



WITH PREJUDICE

January 21, 2011

Municipality of Clarington
40 Temperance Street
Bowmanville, ON L1C 3A6

The Regional
Municipality
of Durham

Legal
Department

Attention: Ms. Patti Barrie, Municipal Clerk

**Re: Host Community Agreement
Energy From Waste Facility**

605 ROSSLAND RD. E.
PO BOX 623
WHITBY ON L1N 6A3
CANADA
905-668-7711
Fax: 905-668-4752

Brian J. Roy
Regional
Solicitor

We are in receipt of your letter to Pat Madill, Regional Clerk containing the Resolution passed by the Council of the Municipality of Clarington on January 17, 2011 (the "Resolution"). The Resolution proposes that the Region of Durham amend the Host Community Agreement ("HCA"), failing which Clarington staff are directed to commence a mediation/arbitration under the terms of the HCA. In addition, the Resolution directs Clarington staff to commence a Court Application challenging the validity of certain provisions of the HCA.

It is the opinion of the Legal Department of the Region of Durham that initiating court proceedings as referenced in the Resolution would amount to a clear and unequivocal breach of the HCA. We will advise our client, Durham Regional Council, accordingly. If the HCA is breached by Clarington, then all of the Region's commitments to Clarington contained therein would be vitiated.

The Region of Durham will not discuss the terms of the HCA while under a threat of litigation. If Clarington wishes to resile from its commitments, then your Council should have requested discussions with Durham concerning that issue rather than threatening to litigate the enforceability of a contract that was freely entered into by the previous Council.

Any delay of the EFW project will expose the Region to significant delay costs including an escalation in the overall cost to complete the project. A significant delay of the EFW project could result in a termination of the entire project agreement and exposure to significant costs. While it is not possible to accurately quantify all of the costs related to a termination of the project agreement, some of those costs would include:

The Fifteen Million Dollars (\$15,000,000) that the Regions of Durham and York have spent to complete the Residual Waste Environmental Assessment;

Termination costs in order to terminate the project agreement which could approach Thirty Million Dollars (\$30,000,000);

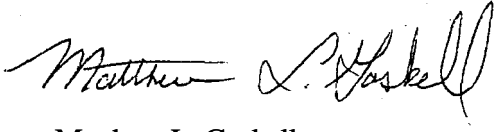
Legal costs and disbursements in addressing the aforementioned terminations in excess of One Million Dollars (\$1,000,000).

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for Our Communities"*

If the Region were subject to any of these costs as a result of Clarington's breach of the HCA, then the Region will undoubtedly pursue recovery from Clarington.

Any further communications concerning this matter should be directed to the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew L. Gaskell". The signature is fluid and cursive, with a large, stylized initial "M".

Matthew L. Gaskell
Senior Solicitor
MG/sm

cc: Roger Anderson, Regional Chair and CEO
Gary Cubitt, CAO