

Oil & Gas Leasing in Ohio

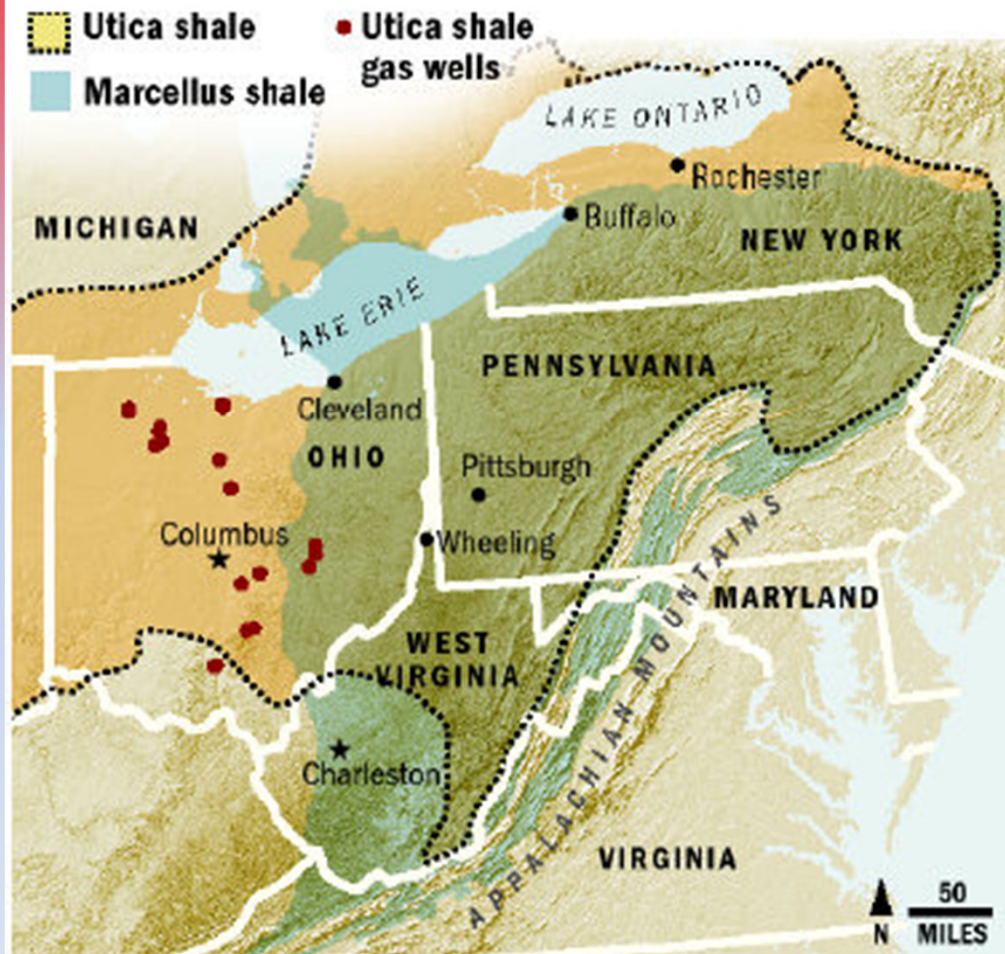
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Digging deep

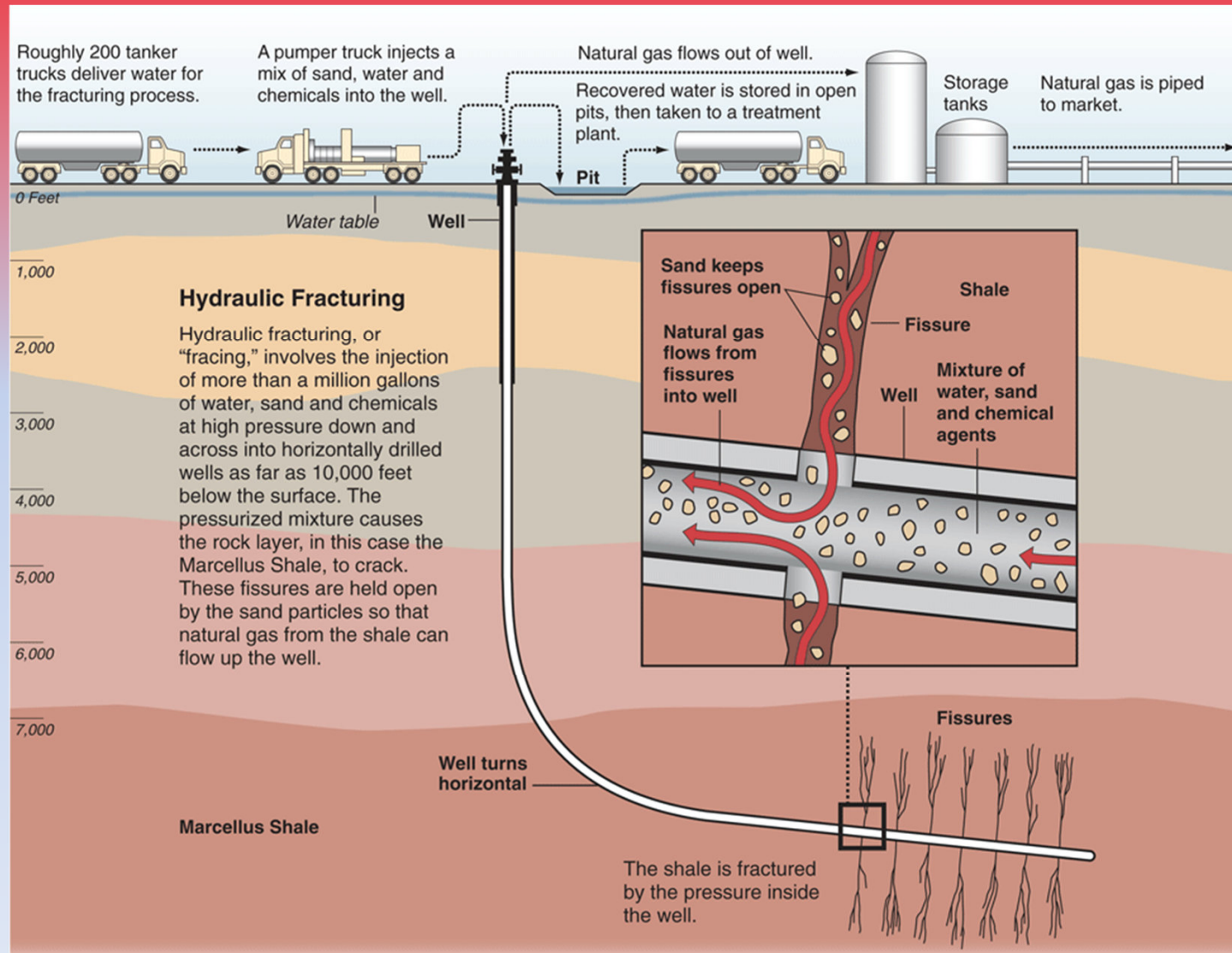
Energy companies are trying to figure out whether they can get natural gas from Utica shale. Companies already are drilling into Marcellus shale, which lies above the Utica shale.



Sources: U.S. Geological Survey, Ohio Department of Natural Resources

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The Fracing Process



Scope of Seminar

- Focus on the Main Issues.
- Discuss general terms in oil & gas leases.
- **REMEMBER:** Every lease, person, company and piece of land is different. This seminar does not take the place of individualized legal advice from an experienced Oil & Gas attorney.

Be Careful-Leases Last a Long Time

- **Don't sign anything without doing your due diligence:**
 - Do not rush
 - Talk with family and neighbors
 - Research the Company
 - Research the Market
 - Realize that you are giving up some control of your land, perhaps for multiple generations
 - Consult an attorney experienced in Oil & Gas law

What to Watch for

- Find out the Operator's plans
 - There is a big difference between a Shale Well and a Clinton Oil Sands Well.
 - If Operator not interested in the Shale, then exclude the Shale from your lease.
 - Ask if Operator would sign a lease for only one strata.



What to Watch for

- **“Intent to Lease”**
 - Really an Option Contract that is binding on Landowner.
 - If the document is really non-binding, then why are we signing it?
- Assignment-Lease will usually be assignable. Company that you lease with can “sell” your lease. Who will your lease be “sold” to?

The Language of Leasing

- **Lease Bonus**-Dollars per acre paid to landowner when Lease takes effect.
- **Landowner's Royalty**-Percentage of revenue that goes to landowner (generally 12.5-15%)
 - Reduced by proportional share of a consolidated well unit. Ex: You own 80 acres of a 640 acre well unit, or 12.5% of unit, so you get 12.5% of 12.5% which is 1.56% of revenue.
 - Be Careful: check whether your royalty is off the gross revenue of the well or if it includes costs of production, marketing, transportation, etc.
- **Primary Term**-Set number of years the lease is effective regardless of drilling or production.

The Language of Leasing (cont.)

- **Secondary Term**-after the primary term, the lease lasts “for as long as oil and/or gas are produced in paying quantities.”
- **“Paying Quantities”**-The Lessee is making any operating profit off of the well. Very low standard, so leases last a long time.
- **Unitization/Pooling**-Lessee’s right to combine your land with land owned by others to form a single well unit.

First Steps of Negotiation

- Don't accept the "standard lease" because most terms are negotiable.
- The more land you have and the better the location, the stronger your negotiating position.
- Oil companies will move on so don't needlessly drag your feet.
 - Forced Pooling.

Problematic Lease Terms-Structures and Right of Ways

- Structures on Land and Right of Ways:
 - Pipeline-bury
 - Well Pad
 - Fracing Pits
 - Roads
 - Tanks
 - Electric Lines, Meters
- Negotiate extra compensation for oil and gas activities conducted on your property.
 - Others in your well unit might not have any disturbance to the surface of their land, so you deserve more compensation.
 - Consider non-drilling lease
- Require your consent as to where oil and gas activities are conducted on your property.

Problematic Lease Terms-Termination of Lease

- Remember that “Paying Quantities” can last a very long time.
 - Set a minimum payment to protect yourself from very low production.
 - How much time does the lease give lessee to remedy defaults?
 - Notice of default
 - Get specific language defining circumstances under which the lease ends.

Problematic Lease Terms-Unitization

- Share royalty proportionally with neighbors.
- Might only have a portion of your land included in the well unit.
 - Does including a portion of your land in a well unit continue the lessee's rights to all of your land or does the non-unitized portion revert back to you?
 - Negotiate for reversion of non-unitized land.

Problematic Lease Terms-Warranty of Title

- Don't accept warranty of title provisions requiring you to guarantee and defend title to your oil and gas rights.
- Lessee will pay for title work prior to paying you and drilling a well, they do not need your warranty.

Problematic Lease Terms-Environment

- Specify remedies for damage done to:
 - Crops and trees
 - Water supply
 - Any limit to lessee's use?
 - Ditches, tile, drainage
 - Soil, erosion
 - Fences, buildings
 - Reclamation at end of lease, set a timeline
 - Remedies are only as good as the finances of the lessee.

Title: Do I own the mineral rights to my land?

- Four Basic Scenarios
 1. You own the surface, but mineral rights have been severed from surface and are owned by another.
 2. Your land is not leased
 3. Your land is leased but you are not receiving royalties or free gas
 4. Your land is leased and you are receiving royalties and/or free gas.

1. Severance of Mineral Rights from Surface Rights

- Ohio has Dormant Minerals Act
 - If a 20 year period has gone by, mineral severances may be abandoned.
 - Certain events like title transactions or mineral production prevent abandonment.
 - Legal process of giving notice and filing an affidavit on record can reunite mineral rights with surface owner (except coal).

2. No Lease On Land

- If no leases cover your land, then you can negotiate and sell your lease rights to an operator for a lease bonus plus a landowner royalty.
 - Lease Bonuses are taxed as ordinary income and not as capital gains.

3. Land is Leased but no Royalties

- If the lessee is in breach of the lease, usually because lessee has not paid royalties or provided free gas, then:
 - Statutory process of notice and filing an affidavit on record to cancel the lease.
 - Lessee must be in breach of lease.
 - Specific lease terms are important, so have an attorney review your lease.
 - Then you can sell lease rights for a lease bonus and a landowner royalty.

4. Land is Leased and Receiving Royalties

- If your land is leased and the lessee is complying with that lease by paying you royalties, rental and/or free gas then:
 - Lessee has right to assign/sell your lease to another operator and the lessee will profit from the lease bonus.
 - Check terms of lease, there are exceptions.
 - You will still receive landowner royalties per the original lease.
 - If original lease has provision limiting the size of consolidated well units, you may be able to bargain for some compensation.