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SMC files NAFTA claim suit | FlamboroughReview.com

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St Marys Cement (SMC) filed an application for arbitration last week, bringing its Flamborough Quarry battle to the international stage and following through on plans it made public last month to file a \$275-million (US) arbitration claim against the Canadian government under the North American Free Trade Agreement (NAFTA).

The aggregate company alleges that the Ontario government was "so politically motivated to secure a Hamilton-area provincial seat and to benefit Liberal political insiders that it used a Ministerial Zoning Order and declaration of provincial interest – for the first time ever in a quarry application – to kill the Flamborough Quarry."

The provincial government denies the allegations, which have yet to be proven in court.

In its 15-page claim to NAFTA, St Marys, a Canadian subsidiary of Brazil's Votorantim Cimentos, claimed that the company's bid to establish a quarry in northeast Flamborough had been treated unfairly by the Ontario government, which in April 2010, through then Minister of Municipal Affairs and Housing, Jim Bradley, imposed a Minister's Zoning Order, or zoning freeze, on a 158-hectare site owned by the company.

St Marys subsequently filed an appeal to the Ontario Municipal Board (OMB), but in April of this year, the provincial government declared a provincial interest in the proposed site, giving it license to overturn any OMB decision.

In the arbitration claim, the company alleges that former Liberal political aides, living in Flamborough and belonging to the anti-quarry group, FORCE (Friends of Rural Communities and the Environment), influenced ministers in Ontario's governing Liberal party "to use unprecedented unilateral ministerial powers targeting only lands owned by SMC and interfering with SMC's vested property rights."

Graham Flint, chair of FORCE, called the allegations "egregious, unfounded rhetoric that flies in the face of the facts." He said the company's allegations about two FORCE members takes the quarry battle to "an entirely new low" and he questioned how a couple of people could have such far-reaching influence that they could convince local agencies and municipalities, including Hamilton public health, Halton Conservation Authority, the City of Hamilton, Town of Milton, City of Burlington and Region of Halton, to raise objections to the proposed quarry.

The land use decision by the Ontario government was made in response to widespread community outcry, he said, adding that opposition isn't confined to one political party, as evidenced by Ontario NDP leader Andrea Horwath's stand against the proposal as well as that of Halton's Tory MPP Ted Chudleigh.

Flint also noted that the two Flamborough residents described in the arbitration claim as being prominent political insiders of the Ontario Liberal Party haven't worked for high-ranking provincial Liberals for more than two decades.

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Characterizing the company's recent action as a type of SLAPP (Strategic Lawsuit Against Public Participation), Flint said, "It's meant to put a chill on all those opposing the proposal. We believe that people should be able to get involved in public issues."

In an earlier interview, SMC president Richard Olsen denied Flint's assertion that the company is attempting to stifle public participation. He said St Marys is trying to restore a planning process that invites public discourse but which has been curtailed by the provincial government's actions.

"Public participation is exactly what we're after," he said, adding that St Marys is merely "asserting its rights" in filing the claim and is mystified as to why the government chose to freeze the zoning or declare a public interest on the quarry lands.

As a result, SMC requested the release of government documents under a Freedom of Information application and, upon thorough review of "heavily redacted materials," found "there are no technical or environmental data that would preclude issuance of a quarry licence";

Objections

"That's just not a true statement," Flint said this week. "There are pages and pages of objections to the proposal citing many environmental concerns."

In May, SMC filed an application for a judicial review by the Ontario Superior Court of Justice into the provincial government's actions on the quarry property, "to obtain a fair and impartial hearing into the substantial merits of its (aggregate licence) application";

"St Marys regrets having to take these exceptional actions to assert our rights," said Olsen of the NAFTA claim. "But we are confident that if the quarry application is assessed on its merits, it would be approved."

According to a news release issued by St Marys last week, its submission of an arbitration claim will lead to the creation of a three-person international panel to review, early next year, the company's "allegations of serious fairness and due process irregularities taken by governments that harmed the company and its investments."