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## Legal skirmishes on quarry under way

By Dianne Cornish, REVIEW STAFF

The first of many legal confrontations between St Marys Cement (SMC) and those opposed to the aggregate company's plans to establish a quarry in northeast Flamborough resulted last month in a provincial court upholding another body's earlier decision supporting the Ministry of Environment's (MOE's) refusal last year to grant a permit to take water (PTTW) to the company. But, for the second time, the loss of the appeal has led to yet another legal action by SMC, this time to the Ontario Court of Appeal.

"Again, it doesn't surprise me, but I am disappointed," said Graham Flint, chair of the anti-quarry citizens' group, FORCE (Friends of Rural Communities and the Environment). Flint said the move is yet another example of the company's determination to pursue an aggregate licence in the face of widespread community, municipal and government agency opposition and "further proof that we still have a fight on our hands to defend our victories."

Among those "victories" was a decision by the MOE in April 2011 to deny a PTTW to St Marys. The company subsequently appealed to the Environmental Review Tribunal (ERT), which, in turn, ruled in January of this year in favour of the MOE's decision. SMC appealed the ERT finding to the Ontario Divisional Court, which heard testimony on the appeal in Toronto on June 29, rendering its decision to uphold the ministry's permit denial on Aug. 20.

"We thought this would be it," Flint said of the court's decision, but last Tuesday FORCE learned of the aggregate company's move to appeal the divisional court ruling to the Ontario Court of Appeal.

"St Marys has to demonstrate that the justices (at divisional court) made a mistake when it comes to the law," if it is to win its case, Flint explained.

The actions around the PTTW are one of several legal challenges the company has set in motion in recent months. SMC has also launched a judicial review through the Ontario divisional court into the Ministerial Zoning Order (MZO) which the Ontario government placed on the quarry site on April 2010, essentially freezing the zoning on the site, near the corner of 11<sup>th</sup> Concession Road East and Milborough Line in Flamborough, as agricultural and conservation management, making it impossible to establish a quarry there. The MZO designation figured prominently in the MOE's refusal of the company's application for a PTTW.

Besides challenging the MZO, St Marys is also asking the divisional court to rule on the Ontario government's decision in April 2011 to declare a provincial interest (DPI) on the site. The provincial interest designation makes it possible for the government to overturn any OMB (Ontario Municipal Board) ruling about the quarry site that it disagrees with.

While the case has not yet been heard, preliminary motions about the challenge will begin before the divisional court this fall. According to a release issued by FORCE this week, "preliminary process steps are (also) moving forward" on SMC's North American Free Trade Agreement (NAFTA) filings, launched at the federal level. The company has appealed to the federal court for a judicial review, seeking \$275 million (US) in its suit against the Canadian government, which denied St Marys NAFTA claim on the basis that the Brazilian owner of the aggregate company has no standing because Brazil is not a signatory to NAFTA.

Reacting to the company's recent action, the release from FORCE stated: "We have to wonder, even in our democratic society, how many times the company can appeal before "no means no." Flint said he believes St Marys can appeal the PTTW decision all the way to the Supreme Court of Canada, if it wishes.

The province and SMC are scheduled to be in the Ontario Superior Court of Justice on Tuesday as the province presents its arguments on why it feels the aggregate company's judicial review should be thrown out. Flint said the province will argue that the case should be decided by the OMB rather than the courts and that St Marys failed to challenge the MZO and DPI "in a timely way" so it shouldn't be allowed to go to judicial review.

If the matter does go to a hearing before the court, the FORCE chair said the province plans to challenge the admissibility of testimony contained in the affidavits of a SMC employee and a consulting planner, who alleged that the Ontario government was politically motivated when it declared a zoning freeze on the quarry property and when it declared a provincial interest in the site.



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At a public meeting in Carlisle five months ago, Flint advised area residents to continue to be engaged in the battle against the quarry. In asking for their support, both financially and morally, he cautioned, "In the end, it could come down to who has the resources to go the distance."

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