

Staff Report

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| Report To: | Council | |
| Date of Meeting: | March 14, 2022 | Report Number: PDS-016-22 |
| Submitted By: | Ryan Windle, Director of Planning and Development Services | |
| Reviewed By: | Mary-Anne Dempster, CAO | By-law Number: |
| File Number: | PLN 33.22 | Resolution#: C-062-22, C-063-22 |
| Report Subject: | Update and Next Steps: Municipal Comments on the Durham York Energy Centre Throughput Increase from 140,000 to 160,000 Tonnes per Year | |

Recommendation:

1. That Report PDS-016-22 and any related communication items be received;
2. That the responses from the Regions of Durham and York (Regions) to the Municipality's comments on the Durham York Energy Centre (DYEC) throughput increase (from 140,000 to 160,000 tonnes per year) Environmental Screening Process be received;
3. That Council direct Staff to undertake Option ____ as identified in Report PDS-016-22:

Option 1 – Ministry Request

That staff be directed to request the Ministry of Environment, Conservation and Parks (MECP)

- i) confirm their review and acceptance of the air quality modelling methodology, data inputs, and Air Quality Impact Assessment completed as supporting documentation to the Environmental Screening Process, and
- ii) respond to concerns regarding elevated levels of nitrogen dioxide, sulphur dioxide and benzo[a]pyrene in the local airshed and the relative contributions of the DYEC; and further

Staff be directed to prepare a briefing document on planned future development in the South Courtice Area to support DYEC emissions dispersion modelling considerations by the Regions and MECP during the subsequent Environmental Compliance Approval Amendment process.

Option 2 – Elevation Request

That staff be directed to submit an Environmental Assessment elevation request to the Director of the Environmental Assessment and Approvals Branch, MECP.

4. That all interested parties listed in Report PDS-016-22 and any delegations be advised of Council's decision.

Report Overview

PDS-016-22 responds to Council Resolution #C-040-22 regarding the Municipality's comments on the Durham York Energy Centre Throughput Increase (140,000 to 160,000 tonnes per year) Environmental Screening Process. In accordance with Council's direction Planning and Development Services staff and representatives of the Regions project team have engaged in discussions regarding the Municipality's comments, to work towards resolution of concerns by the March 14, 2022 Council meeting. This report outlines the outcomes of these discussions and seeks Council's direction on next steps. Final comment responses are being prepared by the Region and will be submitted to the Municipality, separately.

1. Background

- 1.1 The Regions of Durham and York (Regions) are seeking environmental permissions to increase the processing capacity at the Durham York Energy Centre (DYEC) by 20,000 tonnes to 160,000 tonne per year. As a first step in the permitting process, the Region has undertaken an Environmental Screening Process (ESP) under the *Environmental Assessment Act*.
- 1.2 Report [PDS-008-22](#) presented Clarington staff's comments and recommendations on the ESP, prepared with technical assistance from Dillon Consulting. On February 14, 2022, Council approved Resolution #C-040-22 providing direction on the submission of the Municipal comments and further discussions with the Regions for the purposes of resolving concerns prior to the March 14, 2022 Council meeting.
- 1.3 In response to the concerns of delegations that appeared before Council on February 7 and 14, 2022, Resolution #C-040-22 included amendments by Council. A consolidated list of the requests of the Municipality is provided as **Attachment 1**.
- 1.4 Mutual agreement notices from the Regions and the Municipality to continue discussions beyond the 60-day review period established for the ESP were submitted to the Director of the Environmental Assessment and Approvals Branch (EAAB), Ministry of Environment, Conservation and Parks (MECP) on February 18, 2022 (see [Memo-010-22](#)).
- 1.5 The purpose of this report is to inform Council of the Regions' responses to the Municipality's comments and seek Council's direction on next steps.

2. Discussion

Discussion of Municipal Comments

- 2.1 The following timeline summarizes the sequence of consultation with the Regions in response to the Municipality's comments on the project:

| Timeline | Action |
|---------------|--|
| Dec. 20, 2022 | Region issued ESP Notice of Completion |
| Feb. 7, 2022 | Municipal comments to Planning and Development Committee (Report PDS-008-22) |
| Feb. 8, 2022 | Preliminary meeting with the Region of Durham to request agreement on a mutually acceptable time period to review the Municipality's comments and attempt to resolve concerns. |
| Feb. 11, 2022 | Meeting with the Regions and Municipality/Regions consultants to review and discuss the Municipality's comments. |
| Feb. 14, 2022 | Update to Council (PDS-009-22) and direction to submit the necessary notice to MECP regarding continuation of discussions with the Region beyond the 60-day review period. |
| Feb. 15, 2022 | Final Municipal comments, as amended by Council in response to the concerns of community members about the project, submitted to the Regions. |
| Feb. 18, 2022 | Separate notices of agreement to on-going discussions submitted to the MECP by the Municipality and Regions. |
| Feb. 18, 2022 | Draft Municipal comment responses received from the Regions (for discussion purposes). |
| Feb. 24, 2022 | Meeting with the Regions and Municipal/Regions consultants to seek clarity and additional information in response to the draft Municipal comment responses |
| Mar. 4, 2022 | Revised draft Municipal comment responses received from the Regions (for discussion purposes). |
| Mar. 7, 2022 | Update to Planning and Development Committee (Memo-010-22). |
| Mar. 7-9 | Additional questions and information requests submitted to the Regions. |

2.2 At the time of writing this report, the Regions were working to address the additional questions submitted by staff and preparing a final response to the Municipality's comments on the Project. The following sub-section summarizes key elements of the consultation to date from the perspective of staff, based on discussions with the Region.

Comment Responses

- 2.3 In response to several of the Municipality's comments relating to the modelling methodology, data inputs, and emissions calculations, the Regions have provided further explanation and re-stated the involvement of the MECP in the review and approval of the modelling approach and parameters, and in the review of the air quality impact assessment (AQIA) that was undertaken. Copies of documentation to confirm the MECP review and approval of the modelling approach/parameters and meteorological and terrain (MET) data were provided. Comments from the MECP on the September 2021 (draft) *Air Quality Impact Assessment* (Golder Associates) and the Regions responses were included in *Record of Consultation Summary Report* (Dec. 2021), provided as Appendix G to the *Durham York Energy Centre Environmental Screening Report* (Dec., 2021). No final confirmation of the MECP's acceptance of the emissions estimates / AQIA has been received.
- 2.4 Notably, the ESP is a proponent-driven, self assessment process; there is no requirement for formal approval by the MECP. The Municipality's consultant has advised staff that the documents provided by the Regions confirm the MECP acceptance of the modelling approach. However, to Staffs knowledge, acceptance of the Regions comments on the September 2021 draft AQIA could not be verified at the time of writing this report. Dillon Consulting recommends that the Municipality request that the MECP confirm that the emissions estimates and AQIA are appropriate and reasonably conservative.
- 2.5 The Regions have made commitments to address requests made by the Municipality, including the following:
- Review of the location of sensitive land uses above ground level permitted by current zoning within the Energy Park as part of the Environmental Compliance Approval (ECA) Amendment process that will be undertaken upon completion of the ESP;
 - The inclusion of additional receptors representative of elevated receptors within the Courtice MTSA as part of the ECA Amendment process;
 - Re-modelling of worst-case scenario odour emissions from the DYEC under the 160,000 tonne per year scenario as part of the ECA Amendment process;
 - Assessment of air quality during process upset conditions, including start-up, shut-down and operating upset conditions as part of the ECA Amendment process;
 - Provision of all supporting documents to the ECA Amendment process, including the updated ESDM report, to the Municipality for review and commenting;

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- Completion of an update to the Human Health and Ecological Risk Assessment (HHERA) as part of the future expansion to 250,000 tonnes per year of capacity; and
 - Participation in discussions with local area stakeholders regarding Council's request for the establishment of a real-time air monitoring network, with any potential contributions being subject to discussion and Regional Council approval.
- 2.6 In summary, based on the discussions to date, the Regions have also indicated the following with the respect the remaining Municipal comments, which will be further elaborated on in the Region's final (pending) comment responses:
- The Region of Durham continuously monitors best practices relating to the operation and monitoring of thermal waste treatment facilities; no changes to emissions control system are being proposed at this time; and
 - Changes to the portion of the waste stream to be processed in the future at the Region of Durham's proposed pre-sort facility before being sent for final disposal at the DYEC will not have a significant effect on the overall waste composition processed at the DYEC; as a result, the waste composition scenario and corresponding emissions profile remains unchanged for the purposes of modelling.
- 2.7 In response to concerns of Council and members of the public, the final Municipal comments approved by Council were amended to include the request that an updated HHERA be undertaken for the proposed increased in throughput capacity to 160,000 tonnes per year, and that "the HHERA include the south Clarington airshed as a whole and include a toxicological assessment and a satisfactory opinion from the Medical Officer of Health for Durham Region." In response, the Regions have re-affirmed to staff that the original HHERA completed in 2009 as a component of the Environmental Assessment for the DYEC considered up to the maximum design capacity of 400,000 tonnes per year. Further, the Regions have committed to completing an update to the HHERA as part of the future expansion of the DYEC to 250,000 tonnes per year, not as part of the current project.
- 2.8 Council's amendments to Municipal comments also sought to address concerns respecting already elevated background concentrations of nitrogen dioxide, sulphur dioxide and benzo[a]pyrene and to mitigate for any additional contributions from the DYEC. The Regions have re-affirmed that the results of the cumulative assessment demonstrate that maximum predicted concentrations of nitrogen dioxide and sulphur dioxide are below the applicable provincial air quality standards and that emissions of these compounds are continuously monitored. In addition, the Regions have stated that emissions from the DYEC contribute less than 1% to the total ambient benzo[a]pyrene concentrations for all scenarios assessed as part of the AQIA and ambient concentrations are generally attributed to already elevated background concentrations in the area.

Environmental Screening Process

- 2.9 The *Guide to Environmental Assessment Requirements for Waste Management Projects* (MECP, 2007) outlines the process for undertaking an ESP, where applicable. In accordance with ESP guidance, the Regions carried out the required minimum 60-day public review period from December 20, 2021 to February 18, 2022.
- 2.10 The ESP is a proponent-driven process where comments and concerns with the project are to be directly addressed with proponents (i.e the Regions). Where there are outstanding concerns, interested parties (including local municipalities) may submit a request to the Director of the EAAB, MECP for elevation of the project to an individual Environmental Assessment during the 60-day review period. In this case, where the Municipality and Regions agreed to a discussion period extending beyond the 60-day review period, any request to the MECP for elevation of the project must be submitted within a further 7-days following the additional discussion period agreed to (i.e. by March 21, 2022). Once elevation requests are withdrawn or resolved (if received), the proponent files a final Statement of Completion and can proceed with the project, subject to any other required approvals.
- 2.11 Staff understands that several requests for elevation of the project to an individual Environmental Assessment have been submitted by others to the MECP. As a result of these requests and the on-going discussions with the Municipality, the Regions cannot proceed further with the project until a decision on those elevation requests has been issued by the MECP.
- 2.12 As stated in the ESP guidance, “the submission of an elevation request does not preclude the proponent from attempting to continue efforts to resolve concerns directly with the requester(s).” The Regions have previously indicated that responses to the comments of delegates appearing before Clarington Council on February 7 and February 14, 2022 will be prepared and documented in the final consultation summary report for the project and submitted to the MECP. Staff have requested the Regions confirm how they will respond to the elevation requests that have been submitted. In addition, the Director’s decision on each elevation request received must state the reasons for the decision made.

Next Steps

- 2.13 Staff and consultants from the Municipality and Regions have reviewed and discussed the Municipality’s comments on the proposed DYEC throughput increase. With the mutually agreed to timeframe for discussions concluding on March 14, there are two possible next steps for Council’s consideration as outlined in the Report Recommendations:

- Option 1 – Request the Province confirm their acceptance of the Regions Air Quality Impact Assessment; and
- Option 2 – Request the Province elevate the project to an individual Environmental Assessment.

Option 1: Ministry Request

- 2.14 Council could direct staff to submit a request to the MECP to confirm the air quality modelling methodology, data inputs, emissions estimates, assessment and AQIA were appropriate and acceptable to the MECP and that all MECP comments have been addressed. The MECP could also be requested to respond to concerns regarding elevated levels of nitrogen dioxide, sulphur dioxide and benzo[a]pyrene in the local airshed and the relative contributions of the DYEC.
- 2.15 Regarding Municipal comments on known surrounding future land uses in the area (i.e. Clarington Energy Park, Courtice Major Transit Station Area and Courtice waterfront area), it is staff's opinion that there should be some certainty that future development, including the Municipality's ability to meet Regional and Provincial policy, will not be negatively impacted by DYEC operations. To support the Region and MECs understanding and consideration of this area during the ECA Amendment process, staff can prepare a briefing document on planned future development in the South Courtice Area, including criteria and parameters that would support the development of inputs for updated Emissions Summary and Dispersion Modelling (ESDM) reporting. Much of this work would be supported by information being compiled in response to Council's request for an individual Environmental Assessment for the Region of Durham's proposed pre-sort and anaerobic digestion facility.
- 2.16 As summarized in section 2.5, the Regions have made commitments to the Municipality to address concerns raised. In accordance with the ESP guidance, the Regions are required to notify the Director of the EAAB, MECP of the commitments made and to implement the project in accordance with all such commitments.
- 2.17 An updated ESDM Report will be prepared by the Regions as supporting documentation for the ECA Amendment process that the Regions are also required to undertake. The Regions have committed to provide the ECA Amendment application and supporting documents, including the updated ESDM Report, to the Municipality as part of the ECA Amendment process.
- 2.18 Due to the specialized expertise required, a third party consultant would be needed to assist Council and Staff in a technical review of the air quality components of the ECA application. Given the questions and comments of Council and members of the public brought forward to the Municipality, a comprehensive peer review would be necessary to fully respond to the concerns raised, if necessary and desired by Council. Staff could

provide an update to Council and outline the cost and budget options available for a peer review options available, if necessary, pending the issuance of decisions by the Director on the elevation requests submitted.

Option 2: Elevation Request

2.19 Should the concerns of Council not be addressed, an alternate option for Council's consideration is to simply direct staff to submit an elevation request to the MECP, in accordance with the requirements set out in the *Guide to Environmental Assessment Requirements for Waste Management Projects* (MECP, 2007). Such a request must include the following:

- Name of the project and proponent;
- Name of the project and proponent;
- Basis of the request;
- Request that the project be elevated to an individual environmental assessment;
- Nature of the specific environmental concerns that remain unresolved;
- Benefits of requiring the proponent to undertake an individual environmental assessment;
- Information about any efforts to discuss/resolve these concerns/environmental effects with the proponent;
- Details of any correspondence between the person and the proponent; and
- Any other matters considered relevant by the requesting person.

2.20 The Municipality would have until March 21, 2022 to prepare and submit the elevation request. With limited time available, Staff would package the comments received from our consultant, members of the public and the responses provided by the Regions and provide them to the MECP as the elevation request.

3. Concurrence

Not Applicable.

4. Conclusion

It is respectfully recommended that Council provide direction to staff on which option they would prefer and any additional reasoning for supporting this request that could be provided to the MECP.

Attachments:

Attachment 1 – Consolidated List of Municipal Comments/Requests

Interested Parties:

The following interested parties will be notified of Council's decision:

Gioseph Anello, Director, Waste Management Services, Region of Durham
Andrew Evans, Project Manager, Waste Planning & Technical Services, Region of Durham
Celeste Dugas, Manager, York Durham District Office, MECP
Philip Dunn, Senior Environmental Officer, York Durham District Office, MECP
Jeff Butchart, Issues Project Coordinator (Acting), York Durham District Office, MECP
Wendy Bracken
Linda Gasser
Kerry Meydam
Clarington Clear c/o Karrie Lynn Dymond

Durham York Energy Centre Throughput Increase (from 140,000 to 160,000 tonnes per year) Environmental Screening Report (December 2021)

Consolidated List of Municipality of Clarington Comments / Requests:

1. That the Region of Durham and Region of York (Regions) and Ministry of Environment, Conservation and Parks (MECP) review the agreed to modelling methodology / data inputs to confirm their appropriateness, taking into consideration Recommendation #1, #2, #3, #4 and #8 from Dillon Consulting, as described in **Attachment 2 to [PDS-008-22](#)**.
2. That the Regions and MECP review the Air Quality Impact Assessment (AQIA) (Golder Associates, December 2021) to confirm that all appropriate, reasonably foreseeable future activities have been included (see Dillon Consulting Recommendation #5).
3. That the Regions and MECP include the Courtice Major Transit Station Area in the AQIA and assess whether the proposal may have potential negative effects on the future development of this area and the Municipality's ability to achieve provincial and regional land use policy requirements.
4. That the Regions and MECP consider the current waste composition scenario and the future "pre-sorted" waste composition scenario as part of the demonstration of compliance with air quality limits that the Regions are required to undertake to support their Environmental Compliance Approval (ECA) Amendment application for the proposed throughput increase.
5. That Durham confirm how it has addressed the applicable requirements of the Host Community Agreement.
6. That the Site-Specific Human Health and Ecological Risk Assessment (HHERA) be comprehensively updated as part of the supporting studies to expand the DYEC to process 160,000 tonnes per year, including that the scope of the update consider the effect of DYEC upset conditions at this significantly increased capacity and that the HHERA include the south Clarington airshed as a whole, and include a toxicological assessment and a satisfactory opinion from the Medical Officer of Health for Durham Region.
7. That the Regions and MECP undertake additional technical studies as a component of the ECA Amendment application to verify that the no increase in odours is expected from the proposal (see Dillon Recommendation #6).
8. That the Region identify and implement mitigation measures to prevent the risk of nitrogen dioxide, sulphur dioxide and benzo[a]pyrene exceedances identified in the AQIA, where practicable.
9. That the Regions and MECP commit to public consultation as a component of the ECA Amendment process to provide the Municipality and the Public opportunity to

review and provide comment on the application, including all supporting technical studies and other documents.

10. That the Regions and MECP confirm that all stack parameters and emission rates have been appropriately characterized.