

## Terry Hill South Field – Interim Decision

December 21, 2004

The Commissioner of the New York State Department of Environmental Conservation ("DEC") issued an Interim Decision on the Terry Hill South Field that will result in the release of royalties to those landowners who have leased with Fortuna. The decision can be read in its entirety on the DEC's website. A link to the website is listed below.

At the administrative hearings for the Terry Hill South Field held in 2002 challenges were made to the DEC's recommendations in respect of: (1) the spacing unit configurations for the various wells in the Field; and (2) the percentage of production that uncontrolled interest owners in the spacing units were entitled to (1/8th royalty interest) upon compulsory integration into the spacing unit for a well. The Administrative Law Judge dismissed both of the challenges.

The decision of the Administrative Law Judge on the two above issues was appealed to the Commissioner of the DEC. On December 21, 2004 the Commissioner of the DEC issued an interim decision dismissing the appeal in respect of the challenges to the configuration of the spacing units. The Commissioner of the DEC held that the Administrative Law Judge was correct determining that the parties who were challenging the spacing unit configurations did not bring forth sufficient evidence to show the spacing units were incorrect. The Commissioner of the DEC confirmed "the petitioners' offer of proof at the issues conference was insufficient to establish an adjudicable issue concerning the size and configuration of the field".

The interim decision of the Commissioner of the DEC instructs the staff of the DEC to prepare an order releasing all royalties to the mineral rights owners in the Terry Hill South Field excluding those persons who are claiming greater than a 1/8th royalty share of the production from the wells. Fortuna has no control over the timing of the preparation and execution of the order releasing royalties, as this will be completed by the staff of the DEC.

Once the order releasing royalties is prepared and signed Fortuna will be in a position to release royalties. In the meantime Fortuna will be ensuring we have the correct names and addresses of the landowners.

The Commissioner of the DEC did not make any decision on the second appealed issue dealing with compulsory integration. Fortuna does not know when this issue will be decided. As a result a 1/8th royalty attributable to those persons who are claiming greater than a 1/8th royalty share of the production from the wells will continue to be withheld by Fortuna in an interest bearing trust account.

Related:

<http://www.dec.state.ny.us/website/ohms/decis/terryhillid.html>