the analysis of data obtained once the Energy from Waste Facility has been operational for at least one year;**

Therefore, more than 8 years of monitoring results and data should be reviewed.

- i) Works Committee should request and review Annual Reconciliation Reports with Covanta and determine if Covanta/Reworld met performance guarantees set out in the project agreement over the last 8 years. The total of financial adjustments used to be reported publicly, with companion confidential reports to Council, but that stopped when this was delegated to staff.
- j) Questions Works Committee should ask staff about Monitoring Plan Evaluations staff committed to in Report 2013-J-26:

Have Durham staff evaluated at least annually each monitoring plan as then Works Commissioner recommended in report 2013-J-26? Note also in Oct. 9 2013 minutes, commitment to evaluate after first full year and report, see page 46 Section g)

If staff conducted annual evaluations, how were these evaluations documented and to whom were they reported?

If annual evaluations of each monitoring plan have NOT been done, Works Committee should ask why not, AND

Works Committee should direct staff to conduct the recommended annual evaluations and present results and recommendations to Works Committee and Council via written report BEFORE any decision around submitting ECA applications is made.

Thank you for your attention.

Linda Gasser

Whitby

Email: 

Attachment: Extract Oct. 9.2013 Council minutes re DYEC monitoring motions pages 45-51

Cc: Durham Region CAO E. Baxter Trahair
York Region CAO Erin Mahoney
Durham Works Commissioner Ramesh Jagannathan
Durham Director Waste Andrew Evans
Durham MoH Dr. Robert Kyle
Durham Region Solicitor & Director of Legal Services Jason Hunt
Clarington Council via Clarington Clerk
York Region Council via Clerk
MECP Celeste Dugas, Durham York District Office
EFW AC, EFW WMAC & DECAC committees via Durham Clerks

Minutes - Regional Council

- 45 -

October 9, 2013

Parish
Perkins
Pidwerbecki
Rodrigues
Ryan
Woo

MOVED by Councillor Ryan, SECONDED by Councillor Henry,
(327) "THAT Regional Council recess for 10 minutes."
CARRIED

Council recessed at 4:20 p.m. and reconvened at approximately 4:34 p.m.

EIGHTH REPORT OF THE JOINT COMMITTEES

1. FRENCH LANGUAGE SERVICES ACT (2013-J-24)

RECOMMENDATIONS TO COUNCIL (AS AMENDED)

- a) THAT until such time that the Regional Municipality of Durham receives satisfactory assurances from the relevant Provincial Ministries and agencies that the costs of designation under the F.L.S.A. related to Provincial Services and programs will be covered by the Province of Ontario and until that's delivered Regional Council not support the geographic area of Durham being a designated area under the *French Language Services Act*; and
- b) THAT Report #2013-J-24 of the Chief Administrative Officer be forwarded to the Minister responsible for Francophone Affairs, all local MPPs and the eight local municipalities.

2. ENERGY FROM WASTE (EFW) ENVIRONMENTAL MONITORING PROGRAM REVIEW (2013-J-26)

RECOMMENDATIONS TO COUNCIL (AS AMENDED)

- a) THAT to affirm that the existing Energy from Waste Facility Environmental Monitoring Program meets all regulatory requirements and exceeds Regional Council approved monitoring plans:

- i) THAT the Regional Municipality of Durham will undertake one additional annual stack test commencing in 2015, for at least three years;
 - ii) THAT the third party, independent and impartial testing agent approved by the Commissioner of Works be retained to carry out the additional annual stack test for the duration of the three years;
 - iii) THAT an independent report of data collected and analysed be presented to Regional Council;
 - iv) THAT the Commissioner of Works approach the Region of York for financial contributions towards this program in accordance with the principles identified in the co-owner's agreement;
 - b) THAT the Regional Municipality of Durham in co-operation with the Municipality of Clarington undertake to site and provide an additional fixed air monitoring station for a three year period;
 - c) THAT following the first full year of monitoring during operations, and subsequent to the Ministry of the Environment review of the monitoring results, staff report back on any recommended revisions to the Energy from Waste Facility Environmental Monitoring Program; and
 - d) THAT the three motions from the Energy from Waste – Waste Management Advisory Committee (Host Community Committee), Municipality of Clarington and Township of Uxbridge, with respect to additional monitoring, be received for information, with a copy of Report No. 2013-J-26 to be forwarded to these municipalities.
3. CONFIDENTIAL REPORT OF THE COMMISSIONER OF WORKS – CONFIDENTIAL MEMORANDUM CONTAINING LEGAL ADVICE FROM THE REGIONAL SOLICITOR WITH RESPECT TO POTENTIAL LEGAL LIABILITY AND CONTRACTUAL IMPLICATIONS ARISING FROM PROPOSALS FOR ADDITIONAL MONITORING (2013-J-27)

THAT Confidential Report #2013-J-27 of the Commissioner of Works be received for information.

4. DURHAM/YORK ENERGY CENTRE, ENERGY FROM WASTE (EFW)
FACILITY CONSTRUCTION UPDATE REPORT ([2013-J-28](#))

RECOMMENDATION TO COUNCIL

THAT project update Report #2013-J-28 be received for information.

Respectfully submitted,
D. Mitchell, Chair
Finance & Administration Committee

L. Coe, Chair
Health & Social Services Committee

N. Pidwerbecki, Chair
Works Committee

MOVED by Councillor Mitchell, SECONDED by Councillor Coe,
(328) "THAT the recommendations contained in Items 3 and 4 of the Eighth
Report of the Joint Committees be adopted."

CARRIED

MOVED by Councillor Mitchell, SECONDED by Councillor Coe,
(329) "THAT the recommendations contained in Item 1 of the Eighth Report of
the Joint Committees be adopted."

CARRIED AS AMENDED
LATER IN THE MEETING
(See Following Motion)

MOVED by Councillor Parish, SECONDED by Councillor Perkins,
(330) "THAT the foregoing main motion (329) of Councillors Mitchell and Coe
to adopt the recommendations contained in Item 1 of the Eighth Report
of the Joint Committees be amended in Part a) by adding the following
words at the beginning thereof after the word 'THAT':

'until such time that the Regional Municipality Durham receives
satisfactory assurances from the relevant Provincial Ministries and
agencies that the costs of designation under the F.L.S.A. related
to Provincial Services and programs will be covered by the
Province of Ontario and until that's delivered'"

so that Part a) of Item 1 now reads as follows:

- “a) THAT until such time that the Regional Municipality of Durham receives satisfactory assurances from the relevant Provincial Ministries and agencies that the costs of designation under the F.L.S.A. related to Provincial Services and programs will be covered by the Province of Ontario and until that’s delivered Regional Council not support the geographic area of Durham being a designated area under the *French Language Services Act*, and”

CARRIED

The main motion (329) of Councillor Mitchell and Coe to adopt the recommendations contained in Item 1 of the Eighth Report of the Joint Committees, as amended, was then put to a vote and CARRIED AS AMENDED ON THE FOLLOWING RECORDED VOTE:

<u>COUNCILLORS</u>	<u>YES</u>	<u>NO</u>
	Aker	Nil
	Ballinger	
	Bath	
<u>Members Absent</u>	Chapman	
O’Connell	Clayton	
O’Connor	Coe	
	Collier	
	Diamond	
	Drew	
	Drumm	
	England	
	Foster	
	Henry	
	Jordan	
	Marimpietri	
	McLean	
	Mercier	
	Mitchell	
	Neal	
	Novak	
	Parish	
	Perkins	
	Pidwerbecki	
	Rodrigues	
	Ryan	
	Woo	

Regional Chair Anderson vacated the Chair at 5:59 p.m. and assumed the Chair at 6:06 p.m. Councillor Henry chaired the meeting in his absence.

MOVED by Councillor Mitchell, SECONDED by Councillor Coe,
 (331) "THAT the recommendations contained in Item 2 of the Eighth Report of the Joint Committees be adopted."

CARRIED AS AMENDED
 LATER IN THE MEETING
 (See Following Motions)

MOVED by Councillor Novak, SECONDED by Councillor Foster,
 (332) "THAT the foregoing main motion (331) of Councillors Mitchell and Coe to adopt the recommendations contained in Item 2 of the Eighth Report of the Joint Committees be amended by adding a new Part b) to read as follows and by re-lettering the remaining parts accordingly:

'b) THAT the Regional Municipality of Durham in co-operation with the Municipality of Clarington undertake to site and provide an additional fixed air monitoring station for a three year period'."

CARRIED ON THE FOLLOWING
 RECORDED VOTE:

<u>Members Absent</u>	COUNCILLORS	<u>YES</u>	<u>NO</u>
O'Connell		Aker	Chapman
O'Connor		Ballinger	Collier
		Bath	Drew
		Clayton	England
		Coe	Jordan
		Diamond	McLean
		Drumm	Mitchell
		Foster	Neal
		Henry	Parish
		Marimpietri	Rodrigues
		Mercier	
		Novak	
		Perkins	
		Pidwerbecki	
		Ryan	
		Woo	

MOVED by Councillor Woo, SECONDED by Councillor Diamond,
 (333) "THAT the foregoing main motion (331) of Councillors Mitchell and Coe to adopt the recommendations contained in Item 2 of the Eighth Report of the Joint Committees be amended by adding a new Part d) to read as follows and by re-lettering the existing Part d) to e):

- 'd) To undertake continuous sampling of mercury and continuous emission monitoring of all total particulate matter at the incinerator stack'."

MOTION DEFEATED

ON THE FOLLOWING RECORDED VOTE:

<u>Members Absent</u>	COUNCILLORS	<u>YES</u>	<u>NO</u>
England		Diamond	Aker
Henry		Drumm	Ballinger
O'Connell		Jordan	Bath
O'Connor		Neal	Chapman
Ryan		Parish	Clayton
		Rodrigues	Coe
		Woo	Collier
			Drew
			Foster
			Marimpietri
			McLean
			Mercier
			Mitchell
			Novak
			Perkins
			Pidwerbecki

MOVED by Councillor Diamond, SECONDED by Councillor Collier,
 (334) "THAT the foregoing main motion (331) of Councillors Mitchell and Coe to adopt the recommendations contained in Item 2 of the Eighth Report of the Joint Committees be referred to staff to prepare a follow-up report to Tri-Committee to:

- i) Respond to concerns regarding apparently contradictory information received in the staff report dated October 8, 2013, regarding its "State of Technologies for Continuous Particulate Matter Emission Monitoring Devices" with particular reference to issues raised at the meeting of October 9, 2013; and further
- ii) THAT additional options that incorporate Council's long-standing commitments to public safety be presented to Tri-Committee."

MOTION DEFEATED ON THE
FOLLOWING RECORDED VOTE:

	COUNCILLORS	<u>YES</u>	<u>NO</u>
		Collier	Aker
		Diamond	Ballinger
		Jordan	Bath
<u>Members Absent</u>		Neal	Chapman
England		Parish	Clayton
Henry		Rodrigues	Coe
O'Connell		Woo	Drew
O'Connor			Drumm
Ryan			Foster
			Marimpietri
			McLean
			Mercier
			Mitchell
			Novak
			Perkins
			Pidwerbecki

The main motion (331) of Councillors Mitchell and Coe to adopt the recommendations contained in Item 2 of the Eighth Report of the Joint Committees, as amended, was then put to a vote and CARRIED AS AMENDED ON THE FOLLOWING RECORDED VOTE:

	COUNCILLORS	<u>YES</u>	<u>NO</u>
		Aker	Collier
		Ballinger	Diamond
		Bath	Drumm
<u>Members Absent</u>		Chapman	Jordan
England		Clayton	Neal
Henry		Coe	Parish
O'Connell		Drew	Rodrigues
O'Connor		Foster	Woo
Ryan		Marimpietri	
		McLean	
		Mercier	
		Mitchell	
		Novak	
		Perkins	
		Pidwerbecki	