

February 17, 2006

*By E-mail and First-Class Mail*

Ralph J. Lancaster, Jr., Esq.  
Pierce Atwood  
One Monument Square  
Portland, ME 04101

**Re: *New Jersey v. Delaware*, No. 134, Original: Issues of Fact and Law**

Dear Mr. Lancaster,

Pursuant to Case Management Order No. 1, we respectfully submit Delaware's statement of the issues of fact and law to be decided in this case.

**ISSUES OF FACT**

1. What projects, other than BP's Crown Landing project, are under consideration or pending for approval in New Jersey within the twelve-mile circle and implicate Article VII or VIII of the 1905 Compact?
2. What is the relationship of BP's commercial interests in obtaining regulatory approval of the Crown Landing project to New Jersey's decision to bring this action?
3. What actions, if any, have the parties undertaken to implement Article IV of the 1905 Compact, such as adopting uniform fishing laws?
4. What representations were made by New Jersey and Delaware regarding the adoption of uniform fishing laws in order to procure the ratification of the 1905 Compact by Congress in 1907?
5. What were the scope and type of projects previously approved by New Jersey within the twelve-mile circle?

6. Have the other projects previously approved by New Jersey within the twelve-mile circle required the dredging of Delaware's submerged land? If so, has the dredging been on a scale commensurate with BP's Crown Landing project?
7. Have any projects previously approved by New Jersey raised material questions of compliance with Delaware's coastal zone management or other laws?
8. What is the nature and scope of BP's Crown Landing liquefied natural gas unloading facility?
9. Has BP obtained all necessary New Jersey government permits for the Crown Landing project?
10. What were the scope and type of projects considered to have been within New Jersey's "riparian jurisdiction" at the time the 1905 Compact was drafted, signed, and approved by Congress?
11. What were the scope and type of projects considered to have been within New Jersey's exercise of jurisdiction within the twelve-mile circle, other than as to "riparian jurisdiction," at the time the 1905 Compact was drafted, signed, and approved by Congress?
12. What was the historical meaning of "riparian jurisdiction" at the time the 1905 Compact was drafted, signed, and approved by Congress?
13. What representations were made by the commissioners, legislators, and others involved in drafting, adopting, and/or ratifying the 1905 Compact or litigating *New Jersey v. Delaware*, 205 U.S. 550 (1907) (No. 1, Orig.), that shed light on the meaning of the 1905 Compact, including Articles IV, VII and VIII thereof?
14. What representations has New Jersey made, both prior and subsequent to the approval of the 1905 Compact, about Delaware's jurisdiction over activities carried out on or over Delaware's submerged lands, but also on or attached to New Jersey's shore?
15. What riparian uses existed on each side of the Delaware River within the twelve-mile circle before and at the time of the 1905 Compact?
16. What riparian uses continued on each side of the Delaware River within the twelve-mile circle after execution of the 1905 Compact?

### **ISSUES OF LAW**

1. Whether, in light of the facts to be discovered, the Supreme Court has jurisdiction over this action.
2. Whether the failure of the States to enact the uniform fishing laws required by Article IV of the 1905 Compact renders the Compact unenforceable.
3. Whether, if the 1905 Compact is unenforceable, any other source of law would preclude Delaware from enforcing its laws on its own side of the boundary to projects such as BP's Crown Landing facility.
4. Whether the phrase "on its own side of the river" in Article VII of the 1905 Compact should be read in light of the longstanding boundary dispute between the States as a phrase used to defer a resolution of the precise location of where the parties would exercise "riparian jurisdiction" until after the actual boundary line was later determined.
5. Whether the phrase "may ... continue to exercise" in Article VII of the 1905 Compact reflects the parties' intent to preserve the status quo regarding the exercise of riparian jurisdiction without expressly addressing or resolving either the boundary question or the jurisdictional issues that might arise should the boundary later be adjudicated or resolved by the States.
6. Whether Article VIII of the 1905 Compact, which provides that "[n]othing herein contained shall affect the territorial limits, rights, or jurisdiction of either State of, in, or over the Delaware River, or the ownership of the subaqueous soil thereof, except as herein expressly set forth," requires a clear statement rule of interpretation for the 1905 Compact and thus that any relinquishment of jurisdiction to regulate activities on Delaware's or New Jersey's sovereign lands be explicit in the Compact.
7. Whether the 1905 Compact should be read in light of the public trust doctrine, which requires a State to hold its sovereign lands in a public trust for its citizens.
8. Whether the phrase "riparian jurisdiction," as used in Article VII of the 1905 Compact and understood in light of the contemporaneous legal context of "riparian" rights, applies broadly to virtually any activity that New Jersey might wish to authorize on a wharf including, for example, the handling of hazardous materials such as liquefied natural gas, heavy industrial activities, restaurants, casinos, heliports or airports, floating condominiums, amusement parks, adult entertainment, and the like.

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9. Whether BP's Crown Landing project, which by BP's latest estimate would extend at least 2,000 feet into Delaware territory and require the dredging of 1.24 million cubic yards of Delaware soil, is a project encompassed within the "riparian jurisdiction" addressed by the 1905 Compact.
10. Whether the term "exclusive" should be impliedly read into Article VII to preclude Delaware from exercising any jurisdiction under applicable state laws over projects that cross the border from New Jersey and encroach onto Delaware's submerged lands, notwithstanding the fact that the drafters used the term "exclusive jurisdiction" elsewhere in the 1905 Compact but not in Article VII.
11. Whether New Jersey is estopped from now claiming its own "exclusive" riparian jurisdiction over projects extending from New Jersey lands beyond the border into Delaware.

Very truly yours,

David C. Frederick

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Barbara Conklin, Esq. (e-mail and 2 paper copies)  
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