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Press Release

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Late Friday afternoon, DurhamCLEAR, a Durham-based environmental advocacy group launched a legal challenge to the proposed incinerator in Clarington.

The group and many others have been opposing the facility for years as it worked its way through various regulatory steps. Through letters, deputations and one-on-one meetings, opponents to the incinerator have tried to bring numerous deficiencies to the attention of regional and provincial authorities but their input has been ignored.

By ignoring the deficiencies the Region has left itself open to legal challenge. This particular action is based on the zoning of the property, but there are other issues that could also be pursued. The respondents to the action are the Region of Durham, Covanta, and Clarington.

"Basically, we want the Region to obey its own laws and those of Clarington. And since they are proceeding without the proper zoning on the property, we are asking the court to restrain them until they bring themselves into compliance through the site-specific rezoning that is required in the Clarington Official Plan," said Doug Anderson, president of DurhamCLEAR.

The current zoning of the property (Zoning By-Law 84-63 - section 23A - D) specifically "excludes ... a waste incineration facility".

"The Region is well aware that a rezoning application would open a huge can of worms and so they have tried to circumvent this with the host community agreement," said Anderson. In the HCA the Region and Clarington agreed that the facility "will be considered a 'public use' for the purposes of the Zoning By-law and that it is not necessary to amend the Clarington Official Plan or Zoning By-law." would be regarded as a public work which would exempt the facility."

"Just because two parties agree to something does not make it so," said Anderson.

In its action, DurhamCLEAR is disputing that the incinerator, which is being designed, built and operated by a private corporation, Covanta, can be regarded as a public work as defined in the Planning Act, and is challenging the Host Community Agreement itself as "an illegal restraint on, and divestiture of, the legislative powers and decision making authority of the council of the Municipality of Clarington."

DurhamCLEAR is being represented by an exceptional team of environmental lawyers. The lead counsel is Eric Gillespie who has recently completed a long but successful class action lawsuit against International Nickel Co in Port Colborne in which residents of the community were awarded \$36 Million for the nickel contamination of their properties. (Nickel oxide is a carcinogen.) This action which commenced in 2001 was the first case in Ontario involving long-term environmental contamination to be certified as a class action.

Gillespie is being assisted by Travis Allan, a prominent environmental lawyer who will be speaking at the Inter-American Development Bank in Washington D.C. this coming Monday, July 25, on Climate Finance. Allan will be discussing voluntary carbon finance with a focus on international development in the Americas.

The actual application can be found on DurhamCLEAR's website, DurhamCLEAR.ca. The posting on the main page has links to numerous relevant documents.