



Indian Lake Borough

Office of the Mayor

Indian Lake Lot Owners and Residents:

While there is much to report as we head into the summer season, this edition of my newsletter is focused on a single and very important issue. Council has requested that I address this issue with you. I will publish a separate newsletter next month that will address the other topics of interest. For now, remember to get your boat license applications in, and know that the valve on the dam was closed on March 9. Absent a complete drought, the lake will certainly be full in time for Memorial Day. Those key items of interest aside, I hope that you will please take the time to carefully read the information below. Council will undoubtedly need the collective wisdom of all of you in deciding how to address this issue.

MINING ACTIVITY

The Borough Council has been addressing an issue that will no doubt generate substantial concern among the residents of the Borough. I apologize for the length of this newsletter but this is a complex issue with a number of moving parts. I have tried to outline the relevant information in a logical format so that you will be prepared for the public meeting on this issue, which will be held following the Service Corporation annual meeting. The Service Corporation meeting will be held at the Shanksville School District Cafetorium on May 14, 2016 at 10:00 am. The Borough public meeting will begin at 11:00 am.

1. DEP, over the objection of the Borough, has issued a strip mining permit to LCT Energy. The proposed mining is planned on a 150 acre parcel of land. Around one third of the project total and less than 7 acres of actual mined coal is inside the Borough. The site of the proposed mining is located across Route 160 from Cherry Lane (across the highway and south of the public golf course roughly). As most of the mining area will occur outside the Borough, and because regulation of mining is strictly within the control of DEP, we have limited ability to influence the project legislatively.

2. The mining division of DEP issued the strip mining permit to LCT at the same time the water quality division of DEP was completing a Sourcewater Protection (well water) study. The Sourcewater Protection Study shows that a portion of the recharge area for the Borough's wells (where our well water ultimately comes from) is in the same area as the proposed mining. As a result, mining is anticipated to impact our wells. Given the distance from our wellheads, this impact is expect to occur within 5 to 10 years.

3. The quality of our wells, especially well #2, which serves the Buckstown Tank, is already experiencing deteriorating quality. We believe this is because DEP is no longer requiring treatment in the area of previous surface and deep mining operations now occupied by flight 93. Since the cessation of that treatment, we have noticed an increase in manganese, and to a lesser extent, iron. To address this looming problem, the Borough has already engaged an engineering firm to design an appropriate treatment plant to ensure that the water delivered to your homes continues to meet safe drinking standards. (By the way, we have no lead pipes in the Borough. We

also routinely test for lead. The latest test data shows no evidence of any lead in our water and this is consistent with our test results in prior years).

4. There is disagreement within DEP (between the mining and water quality folks) as to the potential negative impact that the proposed mining will have on our water supply. Unfortunately, the sourcewater protection regulations have no teeth and provide no legal basis to obtain a reversal of the mining permit.

5. While Council has explored the possibility of obtaining access to water from the Quemahoming pipeline, that option appears too expensive to explore at this time. As a result, we intend to maintain our current well system and treat the water so that we can continue to provide safe drinking water to the residents of the Borough.

6. Concerned about DEP's lack of concern for the impact that the proposed mining would have on the quantity and quality of the Borough's water supply, the Borough authorized our solicitor to challenge the issuance of the permit. The Borough's appeal is pending before the PA Environmental Hearing Board.

7. Because the outcome of such an appeal is uncertain, the Borough is also exploring options to settle the present appeal on terms favorable to the Borough. I should point out that we believe we have a reasonably strong case. We believe we can demonstrate that the DEP mining division did not appropriately consider the facts brought forth in the DEP water quality study. Regardless, even if the Environmental Hearing Board found our arguments persuasive, we anticipate that the most likely outcome would be that the Board would remand the permit back to DEP for further consideration. DEP has already advised that even if they had reviewed the water quality study results, they would have still issued the permit. For that reason, a completely favorable outcome (rescission of the permit) is not a likely result.

8. LCT, in discussions with the Borough, has indicated that the proposed strip mining is merely a conduit to planned deep mining, which is anticipated to occur under portions of the Borough. The mineral rights are not owned by the Borough and are believed to be held by a small number of individuals who will apparently be receiving a royalty from LCT. At this point, no permit has been submitted for the planned deep mining activity. LCT has advised us that the strip mining project alone is not likely to produce any significant revenue. The deep mining project, however, is expected to produce anywhere from 2.5 to 4 million tons of very low Sulphur (high quality) coal, which will be sufficient to make the overall strip mining/deep mining project worthwhile.

9. We believe that a challenge by the Borough to the planned deep mining permit could delay or stop the issuance of a permit. At a minimum, such a challenge would make obtaining a permit much more expensive for LCT, with costs to the Borough as well. Even should we raise such a challenge, we also have to consider that DEP would could grant such a permit over the objections of the Borough.

10. As a means of settling the current challenge to the surface mining permit, and in order to avoid challenges from the Borough that would make obtaining a permit for the planned deep mining project more costly, LCT has engaged in discussions with the Borough in the hopes of reaching an amicable resolution.

11. At this point, based on a memorandum of understanding, which is intended to lead to a settlement agreement between the Borough and LCT, the Borough would be required to abandon its appeal of the surface mining permit and additionally agree to cooperate with LCT's attempts to obtain the deep mining permit. This would require repeal of an Ordinance that totally precludes mining within the Borough. While this Ordinance is not enforceable in any event since it is preempted by the State Mining Act, such a restriction could expose the Borough to other legal challenges. We would also be required to modify the zoning ordinance to permit but regulate the strip mining in the roughly 6 acres of land that is within the Borough. The zoning ordinance, which is applicable to surface uses of land, cannot address the proposed deep mining operation. Notwithstanding the Borough's agreement to cooperate with the Deep Mining permit process, the Borough **WILL**, however, retain the ability to challenge the deep mining permit to the extent the Borough believes that the deep mining will impact the quantity or quality of water in the lake itself. Fortunately, we have years of sampling data to demonstrate the present quality of water in the lake.

12. In return for the Borough abandoning the present appeal and cooperating with the proposed deep mine permitting process, LCT has agreed to pay the Borough a royalty of \$0.55 per ton of coal mined and sold¹. In addition, the Borough also anticipates inclusion of additional protections within the agreement that are yet to be identified to ensure that our lake is adequately protected. To ensure that we properly anticipate all likely harms from both the surface and proposed deep mining operations, the Borough has engaged an environmental firm familiar with such mining projects and their associated environmental impacts to advise us in this regard. Based on their input, the Borough anticipates including provisions within the agreement that will create specific obligations for LCT should any of the identified potential harms occur.

13. According to LCT, the present price of coal makes it unlikely that the strip mining would occur (as they put it to DEP) "in the foreseeable future." Without the deep mine, strip mining would not likely be economically feasible at all.

14. Our solicitor has obtained approval from the Environmental Hearing Board to delay a hearing on our appeal of the surface mining permit until after the public meeting on May 14. If a finalized settlement agreement is not in place by May 27th at 10:00 am, the appeal will go forward to a hearing, which will occur sometime after July 15th. We could, however, continue to pursue settlement negotiations.

The objective at this point is to advise you of what is happening and the difficult choice that the Borough needs to make. The key things to understand are as follows:

- A permit for surface mining has already been issued over the Borough's objection. The Borough has an appeal pending but the outcome of such an appeal is not certain.
- The permit for deep mining, which has not yet been submitted, is also likely to be approved by DEP without regard to any potential objections that the Borough might raise.

¹ Because the price of coal varies, there has been some discussion of expressing the royalty payment as a percentage of the sale price of the coal.

- We have little power to regulate mining on the surface (zoning is our only avenue) and no power to regulate deep mining. For the surface mining project, we only have the authority to regulate (through our zoning ordinance) the small portion of the project that occurs within the Borough.

Understanding the above, the Borough appears to have three options:

1. We continue to fight the good fight. If unsuccessful, we will have no control whatsoever over the project. In such an event, we would be reliant entirely on DEP to step in if we perceived a negative impact. In such a case, we would need to prove that the negative impact was caused by the present mining and not previous mining. This may prove to be a difficult task.

2. We attempt to buy the mineral rights, and potentially LCT's lost profits as a financial solution to preclude mining. We anticipate the cost at somewhere between \$15M and \$30M although it could be more depending on the current price of coal.

3. We continue to pursue a negotiated agreement. A settlement agreement allows us to negotiate in advance, reasonable protections to ensure that our Borough's greatest asset, the lake, is not harmed. It also allows us to avoid the expenses associated with protracted litigation that are not likely to be fruitful. Under such an agreement, in the event that one or more identified potential harms (e.g. impact to the lake, subsidence, traffic issues, environmental harm from the dust/dirt associated with strip mining) do occur, the settlement agreement can define the obligations of the mining company in response. While DEP might also possibly step in, it is not perceived that we can count on DEP for timely assistance. Therefore, a settlement agreement gives us a way to regulate the mining company's conduct as well as define their obligations in advance. We must consider, however, that the protective provisions we might demand would not be agreeable to LCT. In such a case, settlement may not be possible.

You might have noticed that I have ignored the potential financial windfall that the Borough might realize under the proposed settlement once the coal is mined and sold. In my opinion, the financial aspects of such an agreement do not provide a compelling reason to consider this approach. This is because the anticipated royalty money wouldn't come close to compensating the Borough or its property owners should mining negatively impact the quality or quantity of water in the lake. Assuming no negative impact, and should such money materialize, we can use it to fund our water treatment, which we are in the process of doing anyway, or can use it to pay down the principle on the loans for the dam remediation project. Regardless, in my view, the most compelling reason to consider a settlement is that it provides us an opportunity to control (to some degree) what will happen and will further define LCT's obligations if the mining operation negatively impacts the Borough.

It goes without saying that the available options are not ideal. This is what has led to many lengthy and sometimes animated discussions among the members of Council. Understand that each member of Council is genuinely concerned about how mining will impact our community. The public hearing is an opportunity to share ideas about how best to proceed. While we will certainly have more information available at the public meeting based on the input of the environmental firm we have retained to assist us, the objective at this point is to give you what information we have and

to identify the known options available. Armed with this information, it is hoped that you can be better prepared to participate in the discussion at the public meeting.

I encourage each of you to plan to attend the Borough meeting immediately following the Service Corporation meeting on May 14th at the Shanksville School Cafetorium. If you cannot attend, you can address your concerns in advance by e-mail to the Members of the Borough Council at council@indianlakepa.us. It is hoped that each of you will substantively contribute ideas on the best way to proceed. Because it is assumed that NO ONE wants mining to occur anywhere near the Borough, and because that is not something within the Borough's control, we need not waste time at the meeting stating the obvious (Dick has advised that we only have the meeting space until 2:00 pm).

As for the meeting itself, I anticipate that Council will present an outline of where we are and will detail where the proposed mining is to occur. I also anticipate that you will hear a presentation from the environmental experts retained by the Borough regarding our options and assuming mining were to occur, what potential negative impacts we might face as a result. If our solicitor is able to attend, I would anticipate a presentation by him as to our efforts thus far as well as the scope of what we might be able to accomplish in a settlement agreement. Then I presume the floor will open so that you may ask questions and provide input. While I cannot speak for the Council, I am sure they hope to gain your collective insight as well as productive input so that they can make an ultimate decision that serves the best interests of the Borough.

In the interim, property owners can post and participate in polls on this subject through the Borough website at <http://indianlake-pa.net/smf/index.php?board=7.0>



Michael Miscoe
Mayor, Indian Lake Borough