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By Dianne Cornish, REVIEW STAFF

St Marys Cement (SMC), which is proposing to establish a large limestone quarry at 11th Concession Road East and Milborough Line, is appealing to Ontario's divisional court to set aside a recent decision by the Environmental Review Tribunal (ERT) that denied its application for a Permit to Take Water (PTTW). The aggregate company is seeking the permit to conduct pump tests at the site, it said, to show a groundwater recirculation system proposed for the quarry will significantly mitigate any negative impacts that it could have on the local groundwater system.

Last month, the ERT dismissed the company's appeal to overturn the Ministry of the Environment's (MOE's) rejection of their PTTW last April. At the hearing, the ministry argued that it felt approval would contravene a Ministerial Zoning Order (MZO) placed on the proposed quarry lands by the Ministry of Municipal Affairs and Housing in April 2010. The order freezes the zoning on the property, prohibiting it from being used as a quarry. In a broader sense, it has been interpreted to mean that the proposed quarry site is prohibited from being used for any purpose that would promote its use as a quarry.

But SMC argues that the ERT erred in its interpretation of law when it held that it was irrelevant to the PTTW appeal whether or not the hydrogeological data was required for the ERT to make a decision on the appeal of the zoning freeze. The aggregate company also claims that its right to a full hearing on its appeal to the OMB was denied because without a PTTW it was unable to obtain the necessary hydrogeological data required to present its case.

The company names the director of the MOE and FORCE (Friends of Rural Communities and the Environment), a grassroots group opposed to the quarry, in its court action and asks that they be held responsible for the costs of the action if the court agrees to overturn the ERT decision.

FORCE chair Graham Flint said the citizen's group learned about the company's decision to take legal action last week and, as with past moves taken by SMC, is "not surprised, but disappointed" by its persistent attempts to proceed with the quarry plan despite strong opposition from the community, local governments and agencies.

"It's the last man standing type of situation," he said, adding that he sees the recent action as a further attempt by the company to weaken the financial resources of its opponents in hopes of forcing them to abandon their opposition. He also expressed concern about the possibility of FORCE being assigned some of the court costs simply because of its involvement in the ERT hearing where it argued that granting a PTTW would be premature while the MZO designation remained in place. "The rules of the game made us part of the decision, but someone else (the MOE) made the decision," he explained.

Flint said there are a number of timelines to be met by the parties involved so he doesn't anticipate the court battle to begin until early summer. He said FORCE has yet to decide "to what degree to get engaged" in the proceedings, but will be discussing options with area residents at its annual meeting, Tuesday, April 10 at Our Lady of Mount Carmel Catholic School in Carlisle.