

Region warns Council not to delay

The Region of Durham wasted no time in responding to a motion passed by Clarington Council last week regarding the Region's proposed garbage incinerator.

Councillor Corinna Traill described the letter sent to Clarington's Municipal Clerk, Patti Barrie, from the Region's Senior Solicitor, Matthew Gaskell, as "very aggressive and very threatening." Gaskell says in his letter, "The Region will not discuss the terms of the host community agreement (HCA) while under threat of litigation."

Clarington Councillors passed a resolution at Monday's council meeting, asking the Region to clarify a number of clauses contained in the HCA -the package of incentives the Region has agreed to give Clarington for hosting its garbage incinerator. The second part of the resolution directs staff to commence court proceedings to determine if Clarington is legally bound to a clause in the HCA where it is agreed that "Clarington shall not oppose the development or operation of the energy from waste [EFW] facility."

According to Gaskell, if Clarington Council wants to retract its commitments in the HCA then it should have requested discussions with the Region rather than threaten to litigate.

Any delay in the incinerator project will expose the Region to significant delay costs, according to Gaskell. "Significant delay in the EFW project could result in a termination of the entire project agreement and exposure to significant costs," Gaskell stated. If the Region were subject to the estimated \$46-million in costs to terminate the proposed project as a result of Clarington's breach of the HCA, then the Region would pursue Clarington for the recovery of these costs, Gaskell states in his letter.

Councillor Joe Neal, who made the motion which was approved last week, requested that Clarington seek outside legal advice from a contract law specialist with respect to whether the motion indeed exposes the municipality to the risks outlined in Gaskell's letter.

As only Councillor Traill supported this motion, it did not pass.

However, council members did pass a motion requesting staff to prepare a report regarding the establishment of the advisory committee mandated by the Minister of the Environment in his approval of the EFW environmental assessment.

The Minister directed the Region to establish a public advisory committee to ensure that concerns about the design, construction and operation of the incinerator are considered, and that mitigation measures are implemented where appropriate.

The first meeting of the advisory committee, which was held last Thursday afternoon at the Region of Durham headquarters in Whitby, was closed to the public. A security guard posted at the committee meeting room door would only allow those members named on his list to enter the room, according to Linda Gasser, anti-incinerator advocate. Gasser was invited to participate on the advisory committee, as per the Ministry's request.

"Durham Region has taken great steps to limit public scrutiny," she stated when she addressed Clarington Councillors at their Monday morning meeting. She asked that Clarington get a council representative on this committee.

Wendy Bracken also asked that Clarington Council get a representative on the EFW Advisory Committee on Monday morning. She called the Advisory Committee "window dressing."

Bracken said it was outrageous to see the number of people who walked into that committee room, who were on the Advisory Committee, who had never attended any of the EFW public meetings, while those members of the public who had faithfully attended the public meetings were barred from the meeting.

Councillors did pass a resolution asking staff to seek clarification from the Minister of the Environment as to the terms of reference for the EFW Advisory Committee he has mandated.