The Regional Municipality of Durham

To: Joint Finance and Administration and Works Committee

From: R. J. Clapp, Commissioner of Finance
C. R. Curtis, Commissioner of Works

Date: February 3, 2011

SUBJECT:
Durham/York Energy from Waste Project

RECOMMENDATIONS:

THAT the Finance and Administration and Works Committee recommends to Regional Council that:

a) The Durham York Covanta Project Agreement be received and forwarded to Regional Council for information;

b) The Notice of Approval to Proceed with the Undertaking for The Amended Environmental Assessment for Durham and York Residual Waste Study, November 19, 2010 be received for information;

c) Consistent with the current Energy from Waste (EFW) Memorandum of Understanding (MOU) executed in 2009 by both The Regional Municipality of Durham (Durham) and The Regional Municipality of York (York), the Regional Chair and Clerk be authorized to execute the Co-owners’ Agreement with York, including the sale of a 50 per cent interest in EFW facility lands to York at fair market value;

d) The communication outreach for the Certificate of Approval Phase, as detailed in this report, be received and forwarded to Regional Council for information;

e) The attached architectural concepts of design for the facility be received and forwarded to Regional Council for information; and

f) The Joint Waste Management Group Committee and Energy from Waste Site Liaison Committee previously established for the Environmental Assessment portion of the project be dissolved and the Integrated Waste Management Committee Terms of Reference included as Attachment 4 be forwarded to the Municipality of Clarington for input prior to consideration by Regional Council.
REPORT:

Attachment No. 1  Conditions of Environmental Assessment Approval and Project Agreement
Attachment No. 2  Architectural Concepts of Design
Attachment No. 3:  Ministry of the Environment's Notice of Approval to Proceed with the Undertaking regarding the Amended Environmental Assessment for Durham and York Residual Waste Study
Attachment No. 4  Draft Terms of Reference for Integrated Waste Management Committee (IWMC)

1. BACKGROUND

In June 2005, The Regional Municipalities of Durham and York (Regions) established a partnership to seek local solutions to responsibly manage residual municipal solid waste not captured by the Regions' province-leading recycling and diversion programs. Over the past five and a half years, The Regional Municipality of Durham (Durham) and The Regional Municipality of York (York) have invested considerable time, money and resources to advance the project through technology selection, site selection, environmental assessment (EA) and impact studies, public consultation and a competitive procurement process.

The EA and procurement processes ran concurrently:

- Province approves EA Terms of Reference .................. March 31, 2006
- Energy from Waste (EFW) selected as preferred method.. June 22, 2006
- Request for Qualification (RFQ) issued .......................... July 12, 2007
- Request for Proposal (RFP) issued to five pre-qualified vendors .......................................................... August 22, 2008
- Selection of Preferred Vendor ........................................ April 22, 2009
- EA submitted to Ministry of the Environment .................... July 31, 2009
- Revised EA submitted to Ministry of the Environment November 27, 2009
- Notification of EA approval from Ministry of the Environment .............................................. November 19, 2010
- Execution of Project Agreement ................................. November 25, 2010

Extensive public consultations were undertaken throughout the process to ensure that the values and priorities of the public and stakeholders were reflected
in the preferred alternative. Regional Council approvals were obtained at all major milestones such as technology selection, site selection, vendor selection, and submission of the EA study documentation. Based on the detailed evaluation of environmental, social and economic considerations, the study identified the mass burn incinerator as the most environmentally sustainable disposal option for residual municipal solid waste in the Regions.

The EFW project technical requirements contained within the Project Agreement have rigorously fulfilled the direction provided by Durham’s Regional Committees and Council.

2. PROJECT AGREEMENT

Consistent with the direction of Regional Council, a two staged procurement process consisting of a Request For Qualifications (RFQ) and Request for Proposals (RFP) was issued, based upon a public ownership model and a long-term contract with the private sector for the design, construction and operation of an Energy from Waste (EFW) facility. Contract terms detailed in the draft Project Agreement formed part of RFP-604-2008, including legal, commercial and technical specifications. The draft Project Agreement issued within the RFP formed the basis for the final Project Agreement negotiated between the Regions and the preferred proponent, Covanta Energy Corporation (Covanta).

The salient commercial terms in the executed Project Agreement are consistent with Regional Council direction and with RFP-604-2008, as confirmed by legal consultant and external counsel Borden Ladner Gervais prior to execution of the Project Agreement.

3. ENVIRONMENTAL ASSESSMENT APPROVAL

On November 19, 2010, the Regions received notice of approval from the Ministry of the Environment (MOE) (Attachment No. 3). As expected, that approval came with several Conditions of Approval (Conditions) that must be followed under the EA Act. Some of those conditions are directly associated with the facility and will require efforts jointly from the Regions and Covanta. Others are more broadly connected to the Regions’ larger integrated waste management systems and will require actions from both Durham and York.

Staff and the project team consultants performed a complete review of the conditions and based on currently available information, determined that none of the conditions affect the overall project capital cost or annual operating fee to be paid to Covanta. The Project Agreement also satisfies the relevant EA Conditions as indicated in Attachment No. 1.
4. **EFW PROJECT CO-OWNERS’ AGREEMENT BETWEEN DURHAM AND YORK**

Based upon the previously approved MOU, the Regions now need to finalize and execute a project co-owner's agreement. As part of that agreement York Region will purchase at fair market value, a 50 per cent ownership interest in EFW facility lands currently wholly owned by Durham Region. This partnership in facility lands does not increase York's ownership share of the facility beyond 21.4 per cent, which is based upon each Regions' respective share of processing capacity for the 140,000 tonne facility.

5. **DURHAM REGIONAL COUNCIL RESOLUTION AND HEALTH DEPARTMENT ROLE**

Throughout the EA process, various commitments and Durham Regional Council resolutions were imposed for the facility ranging from ongoing public consultation to specific monitoring requirements. Endorsed Durham Regional Council resolutions affecting the EFW facility operation have been incorporated into the EA and Project Agreement documents.

Key resolutions regarding air emission criteria (CEMS, Dioxin & Furan cartridges) were built directly into the Project Agreement. This facility is entirely publicly owned by the Regions who will retain control over the critical operating principles, specifically those related to environmental safety and compliance.

Other Durham Regional Council resolutions specific to environmental surveillance of air, water and soil surrounding the facility were captured either within the Project Agreement, staff obligations or by the EA Conditions. Resolutions from the Medical Officer of Health’s report 2009-COW-01 for off-site environmental monitoring will be incorporated into Durham Region’s annual operating budget. The Health Department will play an active role in both the Certificate of Approval process and the monitoring programs.

6. **COMMUNICATIONS FOR CERTIFICATE OF APPROVAL PHASE**

The Regions, as part of their obligations to fulfill the EA approval Conditions, must develop and implement a communications plan. Several initiatives are currently being advanced by staff. Staff will migrate the Durham York Residual Waste Study website to Regional ownership, and will notify the identified stakeholders once it is activated. The Certificate of Approval application will be posted on the website along with other EFW documentation. Multimedia communications will continue at milestone events. Public meetings will be held as specified in the EA Conditions prior to construction, receipt of waste and during initial operation. In addition, a waste fair will be held in the Municipality of Clarington (Clarington) on March 5, 2011 and a presentation will be made to Clarington Council and the Integrated Waste Management Committee (IWMC).
(Attachment No. 4) regarding the terms of the Certificate of Approval subsequent to its issuance.

7. **ARCHITECTURAL CONCEPTS OF DESIGN (ATTACHMENT NO. 2)**

The RFP required proponents to propose a basic facility design and provides a cash allowance of up to $9 million to develop architectural enhancements to their basic design to accommodate local requirements. Under the tasks outlined in the approved Early Works Agreement, the following activities are to be completed:

a) Preparation and submission of renderings illustrating three alternate proposed designs for the Facility (sequential development).

b) Review of these designs with the Owner and local stakeholders and formulation of a preferred architectural design.

c) Preparation of a final set of drawings and a three dimensional (computer) model illustrating the preferred architectural design of the Facility.

d) Based on the preferred architectural design, complete a visual assessment and submit as a package forming part of the Environmental Protection Act application.

Utilizing a sequential methodology consisting of the evolutionary development of the Covanta base bid proposal, the attached conceptual architectural design (Attachment No. 2) for the facility has been recommended by staff. Consultation has been undertaken with Regional Councillors from Clarington and staff on several occasions. The preferred conceptual design has been evaluated by Regional staff and accessed to meet the EFW facility design guidelines provided by Clarington in April 2008.

The conceptual architectural design will be posted on the EFW website and will be presented to the public through the advisory committees and during the spring 2011 waste fair in Clarington.

8. **EFW COMMITTEE REQUIREMENTS**

The proposed public Integrated Waste Management Committee (IWMC) along with the MOE mandated EFW Advisory Committee will provide the opportunity for involvement from every municipality within Durham and York, the general public and interested stakeholders. The Draft IWMC Terms of Reference (Attachment No. 4) will be submitted to Clarington for comment and will subsequently be brought to Regional Council for approval. The IWMC membership will be approved by Regional Council.
These two committees will replace the former Joint Waste Management Group and the EFW Site Liaison Committee which have fulfilled their respective mandates.

9. CONCLUSION AND NEXT STEPS

The energy from waste project received final approval from the Ministry of the Environment under the Environmental Assessment Act on November 19, 2010. After five and a half years of detailed study, review and public processes, the approval reinforces the development of an energy from waste facility as a safe and sustainable local solution to the Regional Municipalities of Durham and York's long term waste management strategy.

As authorized by Regional Municipality of Durham Council in June 2009, the Project Agreement was successfully negotiated with Covanta Energy Corporation within the framework approved by Committee of the Whole Report 2009-COW-03, and was executed on November 25, 2010. The Project Agreement sets the terms and conditions for the design, build and operation of the Regionally-owned facility for a minimum of 20 years of operations.

Next steps include the following key elements and estimated dates:

Execution of the Co-Owners' Agreement ......................February 2011
Approval of the Certificate of Approval under the
Environmental Protection Act ......................................May 2011
Complete Detailed Design ....................................July 2012
Complete Construction ........................................December 2013
Facility Commissioning .........................................January to May 2014
Commercial Operation ........................................June 2014

As outlined above, after obtaining the Certificate of Approval from the Ministry of the Environment, Covanta Energy Corporation will start phase two of the project which is the construction of the energy from waste facility.
Staff will continue to proceed with the project within the framework approved by the Regional Municipalities of Durham and York.

Clifford Curtis, P.Eng. MBA, Commissioner of Works

R. J. Clapp, CA Commissioner of Finance

Recommended for Presentation to Committee

G. H. Cubitt, M.S.W., Chief Administrative Officer

WM1/WM3/ms