

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

NOTICE OF INTENT TO ISSUE A SPACING ORDER FOR A NATURAL GAS
WELL PERMITTED PRIOR TO AUGUST 2, 2005

The Department of Environmental Conservation (“Department”) hereby gives notice pursuant to Environmental Conservation Law (“ECL”) § 23-0503(5) of its intent to issue a spacing order establishing a spacing unit for the following listed well:

<u>Well Name</u>	<u>Town</u>	<u>County</u>	<u>API Number</u>
Fred Andrews 1-A	Big Flats	Chemung	31-015-23182-01-00

Well Operator: Fortuna Energy Inc., 337 Daniel Zenker Drive, Horseheads, New York 14845 (Contact:Mr. Guido Struyk).

A permit to drill the Fred Andrews 1-A well was issued April 29, 2005. A September 8, 2006, spacing and compulsory integration order previously issued for the well was vacated by Interim Decision and Order of the Commissioner, dated January 7, 2009. The spacing order was vacated on the ground that amendments to ECL article 23 effective August 2, 2005 applied to the Fred Andrews 1-A well and that procedures under the new law were not followed for the September 8, 2006 order. The Department proposes to re-issue a spacing order pursuant to ECL 23-0503(5) of the new law.

The proposed spacing unit for the well conforms to the “statewide spacing” provisions of ECL 23-0501(1)(b)(iv). Accordingly, the spacing order may be issued without a hearing if no substantive and significant objections to the boundaries of the proposed spacing unit are received within thirty (30) days after publication of this notice by the well operator.

The Department has directed the well operator listed above to provide notice of the proposed spacing unit by publication in a newspaper of general circulation in the vicinity of the unit. The Department has also provided notice by certified mail, return receipt requested, to each uncontrolled owner within the proposed unit.

A 30-day comment period, as provided by ECL 23-0503(5), commences upon publication of this notice by the well operator. If the Department determines that substantive and significant issues are raised in a timely manner during the comment period, an adjudicatory hearing will be scheduled.

All written comments on the proposed spacing unit must be received by the Department at the following addresses no later than close of business on **Monday, March 16, 2009**. Written comments on the proposed spacing unit should be submitted to: John K. Dahl, Director, Bureau of Oil and Gas Regulations, Division of Mineral Resources, New York State Department of Environmental Conservation, 625 Broadway, 3rd Floor, Albany, New York 12233-6500 (518-402-8056). A copy of any written

comments should also be submitted at the same time to James T. McClymonds, Chief Administrative Law Judge, New York State Department of Environmental Conservation, 625 Broadway, 1st Floor, Albany, New York 12233-1550 (518-402-9003), and to counsel for the well operator, Ruth E. Leistensnider, Esq., Nixon Peabody LLP, 677 Broadway, 10th Floor, Albany, New York 12207.

Any challenge to a proposed spacing unit must meet the substantive and significant requirement for establishing an issue for adjudication and must contain (i) a description and a map of the proposed alternative spacing unit; (ii) a technical justification of the proposed alternative spacing unit, which shall include a description and analysis of the scientific data intended by the owner to support its proposed spacing unit configuration; and (iii) the name, address and experience of any expert witness proposed to support the proposed alternative spacing unit configuration.

A map of the proposed spacing unit and the draft spacing order are available for inspection during normal business hours at the Department's Division of Mineral Resources, Region 8 Headquarters, 6274 East Avon-Lima Road, Avon, New York 14414-9519 (585-226-2466), Contact: Linda Collart; and at the Department's Region 8 Sub-Office, 276 Sing Sing Road, Suite 1, Horseheads, New York 14845 (607-739-0809), Contact: Joseph Yarosz. Interested parties may also request the map and draft spacing order from the Department's Division of Mineral Resources' Albany office by email, at dmnog@gw.dec.state.ny.us.

The spacing order will not be issued until one of the following occurs: (1) the Department determines that no substantive and significant issues have been raised, or (2) an adjudicatory hearing has been held to address any substantive and significant issues. If, after spacing order issuance, the well operator does not control 100% of the acreage in the unit, the Department will schedule an integration hearing pursuant to ECL 23-0901(3).

Dated: February 9, 2009
Albany, New York

James T. McClymonds
Chief Administrative Law Judge