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## The Marcellus Watch



*Gas leases contain many traps for the unwary. That's why it makes sense for landowners to join a coalition before signing anything. In his latest column about drilling in the Marcellus Shale formation, journalist Peter Mantius of Burdett writes that a coalition in Schuyler County already has 150 members.*

**Left:** Peter Mantius

### Landowners Unite!

**By Peter Mantius**

BURDETT, Nov. 20 -- As the state moves closer to opening the floodgates for new natural gas drilling in the Southern Tier, landowners who are weighing whether to lease their property to drillers face complicated, high-stakes choices.

If they're smart, nearly all experts agree, they'll join a landowners' coalition before signing anything.

Why?

Because gas drillers and the landmen (leasing agents) who represent them are notorious for cutting one-sided deals that leave the landowner under-protected and under-compensated.

Gas leasing has “lots of traps for the unwary,” Guy Krogh, an Ithaca attorney, said at a recent forum at Cornell University. “Coalitions are a tool for getting better information and better negotiations.”

Finger Lakes landowners have been signing gas leases for decades – mostly on their own.

But the game has changed. Potential payouts are sharply higher, thanks to a relatively new water-intensive drilling technique that opens up vast stores of gas in shale thousands of feet underground. This Marcellus Shale formation stretching from the Finger Lakes into Pennsylvania, Ohio and West Virginia, is easily the largest natural gas source on the continent.

Drillers have already moved into Pennsylvania with hundreds of new wells. They’re expected to cross the border as soon as New York State sets its final rules for drilling horizontally with a technique known as hydraulic fracturing, or fracking. That could come early next year.

In anticipation of a land rush by drillers, landowner coalitions are springing up across the Southern Tier.

In Schuyler County, a coalition representing about 150 landowners holds a combined 10,000 acres.

“At some point that acreage will be packaged and marketed to multiple gas drilling companies,” said Bill Lock, a consulting engineer at Corning Inc. who chairs the steering committee of the Schuyler County Landowners Coalition ([schuylerloc.org](http://schuylerloc.org)).

The Schuyler group is encouraged by agreements other coalitions have struck with drillers. For example, Fortuna Energy Inc. recently agreed to pay \$5,500 an acre, plus 20-percent royalties to members of a coalition in Broome County.

Lock said his group is waiting for the state Department of Environmental Conservation to release its rules for drilling before making a final push for new members and marketing its land.

The DEC will continue to accept written comments on its rules until Dec. 31. After that, it will decide what changes, if any, are appropriate. Significant changes would require new public hearings. But if the changes are minor, the state could begin issuing drilling permits in the spring.

Drilling supporters and opponents anxiously await the DEC’s next move.

The two sides squared off at the agency’s fourth and final public hearing on fracking rules on Nov. 18 in Corning, which drew a crowd of more than 500 and TV cameras. Those opposed to drilling lined the auditorium with anti-drilling signs and banners, while many in favor of drilling were clad in yellow T-shirts adorned with the green lettering “Pass Gas.”

Anti-drilling speakers argued that the proposed rules utterly fail to address the cumulative effects of mass fracking on water usage, truck traffic, wastewater disposal, noise and other issues.

And they demanded stricter rules on well spacing. Under the current plan, drillers could construct one drilling pad per square mile, or every 640 acres. Each pad typically contains

up to six wells, though they can handle up to 10.

One speaker said 1,500 people had signed a petition calling for the agency to withdraw its proposed rules and start from scratch.

(See [http://www.toxicstargeting.com/MarcellusShale/coalition\\_letter](http://www.toxicstargeting.com/MarcellusShale/coalition_letter)).

The pro-drilling crowd didn't show much patience for the other side's detailed environmental concerns or "scare tactics." Several argued that drilling represents a rare economic opportunity that the region can't afford to squander. "True environmentalists," one pro-drilling speaker said, see natural gas as a better alternative than coal or foreign oil.

Ken Knowles, head of the Steuben County Landowners Coalition, went further, taunting the antis by repeatedly saying, "If you are opposed to drilling, you are in favor of foreign oil."

The Steuben coalition is one of the region's largest. Much bigger than Schuyler's, it claims 5,000 households owning a combined 150,000 acres.

The two neighboring coalitions both chose Empire Energy Consultants, LLC, to represent them in negotiations with gas drillers. Empire was formed last year by Nicole Gwardyak, a former Pennsylvania landman. Under its deal with the Schuyler coalition, her company would receive \$20 per acre for negotiating a drilling contract.

"If the wells come to fruition, it will mean life-changing money," Gwardyak said last year, as quoted in *Wealth Daily*.

Lock said each landowner in the Schuyler Coalition would have the right to accept or reject any contract Empire brought in. And each landowner would be encouraged to consult an attorney before signing any coalition-sponsored deal.

With those safeguards in place, Lock said, it makes sense for anyone who's considering a gas lease to sign up.

The New York Farm Bureau and the Cornell Cooperative Extension agree, at least in principle. Steering people to leasing coalitions strikes them as a better option than telling individuals to go it alone.

Ashur Terwilliger, Chemung County Farm Bureau President and head of a coalition in that county, has long been an advocate for better protections for landowners who enter gas leases.

The wording and interpretation of gas leases can have major unforeseen consequences.

Earlier this year, gas companies attempted to automatically renew old gas leases under old, low-ball terms by asserting that a "force majeure" clause had been triggered by the DEC's delay in setting drilling rules. While that heavy-handed approach may not survive the scrutiny of the state's attorney general, it's mighty disturbing to those who have received the startling letters.

Krogh, the Ithaca attorney, stressed that landowners who sign leases need to be alert and aggressive. Ideally, he said, they should try to include a lease clause that grants them full control of all surface rights on their property. And all royalty clauses should refer to gross – not net – proceeds from drilling, he said.

Randal B. Marcus, another Ithaca lawyer, cautioned that by signing a gas lease, a landowner often cuts the value and marketability of his or her property. By giving a “very broad array of rights” to a driller, the lease “creates a title defect” that could stand as a major obstacle to any future sale, he said.

Furthermore, banks may be reluctant to grant a mortgage on property with a gas lease, Marcus noted.

In fact, Visions Federal Credit Union has said it may require some of its borrowers to re-mortgage their property if it has a gas lease due to the fact that certain leases can significantly devalue a property.

*Peter Mantius (pmantius@gmail.com) was a financial, legal and political reporter at The Atlanta Constitution for 17 years and editor of two business weeklies in the Northeast.*

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**Note:** This is his fourth column, To see his first column, click [here](#). To see his second column, click [here](#). To see his third column, click [here](#).

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