

Six parties trying to fix sewer line boondoggle

Mediator brought in to resolve dispute over bowed section of line

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A lawsuit is on hold while six parties look to a private mediator to help sort out responsibility for fixing a flawed 1,600-foot section of the Pocono Township sewer project.

Millions of dollars are at stake, not to mention the planned start-up this fall of the township's entire \$75 million central sewer project.

Pocono Township and its consulting engineer — R.K.R. Hess Associates — blame Linde Corp., of Pittston, which used subcontractor Gabe's Construction of Sheboygan, Wis., to bore horizontally into the ground near Learn Road and Bulger's Run to install the line.

The line bowed upward by more than 5 feet, meaning gravity can't carry sewage beyond that point along Route 611 south, and ultimately, to the treatment plant in Stroudsburg.

Township officials believe they can at least temporarily work around the transmission problem, perhaps with a temporary bypass while a permanent fix is designed.

It could cost \$2 million to \$6 million to rework the line, depending on the solution, Hess says in court papers.

The township, meanwhile, is holding onto \$1.1 million that Linde put up as collateral to ensure completion of the \$3.35 million project. The township and R.K.R. Hess contend Linde deviated from Hess' design specifications.

Linde blames Hess' design specs for misidentifying what turned out to be unstable ground.

Linde has submitted a \$3.9 million bill for the alleged design flaw and an \$899,000 bill for lost work days and other costs attributed to the flaw.

Linde filed suit last fall against Hess and the township.

"Hess and the township knew, or reasonably should have known, and intended that prospective contractors like Linde would rely on the information contained in the plans, drawings and specifications in the preparation of their bids for work on the project," Linde attorneys wrote.

Linde accuses Hess of negligent misrepresentations and the township of breach of contract. Pocono Township said it terminated Linde's contract after several unsuccessful efforts to get Linde to correct "substantial deficiencies" in its work.

"On Oct. 4, 2011, Linde submitted an 'as built' (horizontal directional drilling) profile for the completed

project that showed certain elevations of the installed pipe deviated 36 to 66 inches from the elevations required and shown in the contract documents," the township wrote.

Hess said Linde has failed to cooperate in fixing the problem.

"Linde initially denied that the HDD section was unacceptable, and for many, many months, Linde refused to provide Hess with information and to cooperate with Hess in developing a solution so that Pocono would receive a functioning sewer collection system," Hess wrote. "Linde's intransigence and failure to cooperate has caused undue burden and expense to Hess and Pocono relative to developing a fix."

Other parties have been pulled into the suit.

Defendants R.K.R. Hess and the township filed a writ last December naming Gabes — Linde's driller — as an additional defendant. Hess also named United Testing of Pennsylvania and Earth Engineers as additional defendants.

United Testing was hired by Hess, before Hess completed design plans, to do sample borings of the soil to check the stability of the ground. United Testing subbed that job out to Earth Engineers.

The additional parties were named after Linde charged that Hess failed to provide several requested internal documents. Hess replied that complying with all the documents requests would be expensive and Hess had several documents it would eventually want from Linde.

"There is no purpose and relevance to seeking and/or producing the entirety of documentation from the overall project, and making such requests constitutes harassment of Hess," Hess attorneys wrote.

Hess recommended that all parties submit to mediation as the best solution for resolving the dispute and getting the sewer line fixed. The parties agreed. So far the parties have held two sets of meetings with the mediator, a Philadelphia attorney, including meetings held Aug. 1-2 in King of Prussia.