

Sheldon Township sues wind farm owner for alleged deficient road repairs

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Photo by: Will Brumleve/Paxton Record

Then-E.On Climate & Renewables communications manager Joe Borkowski speaks to a crowd at an event celebrating the start of construction of the Settlers Trail Wind Farm in spring 2011.

SHELDON — Sheldon Township in Iroquois County is suing the owner of the Settlers Trail Wind Farm for more than \$1.8 million, alleging that the company failed to adequately restore township roads used to build the 94-turbine wind farm in 2011.

Sheldon Township Highway Commissioner James Yana filed the one-count lawsuit in Iroquois County Circuit Court on July 17 against E.On Climate & Renewables North America LLC, doing business as Settlers Trail Wind Farm LLC.

The lawsuit claims that the road restoration work, which was required to be done by E.On as part of a “road upgrade and maintenance agreement,” remains “deficient over an approximately five-mile radius.” The agreement had required E.On to repair all roads damaged during construction to their “preconstruction condition” or better.

The \$1.8 million sought by the township reflects the cost for having the necessary restoration work done by a “third party.”

E.On communications manager Matt Tulis said the company had not yet seen the lawsuit so it is not prepared to comment.

According to the suit, after bringing concerns to E.On’s attention following construction, Yana said he was told to address his concerns to the subcontractor that performed the road restoration, Terra Haute, Ind.-based White Construction Inc.

Yana said he did so in fall 2011, and Yana continued to express his concerns in the “numerous months” that followed.

In January 2012, E.On officials asked Yana to provide White Construction a list of roads with problems, and he did so, the suit says.

In July 2012, Yana provided an updated list, and two days later he met with E.On officials to reach an agreement for the work that needed to be done. But Yana said that E.On officials arrived at the meeting “with no further information as to their proposal of when they intended to replace the defective roads.”

In September 2012, E.On and Yana agreed on an independent professional civil engineer — Applied Research Associates Inc. (ARA) in Champaign — to inspect the roads. E.On also agreed “not to dispute” the engineer’s findings and that the company would “proceed to repair any deficiencies identified” by the engineer “as soon as possible.”

ARA had prepared a pre-construction report of the condition of the roads in Sheldon Township. ARA was directed to compare its preconstruction report with the postconstruction report and indicate whether the roads were in “as good as, better than or less than the condition of each road” before construction of the wind farm began. ARA also was instructed to provide a “method of remediation for the roads that were rated ‘less than.’”

On June 17, 2013, ARA’s report disclosed that a number of roads in the township had not been returned to “at least as good” condition as they were prior to E.On’s use of the roads, the lawsuit says. All of those roads identified as damaged had “pavement corrugation,” also known as “washboarding.”

To remediate corrugation on chip-sealed roads, it is necessary to stabilize the upper layer of the aggregate base and reapply a chip seal surface, the suit says.

Later, E.On informed Sheldon Township officials that “it is only prepared to make minor remediation to repair moderate corrugation” at six intersections. E.On told the township it intended to “do nothing about ‘low corrugation’ roadways because low corrugation presents ‘no hazard or inconvenience to the motoring public,’” the suit says.

The lawsuit claims E.On breached its road-maintenance agreement with the township by:

— Failing to remediate the washboarding of all roads identified by ARA in the manner recommended by ARA.

— Failing to restore roads to their preconstruction condition within six months of the wind farm’s completion.

— Failing to have road restoration and upgrades inspected and approved by an independent professional civil engineer licensed in Illinois within 30 days of the restoration work being done.

— Failing to remediate the deficient repairs of the roads pursuant to ADA’s recommendations.

— And refusing to pay agreed-upon fines for violations of the road-use agreement. The suit lists seven cases where heavy construction trucks allegedly were seen on township roads they were not permitted to be on, as outlined in the agreement.

The suit seeks further damages for those “fines and penalties incurred” by E.On during the course of the project.

Yana did not immediately return a message seeking further comment.

Iroquois County Board Chairman Rod Copas said Thursday that the county is not part of the lawsuit, adding that he is “unaware of any problems we have on the county roads that were involved in this.”