

FORCE Response to NAFTA Claim filed by St Marys VCNA, LLC

August 15th, 2011

We are disappointed, but not surprised, by St Marys Cement's decisions to challenge two of the Province's decisions regarding the proposed St Marys Cement Flamborough quarry. Those decisions are a Ministerial Zoning Order to freeze the current zoning on the property, issued in April 2010, and a Declaration of Provincial Interest before the Ontario Municipal Board, in April 2011. We understand now that the company has filed a NAFTA suit. It has also filed a notice of application for judicial review in the Ontario Superior Court of Justice.

Our Communities disagree with the company's interpretation of events and suggestions that the provincial government's decisions were made inappropriately or for improper purposes:

- It is clear that this proposed development has been under review for over 7 years.
- Staff and elected officials in Hamilton, Burlington, Milton and the Region of Halton, as well as their Officers of Medical Health, objected to or registered their concerns about the proposed quarry, as did other public agencies such as Conservation Halton, the Niagara Escarpment Commission, the Hamilton Wentworth District School Board, MNR and MOE. Indeed, they have all recently reconfirmed their objections and concerns.
- More than 1200 area residents formally objected to the proposal
- Opposition to the development crosses all political parties, including MPP Ted Chudleigh (PC - Halton), MPP Andrea Horwath (Hamilton Centre/Leader of the NDP), MPP Ted McMeekin (Liberal - Ancaster-Dundas-Flamborough-Westdale), and MP David Sweet (PC - Ancaster-Dundas-Flamborough-Westdale)
- The Province made a decision to freeze the zoning on the property that appears to, in part, reflect on those stakeholders' positions.
- As the company pursued its interests before the Ontario Municipal Board, Hamilton, Milton and Halton made decisions to participate formally as parties in the hearing to represent their concerns. They requested that the Province declare a Provincial Interest in the proceedings. The Province made a decision to declare a Provincial Interest to the Board.

To make an accusation that the reasons for the provincial decisions was for other than the fact and science based concerns related to the project appears disrespectful to all the private and public professionals who have evaluated the project, to date, and have made a professional decision to recommend that the project should not proceed.

Our Communities do not believe that the company has exhausted its appeal rights before the OMB.

St Marys Cement has chosen, however, to adjourn the OMB hearing and to escalate the situation. The company has moved the matter to the courts and a NAFTA tribunal for consideration.

The clear message to our Communities is that it's not over...yet.

We must stay engaged and continue to represent our communities' interests until this proposed quarry is stopped.

Our Communities feel that it is important to set the record straight. FORCE, its supporters and volunteers, and our Communities have done nothing wrong.

We are disappointed that St Marys Cement has singled out two of FORCE's hundreds of supporters and volunteers. It is inappropriate for SMC to be targeting these volunteers due to their past and current public service. We are concerned that SMC has chosen to make allegations based on incorrect facts and information. These allegations affect the reputations and credibility of FORCE, its volunteers, and our Communities.

We believe citizens should be encouraged to volunteer, to engage in public discussion and to contribute in the countless ways necessary to create a civil society that is alive to the interests and rights of its members.

We categorically state that FORCE has not received and does not receive:

- Any funds from Environmental Defence (ED) itself or any other coalition in which Environmental Defence is involved
- Any funds from the Friends of the Greenbelt Foundation, either directly or indirectly through Environmental Defence or any other organization

FORCE is funded 100% by individual and business donations from supporters in our Communities. Individual FORCE supporters in the community have the choice to donate directly to FORCE or to Environmental Defence, specifying that the donation be directed to the FORCE case. FORCE supporters' donations to ED, directed to the FORCE case, are segregated and legal and technical expert invoices can be paid from these segregated community funds.

- FORCE is a community case partner with Environmental Defence under the terms of a legal assistance agreement. This is the same approach used by ED for numerous community groups for decades.
- The FORCE case and application were reviewed by an external case advisory committee to Environmental Defence to ensure the case was significant and

consistent with ED's charitable mandate and approved on recommendation by the ED Board

- ED provides contribution processing, credit card and tax receipting services for individuals and businesses who are concerned about the proposed Flamborough quarry and choose to donate to the case through Environmental Defence
- ED assesses a small administrative fee for providing these services
- Both organizations retain their full independence under this agreement

These transactions are all reflected, and have been each year, in the annual FORCE audited financial statements posted on our website at www.StopTheQuarry.ca.

No funds have ever been received, assigned, transferred or directed to FORCE from Environmental Defence or the Friends of the Greenbelt Foundation, directly or indirectly.

FORCE intends to stay engaged and continue to represent our communities' interests until the proposed quarry is stopped.

Our Communities view the JR and NAFTA applications like SLAPP – a strategic lawsuit against public participation - by another name.

Participation by members of the community in matters of public interest is fundamental to our democratic society.

Given the universal and documented opposition to this proposed quarry by staff and elected officials in Hamilton, Burlington, Milton and Halton, as well as other public agencies, **we view this as an attempt by St Marys Cement to silence its critics.**

We are now being forced to direct our energies (and finances) into responding to these applications and away from the real issues which are the inappropriateness of this massive development and its potential adverse impacts in our Communities.

We will not be bullied and intimidated from advocating to protect our Communities. There is too much at stake: our drinking water, precious natural features, local farms and food production, road safety, schools, and our way of life.

Together, We Will Succeed!