

---

**In The  
Supreme Court of the United States**

---

STATE OF NEW JERSEY,  
*Plaintiff,*

v.

STATE OF DELAWARE,  
*Defendant.*

---

**Before the Special Master  
the Hon. Ralph I. Lancaster, Jr.**

---

---

**APPENDIX OF THE STATE OF NEW JERSEY  
ON MOTION FOR SUMMARY JUDGMENT**

---

STUART RABNER  
Attorney General

RACHEL J. HOROWITZ\*  
BARBARA L. CONKLIN\*  
Deputy Attorneys General

Of Counsel  
GERARD BURKE  
Assistant Attorney General  
JOHN R. RENELLA  
Deputy Attorney General

\* *Counsel of Record*

On the Brief  
WILLIAM E. ANDERSEN  
AMY C. DONLON  
DEAN JABLONSKI  
EILEEN P. KELLY  
Deputy Attorneys General

Richard J. Hughes Justice  
Complex  
25 West Market Street  
P.O. Box 112  
Trenton, New Jersey 08625  
(609) 984-6811

**New Jersey's Appendix  
Table of Contents**

**Volume I**

	<b>Page</b>
<b>Documents Relating to the Compact of 1905</b>	
Delaware Joint Resolution, February 13, 1905 .....	1a
23 Del. Laws Ch. 6 (1905) .....	2a
Laws of the State of Delaware 1905, Appendix .....	7a
Compact of 1905 (23 Del. Laws Ch. 5 (1905)) .....	8a
Compact of 1905 as enacted by Congress, January 24, 1907 .....	14a
<b>Documents relating to the 1935 Decree, <u>New Jersey v. Delaware II</u></b>	
Decree, No. 11 Orig., June 3, 1935 .....	18a
<b><u>New Jersey v. Delaware I</u> transcript (extracts)</b>	
Transcript of proceedings, pages 305-312 .....	25a
Transcript of proceedings, pages 240-241 .....	33a
Transcript of proceedings, pages 244-245 .....	35a
Transcript of proceedings, page 260 .....	37a
Transcript of proceedings, pages 272-283 .....	38a
Transcript of proceedings, pages 168 .....	50a
Transcript of proceedings, pages 133-134 .....	51a
Transcript of proceedings, pages 155-156 .....	53a

**Volume I (cont.)**

Transcript of proceedings, pages 242-245, (Exhibit 35  
Daniel H. Kent Riparian grant 1883) ..... 55a

Transcript of proceedings, pages 256-265, (Exhibit 37 Dupont Riparian grant 1891) ..... 59a

Transcript of proceedings, pages 266-271 (Exhibit 38  
Annie E. Brown Riparian grant 1891) ..... 68a

Transcript of proceedings, pages 60-78 ..... 74a

**Documents Related to and Predating Compact of 1905**

Correspondence between the Governors of New Jersey  
and Delaware: May 9, 14, 22, 1872 ..... 94a

New Jersey v. Delaware I, Order for Preliminary Injunction, March 26, 1877 ..... 99a

Report of Commissioners of New Jersey, March 16, 1903 ..... 102a

Letter Report from Delaware Commissioners, March 28, 1903 ..... 105a

Letter from Delaware Commissioner Ward to Delaware  
Commissioner Bates, February 11, 1905 ..... 108a

Letter to New Jersey Governor Stokes, December 19, 1905 ..... 110a

Letter from the Secretary Of State of Delaware, December 21, 1905 ..... 111a

Resolution passed by the Joint Commission on January 16, 1907 (with cover letter) ..... 112a

Letter from Delaware Attorney General, January 19, 1907 ..... 114a

**Documents Related to New Jersey v. Delaware II**

Reply Brief of Defendant Before Special Master pages 6-11 ..... 121a

**Volume I (cont.)**

Oral argument by Delaware before Special Master pages 90-93 ..... 125a

Report of the Special Master pages 52-55, 76-77 and 80 ..... 128a

Brief for Plaintiff on Exceptions to the  
    Report of the Special Master pages 126-131 ..... 133a

Reply Brief of Defendant pages 7-11, 16 and 17, 26-29 ..... 137a

**Documents Related to New Jersey’s Opening Statement and Sherman Testimony, New**

**Jersey v. Delaware II (excerpts)**

Transcript of proceedings, pages 77-87 ..... 143a

Transcript of proceedings, pages 106-111 ..... 149a

Transcript of proceedings, pages 114-115 ..... 153a

Transcript of proceedings, pages 116-123 ..... 155a

**Volume II**

**Documents Related to New Jersey’s Opening Statement and Sherman Testimony, New**

**Jersey v. Delaware II (excerpts) (continued)**

Transcript of proceedings, pages 126-129 ..... 159a

Transcript of proceedings, pages 130-155 ..... 161a

Transcript of proceedings, pages 270-285 ..... 174a

**Correspondence Related to Decision, New Jersey v. Delaware II**

Letter from Duane Minard N.J. Assistant Attorney General  
    to Hon. Clarence Southerland, Delaware Special Counsel, April 17, 1935 ..... 182a

## Volume II (cont.)

Letter from Clarence Southerland to Delaware	
Attorney General Green, April 18, 1935 .....	184a
Letter from Delaware Attorney General Green to the	
Governor of Delaware, December 27, 1938 .....	186a
Report by Clarence Southerland for Delaware Attorney General, July 3, 1935 .....	190a

### New Jersey Laws

Wharf Act of 1851, 1851 N.J. Laws ch. 335 .....	206a
Legislative Grant to <u>Thomas D. Broadway</u> , 1854 N.J. Laws ch. 143 .....	211a
Act to Incorporate the <u>Pennsgrove Pier Company</u> , 1855 N.J. Laws ch. 274 .....	214a
Board of Riparian Commissioners Law, 1864 N.J. Laws ch. 391 .....	217a
Report of Commissioners, February 1, 1865 .....	220a
General Riparian Act, 1869 N.J. Laws ch. 383. ....	232a
Legislative Grant to <u>Robert Walker</u> , 1870 N.J. Laws ch. 131 .....	240a
Legislative Grant to <u>Joseph Guest</u> , 1870 N.J. Laws ch. 344 .....	241a
1871 N.J. Laws ch. 256 .....	242a
Legislative Grant to <u>Henry Barber</u> , 1871 N.J. Laws ch. 307 .....	243a
Proclamation by the Governor of New Jersey, May 8, 1872 .....	245a
Joint Resolution by New Jersey Legislature,	
1876 N.J. Laws p. 418, March 30, 1876 .....	247a
1891 N.J. Laws ch. 123 .....	249a
1903 N.J. Laws, p. 39: Joint Resolution Relating to the Boundary Controversy	
Between the States of New Jersey and Delaware, March 5, 1903 .....	254a
1903 N.J. Laws ch. 243: Act to Ratify a Compact, April 8, 1903 .....	256a
1905 N.J. Laws ch. 42: Act to Ratify and	
Confirm the 1905 Compact, March 21, 1905 .....	262a
1905 N.J. Laws ch. 230: Act to Appoint	
Three Commissioners by New Jersey, May 11, 1905 .....	268a

## Volume II (cont.)

1905 N.J. Laws ch. 131: Act to provide uniform laws regarding fishing, May 7, 1907 .....	273a
Waterfront Development Law, 1914 N.J. Laws ch. 123 (now codified in part as <u>N.J.S.A. §12:5-1 et seq.</u> ) .....	283a
New Jersey Board of Commerce and Navigation Permit to William Acton, 1923 and 1925 .....	290a
1915 N.J. Laws ch. 242: New Jersey Board of Commerce and Navigation Act .....	292a
1917 N.J. Laws ch. 189: New Jersey Cession to United States Government .....	298a

### **New Jersey Attorney General Opinions and Related Correspondence**

NJ Atty Gen. Op. 3 (1954), February 2, 1954 .....	302a
Letter from Chief Deputy Attorney General of Delaware to Mr. Gannon, Chief of New Jersey Navigation Bureau, June 13, 1955 and Reply of June 19, 1955 .....	305a
Letter from Mr. Friedman of New Jersey Navigation Bureau to Delaware Chief Deputy Attorney General, August 2, 1956 .....	307a
NJ Atty Gen. Op. 22 (1956), November 16, 1956 .....	308a

## Volume III

### **Delaware Laws**

Wilmington Ordinance, approved July 16, 1884 .....	313a
40 Del. Laws ch. 179 (1935)(Wilmington boundaries), approved April 11, 1935 .....	314a
Wilmington City Code, effective July 1, 1993 (portion) .....	319a

### **Delaware Attorney General Opinions on Fishing Laws and Delaware Governor's 1909 Message**

State of Delaware, Biennial Message of Preston Lea, Governor, January 5, 1909 (portion) .....	356a
Del. Atty Gen. Op. 33 (1977), October 28, 1977 .....	360a

### Volume III (cont.)

Delaware Attorney General letter, September 11, 1946 ..... 362a

#### **Castagana Affidavit**

Affidavit of Richard G. Castagna, June 27, 2005 ..... 369a

#### **New Jersey State Tidelands Grants**

Daniel H. Kent grant, 1883 ..... 386a

Annie E. Brown grant, 1891 ..... 392a

Dupont grant, 1891 ..... 399a

James A. Denny grant, 1906 ..... 404a

Pennsgrove Pier Company grant, 1916 ..... 412a

Harry S. Barber grant, 1916 ..... 419a

Dupont grant (9 tracts), August 21, 1916 ..... 427a

Dupont grant, November 20, 1916 ..... 439a

Dupont grant, 1917 ..... 445a

Dupont lease, 1918 ..... 450a

French's Hotel Company grant, 1921 ..... 457a

Acton grant, February 27, 1923 ..... 463a

Acton grant, November 22, 1923 ..... 468a

Lease to Fogg and Hires Company, 1924 ..... 473a

Delaware-New Jersey Ferry Company grant 1930 ..... 482a

Acton grant, August 17, 1925, (Liber H-1 p. 81) ..... 486a

Acton grant, August 17, 1925, (Liber K-1 p. 58) ..... 491a

Township of Lower Penns Neck grant, 1925 ..... 496a

Acton grant, October 19, 1925 ..... 501a

The Franklin Real Estate Company grant, 1928 ..... 506a

Anna C. B. Locuson grant, 1929 ..... 511a

## Volume IV

Josephine Grace Locuson grant, April 15, 1929 (Liber Q-1 p. 155) .....	516a
Josephine Grace Locuson grant, April 15, 1929 (Liber Q-1 p. 149) .....	521a
William G. Locuson grant, June 17, 1929 .....	526a
Josephine Grace Locuson grant, 1929 .....	531a
Dupont grant, 1929 .....	538a
Delaware River Power Company Lease, 1929 .....	543a
Penn Beach Property Owners' Association grant, 1933 .....	549a
J. Landis Strickler grant, 1935 .....	554a
Dupont grant, 1943 .....	559a
Sun Oil Company grant, 1957 .....	565a
Dupont grant, 1960 .....	575a
Dupont grant, 1967 .....	582a
Keystone Urban Renewal Limited Partnership lease, 1992 .....	589a
William G. Bergman license, 2001 (renewal) .....	610a
Township of Pennsville Revocable license, 2000 .....	616a
New Jersey Parks Assignment of Management Rights, 1999 .....	622a

### **Documents Relating to E. I. du Pont de Nemours and Company**

Letter of W.G. Ramey, Vice President of DuPont, to B.F. Cresson, Jr., Chief Engineer, New Jersey Board of Commerce and Navigation, September 11, 1916 .....	632a
Letter of B.F. Cresson, Jr. Consulting Engineer, New Jersey Board of Commerce and Navigation to C.R. Mudge, Esq. of Legal Department of Dupont, November 7, 1917 .....	633a
Letter of Mr. Cresson to Mr. Mudge, November 8, 1917 .....	634a
Letter of Mr. Cresson to Mr. Mudge, November 12, 1917 .....	635a
Letter of Alan L. Skinner, of Counsel to R.A. Haber, Chief Engineer, Delaware Highway Department, September 30, 1957 .....	636a



**Volume IV (cont.)**

Letter of Mr. Haber to Mr. Skinner October 25, 1957 .....	638a
Letter of S. Samuel Arst, Counsel to the State Highway Department to Mr. Haber, December 2, 1957 .....	639a
Letter of Mr. Haber to Army Corps. of Engineers, December 13, 1957	
Letter of Edward T. Fogg, Engineer of Dupont to B. E. Lane of D.N.R.E.C., May 12, 1971 .....	642a
Letter of Mr. Fogg to Mr. Lane, June 7, 1971 .....	648a
Letter of Richard H. Schlein, Delaware Deputy Attorney General to Hon., Russell W. Peterson, Governor of Delaware, September 23, 1971 .....	650a
New Jersey Permit for Dupont, March 1, 1977 .....	657a
New Jersey Permit to Dupont, August 1977 .....	658a
Acceptance of Revocable Permit, September 19, 1977 .....	660a
New Jersey Stream Encroachment Permit Application Acknowledgment, October 25, 1977 .....	661a
Memorandum from Mike Malkiewicz to Bill Moyer (of Delaware), September 4, 1981 .....	662a
Memorandum from Mike Malkiewicz to Bill Moyer, September 10, 1981 .....	663a
Delaware Lease to Dupont, September 29, 1971 .....	664a
Memorandum from William Moyer to June MacArtor (Delaware DAG), January 15, 1982 .....	670a
Letter of Deputy Attorney General MacArtor of Delaware to Mr. Skinner of Dupont, October 23, 1981 .....	671a
Project Summary of Chambers Works Proposal, 1982 .....	672a
Acceptance of Revocable Permit, April 8, 1982 and Coastal Permit, March 24, 1982 .....	676a

## Volume IV (cont.)

### New Jersey Water Allocation Permits

Affidavit of Frederick Sickels, June 22, 2005 .....	683a
New Jersey Water Allocation Permit to Logan Generating Company, November 13, 1996 .....	688a
Cogentrix Water Allocation Permit Renewal Application, September 29, 2005 .....	698a

### New Jersey Surface Water Discharge Permits and Enforcement

Jeffrey T. Redding Affidavit, June 23, 2005 .....	710a
---	------

## Volume V

### New Jersey Surface Water Discharge Permits and Enforcement (cont.)

Cogentrix N.J.P.D.E.S. Permit Renewal Application, March 3, 2005 .....	718a
Letter of N.J.D.E.P. Division of Water Quality to Mr. Donnelly of D.N.R.E.C., March 29, 2006 .....	758a
Dupont Administrative Consent Order, June 28, 1989 .....	761a
Dupont Administrative Consent Orders, February 8, 1988 and December 14, 1984 .....	770a
Connectiv Power Administrative Order, June 7, 2001 .....	777a
Pennsville Sewerage Authority Administrative Order, June 16, 1988 .....	785a
Pennsville Sewerage Authority Administrative Consent Order, June 29, 1991 .....	794a
Penns Grove Sewerage Authority Consent Order, May 12, 1999 .....	803a
Logan Generating Plant Discharge Permit Field Compliance and Assistance Report, August 26, 1978 .....	810a
Logan Generating Plant Settlement Agreement, January 4, 1996 .....	811a

### Broderick Affidavit and Waterfront Development Permits, With Delaware Correspondence

Affidavit of Kevin Broderick, June 2005 .....	817a
---	------

**Volume V (cont.)**

Dupont Chambers Works New Jersey Waterfront Development Permit,  
October 18, 1982 ..... 824a

Dupont Chambers Works New Jersey Waterfront Development Permit,  
January 20, 1988 ..... 827a

Keystone Cogeneration System New Jersey Waterfront  
Development Permit, September 24, 1991 ..... 830a

Keystone Cogeneration Systems Inc. Summary Analysis, September 24, 1991 ..... 837a

Logan Generating Company Water Quality Certificate, September 14, 1998 ..... 870a

Pennsville Township New Jersey Permit, March 22, 2000 ..... 876a

Pennsville Township New Jersey Permit, February 20, 2001 ..... 879a

Fort Mott State Park Permit, January 24, 1996 ..... 882a

Letter from Fenwick Commons' Counsel to D.N.R.E.C.  
Secretary Hughes, May 6, 2005 ..... 885a

Decision by Secretary Hughes re: Riverwalk Project, March 10, 2005 ..... 886a

**Delaware Actions - El Paso**

Letter from David R. Keifer, Director, Delaware Planning Office to  
N.J.D.E.P. Commissioner Sullivan, February 17, 1972 ..... 887a

Letter from Mr. Keifer to Mr. Barry Huntsinger, Vice President of El Paso  
Eastern Company, February 23, 1972 ..... 888a

Letter from Commissioner Sullivan to Mr. Keifer, March 2, 1972 ..... 891a

Letter from Mr. Huntsinger, to Mr. Keifer, March 3, 1972 ..... 892a

Letter from Mr. Keifer to Mr. Huntsinger, March 17, 1972 ..... 893a

**Coastal Zone Management Documents**

The Coastal Zone of Delaware, July 1972 (excerpts) ..... 895a

**Volume V (con.)**

Comments of Sun Oil Company on the Proposed

Delaware Coastal Management Plan, August 9, 1979 .....	932a
Affidavit of Steven C. Whitney, July 27, 2005 .....	936a
DuPont Dredging Permit Issued by New Jersey, Sept. 16, 1977 .....	939a-1

**Volume VI**

State of New Jersey Coastal Management Program

Bay and Ocean Shore Segment Draft Environmental Impact Statement, May 1978 (portion) .....	940a
Options for New Jersey's Developed Coast Appendices A-G, March 1979 (portions) .....	1024a
New Jersey Coastal Management Program Final Environmental Impact Statement, August 1980 .....	1057a
Letter from Mr. Whitney of N.J.D.E.P. to Anthony P. Pratt of D.N.R.E.C. re: Keystone Cogeneration Systems, March 14, 1991 .....	1067a
Draft Memorandum of Agreement, November 15, 1993 .....	1068a
Letter of Delaware Administrator Cooksey to Terrie Fowler, Planner, N.J.D.E.P. re: Draft Memorandum of Agreement, May 9, 1994 .....	1074a
Draft Memorandum of Agreement, June 16, 1994 .....	1076a

**Newspaper Articles Regarding Compact**

<u>Every Evening</u> - Wilmington, Delaware, March 10, 1905 "The Boundary Question" (p. 4) .....	1081a
<u>Every Evening</u> - Wilmington, Delaware, March 10, 1905 "The Boundary Question" (p. 6) .....	1083a
<u>Every Evening</u> - Wilmington, Delaware, March 11, 1905 Statement by Mr. H.H. Ward .....	1086a
<u>Every Evening</u> - Wilmington, Delaware, March 15, 1905 Editorial .....	1088a
<u>Every Evening</u> - Wilmington, Delaware, March 15, 1905 News report .....	1090a

## Volume VI (con.)

<u>Every Evening</u> - Wilmington, Delaware, March 15, 1905 “The Boundary Battle” .....	1092a
<u>Every Evening</u> - Wilmington, Delaware, March 15, 1905	
News report “Boundary Dispute” .....	1103a
<u>Every Evening</u> - Wilmington, Delaware, News report	
“Boundary Settlement Compact is Signed” .....	1108a

### **Pre-New Jersey v. Delaware III Correspondence**

Letter of New Jersey Governor’s Chief Counsel, Paul T. Fader to Joseph Schoell,	
Legal Counsel to Delaware Governor, April 11, 2005 .....	1109a
Letter of Mr. Schoell to Mr. Fader, May 9, 2005 .....	1112a
New Jersey Assembly Resolution No. 260, Assembly	
Committee Substitute - adopted May 2, 2005 .....	1114a

## Volume VII

### **Request for Admissions (Delaware’s Response)and September 19, 2006 Letter**

Delaware’s Responses to New Jersey’s First Request	
for Admissions September 8, 2006 .....	1117a
Letter of Mr. Collins J. Seitz to Deputy Attorney General	
Rachel J. Horowitz, September 19, 2006 .....	1189a

### **Expert Reports**

Richard Castagna, <u>New Jersey’s Exercise of Regulatory Authority Over Waterfront</u>	
<u>Improvements In The Twelve Mile Circle Outshore of Low Water,</u>	
November 9, 2006 .....	1193a
J. Richard Weggel, Ph.D., P.E., <u>Trends in Shipping, Dredging Technology and in</u>	
<u>Wharf and Pier Construction in the Years Surrounding 1905 with</u>	
<u>Emphasis on the Delaware River and Bay,</u> November 7, 2006 .....	1224a

## Volume VII (con.)

### Treatises

Farnham, The Law of Waters and Water Rights, Vol. I (1904) (excerpts) ..... 1279a

### Additional Miscellaneous Documents

Letter of David Q. Risilia, N.J.D.E.P., to David Blaha, Environmental Resources  
Management, October 19, 2005 ..... 1296a

Letter of Janis Farmer of Crown Landing to Mr. Risilia, April 10, 2006 ..... 1298a

Letter of S. Samuel Arsht, Department Attorney, Delaware Highway Department,  
to Alan L. Skinner of Dupont, January 8, 1958 ..... 1299a

Letter of Mr. Skinner to John C. Bryson of D.N.R.E.C., February 10, 1971 ..... 1300a

Letter of Mr. Skinner to Delaware Deputy Attorney General June D. MacArtor,  
October 27, 1981 ..... 1303a

Letter of Herbert Ward, Delaware Attorney General, to  
Delaware Governor Hunn, January 31, 1903 ..... 1305a

Joint Resolution of New Jersey Legislature, February 14, 1905 ..... 1315a

Webster's Unabridged Dictionary (1898) (excerpts) ..... 1319a

Letter of Delaware Attorney General to Delaware Special Counsel Southerland,  
April 25, 1935 ..... 1319a

Opinion of Delaware Attorney General, February 8, 1968 ..... 1320a

## Volume VIII

Affidavit of Craig A. Reiner, August 29, 2006 ..... 1322a

Affidavit of Carl W. Wentzell, August 30, 2006 ..... 1325a

Affidavit of J. Thomas Butts, September 5, 2006 ..... 1329a

Declaration of Beth S. Reddy, October 2, 2006 ..... 1334a

Memo to Colonel Justin J. Dinto Superintendent of State Police, from Philip H. Hopkins, Jr.,  
Counsel to The New Jersey Attorney General, April 30, 1993 ..... 1340a

Letter to Mr. Hugh R. Sharp, Chairman State Highway Department, from Delaware Attorney  
General Joseph Craven, May 31, 1955 ..... 1347a

Volume VIII (con.)

Letter to John C. Bryson, Executive Director, Delaware Water and Air Resources Commission, from James L. Lachum, Esq., Berl, Potter & Anderson, September 9, 1966 .....	1349a
Letter to Juan S. Crofton, Crofton Diving Corp., from Frank J. Cianfrani, Chief Regulatory Branch, US Army Corps of Engineers, June 24, 1988 .....	1359a
Letter to Sarah W. Cooksey, Administrator, Delaware Coastal Management Program, from Thomas McVeigh, Principal Project Manager, Roy F. Weston, Inc., February 21, 2001 .....	1362a
Coastal Zone Management for Delaware, February 18, 1971 (Excerpt) .....	1367a
Delaware Bay Report Series, Volume 8, Economic and Social Aspects of Delaware's Coastal Zone, Spring 1973 (Excerpt) .....	1408a
Delaware's Responses to New Jersey's First Set of Interrogatories, June 30, 2006 .....	1471a
Delaware's Response to New Jersey's First Request for Production of Documents, June 30, 2006 .....	1501a
Henry Philip Farnham, The Law of Water and Water Rights, 1904 (Excerpt), §114 .....	1516a
Letter to David Blaha, Environmental Resources Management, from Joseph J. Seebode, Assistant Commissioner, NJDEP, May 24, 2005 .....	1525a
Letter to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission from Kenneth C. Koschek, Office of Permit Coordination and Environmental Review, NJDEP, May 25, 2005 .....	1527a